

IN THE COURT OF COMMON PLEAS
MONTGOMERY COUNTY, OHIO
CIVIL DIVISION

David Esrati :
113 Bonner St. :
Dayton, OH 45410 :
 :
Plaintiff, :
 :
vs. :
 :
 : **Complaint and Petition for Injunctive Relief**

Montgomery County Board of Elections :
451 W. Third St. :
Dayton, OH 45422 :
 :
and :
 :
Jeffrey Rezabek :
Director :
Montgomery County Board of Elections :
451 W. Third St. :
Dayton, OH 45422 :
 :
and :
 :
Sarah Greathouse :
Deputy Director :
Montgomery County Board of Elections :
451 W. Third St. :
Dayton, OH 45422 :
 :
Defendants. :

Preface:

Our democracy dies in darkness. In Ohio, we have “Sunshine laws” to allow the citizens to fully explore, understand and partake in our democratic process. If an organization tries to hide public information, these laws are to be enforced by citizens, at their cost, with very little reward for their participation in the process. I am filing pro se, so I cannot be compensated for my time, therefore it is up to a judge, to decide on the veracity and import of my action, and to punish those involved, to set a standard for compliance, and to send a message that these laws, in fact, do have real teeth.

End Preface.

This action is brought in haste in the name of David Esrati who is petitioning this Court pro se, for An injunction directing Defendants, the Montgomery County Board of Elections, Jeff Rezabek, Sarah Greathouse, and the Montgomery County Board of Elections, to comply with their legal obligations under Ohio’s open meetings statute, specifically O.R.C. 121.22 and to comply with their governmental duties of their offices.

Jurisdiction

1. An injunction is the appropriate remedy to compel compliance with O.R.C. 121.22, which specifically states that “the court of common pleas shall issue an injunction to compel the members of the public body to comply with [the statute’s] provisions.” O.R.C. 121.22(I)(1).
2. This Court has original jurisdiction over injunctive actions pursuant to Ohio Revised Code Section 121.22(F).

Parties

Plaintiff David Esrati

3. Plaintiff David Esrati (“Esrati”) is a resident of the City of Dayton, Ohio and Montgomery County.
4. Esrati is an elected Precinct Captain in the Montgomery County Democratic Party. Precinct captains supposedly oversee the appointment of a representative to the Montgomery County Board of Elections.
5. Esrati operates a prominent blog, esrati.com.
6. Through esrati.com, Esrati authors and publishes articles that cover a variety of topics. Some of the topics covered are politics, crime, education, and economic development. The vast majority of articles have a local focus. He qualifies as a “Citizen Journalist.”
7. Esrati has published more than 3,094 articles on esrati.com, and the page receives, on average, more than 1100 unique visitors per day.
8. On February 11, 2022, 9:58 AM Esrati had contacted via email, the Directors of the Montgomery County Board of Elections asking for a proper public record in response to their agenda;

“V. Candidate Petitions for May 3, 2022 Primary Election (2022-3)

1. Petitions that Appear Valid
2. Petitions that Appear Questionable
3. Petitions that Appear Invalid"

List the names.

It's a public record.”

9. In the same request, I suggested that if they didn’t comply, I’d see them in court, per Ohio Sunshine laws. No other public body presents an agenda like this. These aren’t the Oscars, with a list of potential winners, to be announced in a black tie event, they are public officials discussing who will, or will not, be on the ballot. This information is critical to candidates, to know if they should be in attendance.

