

**IN THE CIRCUIT COURT OF BOONE COUNTY
STATE OF MISSOURI**

CHARLES BASYE,)
)
Relator/Plaintiff,)
)
v.)
)
COLUMBIA PUBLIC SCHOOLS,)
)
and)
)
COLUMBIA PUBLIC SCHOOLS BOARD)
OF EDUCATION,)
)
and)
)
DAVID SEAMON,)
President, Columbia Board of Education,)
in his official capacity,)
)
CHRIS HORN,)
Vice President, Columbia Board of)
Education,)
in his official capacity,)
)
KATHERINE SASSER,)
Member, Columbia Board of Education,)
in her official capacity,)
)
JEANNE SNODGRASS,)
Member, Columbia Board of Education,)
in her official capacity,)
)
HELEN WADE,)
Member, Columbia Board of Education,)
in her official capacity,)
)
SUZETTE WATERS,)
Member, Columbia Board of Education,)
in her official capacity,)
)
BLAKE WILLOUGHBY,)
Member, Columbia Board of Education,)
in his official capacity,)

Case No.

Serve all at:)
1818 W. Worley St.)
Columbia, MO 65203)
Respondents/Defendants.)

VERIFIED PETITION

COMES NOW, Relator/Plaintiff Charles Basye (“Relator”), by and through undersigned counsel, and for his Verified Petition states as follows:

PARTIES, JURISDICTION AND VENUE

1. Relator Charles Basye is an individual residing in Boone County, Missouri.
2. Relator is a qualified candidate for school board director for the Columbia Public Schools pursuant to Section 162.471, RSMo. in that Relator is a registered voter living within the Columbia Public School District, Relator has lived in Missouri continuously for more than one year preceding December 27, 2022, and Relator is 64 years of age.
3. Respondent Columbia Public Schools is a public school district, a political subdivision of the State of Missouri, and is governed by Respondent Columbia Board of Education (the “Board of Education”) pursuant to Chapter 162, RSMo. The Columbia Public School District is located almost entirely within Boone County, Missouri.
4. Respondent David Seamon is the president of the Board of Education and is set forth as a party herein in his official capacity.
5. Respondent Chris Horn is the vice president of the Board of Education and is set forth as a party herein in his official capacity.
6. Respondent Katherine Sasser is a member of the Board of Education and is set forth as a party herein in her official capacity.

7. Respondent Jeanne Snodgrass is a member of the Board of Education and is set forth as a party herein in her official capacity.

8. Respondent Helen Wade is a member of the Board of Education and is set forth as a party herein in her official capacity.

9. Respondent Suzette Waters is a member of the Board of Education and is set forth as a party herein in her official capacity.

10. Respondent Blake Willoughby is a member of the Board of Education and is set forth as a party herein in his official capacity.

11. Respondents Seamon, Horn, Sasser, Snodgrass, Wade, Waters and Willoughby collectively form the Board of Education.

12. Respondent Board of Education is an “agency” as defined in Section 536.010(2), RSMo. as the Board of Education is organized under Chapter 162, RSMo. and are authorized by law to make rules.

13. The Court has jurisdiction pursuant to Section 536.050, RSMo. over actions against agencies for declaratory judgment as to the validity of an agency rule or the threatened application thereof.

14. The Court has jurisdiction pursuant to Section 536.150, RSMo. and Rule 94 over actions for writs of mandamus and certiorari as against agency decisions.

15. The Court has jurisdiction pursuant to Rule 92 over the action for an injunction against Respondents.

16. Venue in Boone County is proper in this case under Section 536.050, RSMo. as Relator is a resident of Boone County.

FACTS COMMON TO ALL COUNTS

17. Respondents Columbia Public Schools operates out of the Neil C. Aslin Administration Building located at 1818 W. Worley St., Columbia, MO 65203 (the “Aslin Building”).)

18. Pursuant to Section 162.481, RSMo., Respondents Columbia Public Schools is holding an election on April 4, 2023, for three positions on the Board of Education.

