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Court of Appeals

RESPONSE IN OPPOSITION TO
June 10, 2025 18:35

By: KENNETH D. MYERS 0053655

Confirmation Nbr. 3521621

STATE EX REL. LATEEK SHABAZZ

CA 25 115185

vs.

SANDRA MORGAN

Judge:

Pages Filed: 17

IN THE EIGHTH DISTRICT COURT OF APPEAL
CUYAHOGA COUNTY, OHIO

STATE EX REL.)	Case No.: CA-25-115185
LATEEK SHABAZZ,)	
)	
Relator,)	
)	
-vs-)	
)	
SANDRA MORGAN,)	
)	
Respondent.)	<u>ORIGINAL ACTION FOR A</u>
)	<u>WRIT OF QUO WARRANTO</u>
)	

**RELATOR’S RESPONSE TO RESPONDENT SANDRA MORGAN’S MOTION TO
DISMISS/MOTION FOR INJUNCTION**

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**RELATOR'S RESPONSE TO RESPONDENT SANDRA MORGAN'S MOTION TO
DISMISS/REQUEST FOR INJUNCTION**

Now comes relator, Lateek Shabazz, and, pursuant to this Court's June 6, 2025 order, responds to respondent Sandra Morgan's motion to dismiss/request for injunction.

On June 2, 2025, relator Lateek Shabazz, the President of East Cleveland City Council, filed this Original Action in Quo Warranto, seeking this Court's acknowledgment that as of May 29, 2025, the date that then-Mayor Brandon King was convicted of multiple felonies, relator Shabazz was the Mayor of East Cleveland. Relator also filed an emergency motion for peremptory or alternative writ of quo warranto and expedited determination.

On June 5, 2025, Sandra Morgan, who had been appointed Interim Mayor by the Cuyahoga County Probate Court on February 28, 2025 pursuant to Ohio Revised Code 3.16, filed a motion to dismiss, which included a request for an emergency injunction seeking an order from this Court prohibiting Mr. Shabazz from representing himself as the mayor of East Cleveland.

On June 6, 2025, this Court granted relator's emergency motion for peremptory or alternative writ of quo warranto and expedited determination, and set a briefing schedule that gave respondent two weeks to file a dispositive motion or brief in opposition, and gave relator one week from respondent's filing to file a reply brief.

Respondent had already filed her dispositive motion by the time this Court issued its order, so relator now files this reply (actually a response to respondent's motion to dismiss) in accordance with this Court's scheduling order.

Thus, pursuant to this Court's scheduling order, the filing of this brief should end the briefing and this matter should be ready for an expedited determination by this Court. Relator

incorporates the contents of the Petition for Writ of Quo Warranto and relator's motion for peremptory and/or alternative writ and request for expedited review by reference.

On June 6, 2025, Cuyahoga County Prosecutor Michael O'Malley filed his own Complaint for Writ of Quo Warranto, seeking a declaration that Sandra Morgan is the rightful mayor. Prosecutor O'Malley also filed a motion seeking to consolidate both cases.

On June 9, 2025, this Court granted the motion to consolidate.

Mr. Shabazz, respondent in the O'Malley case, expects to file separately a motion to dismiss/motion for summary judgment forthwith and therefore, this brief responds only to Ms. Morgan's motion to dismiss/motion for injunction.

Summary of Ms. Morgan's Arguments

1) Ms. Morgan's main argument is that pursuant to O.R.C. 3.16, when she was appointed as Interim Mayor by the Probate Court, she became entitled to continue to hold that office until the November, 2025 mayoral election, because none of the three O.R.C. 3.16(C) factors have come to fruition. That is, the suspended mayor has not been reinstated to office by an appeal, the charges against the suspended mayor have not been disposed of by dismissal or acquittal; and a successor mayor has not been elected. Respondent Motion to Dismiss at 2-3.

2) Ms. Morgan also argues that Brandon King is still mayor. "King was convicted but he hasn't even been sentenced yet. He is likely to appeal his conviction and the election will not be held until November 0f 2025. Therefore, Brandon King is still under suspension. He has not been 'removed,' the mayor's seat is not vacant and Sandra Morgan is still interim Mayor."

