

FILED

2007 APR 17 P 3: 46

IN THE COURT OF COMMON PLEAS  
CUYAHOGA COUNTY, OHIO

CITY OF CLEVELAND,  
Plaintiff,

v.

STATE OF OHIO,  
Defendant.

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Case No. CV 07 618492

JUDGE TIMOTHY J. MCGINTY

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DEFENDANT STATE OF OHIO'S ANSWER TO  
PLAINTIFF'S COMPLAINT FOR DECLARATORY JUDGMENT

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For its answer to Plaintiff's Complaint filed on March 14, 2007, Defendant State of Ohio ("Defendant") states as follows:

**FIRST DEFENSE**

1. Defendant admits the allegations set forth in paragraph 1 of Plaintiff's Complaint.
2. In response to the allegations in paragraph 2 of Plaintiff's Complaint, Defendant admits that the City of Cleveland is located in Cuyahoga County, Ohio. Further answering, Defendant denies the remaining allegations set forth in paragraph 2 of Plaintiff's Complaint for lack of knowledge or information sufficient to form a belief as to the truth of the allegations contained therein.
3. Defendant admits the allegations in paragraph 3 of Plaintiff's Complaint.
4. In response to the allegations in paragraph 4 of Plaintiff's Complaint, Defendant admits that this is a civil action that seeks declaratory relief. Further answering, to the extent that Plaintiff cites R.C. 2721.03, that provision speaks for itself and the allegations do not require a response. Further answering, Defendant denies the remaining allegations in

paragraph 4 of Plaintiff's Complaint.

5. In response to the allegations set forth in paragraph 5 of Plaintiff's Complaint, to the extent that Plaintiff cites *Pack v. City of Cleveland* (1982), 1 Ohio St.3d 129, 131, 438 N.E.2d 434, that case speaks for itself, and the allegations do not require a response. Further answering, Defendant denies the remaining allegations set forth in paragraph 5 of Plaintiff's Complaint.
6. Defendant denies the allegations set forth in paragraphs 6 and 7 of Plaintiff's Complaint.
7. In response to the allegations in paragraph 8 of Plaintiff's Complaint, Defendant admits that the Ohio Constitution was amended in 1912. Further answering, the remaining allegations set forth in paragraph 8 of Plaintiff's Complaint state a legal conclusion not requiring a response; to the extent they state facts, they are denied.
8. In response to the allegations set forth in paragraph 9 of Plaintiff's Complaint, Defendant admits that Section 3, Article XVIII of the Ohio Constitution (the "Home Rule Amendment") was a part of the 1912 amendments. Further answering, to the extent the remaining allegations quote the Home Rule Amendment, that provision speaks for itself; therefore, the allegations do not require a response.
9. The allegations in paragraph 10 of Plaintiff's Complaint state a legal conclusion not requiring a response; to the extent they state facts, they are denied.
10. In response to the allegations set forth in paragraph 11 of Plaintiff's Complaint, to the extent that Plaintiff cites *Canton v. Ohio*, 95 Ohio St.3d 149, 2002-Ohio-2005, 766 N.E.2d 963, ¶¶ 9-11; *Fondessy Ents., Inc. v. Oregon* (1986), 23 Ohio St.3d 213, 215-17, 492 N.E.2d 797; *Akron v. Scalera* (1939), 135 Ohio St. 65, 66, 19 N.E.2d 279, those cases speak for themselves, and the allegations do not require a response. Further

answering, the remaining allegations set forth in paragraph 11 of Plaintiff's Complaint state a legal conclusion not requiring a response; to the extent they state facts, they are denied.

