

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

State ex rel. BRIAN M. AMES)	CASE NO.: 21M000093
)	
Relator,)	JUDGE: DAVID M. ONDREY
)	
v.)	RELATOR'S OPPOSITION TO
)	RESPONDENTS' MOTION TO DISMISS
GEAUGA COUNTY REPUBLICAN)	
CENTRAL AND EXECUTIVE)	
COMMITTEES et al.)	
)	
Respondents)	

Now comes Relator Brian M. Ames with his Opposition to Respondents' Motion to Dismiss and requests this Court deny same for cause set forth in the attached Memorandum in Opposition.

Respectfully Submitted,



Brian M. Ames
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Relator *pro se*

CERTIFICATION OF SERVICE

I hereby certify that, on the 22nd day of March, 2021, a true copy of the foregoing was, in accordance with Civ.R. 5(B)(2)(f), sent by electronic mail to:

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Memorandum in Opposition to Respondents’ Motion to Dismiss Civ.R. 12(B)(6)

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1. Introduction

This case arises from the common misapprehension of the nature of the county central committees created by statute: that they are political parties. In truth, they are akin to embassies that the State of Ohio has established to allow political parties to participate in certain governmental functions consistent with a public policy determined by the General Assembly. A county central committee can be compared to the U.S. Embassy to Israel which remains U.S. property although it is located in Israel and employs Israelis to further U.S. foreign policy. Just as the U.S. Embassy to Israel is created by the U.S. and may be abolished should the U.S. decide that it no longer serves foreign policy, so are the county central committees: created by the General Assembly, they may be abolished should the General Assembly decide that they no longer serve public policy. Such abolishment would not extinguish the major political parties any more than the closing of an embassy would extinguish the host country. The major political parties are now and will always remain distinct from the county central committees.

2. Preliminary Matters

The named respondents in this case are not “Geauga County Republican *Party* Central and Executive Committees and Chairman Nancy B. McArthur” (Emphasis added.) as Respondents state in their motion but simply “Geauga County Republican Central and Executive Committees and Nancy B. McArthur in her Official Capacity as Chairman” as stated in the Verified Complaint in Mandamus, Declaratory Judgment, and Injunction for Enforcement of R.C. 121.22 the service of which along with summons commenced this action. Civ.R. 3(A).

3. Material Facts as Alleged in Relator’s Complaint

Respondent Geauga County Republican Central Committee (“Central Committee”) is a county central committee consisting of one member from each election precinct in the county created by R.C. 3517.03.

Respondent Geauga County Republican Executive Committee¹ (“Executive Committee”) is the executive committee elected by the Central Committee pursuant to the mandate of R.C. 3517.03.

Respondent Nancy B. McArthur (“Ms. McArthur”) is the duly elected chairman of both the Central Committee and the Executive Committee (collectively “Committees”).

The General Assembly has empowered the Executive Committee to make and file a recommendation with the Ohio Secretary of State (“SOS”) for the appointment of a qualified elector to fill the vacancy of a Republican member of the Geauga County Board of Elections (“BOE”) by enacting R.C. 3501.07. The SOS provides Form 306 on which the recommendation must be reported.

On February 6, 2021 at about 10:00am, the Committees held a meeting (“Meeting”) at the Heritage Marketplace Event Center (“Event Center”) located at 15848 Nauvoo Rd, Middlefield, OH 44062. The purpose of the Meeting was to select a qualified elector, pursuant to R.C. 3501.07, to fill the vacancy of a Republican member of the BOE resulting from the expiration of term of Joan A. Windnagel on March 1, 2021.

The Meeting was conducted by statutorily created public bodies for the purpose of performing a statutory function, therefore R.C. 121.22, the Open Meetings Act, applies to the Meeting. The making of a recommendation pursuant to R.C. 3501.07 is official business of the Committees.

Mr. Ames and several others who had entered the Event Center were denied access to the Meeting, notwithstanding Mr. Ames having informed Ms. McArthur that it was required by law to be an open meeting. Mr. Ames made a video recording of his attempt to attend the Meeting and Ms. McArthur denying him entrance.

¹ The members of the Central Committee are also members of the Executive Committee.