Respondent's Motion to Dismiss at 5. "...under 3.16(C)(4) Brandon (sic) is still suspended and it is premature for Petitioner to hold himself out as mayor." Respondent's Motion to Dismiss at 7.

3) Ms. Morgan also argues that O.R.C. 3.16 takes precedence over the East Cleveland Charter. "Section 114 of the East Cleveland Charter was designed to ensure that the business of the city would continue if the elected mayor could not perform his or her duties. The appointment of Sandra Morgan under R.C. 3.16 did just that." Respondent's Motion to Dismiss at 5.

4) Ms. Morgan also makes a political argument, i.e., that her appointment has been good for the City of East Cleveland, that she has "brought a sense of calm back to the city," and that removing her now "would serve only to throw the city government back into chaos. Mayor Morgan's efforts to bring county and state leadership together in cooperation to aid the City of East Cleveland would be derailed. For these reasons Judge Anthony Russo's order must be followed and Mayor Morgan must retain her position as interim mayor." Respondent's Motion to Dismiss at 5-6.

5) Ms. Morgan also makes a "request for injunction," asking this Court to enjoin Mr. Shabazz from "taking the office as mayor or holding himself out as mayor." Respondent's Motion to Dismiss at 6.

The Motion to Dismiss Standard

As an initial matter, Ms. Morgan makes no reference to the standard for a motion to

dismiss.

“In considering a motion to dismiss a quo warranto action, we must presume that all the factual allegations made in the complaint and the documents incorporated into the complaint are true and we must make all reasonable inferences in the relator’s favor.” State ex rel. Nguyen v. Lawson, 178 Ohio St.3d 260 (2025) at P 17, citing State ex rel. Andrews v. Lake Cnty. Court of Common Pleas, 170 Ohio St. 3d 354 (2022). A dismissal can be granted “only if it appears beyond doubt that the relator can prove no set of facts entitling the relator to relief.” Id.

In this case, after presuming the truth of the factual allegations and making all reasonable inferences in favor of relator, this case cannot be dismissed. Ms. Morgan does not dispute any of the relevant facts: Brandon King was indicted by a grand jury; he was suspended and Sandra Morgan was appointed Interim Mayor pursuant to O.R.C. 3.16; Mr. King was convicted of several felonies, including theft of office, on May 29, 2025; O.R.C. 3.16 provides a mechanism for naming a permanent replacement for the Interim Mayor if the suspended official’s suspension ends by conviction, thus creating a vacancy in the office; another statute, O.R.C. 2921.41(C)(1) states that a public official’s disqualification takes effect upon a guilty finding, not after sentencing or after appeal; East Cleveland Charter Section 114 states that when there is a vacancy in the mayor’s office caused by the mayor’s removal, the City Council President is the first in the line of succession.

These facts preclude a dismissal of the Quo Warranto because not only does the motion to dismiss fail to show “beyond doubt that the relator can prove no set of facts entitling the relator to relief,” but the facts show that relator is in fact entitled to relief..

Response to Ms. Morgan's Arguments

Ms. Morgan completely ignores the crux of Mr. Shabazz's argument, i.e., that the Home Rule provision of the Ohio Constitution and Ohio Supreme Court precedent mandate that the East Cleveland Charter takes precedence over conflicting state statutes. Mr. Shabazz has set forth the details and legal significance of the Home Rule provision, and by failing to even address, much less argue or rebut Mr. Shabazz's argument, Ms. Morgan has waived any counter-argument and conceded the validity of Mr. Shabazz's argument. There is no dispute that in Charter communities, like East Cleveland, when there is a conflict between state law and the Charter, the Charter prevails. In this case, the Charter mandates that upon Brandon King's disqualification, Mr. Shabazz, as City Council President, immediately becomes mayor.