11. In response to the allegations in paragraph 12 of Plaintiff's Complaint, *Arnold v. Cleveland* (1993), 67 Ohio St.3d 35, 46-50, 616 N.E.2d 163, speaks for itself and the allegations do not require a response.
12. In response to the allegations in paragraph 13 of Plaintiff's Complaint, *Cincinnati v. Baskin*, 112 Ohio St.3d 279, 2006-Ohio-6422, 859 N.E.2d 514, ¶¶ 11, 24-26; *Arnold v. Cleveland* (1993), 67 Ohio St.3d 35, 46-50, 616 N.E.2d 163; *Mosher v. Dayton* (1976), 48 Ohio St.2d 243, 247-248, 358 N.E.2d 540; *Porter v. Oberlin* (1965), 1 Ohio St.2d 143, 149, 205 N.E.3d 363; *Allion v. Toledo* (1919), 99 Ohio St. 416, 124 N.E. 237, syllabus, all speak for themselves and the allegations do not require a response.
13. In response to the allegations in paragraph 14 of Plaintiff's Complaint, *Mosher v. Dayton* (1976), 48 Ohio St.2d 243, 247-248, 358 N.E.2d 540, speaks for itself and the allegations do not require a response.
14. Defendant denies the allegations set forth in paragraph 15 of Plaintiff's Complaint for lack of knowledge or information sufficient to form a belief as to the truth of the allegations contained therein.
15. In response to the allegations in paragraph 16 of Plaintiff's Complaint, to the extent Plaintiff cites to *Arnold v. Cleveland* (1993), 67 Ohio St.3d 35, 616 N.E.2d 163, that case speaks for itself and the allegations do not require a response. Further answering, Defendant denies the remaining allegations set forth in paragraph 16 of Plaintiff's Complaint for lack of knowledge or information sufficient to form a belief as to the truth

of the allegations contained therein.

16. In response to the allegations in paragraph 17 of Plaintiff's Complaint, to the extent Plaintiff cites to *Cincinnati v. Baskin*, 112 Ohio St.3d at ¶¶ 52-53 (concurring opinion by Justice O'Connor), that case speaks for itself and the allegations do not require a response. Further answering, Defendant denies the remaining allegations in paragraph 17 of Plaintiff's Complaint.

17. Defendant denies the allegations set forth in paragraph 18 of Plaintiff's Complaint for lack of knowledge or information sufficient to form a belief as to the truth of the allegations contained therein.

18. In response to the allegations in paragraph 19 of Plaintiff's Complaint, Defendant admits the Ohio General Assembly enacted R.C. 9.68. Further answering, R.C. 9.68 speaks for itself, and the allegations do not require a response. Further answering, Defendant denies the remaining allegations set forth in paragraph 19 of Plaintiff's Complaint.

19. In response to the allegations in paragraph 20 of Plaintiff's Complaint, to the extent Plaintiff quotes R.C. 9.68, that statute speaks for itself and the allegations do not require a response; to the extent the allegations state facts, they are denied.

20. In response to paragraphs 21, 22, and 23 of Plaintiff's Complaint, to the extent Plaintiff cites R.C. 9.68, that statute speaks for itself and the allegations do not require a response. Further answering, Defendant denies the remaining allegations set forth in paragraphs 21, 22 and 23 of Plaintiff's Complaint.

21. In response to paragraph 24 of Plaintiff's Complaint, Defendant admits that the General Assembly enacted R.C. 9.68 as a part of Substitute House Bill 347. Further answering, Defendant denies the remaining allegations set forth in paragraph 24 of Plaintiff's

Complaint.

22. Defendant denies the allegations set forth in paragraphs 25, 26, 27, and 28 of Plaintiff's Complaint.

23. In response to paragraph 29 of Plaintiff's Complaint, Defendant hereby incorporates its answers to paragraphs 1-28 of the Complaint.

24. In response to the allegations in paragraph 30 of Plaintiff's Complaint, Section 3, Article XVIII of the Ohio Constitution speaks for itself, and the allegations do not require a response; to the extent they state facts, they are denied.