19. The opening and closing date for candidate filing for Missouri political subdivision elections is set forth in Section 115.127.5, RSMo. That subsection states:

If the opening date for filing a declaration of candidacy for any office in a political subdivision or special district is not required by law or charter, the opening filing date shall be 8:00 a.m., the seventeenth Tuesday prior to the election. ***If the closing date for filing a declaration of candidacy for any office in a political subdivision or special district is not required by law or charter, the closing filing date shall be 5:00 p.m., the fourteenth Tuesday prior to the election.*** The political subdivision or special district calling an election shall, before the seventeenth Tuesday, prior to any election at which offices are to be filled, notify the general public of the opening filing date, the office or offices to be filled, the proper place for filing and the closing filing date of the election. Such notification may be accomplished by legal notice published in at least one newspaper of general circulation in the political subdivision or special district. (***Emphasis added***).

20. Pursuant to Section 115.127, the opening date for filing a declaration of candidacy for the Columbia School Board director election set for April 4, 2023, was 8:00 a.m. on Tuesday, December 6, 2022 (the “Opening Filing Date”) and the closing date for filing a declaration of candidacy was 5:00 p.m. on Tuesday, December 27, 2022 (the “Closing Filing Date”).

21. On or around December 25, 2022, Relator sent an email to the Secretary of the Columbia Board of Education, Noel McDonald, and the Superintendent of Columbia Public Schools, Brian Yearwood, expressing his intent to file a declaration of candidacy for the April 4, 2023, school board election.

22. Specifically, Relator wrote, “I am free all day Tuesday, December 27, 2023 and can be at the Aslin Administration building to complete the necessary paperwork.”

23. In response, Superintendent Yearwood initially indicated that Relator’s declaration of candidacy would be accepted on December 27, stating, “Noel will be at the Aslin Building on 12/27 and will be available to accept your filing.”

24. A true and accurate copy of these e-mails are attached hereto as **Exhibit A** and incorporated by reference.

25. After initially stating that the Respondents would accept Relator’s declaration of candidacy, Superintendent Yearwood called Relator on the morning of December 27, 2023 to let Relator know that Respondents would not accept Relator’s filing due to the Respondents’ purported policy on filing in this election.

26. However, Respondents’ own policies on election of members to the Board of Education are clear and consistent with Missouri law.

27. Specifically, Respondents’ Policy BBB-2 (“Policy BBB-2”) echoing state law (last reviewed and revised in 2022), provides:

Qualified applicants for the board may file a declaration of candidacy during business hours in the superintendent’s office commencing at 8:00 a.m. on the seventeenth Tuesday prior to the election and **ending at 5:00 p.m. on the fourteenth Tuesday prior to the election.**

28. On December 27, 2022, after Relator attempted to file at the Aslin Building and was not granted access to the building to make his filing, Relator then filed his declaration of candidacy for the Columbia Board of Education with the Boone County Clerk.

29. A true and accurate copy of Relator’s declaration of candidacy is attached hereto as **Exhibit B** and incorporated herein by reference.

30. On December 28, 2022, one day after the deadline to file the registration, Ms. McDonald sent an email to Relator explaining that, “If an individual wanted to file as a Board candidate on December 27th, the individual was required to contact me by December 22nd.”

31. A true and accurate copy of the December 28, 2022, e-mail is attached hereto as **Exhibit C** and incorporated by reference.

32. In the December 28th e-mail, Ms. McDonald cited to the Columbia Public Schools website “Board of Education Candidate Filing Procedures,” stating: “Due to the last day of filing, December 27, 2022, being on a District holiday, candidates who wish to file on the last day must make an appointment by 4:00 p.m. on Thursday, December 22, 2022.”

33. December 27, 2022, was not a Missouri state holiday, nor was it a federal holiday.

34. The “public notice” referenced by Ms. McDonald does not contain a citation to a specific statute, regulation or a Board of Education policy for which the Board of Education based its authority to change the last day of filing established by Missouri law and Board of Education Policy.

35. On January 3, 2023, counsel for Relator sent a demand letter to Respondents demanding that Respondents immediately accept Relator’s filing as a candidate for school board director.

36. On January 9, 2023, Respondents held a Board of Education meeting to certify the candidates for the open Board of Education positions.

37. Upon information and belief, Relator’s objections were not even addressed in the open session of the Respondents’ meeting.

38. Ultimately, Relator was not included on the list of candidates certified by Respondents for the ballot for the April 2023 election.

39. Urgency in this matter is necessary, in that, in accordance with Missouri law, notices of election and sample ballots are due to the county clerk's office on January 24, 2023, pursuant to Section 115.125, RSMo.