10. Esrati has raised the issue of the generic agendas with the Board Of Elections multiple times in the past.
11. Following up on the email an hour later with a phone call, Sarah Greathouse, deputy director, declined to respond to the Public Records Request because “you have threatened legal action” and that I would need to contact the Montgomery County Prosecutors office.
12. My response was it’s not my job to contact the Prosecutors office, it’s my job to make you aware of your violation of the Sunshine Laws, it’s my job to enforce them, and she said she’d have the prosecutor’s office contact me, which they did not do.
13. The purpose of an agenda is to inform the public of what is going to happen at a public meeting, at least 24 hours in advance. The BOE meeting is at 3pm on Monday, February 14, at 3:00 PM. It is essential for journalists to be able to prepare in advance for these meetings to contact sources, gather background, and develop information for publication in advance of the meeting. None of this requested information is covered by executive session privilege.
14. Ohio Sunshine Law training is required of all elected officials, and should be well understood by all government bodies that hold public meetings.
15. The Ohio Revised Code, isn’t clear in the public meetings about the content of an agenda, however, Ohio Administrative Code, Rule 3354:2-3-02 | Meetings of the Board of Trustees clearly defines expectations:

(2) Purpose and notification

An agenda for each regular meeting shall be prepared by the chair of the board and delivered to each member of the board at least forty-eight hours prior to the meeting. Included in the agenda materials shall be all supporting data needed for consideration of agenda items as well as regular reporting documents concerning the college. Copies of the complete agendas shall be made readily available to the public. The public may, upon request, obtain copies of all supporting material, except that material to be reviewed in executive session as provided by the Ohio Revised Code.

16. Esrati asked for supporting data needed for consideration of an agenda item and was denied.
17. Penalties for violating ORC 121.22 are purposefully nebulous and up for interpretation. It is unclear what defines an offense. Is it a penalty for a single failing on multiple items, or is each actual item withheld a separate offense, and therefore a violation? The penalty is stated:

(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

(4) A member of a public body who knowingly violates an injunction issued pursuant to division (I)(1) of this section may be removed from office by an action brought in the court of common pleas for that purpose by the prosecuting attorney or the attorney general.

18. Esrati, not having the information, or contact from the prosecutors office, asks for an immediate injunction, forcing the release of this information, a civil forfeiture of \$500 per name withheld from the public and forcing the BOE to postpone the meeting until 24 hours after a full and proper agenda has been released. It would be appropriate to remove the Director and Deputy Director from their posts, for their wanton disregard for the Ohio Sunshine Laws and rules considering Public Records Requests.
19. As a violation of Section 149.43 | Availability of public records for inspection and copying, the delays of delivery of requested documents include a compensatory award of \$100 per day.

(2) If a requester transmits a written request by hand delivery, electronic submission, or certified mail to inspect or receive copies of any public record in a manner that fairly describes the public record or class of public records to the public office or person responsible for the requested public records, except as otherwise provided in this section, the requester shall be entitled to recover the amount of statutory damages set forth in this division if a court determines that the public office or the person responsible for public records failed to comply with an obligation in accordance with division (B) of this section.

The amount of statutory damages shall be fixed at one hundred dollars for each business day during which the public office or person responsible for the requested public records failed to comply with an obligation in accordance with division (B) of this section, beginning with the day on which the requester files a mandamus action to recover statutory damages, up to a maximum of one thousand dollars. The award of statutory damages shall not be construed as a penalty, but as compensation for injury arising from lost use of the requested information. The existence of this injury shall be conclusively presumed.

Defendant Montgomery County Board of Elections

20. Defendant Montgomery County Board of Elections is the appointed body of Montgomery County Ohio overseeing elections.
21. Since the Board of Elections staff is picked by the local political parties, and the parties have an agreement to not challenge Judges in office, this case must be tried by a visiting judge.
22. Since the Montgomery County Prosecutors Office had multiple employees on the Democratic Party Central Committee, who picked the members of the Board of Elections, they cannot be expected to both defend their choices and apply the State Law since they are party to the case. The Board of Elections must hire independent counsel from outside of this jurisdiction, or ask the Ohio Attorney General to represent them.
23. Another Public Records request submitted by Esrati, to cover the contracts and payments with former Democratic Party BOE Director Steve Harsman still have not been provided. The request was made Jan 13, 2022 and re-requested Jan 31, 2022.
24. Since Greathouse and Rezabek chose to hire former BOE Director Harsman to redraw precincts in Montgomery County, it is questionable if either is competent to fill the positions.