However, in this case, the statute and the Charter do not even conflict. The state statute in question, O.R.C. 3.16, sets forth a very detailed process for the temporary replacement of a public official who has been indicted. That statute dictates how a request for a suspension is made, by whom it is made, to whom it is made, who decides on a suspension, who decides on a temporary replacement, and how a permanent replacement is named if the suspended public official is convicted. The entire statute must be read together to understand how the process works from beginning to end.

Ms. Morgan totally ignores how the process ends when a public official is convicted. O.R.C. 3.16(E)(4) and (E)(5) clearly outline when the suspended public official must leave office and how a permanent replacement is named

If a public official is suspended, the Probate Court in the county in which the public

official serves appoints an interim replacement “to perform the suspended public official’s duties” “**[f]or the duration of the public official’s suspension.**”. O.R.C. 3.16(E)(4), emphasis added.

“If the office of the suspended public official becomes vacant during the period of suspension, a public official shall be appointed or elected to fill such vacancy as provided by law.” O.R.C. 3.16(E)(5).

Ms. Morgan attempts to work around this clear language and clear procedure for naming a replacement for a convicted public official by claiming that Brandon King is still suspended because he has not been sentenced and has not exhausted his appeal rights. “Brandon King is still under suspension. He has not been ‘removed,’ the mayor’s seat is not vacant and Sandra Morgan is still interim Mayor.” Respondent’s Motion to Dismiss at 5.

This argument totally ignores Mr. Shabazz’s invocation of O.R.C. 2921.41, pertaining to theft in office convictions, which states, in pertinent part:

O.R.C. 2921.41(C)(1) A public official or party official who pleads guilty to theft in office and who whose plea is accepted by the court or a public official or party official against whom a verdict or finding of guilt for committing theft in office is returned is forever disqualified from holding any public office, employment, or position of trust in this state.

For purposes of being disqualified from holding public office, only a determination of guilt is necessary, not sentencing or any post-trial determinations. O.R.C. 2921.41(C)(1); State ex rel. Gains v. Hill, 1998 Ohio App. LEXIS 1820 (7th Dist. App., 1998) at 6, citing State ex rel. Watkins v. Fiorenzo (1994), 71 Ohio St. 3d 259,260.

Pursuant to the clear language of O.R.C. 2921.41(C)(1) and the cases interpreting the

statute, Brandon King was officially disqualified from holding his office at the time he was found guilty.

County Prosecutor Michael O'Malley apparently agrees. On June 1, 2025, Prosecutor O'Malley issued a press release informing the public of Brandon King's conviction. In the press release, Prosecutor O'Malley says, "As a result of the conviction, Brandon King will not be reinstated as the mayor of East Cleveland and will be disqualified from public office for seven years from the date of conviction." A copy of Prosecutor O'Malley's press release is attached as Exhibit A, emphasis added.

Ironically, even Ms. Morgan agrees that Brandon King ceased to be mayor as of the date of his conviction.

On May 30, 2025, the day after Brandon King's conviction, Ms. Morgan, in her capacity as Interim Mayor, sent an e-mail to the City of East Cleveland's Director of Finance, ordering her to cut off Brandon King's pay as mayor. Ms. Morgan stated: "As you know, former Mayor Brandon King was found guilty of 10 counts yesterday and is now awaiting sentencing. He is effectively no longer Mayor of East Cleveland, and as such, is no longer entitled to salary payments. Therefore, please end payment to Brandon King as of Thursday, May 29, 2025. He is officially separated from employment at the City of East Cleveland." A copy of Ms. Morgan's e-mail is attached as Exhibit B, emphasis added.

Ms. Morgan should not be permitted to claim in an official City of East Cleveland correspondence that Brandon King is no longer mayor effective on the date of being found guilty, and then claim in a filing with this Court supporting her claim that she is still mayor, that Brandon King is still mayor and remains suspended until his appeals run their course. Ms.

Morgan cannot have it both ways when it suits her purpose.