COUNT I – DECLARATORY JUDGMENT
RESPONDENTS HAS NO STATUTORY AUTHORITY TO CHANGE CANDIDATE FILING DEADLINE

40. Relator re-alleges and incorporates paragraphs 1 through 39 above as if fully set forth herein and below.

41. Pursuant to the Missouri Declaratory Judgment Act, Section 527.010, RSMo. a court may issue a declaratory judgment where a party presents (1) a justiciable controversy; (2) legally protectable interests; (3) a controversy ripe for judicial determination; and (4) an inadequate remedy at law. *Khalil v. 3HB Corp.*, 621 S.W.3d 1, 10 (Mo. Ct. App. 2021).

42. Here, the controversy between Relator and the Respondents is judiciable, ripe and sufficiently invokes the Court's power to declare whether Respondents has acted in violation of Missouri law in refusing to place Relator's name on the ballot as a director candidate for the Board of Education election to be held on April 4, 2023, under Section 115.127, RSMo.

43. Furthermore, pursuant to Section 536.050, RSMo. Relator seeks declaratory judgment from the Court as to whether Respondents has acted in violation of Missouri law in refusing to accept Relator's declaration of candidacy as a director candidate for the Columbia Board of Education election to be held on April 4, 2023, pursuant to Section 115.127, RSMo. and in turn to certify Relator as a director candidate.

44. Section 115.127.5, RSMo. states:

If the opening date for filing a declaration of candidacy for any office in a political subdivision or special district is not required by law or charter, the opening filing date shall be 8:00 a.m., the seventeenth Tuesday prior to the election. ***If the closing date for filing a declaration of candidacy for any office in a political subdivision or special district is not required by law or***

charter, the closing filing date shall be 5:00 p.m., the fourteenth Tuesday prior to the election. The political subdivision or special district calling an election shall, before the seventeenth Tuesday, prior to any election at which offices are to be filled, notify the general public of the opening filing date, the office or offices to be filled, the proper place for filing and the closing filing date of the election. Such notification may be accomplished by legal notice published in at least one newspaper of general circulation in the political subdivision or special district. (*Emphasis added*).

45. The date of the election for the directors for the Board of Education is set for April 4, 2023 (the “Election”).

46. Thus, the fourteenth Tuesday prior to the Election was December 27, 2022.

47. Section 115.127, RSMo. or any other provision, does not allow for any discretion for the Respondents to make filing unavailable before 5:00 p.m. on the fourteenth Tuesday prior to the election for any reason.

48. The Public Notice changing the statutory filing deadline is therefore outside the statutory scope of the Respondents’ authority and Respondents has acted ultra vires and without lawful authorization.

49. This is particularly true in light of the language of the Section 115.127, RSMo. as well as the language of the Respondents’ own policy on Board of Education elections contained in Policy BBB-2.

50. Policy BBB-2 states:

Qualified applicants for the board may file a declaration of candidacy during business hours in the superintendent’s office commencing at 8:00 a.m. on the seventeenth Tuesday prior to the election and *ending at 5:00 p.m. on the fourteenth Tuesday prior to the election.* (*emphasis added.*)

51. Like Section 115.127, RSMo. Policy BBB-2 does not grant any discretion to district staff to change the last day for filing from the fourteenth Tuesday prior to the election. Policy BBB-2 is attached hereto as **Exhibit D**.

52. The Public Notice issued by the Respondents disregards Section 115.127, RSMo. and the Board's own Policy BBB-2, in that it altered the statutory requirement to accept filings until the fourteenth Tuesday prior to the election, and as a result denied Relator's declaration of candidacy application and refused to place his name on the ballot for the April 2023 election.

53. This action for declaratory relief will settle the controversy that exists between Relator and Respondents.

54. This count is brought pursuant to Section 536.050, RSMo.

WHEREFORE, the Relator prays for an order pursuant to Sections 527.010 and 536.050, RSMo. declaring that Respondents' refusal to accept Relator's declaration of candidacy and to certify Relator as a candidate for the April 4, 2023 election for directors to the Board of Education exceeded Respondents' authority under Section 115.127, RSMo. and Policy BBB-2, that such act was unlawful pursuant to Section 115.127, RSMo. for Relator's attorney's fees and costs pursuant to Section 536.050, RSMo. and for such other and further relief as the Court deems just and necessary under the circumstances.