25. In response to the allegations set forth in paragraph 31 of Plaintiff's Complaint, to the extent that Plaintiff cites *Canton v. Ohio*, 95 Ohio St.3d 149, 2002-Ohio-2005, 766 N.E.2d 963, syllabus, that case speaks for itself, and the allegations do not require a response. Further answering, the allegations in paragraph 31 of Plaintiff's Complaint state a legal conclusion not requiring a response; to the extent they state facts, they are denied.

26. Defendant denies the allegations set forth in paragraphs 32 and 33 of Plaintiff's Complaint.

27. In response to paragraph 34 of Plaintiff's Complaint, Defendant hereby incorporates its answers to paragraphs 1-33 of the Complaint.

28. Defendant denies the allegations set forth in paragraph 35 of Plaintiff's Complaint.

29. In response to the allegations in paragraph 36 of Plaintiff's Complaint, Section 3, Article XVIII of the Ohio Constitution speaks for itself, and the allegations do not require a response; to the extent they state facts, they are denied.

30. Defendant denies the allegations set forth in paragraphs 37 and 38 of Plaintiff's

Complaint.

31. In response to paragraph 39 of Plaintiff's Complaint, Defendant hereby incorporates its answers to paragraphs 1-38 of the Complaint.
32. In response to the allegations in paragraphs 40, 41, and 42 of Plaintiff's Complaint, Section 1, Article II of the Ohio Constitution speaks for itself, and the allegations do not require a response. Further answering, the remaining allegations set forth in paragraphs 40, 41, and 42 of Plaintiff's Complaint state a legal conclusion not requiring a response; to the extent they state facts, they are denied.
33. Defendant denies the allegations set forth in paragraph 43 of Plaintiff's Complaint.
34. In response to the allegations in paragraph 44 of Plaintiff's Complaint, to the extent Plaintiff cites R.C. 9.68, that statute speaks for itself and the allegations do not require a response. Further answering, Defendant denies the remaining allegations set forth in paragraph 44 of Plaintiff's Complaint.
35. Defendant denies the allegations set forth in paragraph 45 of Plaintiff's Complaint.
36. In response to paragraph 46 of Plaintiff's Complaint, Defendant hereby incorporates its answers to paragraphs 1-45 of the Complaint.
37. In response to the allegations in paragraph 47 of Plaintiff's Complaint, Section 15(D) Article II of the Ohio Constitution speaks for itself, and the allegations do not require a response.
38. Defendant denies the allegations set forth in paragraphs 48 and 49 of Plaintiff's Complaint.
39. Defendant denies each allegation of Plaintiff's Complaint not otherwise expressly admitted.

**SECOND DEFENSE**

40. R.C. 9.68 is constitutional in all respects.

**THIRD DEFENSE**

41. Plaintiff lacks standing to file this complaint.

**FOURTH DEFENSE**

42. The complaint fails to state a claim upon which relief may be granted.

**FIFTH DEFENSE**

43. This Court lacks subject matter jurisdiction over this action.

**SIXTH DEFENSE**

44. This Court lacks venue over this action.

**SEVENTH DEFENSE**

45. Plaintiff has failed to join all parties needed for just adjudication of this action as required by Civ. R. 19 or Civ. R. 19.1.

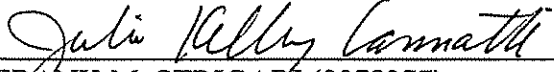
**EIGHTH DEFENSE**

46. Defendant respectfully reserves the right to amend its Answer to add such affirmative defenses as may be disclosed during the course of this proceeding.

**WHEREFORE**, Defendant respectfully requests for this Court to dismiss the Complaint,  
with prejudice at Plaintiff's costs.

Respectfully submitted,

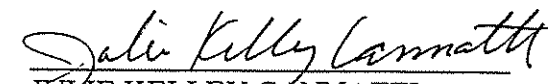
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**CERTIFICATE OF SERVICE**

I hereby certify that on April 17, 2007 a true copy of the foregoing *Defendant State of Ohio's Answer to Plaintiff's Complaint for Declaratory Judgment* was served by regular U.S. mail, postage prepaid upon:

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