Ms. Morgan was correct in her e-mail on May 30, 2025; Brandon King became “officially separated from employment at the City of East Cleveland” and is “effectively no longer Mayor of East Cleveland.” Her argument to the contrary to this Court in her Motion to Dismiss should be disregarded as being contrary to how she is conducting herself in office. Prosecutor O’Malley is also correct in stating that Brandon King “will not be reinstated as the mayor of East Cleveland and will be disqualified from public office....from the date of conviction.”

So the parties agree that Brandon King is “officially separated from employment” at the City of East Cleveland. The guilty finding disqualifies him, and therefore, the office of mayor is vacant. Ms. Morgan does not address the issue of O.R.C. 3.16(E)(4), which says that her interim status lasts “for the duration of the public official’s suspension.” Nor does she address O.R.C. 3.16(E)(5), which calls for the appointment of a permanent mayor upon a vacancy in the office. “If the office of the suspended public official becomes vacant during the period of suspension, a public official shall be appointed or elected to fill such vacancy as provided by law.” O.R.C. 3.16(E)(5).

Again, Ms. Morgan does not address this part of the statutory procedure, because she argues before this Court that Brandon King is still mayor (while telling her subordinates in City Hall that Brandon King is no longer mayor).

She also only tangentially mentions Section 114 of the Charter, which, she says, “...was designed to ensure that the business of the city would continue if the elected mayor could not perform his or her duties. The appointment of Sandra Morgan under R.C. 3.16 did just that.” Respondent’s Motion to Dismiss at 5.

Ms. Morgan does not address how O.R.C. 3.16 “ensures that the business of the city would continue if the elected mayor could not perform his or her duties.” She apparently assumes that she is automatically entitled to the permanent appointment, or that the appointing process outlined in O.R.C. 3.16 will only kick in after Brandon King exhausts all of his appeals.

Ms. Morgan gives short shrift to the requirements and the primacy of the Charter. She seems to believe that there will never come a time in this process when the Charter takes precedence.

This is not correct.

As outlined in the motion for expedited review, the Home Rule provision of the Ohio Constitution takes precedence over a conflicting statute, and in this case, the procedures of O.R.C. 3.16 literally hand the process over to the Charter upon the removal of the mayor.

But other than the one sentence about the Charter quoted above, Ms. Morgan does not even mention the Charter or its relationship to the procedures outlined in O.R.C. 3.16. It’s as if O.R.C. 3.16(E)(4) and (E)(5) don’t exist. What is Ms. Morgan’s position on those segments of the statute? What does she believe is supposed to happen when, as she told her Finance Director, Brandon King is “officially separated from employment?” Who is supposed to appoint the permanent mayor to fill the void caused by Brandon King’s conviction? What does she believe “as provided by law” means in (E)(5) if not the Charter? What other law does Ms. Morgan suggest would govern the appointment of a permanent replacement for the “officially separated” Brandon King? Ms. Morgan asks this Court to dismiss this Quo Warranto and bless her continued usurpation of the office of Mayor, but she refuses to address or rebut Mr. Shabazz’s reliance on O.R.C. 3.16(E)(4) and (E)(5) and Section 114 of the East Cleveland Charter. Ms.

Morgan cannot and did not rebut or even address Mr. Shabazz's arguments; not only should her motion to dismiss be denied, but pursuant to O.R.C. 3.16(E)(4) and (E)(5), read in conjunction with East Cleveland Charter Section 114, this Court should grant Mr. Shabazz a writ of Quo Warranto declaring that he is the rightful mayor of East Cleveland, effective May 29, 2025.

Ms. Morgan's reliance on Judge Russo's order appointing her Interim Mayor, which took place in February, 2025, when Brandon King was still suspended and had not been tried yet, is misplaced. Judge Russo's order should be deemed to have expired as of May 29, 2025, the date the jury found Brandon King guilty of theft in office. His order listing the three circumstances under which his order would end did not account for a vacancy being created in the mayor's office due to Brandon King's conviction. His order appointing Ms. Morgan as Interim Mayor must give way to the procedures outlined in O.R.C. 3.16(E)(4) and (E)(5) and to Section 114 of the East Cleveland Charter. As soon as Brandon King was found guilty, he went from a suspended public official to a disqualified public official and the office of mayor could no longer be filled with an Interim Mayor because the office officially became vacant, to be filled pursuant to the procedures mandated by O.R.C. 3.16(E)(5) and Section 114 of the Charter.