25. If proper agendas had been distributed, with the information about the hiring of Harsman listed on the agenda, the public might have questioned the competency of the appointed directors.

Defendant Jeffrey Rezabek

- 26. Defendant Jeffrey Rezabek is a resident of Montgomery County.
- 27. Rezabek was appointed to be a director of the Montgomery County Board of Elections by the Montgomery County Republican Party.
- 28. Rezabek is a trained attorney, has been a County judge and has served in the Ohio House of Representatives and has had to take Ohio Sunshine Law training multiple times.
- 29. Because of Rezabek's prior positions within the Montgomery County Courts, this case must be heard by a visiting Judge.

Defendant Sarah Greathouse

- 30. Greathouse was given this job by the Montgomery County Democratic Party by a vote of ineligible precinct captains, many of whom are patronage employees of the party.
- 31. Greathouse refused to comply with the Public Records Request on Friday, because the BOE was threatened with legal action.
- 32. Greathouse told Esrati that they would refuse to comply with a Public Records Request since they were facing a potential legal action as proscribed by law when public officials do not comply..

Factual Allegations

- 33. Plaintiff restates the allegations in all proceeding paragraphs as is fully restated herein.
- 34. On January 13, 2022, Plaintiff sent a public records request asking for information about the process and contracts awarded to the former Director of the Board of Elections, Steve Harsman.
- 35. On January 31, 2022, Plaintiff again asked for the status of this request.
- 36. Rezabek responded on Feb 2, 2022 "I am working on getting what you have requested, please be patient."
- 37. On Feb 11, 2022, the Aprile Alford-Barclay of the Board of Elections sent an agenda which had no relevant public information other than the date and time of the meeting on Monday Feb 14, 2022 at 3PM.
- 38. Esrati responded as he has before, that this agenda is unlike any other public body's agenda, lacking detail and he asked for clarification of the following listed items:
 - "V. Candidate Petitions for May 3, 2022 Primary Election (2022-3)
 - 1. Petitions that Appear Valid

- 2. Petitions that Appear Questionable
- 3. Petitions that Appear Invalid"

- 39. Esrati did not receive a response, and called the Board of Elections, where he was passed to Sarah Greathouse who refused to respond, saying that because I had threatened legal action, I'd have to talk to the Prosecutor.
My exact quote:
If you don't send out another-
with answers to this issue-
I'll see you in court.
- 40. Seeing as the Prosecutors Office is conflicted in this issue, I saw no reason to call them. They have defended another quasi-government body, the Dayton Metro Library, in a similar Public Records case filed by the plaintiff- and lied in court. That case is currently awaiting Ohio Supreme Court Review. Greathouse said she'd have them call me. They did not.
- 41. The Agenda provided by this politically appointed body, that is entrusted with our democratic process, is unlike any other public meeting agenda, which usually includes actionable items for public review.
- 42. The meeting is scheduled for 3pm on Monday, Feb 14, 2022 at 3pm, will include a petition for the plaintiff.

Rule

- 43. An injunction is the appropriate remedy to compel compliance with O.R.C. 121.22, which specifically states that “the court of common pleas shall issue an injunction to compel the members of the public body to comply with [the statute’s] provisions.” O.R.C. 121.22(I)(1).
- 44. This Court has original jurisdiction over injunctive actions pursuant to Ohio Revised Code Section 121.22(F).
- 45. Section 121.22 of the Ohio Revised Code, entitled Public meetings – exceptions, states that “[t]his section shall be liberally construed to require public officials to take official action and to conduct all deliberations upon official business only in open meetings unless the subject matter is specifically excepted by law. O.R.C. 121.22(A)
- 46. Similarly, the statute defines “public body” as: “[a]ny board, commission, committee, council, or similar decision-making body of a state agency, institution or authority, and any legislative authority or board, commission, committee, council, agency, authority, or similar decision-making body of any county, township, municipal corporation, school district, or other public subdivision or local public institution;”. O.R.C. 121.22(B)(1)(a)
- 47. The statute defines a “meeting” as a “pre-arranged discussion of the public business of the public body by a majority of its members.” O.R.C. 121.22(B)(2)
- 48. The statute specifically provides an itemized list of public entities and meeting types that do not fall under the provisions of the statute. O.R.C. 121.22(D)

49. The Board of Elections qualifies under O.R.C. 149.011(A) defines “public office” as “organized body, office, agency, institution, or entity established by the laws of this state for the exercise of any function of government.” R.C. 149.011(A).

