

FILED  
2011 JUL 15 PM 3:10

IN THE TWELFTH DISTRICT COURT OF APPEALS  
BROWN COUNTY, OHIO

STATE OF OHIO, ex rel	)	CASE NO. CA2009-02-10
DENNIS J. VARNAU,	)	
	)	
Relator/Petitioner,	)	<u>RELATOR DENNIS VARNAU'S</u>
	)	<u>RESPONSE TO NOTICE OF</u>
-vs-	)	<u>INTENT TO TAKE JUDICIAL</u>
	)	<u>NOTICE</u>
DWAYNE WENNINGER,	)	
	)	
Respondent/Defendant.	)	

Relator, by counsel, submits the following response to the Court's June 30, 2011, Notice of Intent to Take Judicial Notice.

Whether Relator should be heard further on this issue depends on the purpose and legal issue for which the date and Directive so noticed is to be used. Neither party briefed or argued the significance of the "qualification date" for the office in question, or of that Directive, therefore Relator would be unaware of the legal significance of that fact as it relates to the pending issues in this case.

As the Court is aware, R.C. 311.01(H) provides:

As used in this section:

(1) "Qualification date" means the last day on which a candidate for the office of sheriff can file a declaration of candidacy, a statement of candidacy, or a declaration of intent to be a write-in candidate, as applicable, in the case of a primary election for the office of sheriff; the last day on which a person may be appointed to fill a vacancy in a party nomination for the office of sheriff under Chapter 3513. of the Revised Code, in the case of a vacancy in the office of sheriff; or a date thirty days after the day on which a vacancy in the office of sheriff occurs, in the case of an appointment to such a vacancy under section 305.02 of the Revised Code.

It does not appear that date is of significance, as to the failure of Respondent's education to qualify him for anything on any date, as his TTI certificate never was Board of Regents accredited, nor was it ever for "two years" of education.

Respondent also lost his peace officer certificate which lapsed due to the four year break in service under Subsection (8)(a) and (b), which was still lost on January 1, 2005, no matter what date is being used.

Respondent was not able to be appointed, by law, on January 1, 2001, since he did not meet the educational qualifications then. With no valid appointment, he started office *that date*, and four years later, by law, his certificate completely expired. No Secretary of State directive, or anything else, can negate that fact, which was still true as of the "qualification date."

Relator still maintains that qualification to be *on a ballot*, is irrelevant to qualification to *hold the office*, which is what this Writ is requested to fix.

And since no one has ever challenged Relator's qualifications for the office, in any procedure or context, or the votes he received in the subject election, the date does not appear to be relevant to him either.

Counsel concedes he may be missing the point of the Court's taking judicial notice of that date and Directive, in which case, unless the Court resolves the pending motions in Relator's favor, that an opportunity be given to be heard on the specific issue the Court is considering, to which this date and Directive is directed. Of course, if the Motions are resolved in Relator's favor, this request is moot -- as the Supreme Court determined was the case in denying this Relator's Request for Oral Argument, upon ruling in Relator's favor on the merits of the appeal. State ex rel. Varnau vs. Wenninger, 128 Ohio St.3d 361, 944

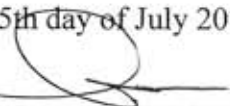
N.E.2d 663, 2011-Ohio-759, ¶ 16.

**THOMAS G. EAGLE CO., L.P.A.**

  
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**CERTIFICATE OF SERVICE**

I hereby certify that a true copy of the foregoing was served upon Gary A. Rosenhoffer, 302 E. Main St., Batavia, OH 45103, and Patrick L. Gregory, 717 W. Plane, Bethel, OH 45106, by ordinary U.S. mail this 15<sup>th</sup> day of July 2011.

  
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**Thomas G. Eagle** (#0034492)