As for Ms. Morgan's page-long Request for Injunction, which does not cite any statutes or case law setting forth the requirements for an injunction, the request is a nullity. Mr. Shabazz believes the Charter clearly makes him mayor as of the date of Brandon King's finding of guilt on May 29, 2025, for the reasons stated herein and in the Quo Warranto petition. He has taken steps to assert his authority, such as having himself sworn in. He has also filed the instant Quo Warranto with the understanding that a dispute exists, that Ms. Morgan actually (wrongfully) occupies the mayor's office in City Hall, and that this Court will make a binding decision as to

who is mayor. The steps Mr. Shabazz has taken have been taken with the understanding that if he prevails in this Court, his appointment should be retroactive to May 29, 2025. Mr. Shabazz also understands that if this Court rules against him, the actions he has taken as Mayor will become null and void.

Finally, as to Ms. Morgan's political argument, that her appointment has been good for the City of East Cleveland, that she has "brought a sense of calm back to the city," and that removing her now "would serve only to throw the city government back into chaos. Mayor Morgan's efforts to bring county and state leadership together in cooperation to aid the City of East Cleveland would be derailed," Respondent's Motion to Dismiss at 5-6, this argument is irrelevant to the matter before this Court and should be disregarded in its entirety. Even if true, Ms. Morgan's performance as Interim Mayor makes no difference in the legal analysis of O.R.C. 3.16 and its relationship to the East Cleveland Charter. This Court should not be placed in the position of evaluating Ms. Morgan's three-month tenure as Interim Mayor as part of the legal determination regarding who should be mayor going forward. It is not this Court's function to decide political questions; the citizens of East Cleveland will elect a mayor in November, 2025 by popular vote. For now, this Court must decide who legally holds the office of mayor based on the Charter, the statute and relevant case law, not on whether Ms. Morgan, by her own self-serving political campaign ad dressed up as legal analysis, is doing a good job.

WHEREFORE, this Court should overrule respondent's motion to dismiss and request for injunction, and grant relator's petition for a writ of quo warranto, effective May 29, 2025.

Respectfully submitted,

/s/Kenneth D. Myers
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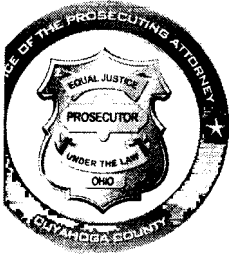
Counsel for Relator
Lateek Shabazz

CERTIFICATE OF SERVICE

I certify that the foregoing has been sent via e-mail to counsel for all parties via the Court's electronic filing system on this 10th day of June, 2025.

/s/Kenneth D. Myers
KENNETH D. MYERS

Counsel for Relator
Lateek Shabazz

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East Cleveland Mayor Brandon King Found Guilty of Theft in Office Among Other Charges; Former East Cleveland City Councilman Ernest Smith Also Found Guilty

CLEVELAND – Cuyahoga County Prosecutor Michael C. O'Malley announced that Brandon King, 56, has been found guilty by a jury of Theft in Office, Having an Unlawful Interest in a Public Contract, among additional charges. Former East Cleveland City Councilman Ernest Smith, 49, was also found guilty by a jury.

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"Mayor King's conviction was inevitable. The citizens of East Cleveland deserve better than what their municipal government has provided them. I am hopeful, under the new leadership of Mayor Sandra Morgan, that the city is now headed in the right direction."

Prosecutor Michael C. O'Malley

From January 1, 2019, through October 2, 2024, Brandon King authorized a public contract and payments through the City of East Cleveland to businesses owned by King and his family members. King authorized leasing office space in a building on Euclid Avenue, owned by King Management Group Limited, to the City of East Cleveland's Domestic Violence Department. The lease was for \$14,184.21 annually, paid in quarterly installments.