The conduct of the Meeting was in violation of R.C. 121.22, the Open Meetings Act.

4. Law and Argument

A. Standard of Review

A motion to dismiss for failure to state a claim is procedural and tests whether the complaint is sufficient. *State ex rel. Hanson v. Guernsey Cty. Bd. of Commrs.*, 65 Ohio St.3d 545, 548, 605 N.E.2d 378 (1992). A trial court may not rely on allegations or evidence outside the complaint, but can only review the complaint and dismiss the case if it appears beyond a doubt that the plaintiff can prove no set of facts entitling it to recover. *State ex rel. Fuqua v. Alexander*, 79 Ohio St.3d 206, 207, 680 N.E.2d 985 (1997). The court must presume that all factual allegations in the complaint are true and make all reasonable inferences in favor of the non-movant. *Mitchell v. Lawson Milk Co.*, 40 Ohio St.3d 190, 192, 532 N.E.2d 753 (1988). However, a court should not accept as true any unsupported legal conclusions in the complaint. *Eichenberger v. Petree*, 76 Ohio App.3d 779, 782, 603 N.E.2d 366 (10th Dist.1992); *Morrow v. Reminger & Reminger Co. LPA*, 183 Ohio App.3d 40, 2009-Ohio-2665, 915 N.E.2d 696, ¶ 7 (10th Dist.).

B. County Central Committees and their Executive Committees (“County Committees”).

County Central Committees were created by the General Assembly by the enactment of certain statutes, R.C. 3517.02 and .03, to serve a public policy of ensuring free and fair elections. Consistent with that policy, the General Assembly has granted to the county central committees certain powers to be exercised both directly and indirectly through the executive committee each is required to elect by statute. Among those powers is the power to make and file a recommendation with the secretary of state for the appointment of a qualified elector to fill a vacancy on a county board of elections pursuant to R.C. 3501.07, which states in pertinent parts:

At a meeting held not more than sixty nor less than fifteen days before the expiration date of the term of office of a member of the board of elections, or

within fifteen days after a vacancy occurs in the board, the county executive committee of the major political party entitled to the appointment may make and file a recommendation with the secretary of state for the appointment of a qualified elector. The secretary of state shall appoint such elector, unless the secretary of state has reason to believe that the elector would not be a competent member of such board. In such cases the secretary of state shall so state in writing to the chairperson of such county executive committee, with the reasons therefor, and such committee may either recommend another elector or may apply for a writ of mandamus to the supreme court to compel the secretary of state to appoint the elector so recommended. In such action the burden of proof to show the qualifications of the person so recommended shall be on the committee making the recommendation. If no such recommendation is made, the secretary of state shall make the appointment.

These County Committees, being creatures of statute, exist only at the pleasure of the General Assembly and may be abolished at any time by further legislative enactments. Since the General Assembly lacks the authority to either create or abolish political parties, the County Committees cannot be construed to be political parties or part of internal party structure. The Supreme Court of the United States has held that "a State cannot substitute its judgment for that of the party as to the desirability of a particular internal party structure, any more than it can tell a party that its proposed communication to party members is unwise". *Eu v. San Francisco County Democratic Central Comm.*, 489 U.S. 214, 109 S.Ct. 1013, 1025, 103 L.Ed.2d 271 (1989).

The creation of County Committees, if construed to be internal structures of major political parties, would necessarily constitute an unconstitutional intrusion into the internal affairs of those political parties by the State. It must be presumed that the General Assembly intended its enactment of R.C. 3517.03 to be in compliance with the constitutions of the state and of the United States. R.C. 1.47(A). If a statute can be interpreted two ways — one of which is constitutional and the other unconstitutional — a court must choose the constitutional interpretation, which is that each such committee is an intermediary between two entities, the State of Ohio and the respective county political party and that each is external to the political

party.

It is only with this understanding that the election of members of a county central committee at public expense can be justified. The conduct of an election of members of a private entity at public expense would necessarily be an egregious misuse of taxpayers' funds.

County central committees are created by R.C. 3517.03 which states in pertinent parts:

The controlling committees of each major political party or organization shall be * * * a county central committee consisting of one member from each election precinct in the county, or of one member from each ward in each city and from each township in the county, as the outgoing committee determines * * *.