COUNT II – PETITION IN MANDAMUS

55. Relator re-alleges and incorporates paragraphs 1 through 54 above as if fully set forth herein and below.

56. Mandamus will issue to compel the performance of a ministerial duty.

57. A ministerial duty is an act that the law directs an official to perform upon a given set of facts, independent of what the officer may think of the propriety or impropriety of doing the act in a particular case.

58. Mandamus will lie when there is a clear, unequivocal, specific and positive right to have performed the act demanded.

59. Even where discretion exists, if the public body arbitrarily or capriciously exercises it, or exercises it in bad faith, then it is regarded that there was no discretion recognized by law and mandamus will lie.

60. Section 115.127.5, RSMo. states:

If the opening date for filing a declaration of candidacy for any office in a political subdivision or special district is not required by law or charter, the opening filing date shall be 8:00 a.m., the seventeenth Tuesday prior to the election. ***If the closing date for filing a declaration of candidacy for any office in a political subdivision or special district is not required by law or charter, the closing filing date shall be 5:00 p.m., the fourteenth Tuesday prior to the election.*** The political subdivision or special district calling an election shall, before the seventeenth Tuesday, prior to any election at which offices are to be filled, notify the general public of the opening filing date, the office or offices to be filled, the proper place for filing and the closing filing date of the election. Such notification may be accomplished by legal notice published in at least one newspaper of general circulation in the political subdivision or special district. (***Emphasis added***).

61. Section 115.127, RSMo. requires that Columbia Public Schools leave open the filing of a declaration of candidacy until the fourteenth Tuesday prior to the election.

62. Respondents, or any of its agents, representatives or employees, do not have any discretion to change the closing date for filing the declaration of candidacy established by Section 115.127.5, RSMo.

63. Relator has a clear, unequivocal, specific and positive right to have his declaration of candidacy accepted by Respondents, and his name added to the election ballot pursuant to Section 115.127, RSMo..

64. Respondents' duties and rights in administering its own board elections are only ministerial, as has been recognized by Missouri courts. *See e.g., Board of Educ. Of City of St. Louis v. State*, 47 S.W.3d 366 (Mo. 2001).

65. On December 27, 2022, Relator timely submitted his declaration of candidacy with the Boone County Clerk.

66. Respondents rejected Relator's filing by certifying the list of candidates for the April 4, 2023, election without Relator's name.

67. Since Respondents do not have discretion to deny a timely filing of a declaration of candidacy, this Court has authority under Section 536.050, RSMo. to issue a writ of mandamus compelling Respondents to accept Relator's declaration of candidacy and adding Relator's name to the ballot for the April 4, 2023, election.

WHEREFORE, Relator Charles Basye, requests that this Court grant a writ of mandamus compelling Respondents to accept Relator's declaration of candidacy and add Relator's name to the ballot for the April 4, 2023, election consistent with Section 115.127, RSMo. and Policy BBB-2, and for such other relief as this Court deems necessary and appropriate.

COUNT III – WRIT OF CERTIORARI
(In the alternative to Count II)

68. Relator re-alleges and incorporates paragraphs 1 through 67 above as if fully set forth herein and below.

69. A common law writ of certiorari will lie where an inferior tribunal acts outside its jurisdictional limits or otherwise illegally.

70. The common law writ of certiorari extends to the review of all questions of jurisdiction, power, and authority of the inferior tribunal to do the action complained of and all question of irregularity in the proceedings.

71. Section 115.127.5, RSMo. states:

If the opening date for filing a declaration of candidacy for any office in a political subdivision or special district is not required by law or charter, the opening filing date shall be 8:00 a.m., the seventeenth Tuesday prior to the election. ***If the closing date for filing a declaration of candidacy for any office in a political subdivision or special district is not required by law or charter, the closing filing date shall be 5:00 p.m., the fourteenth Tuesday prior to the election.*** The political subdivision or special district calling an election shall, before the seventeenth Tuesday, prior to any election at which offices are to be filled, notify the general public of the opening filing date, the office or offices to be filled, the proper place for filing and the closing filing date of the election. Such notification may be accomplished by legal notice published in at least one newspaper of general circulation in the political subdivision or special district. (***Emphasis added***).

72. Section 115.127, RSMo. requires that Columbia Public Schools leave open the filing of a declaration of candidacy until the fourteenth Tuesday prior to the election.