From March 16, 2019, through February 22, 2022, the City of East Cleveland purchased \$5,813.07 of cleaning supplies from American Merchandising Services. King Management Group Ltd. and American Merchandising Services are owned by Brandon King and his family members.

From January 1, 2018, through March 31, 2022, Brandon King improperly provided a City of East Cleveland vehicle to East Cleveland City Councilman Ernest Smith. King also provided Smith with City of East Cleveland gas cards to purchase vehicle fuel. While Smith had the vehicle, he used two gas cards to purchase \$6,791 of gas at the expense of the City of East Cleveland.

In addition, Brandon King also filed false yearly financial disclosure statements with the Ohio Ethics Commission from the years 2015 through 2017.

The investigation was conducted by the Ohio Auditor of State and the Ohio Ethics Commission.

On May 29, 2025, Brandon King was found guilty by a jury of the following charges:

- **One count of Theft in Office (F4)**
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- **Four counts of Having an Unlawful Interest in a Public Contract (F4 x 2, M1 x 2)**

- **One count of Theft in Office (F4)**
- **Four counts of Having an Unlawful Interest in a Public Contract (F4 x 2, M1 x 2)**
- **Three counts of Representation by Public Official or Employee (M1)**
- **One count of Filing a False Disclosure Statement (M1)**
- **One count of Soliciting Improper Compensation (M1)**


As a result of the conviction, Brandon King will not be reinstated as the mayor of East Cleveland and will be disqualified from public office for seven years from the date of conviction.

On May 29, 2025, Ernest Smith was found guilty by a jury of the following charges:

- **One count of Theft in Office (F4)**
- **Two counts of Theft (F5)**
- **One count of Soliciting Improper Compensation (M1)**
- **One count of Misuse of Credit Cards (M1)**

As a result of the conviction, Ernest Smith will be disqualified from public office for seven years from the date of conviction.

They will be sentenced at the Cuyahoga County Justice Center June 9 at 10:30 a.m.

PDF 

May 29th, 2025 | 2025, Press Release | Comments Off

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FW: Suspend Payroll to Brandon King Effective May 29th

From: Stacey White (swhite@eastclecouncil.org)

To: Lshabazz@eastclecouncil.org; pblochowiak@eastclecouncil.org; Tbillings@eastclecouncil.org;
Taustin@eastclecouncil.org; Trichardson@eastclecouncil.org

Cc: lateek.shabazz@aol.com; pblochowiak@gmail.com; twonbillings70@yahoo.com; timraustin@aol.com;
msterrierichardson@gmail.com; clerkbrewer@gmail.com; kdmy@aol.com

Date: Friday, May 30, 2025 at 03:23 PM EDT

Dear Councilors,

For your official information.

Truly,



Stacey R. White, MSSA
Clerk of Council
CITY OF EAST CLEVELAND
Ph: (216) 681-2310
Fax: (216) 681-5440
swhite@eastclecouncil.org

From: Mayor Sandra Morgan <mayormorgan@eastcleveland.org>

Sent: Friday, May 30, 2025 2:10 PM

To: Latasha Williams <lwilliams@eastcleveland.org>

Cc: Stacey White <swhite@eastclecouncil.org>

Subject: Suspend Payroll to Brandon King Effective May 29th

Dear Latasha:

I hope you are well. As you know, former Mayor Brandon King was found guilty of 10 counts yesterday and is now awaiting sentencing. He is effectively no longer Mayor of East Cleveland, and as such, is no longer entitled to salary payments. Therefore, please end payment to Brandon King as of Thursday, May 29, 2025. He is officially separated from employment at the City of East Cleveland. Please copy Mansell, Heather, and me with final details of his payment for our records, along with any request for payment of sick time, etc.

Thanks,
Sandra

Sandra Morgan
Interim Mayor
City of East Cleveland Ohio
14340 Euclid Avenue
East Cleveland, OH 44112
216.681.2208

mayormorgan@eastcleveland.org

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