County executive committees are likewise created by the third paragraph of R.C. 3517.03 which states in pertinent parts:

Each major party controlling committee shall elect an executive committee that shall have the powers granted to it by the party controlling committee, and provided to it by law. * * *.

R.C. 3517.03 Controlling committees of major or intermediate political party membership.

The controlling committees of each major political party or organization shall be a state central committee consisting of two members, one a man and one a woman, representing either each congressional district in the state or each senatorial district in the state, as the outgoing committee determines; a county central committee consisting of one member from each election precinct in the county, or of one member from each ward in each city and from each township in the county, as the outgoing committee determines; and such district, city, township, or other committees as the rules of the party provide.

All the members of such committees shall be members of the party and shall be elected for terms of either two or four years, as determined by party rules, by direct vote at the primary held in an even-numbered year. Except as otherwise provided in section 3517.02 of the Revised Code, candidates for election as state central committee members shall be elected at primaries in the same manner as provided in sections 3513.01 to 3513.32 of the Revised Code for the nomination of candidates for office in a county. Candidates for election as members of the county central committee shall be elected at primaries in the same manner as provided in those sections for the nomination of candidates for county offices, except as otherwise provided in sections 3513.051 and 3517.02 of the Revised Code.

Each major party controlling committee shall elect an executive committee that

shall have the powers granted to it by the party controlling committee, and provided to it by law. When a judicial, senatorial, or congressional district is comprised of more than one county, the chairperson and secretary of the county central committee from each county in that district shall constitute the judicial, senatorial, or congressional committee of the district. When a judicial, senatorial, or congressional district is included within a county, the county central committee shall constitute the judicial, senatorial, or congressional committee of the district.

The General Assembly clearly distinguishes a county central committee from a political party by choosing the language “[a]ll the members of such committees shall be members of the party” in enacting R.C. 3517.03. Construing the word “committees” to mean “parties” leads to an absurd result. Therefore, the word “committees” can only be reasonably construed to mean something other than political parties, the intermediaries created by the General Assembly in furtherance of public election policy, the county central committees.

C. Political Party - Republican Party - Geauga County Republican Party

The Republican Party is a political party within the meaning of Title 35 of the Revised Code by virtue of being a group of voters having polled in the election of presidential electors held on November 3, 2020, a recent regular state election, at least three per cent of the entire vote cast for that office. R.C. 3517.01(A)(1)(a). The Republican Party is a major political party as defined by R.C. 3501.01(F)(1), which states in its entirety:

"Major political party" means any political party organized under the laws of this state whose candidate for governor or nominees for presidential electors received not less than twenty per cent of the total vote cast for such office at the most recent regular state election.

The Geauga County Republican Party (“GCRP”) is comprised of those members of the Republican Party qualified to vote in Geauga County.

The General Assembly has granted neither the Central Committee nor the Executive Committee any right to act in the affairs of Republican Party in Geauga County. The Republican Party in Geauga County has merely acquiesced² to those committees doing so. However, such

² Acquiesce: a person’s tacit or passive acceptance; implied consent to an act. Black’s Law Dictionary,

acquiescence in no way renders the County Committees to be anything but what they are: public entities created by statute.

D. R.C. 121.22, the Open Meetings Act.

Courts have held that a county central committee must comply with R.C. 121.22, the Open Meetings Act, when conducting a meeting to fill a vacancy in a county office pursuant to R.C. 305.02. *Jones v. Geauga Cty Republican Party Cent. Commt.*, 2017-Ohio-2930, citing to *State ex rel. Hayes v. Jennings*, 173 Ohio St. 370, 373-374, 182 N. E. 2d 546 (1962). The meeting of the Executive Committee of February 6, 2021 was held for the purpose of filling a vacancy in a county office, the Geauga County Board of Elections, pursuant to R.C. 3501.07. Although the result of the meeting is a recommendation to the SOS, the General Assembly has provided that the SOS “shall appoint such elector, unless the secretary of state has reason to believe that the elector would not be a competent member of such board.” R.C. 3501.07. The General Assembly has also provided that “[i]n such cases * * * such committee * * * may apply for a writ of mandamus to the supreme court to compel the secretary of state to appoint the elector so recommended.”³ R.C. 3501.07; *State ex rel. Summit Cty. Republican Party Executive Commt. v. Brunner*, 118 Ohio St.3d 515, 2008-Ohio-2824.