73. Columbia Public Schools does not have any discretion to change the closing date for filing the declaration of candidacy established by Section 115.127.5, RSMo.

74. Relator has a clear, unequivocal, specific and positive right to have his declaration of candidacy accepted by Respondents and his name added to the election ballot pursuant to Section 115.127, RSMo.

75. Respondents' act in accepting Relator's declaration of candidacy is purely ministerial once Relator has timely submitted his filing.

76. Relator timely submitted his declaration of candidacy on December 27, 2022, pursuant to Section 115.127, RSMo.

77. Respondents rejected Relator's filing by certifying the list of candidates for the April 4, 2023, election without Relator's name.

78. Respondents' consideration of whether to accept Relator's declaration of candidacy pursuant to Section 115.127, RSMo. is judicial or quasi-judicial in nature.

79. Respondents has exceeded its jurisdiction in its denial of Relator's declaration of candidacy timely filed pursuant to Section 115.127, RSMo. and relying on its own public notice arbitrarily changing the closing date for the filing of declaration of candidacy.

80. Respondents has acted outside its jurisdiction or, alternatively, illegally.

81. Because Respondents has acted outside its jurisdiction or, alternatively, illegally, this Court has the authority to issue a common law writ of certiorari compelling Respondents to accept Relator's declaration of candidacy and adding Relator's name to the ballot for the April 4, 2023, election.

WHEREFORE, Relator Charles Basye requests that this Court grant a writ of certiorari compelling Respondents to accept Relator's declaration of candidacy and adding Relator's name to the ballot for the April 4, 2023, election consistent with Section 115.127, RSMo. and Policy BBB-2, and for such other relief as this Court deems necessary and appropriate.

COUNT IV – TEMPORARY RESTRAINING ORDER

82. Relator re-alleges and incorporates paragraphs 1 through 81 above as if fully set forth herein and below.

83. Respondents acted in a clearly illegal manner in violation of Missouri law as set forth above in refusing to accept Relator's declaration of candidacy and subsequent failure to certify Relator's candidacy.

84. Relator is likely to be successful in this case based on the merits of the case for the reasons set forth above in Counts I, II and III of Relator's Petition.

85. On information and belief, Respondents have already purported to certify the school board election for April 4, 2023, to election authorities pursuant to RSMo. Section 115.125.

86. Immediate and irreparable injury, loss, and damage will result to Relator in the absence of relief because without Court intervention and supervision, Respondents will attempt to exclude Relator from the ballot for school board director, and will likely claim that the January 24, 2023, deadline for election certification has passed.

87. Relator has no remedy at law because without Court supervision and an injunction in this matter the deadlines set forth by statute may pass, making a remedy for the Relator impossible.


88. If this injunction is granted and the final judgment is in turn in Respondents' favor, there is no plausible injury to Respondents from the injunction requested herein, and Relator therefore requests a bond not to exceed Fifty Dollars (\$50.00).

WHEREFORE, Plaintiffs hereby respectfully request the Court to issue an injunction pursuant to Rule 92.02(a) in this matter commanding the Respondents to immediately recognize and deem Relator's declaration of candidacy as timely filed pursuant to Section 115.127, RSMo,

and to certify such declaration of candidacy pursuant to Section 115.125, RSMo. on or before
January 24, 2023.

Respectfully Submitted,

HADEN & COLBERT LLC

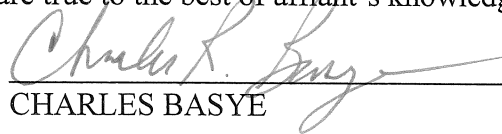


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RELATOR CHARLES BASYE'S SWORN SIGNATURE

STATE OF MISSOURI)
) ss.
COUNTY OF COLE)

The below named person, being duly sworn upon oath, states that he has read the foregoing Verified Petition and the facts stated herein are true to the best of affiant's knowledge and belief.




CHARLES BASYE

Subscribed and sworn to before me this 18th day of January, 2023, by the above named individual, who is personally known to me, and who is personally sworn by me, and who, after having been duly sworn, did review the above Verified Petition, and did state, under oath, that all matters set forth therein are known to him, of his own personal knowledge to be true.

IN TESTIMONY WHEREOF, I have hereunto affixed my hand and notarial seal on the day and year last above written.





Elissa Gail Hendren, Notary Public
Boone County, State of Missouri
My commission expires: 3/12/2023.