(B) "State agency" includes every department, bureau, board, commission, office, or other organized body established by the constitution and laws of this state for the exercise of any function of state government, including any state-supported institution of higher education, the general assembly, any legislative agency, any court or judicial agency, or any political subdivision or agency of a political subdivision.

50. The Ohio Revised Code, isn't clear in the public meetings about the content of an agenda, however, Ohio Administrative Code, Rule 3354:2-3-02 | Meetings of the Board of Trustees clearly defines expectations:

(2) Purpose and notification

An agenda for each regular meeting shall be prepared by the chair of the board and delivered to each member of the board at least forty-eight hours prior to the meeting. Included in the agenda materials shall be all supporting data needed for consideration of agenda items as well as regular reporting documents concerning the college. Copies of the complete agendas shall be made readily available to the public. The public may, upon request, obtain copies of all supporting material, except that material to be reviewed in executive session as provided by the Ohio Revised Code.

51. An agenda would qualify as a public record, under 149.011(G), specifically:

"Records" includes any document, device, or item, regardless of physical form or characteristic, including an electronic record as defined in section 1306.01 of the Revised Code, created or received by or coming under the jurisdiction of any public office of the state or its political subdivisions, which serves to document the organization, functions, policies, decisions, procedures, operations, or other activities of the office.

52. The list of candidates and the petition statuses qualify as documentation of the process to carry out polices and decisions of the Board of Elections. The public has a right to examine this list at least 24 hours in advance to prepare for the meeting, where the public, or the candidates, should have the right to contribute.

53. By hiding the contents of those documents, the Board of Elections is in effect until the actual meeting the Board of Elections has confused their duties of serving the public, with the job of the Oscar nominations. To engage in discussion without proper notification should be grounds for removal from office, since they are not serving the public, put their respective political parties that appointed them.

54. Due to Ohio's odd voter registration laws, the largest class of voters is “unclassified” and not a member of either Political Party. However, the partisan boards of elections, act in the interests of the two lesser parties (by voter registration rolls). The fact that the two parties can have a discussion in a meeting about which persons will be anointed to the ballot, without prior public announcement is contrary to the spirit of the Ohio Sunshine Laws.

55. Ohio common law has interpreted the statute's term "discussion" as suggested by an exchange of words, comments, or ideas between members of the public body. *Springfield Local School Dist. Bd. of Edn. v. Ohio Assn. of Pub. School Emp., Local 530*, 106 Ohio App. 3d 855, 667 N. E. 2d 458 (9th Dist. 1995)

56. Because the law can be difficult for common citizens to apply, the State of Ohio has provided a handbook in common language expressing the intent of the law and before they jump into legalistic lingo, quote the founders of our country who used clearer language: "The liberties of a people never were, nor ever will be, secure, when rulers may be concealed from them... [T]o cover with the veil of secrecy the common routines of business, is an abomination in the eyes of every intelligent man." Patrick Henry ~see State of Ohio Sunshine Laws Manual
<http://www.ohioattorneygeneral.gov/Files/Publications-Files/Publications-for-Legal/Sunshine-Law-Publications/Sunshine-Laws-Manual.aspx>

57. *Wells*, Ohio N.P. at 176.

The court stated that all citizens "have a right to as full knowledge of all the official acts of their officers as the officers themselves have, so as to enable them to ascertain whether their officers have performed their duty in such manner as is acceptable to them with a view to determine whether they will continue them in office or not." The court added:

[T]he records in the auditor's office are the public records of the people of Hamilton county, bought with their money, kept in a public place built with their money, and in the charge of public officials paid by their money and selected by them. The officials in charge of these books, therefore, can be no other than trustees in possession of property belonging to the people of Hamilton county.

If then the auditor holds these books in trust for the people of Hamilton county, it is but an elementary proposition of law that the beneficiaries of the trust may inspect such property, subject only to the limitation that such inspection does not endanger the safety of the books or interfere with the discharge by the auditor of his official duties.

58. The Sunshine Laws manual (Yellow Book) from "Opening overview" page 88, "The Open Meetings Act requires public bodies in Ohio to take official action and conduct all deliberations upon official business only in open meetings where the public may attend and observe. Public bodies must provide advance notice to the public indicating when and where each meeting will take place and, in the case of special meetings, the specific topics that the public body will discuss.

59. "If any person believes that a public body has violated the Open Meetings Act, that person may file an action in a common pleas court to compel the public body to obey the Act. If an injunction is issued, the public body must correct its actions and pay court costs, a fine of \$500, and reasonable attorney fees.

60. "the Open Meetings Act is intended to be read broadly in favor of openness."

61. And while the Sunshine Laws handbook includes this nonsense statement: "In evaluating whether particular gatherings of public officials constituted "meetings," several courts of appeals have opined that the Open Meetings Act "is intended to apply to those situations where there has been actual

formal action taken; to wit, formal *deliberations* concerning the public business.”

Analysis

1. The Board of Elections is a “public body” as defined by the statute.
2. The statute requires advance notification of actions in a meeting.
3. The Montgomery County Board of Elections is the “decision-making body” of Montgomery County, Ohio, a “county government”. Further, the Montgomery County Board of Elections is the “decision-making body” of who is allowed on the ballot, is a “public body” as defined by the statute and falls within the definition of an entity which must, by law, conduct its business in an open meeting.
4. A public records request to comply with Open Meetings Act requirements is a legal request by the plaintiff, and the plaintiff’s only method of compliance is to file a lawsuit
5. The law is clear on the courts requirements to force the publication of the lists, and to allow the public 24 hours to review them.
6. The Meeting at 3pm on Feb 14, 2022 would not be compliant with the review requirements and must be postponed.
7. The Plaintiff is due court costs, a civil forfeiture of \$500 per violation and \$100 per day, maximum 10 days, for each day the plaintiff has had to wait for the requested documents.

Injunction is Appropriate

8. Defendants’ attempts to curtail the public’s right to know the actual agenda items is unlawful.
9. Plaintiff has the legal right to request the documents..
10. Defendants have a clear legal duty to comply with the statute and conduct all meetings in an open manner including notification and published agendas.
11. Plaintiff has no adequate remedy in the ordinary course of law and the statute specifically provides for the issuance of an injunction to compel the members of the public body to comply with the statute’s provisions mandating open records.
12. The Defendants who are appointed members the Board of Elections, insistence that threat of court ordered compliance relieves them of their duty to publish true and actionable items on their agenda, constitute grounds for removal from office.

Wherefore, Plaintiff requests judgment in their favor and requests that the Court:

- (1) Issue an injunction compelling Defendants to delay the meeting of the Board of Election until 24 hours after they have properly published the full agenda.
- (2) Direct the Defendants to inform the public of all meetings of this board, to keep and publish minutes, and to publish a complete agenda in advance of each meeting per the Ohio Sunshine laws.

- (3) Award Plaintiff his court costs associated with bringing this action, including statutory damages; and
- (4) Grant such other and further relief as the Court deems equitable, just, and proper.

Respectfully submitted,

/s/David Esrati

Pro Se

113 Bonner St.

Dayton, OH 45410

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CERTIFICATE OF SERVICE

I hereby certify that on Feb 14th, 2022 I electronically filed the foregoing with the Clerk of Courts using the Montgomery County Electronic Filing System, which will send notification of such filing to all parties if they are registered users or, if they are not, by placing a true and correct copy in the United States mail, postage prepaid, to their address of record. I will also email a copy of my motion to the directors of the Board Of Elections

/s/ David Esrati
David Esrati *pro se*