It is inconsistent with the public policy of free and fair elections that the recommendations of qualified electors to fill vacancies occurring in a county board of election could be shrouded in secrecy. That is public business which must be conducted in open meetings held in compliance with the Open Meetings Act⁴ By failing to conduct its meeting of February 6, 2021 in compliance with R.C. 121.22, Respondents have violated the provisions of the Open Meetings

Eleventh Edition, page 39.

3 Case 2021-0327: State of Ohio ex rel. Summit County Republican Party Executive Committee v. Frank LaRose, Ohio Secretary of State is currently pending in the Supreme Court of Ohio.

4 The Republican Executive Committees of Lake and Summit conducted their meetings held for the same purpose in compliance with R.C. 121.22.

Act.

E. There is no doubt that Mr. Ames can prove facts entitling him to the relief he seeks.

Mr. Ames can prove each and every fact set forth in his complaint as reflected above at 3.

Material Facts as Alleged in Relator's Complaint. Mr. Ames can prove that the Open Meetings Act applies to the meeting of February 6, 2021 and that Respondents conducted said meeting in violation of said act. R.C. 121.22(I) provides statutory relief as follows:

(1) Any person may bring an action to enforce this section. An action under division (I)(1) of this section shall be brought within two years after the date of the alleged violation or threatened violation. Upon proof of a violation or threatened violation of this section in an action brought by any person, the court of common pleas *shall issue* an injunction to compel the members of the public body to comply with its provisions. (Emphasis added)

(2)

(a) If the court of common pleas issues an injunction pursuant to division (I)(1) of this section, the court *shall order* the public body that it enjoins to pay a civil forfeiture of five hundred dollars to the party that sought the injunction and shall award to that party all court costs and, subject to reduction as described in division (I)(2) of this section, reasonable attorney's fees. The court, in its discretion, may reduce an award of attorney's fees to the party that sought the injunction or not award attorney's fees to that party if the court determines both of the following:

(i) That, based on the ordinary application of statutory law and case law as it existed at the time of violation or threatened violation that was the basis of the injunction, a well-informed public body reasonably would believe that the public body was not violating or threatening to violate this section;

(ii) That a well-informed public body reasonably would believe that the conduct or threatened conduct that was the basis of the injunction would serve the public policy that underlies the authority that is asserted as permitting that conduct or threatened conduct.

Therefore, Mr. Ames has stated a claim for which relief may be granted.

F. Respondents' law and argument is inapposite.

Respondents' law and argument, being directed towards a political party, is misplaced. Mr. Ames has not sued any political party or internal entity thereof. He has sued two statutory

committees and their chairman which are external and distinct from any political party as argued above. Therefore, Mr. Ames will not burden this Court with rebuttal of Respondents' specific arguments.

5. Conclusion

Relator is entitled to judgment as a matter of law pursuant to R.C. 121.22(I) for one violation R.C. 121.22. Therefore, Respondents' motion to dismiss must be denied.

Respectfully Submitted,



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Relator *pro se*

CERTIFICATION OF SERVICE

I hereby certify that on the 22nd day of March, 2021 a true copy of the foregoing was, in accordance with Civ.R. 5(B)(2)(f), sent by electronic mail to

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GEAUGA COUNTY REPUBLICAN)	
CENTRAL AND EXECUTIVE)	
COMMITTEES et al.)	
)	
Respondents)	

This matter came before the Court on Respondents' Motion to Dismiss. Upon consideration of same, and Relator's Opposition, this Court finds Respondents' Motion to be NOT WELL TAKEN. The Court hereby DENIES Respondents' Motion to Dismiss and ORDERS Respondents to serve their answer to Relator's complaint within fourteen days after notice of the court's action.

IT IS SO ORDERED.

DAVID M. ONDREY, JUDGE

cc: