IN THE CIRCUIT COURT OF THE FOURTH JUDICIAL CIRCUIT
SHELBY COUNTY, ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS, PLAINTIFF.	)	
v.	)	NO. 2023-MR-13
TERESA BOEHM	)	
ROSE TOWNSHIP CEMETERY BOARD	)	
ROSE TOWNSHIP	)	

MOTION TO FILE AN AMENDED RESPONSE
TO TERESA BOEHM'S MOTION TO DISMISS

Now Comes Plaintiff, the People of the State of Illinois with their motion to file an amended Response to the Amended Motion to Dismiss and in support of this motion state as follows:

1. Plaintiff has come into new additional information concerning this case.
2. That for clarity of the record the State wishes to amend its Response to properly address the issues with Defendant's failure to cite any authority.
3. Attached hereto is a copy of the proposed amended response.

Wherefore, Plaintiff prays that this honorable court grant the following relief:

A) Grant to Plaintiff leave to file its amended response instanter.

Respectfully submitted by the People of the State of Illinois by the State's Attorney in and for Shelby County

/s/Robert T. Hanlon
Robert Hanlon
State's Attorney
Shelby County, Illinois

Prepared by:
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Exhibit A

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AMENDED RESPONSE TO TERESA BOEHM'S MOTION TO DISMISS AS MOOT

Now Comes the People of The State of Illinois by and through The State's Attorney, of and for Shelby County, IL, Robert T. Hanlon, with its Response to Teresa Boehm's Motion to Dismiss as Moot and in opposition thereto states as follows:

INTRODUCTION

Defendant's motion is completely erroneous because Quo Warranto actions are not mooted by resignation. As will be discussed herein Defendant filed with this court a completely underdeveloped motion devoid of authority which renders Defendant's motion improper. An attorney submitting a motion to this Court has an obligation to ensure that there is a lawful basis for the motion. However, all of the available authority undermines Defendant's position. The claim of mootness demonstrates that the motion to dismiss was nothing more than mudslinging.

FACTS

According to Defendant and her counsel (Depending on which Motion the Court Considers), Defendant resigned her appointed position with Rose Township Cemetery Board. Public Records available to the State support that Defendant was paid periodic payments[1] for her unlawful appointment.

[1] The people recently became aware Defendant received public funds from engaging in the unlawful conduct that gave rise to the Quo Warranto Action. Defendant received seven checks of $72.83, presumably a net amount.

ARGUMENT

The Defendant, Teresa Boehm, first filed a motion to dismiss claiming the cause of action is moot because she purportedly resigned from her unlawful appointment. Defendant, Teresa Boehm's initial motion was verified by Defense Counsel, Tom Finks. But see Illinois Rule of Professional Conduct 3.7 prohibiting an attorney appearing in a case where he is a witness. Without leave of court, Defendant, Teresa Boehm, filed an Amended Motion to Dismiss but this time verifying the facts in the amended motion herself. The second Motion to Dismiss was also based upon the claim that Plaintiff resigned from her appointed position.

As a preliminary matter, even if defense counsel is not going to protect the Defendant's constitutional rights, the State's Attorney, in his official capacity, is the representative of all of the people, including the defendant, and it is as much his duty to safeguard the constitutional rights of the Defendant as much as any other citizen. See *People v Cochran,* 313 Ill. 508, 526 (1924). See also *Berger v United States*, 295 U.S. 78, 88; 79 L.ed. 1314, 55 S.Ct. 629, 633 (1935). In this case, defense counsel advances a sworn statement that may establish the Defendant committed a class 4 felony. For this reason, the State's Attorney asks this Court, to provide the criminal admonishment to the defendant so as to ensure that the Defendant has been advised of her constitutional right against self-incrimination that is not being protected by defense counsel.

The waiver of a constitutional right is valid only when it is clear that there has been an intentional relinquishment or abandonment of a known right. *People v. McClanahan*, 191 Ill. 2d 127, 729 N.E.2d 470, 246 Ill. Dec. 97 (2000). "Such waivers must not only be voluntary, but must be '"knowing, intelligent acts done with sufficient awareness of the relevant circumstances

and likely consequences."'' *Id*. at 137 (quoting *People v. Johnson*, 75 Ill. 2d 180, 187, 387 N.E.2d 688, 25 Ill. Dec. 812 (1979), quoting *Brady v. United States*, 397 U.S. 742, 748, 90 S. Ct. 1463, 25 L. Ed. 2d 747 (1970)). This standard, requiring that a waiver be knowing and voluntary, applies to the waiver of statutory rights as well. See *People v. Vernon*, 396 Ill. App. 3d 145, 152, 919 N.E.2d 966, 336 Ill. Dec. 41 (2009) (finding waiver analysis to be the same whether right to counsel is constitutional or statutory); *Department of Public Aid ex rel. Allen v. Dixson*, 323 Ill. App. 3d 600, 603, 323 Ill. App. 3d 604, 752 N.E.2d 1147, 256 Ill. Dec. 905 (200 1) ("Statutory and constitutional rights may be waived as long as the waiver is knowing, voluntary, and intentional.").

In this case, Defendant's counsel advances a sworn statement by the Defendant despite the potential criminal liability to the Defendant. Proper admonishments by the trial court help to ensure that a defendant understands her rights and the consequences of any decision to waive those rights. *People v. Sharifpour*, 402 Ill. App. 3d 100, 930 N.E.2d 529, 341 Ill. Dec. 319 (2010). Many such admonishments are prescribed by our supreme court in order to protect defendant's rights. See, *e.g*., Ill. S. Ct. R. 401 (eff. July 1, 1984) (admonitions for waiver of right to counsel); Ill. S. Ct. R. 402 (eff. July 1, 2012) (admonitions upon a plea of guilty); Ill. S. Ct. R. 605 (eff. Oct. 1, 2001) (admonitions concerning appeal rights). Even where admonishments are prescribed, only substantial compliance—rather than strict compliance—is required. *Sharifpour*, 402 Ill. App. 3d 100, 930 N.E.2d 529, 341 Ill. Dec. 319 (**Rule** 402); *People v. Haynes*, 174 Ill. 2d 204, 673 N.E.2d 318, 220 Ill. Dec. 406 (1996) (**Rule** 401); *People v. Dominguez*, 2012 IL 111336, 976 N.E.2d 983, 364 Ill. Dec. 420 (**Rule** 605). See also *People v. Reid*, 2014 IL App (3d) 130296, P11-P12.

As a result, since this action is advanced by the People and the State's Attorney must ensure the protection of the constitutional rights of the Defendant, the State's Attorney requests that the Defendant be given the criminal admonishment before any consideration of her sworn statement. If after the Defendant is fully informed of her rights with the criminal admonishment, then the State will be happy to allow the Defendant to advance her sworn statement in this case. That statement however acknowledges that the Defendant engaged in felonious conduct. Accordingly, the State prays that this court provide the criminal admonishment before considering the Defendant's various motions to dismiss.

In any event, if this Court determines that the Defendant has resigned from the appointed position on the Rose Township Cemetery Board, such a resignation is not dispositive of purported mootness of a Quo Warranto action. In fact, all of the appellate authority on this point stands for the proposition that a resignation does not moot a Quo Warranto action. *People ex rel. Courtney v. Botts*, 376 Ill. 476, 480 citing to *People* v. *Rodgers,* 118 Cal. 394, 46 Pac. 741; *Commonwealth* v. *Casey,* 133 Mass. 538. See Also *Ill. ex rel. Ballard v. Niekamp*, 961 N.E.2d 288.) ; *People ex rel. Rahn v. Vohra*, 2017 IL App (2d) 160953, ¶ 35, 416 Ill. Dec. 712, 85 N.E.3d 579; (citing *People ex rel. Courtney v. Botts*, 376 Ill. 476, 480-81, 34 N.E.2d 403 (1941))), *People ex rel. Daley v. Datacom Sys. Corp.,* 146 Ill. 2d 1, 585 N.E.2d 51, 165 Ill. Dec. 655 (1991).

Because a Quo Warranto action does not become moot with either resignation or expiration of the term of office, Defendant's motion to dismiss is improper as the case is not moot.

QUO WARRANTO IS NOT A CRIMINAL CASE.

A proceeding in *quo warranto* is not a criminal prosecution. In *People ex rel. Bardill v. Holtz*, 92 Ill. 426 (1879), *overruled in part on other grounds, People ex rel. Weber v. City of Spring Valley*, 129 Ill. 169, 180, 21 N.E. 843 (1889), the court held that the appeal from a judgment in *quo warranto* should have been filed in the appellate court, not the supreme court. This was in part because this was "not a criminal case" (*Holtz*, 92 Ill. at 428) and "not being criminal [or otherwise appealable directly to the supreme court], should have been taken to the Appellate Court" (*id.* at 429).

The State is not obligated to inform a defendant in quo warranto if it intends to charge a felony. This is no different than any other case where the Defendant has not been criminally charged. The filing of charges is entirely discretionary by the State's Attorney. A reasonably prudent attorney representing a defendant facing a quo warranto typically seeks to protect the Defendant from the pitfalls of opening one's mouth. Nevertheless, in this case, Defense counsel has abandoned the primary function of defense counsel ignoring the possibility that the Defendant could be charged with a felony.

Historically, quo warranto was employed to question the right of a person who is charged with usurping, intruding into, or unlawfully holding or executing any office and to effectuate the ouster of an illegally appointed officer. *People ex rel. Chillicothe Township,* 19 Ill. 2d at 427; *People ex rel. Farrington v. Whitcomb*, 55 Ill. 172, 176 (1870). Furthermore, when a court finds a person guilty in a quo warranto proceeding, the Court may enter a judgment of ouster to effectuate that person's removal from the office. 735 ILCS 5/18-108 (West 2018); *People ex rel. Rahn v. Vohra*, 2017 IL App (2d) 160953, ¶ 35, 416 Ill. Dec. 712, 85 N.E.3d 579; (citing *People ex rel. Courtney v. Botts*, 376 Ill. 476, 480-81, 34 N.E.2d 403 (1941)). *Goral v. Dart*, 2020 IL

125085, P79. The traditional common law writ of quo warranto and the modern statutory scheme both demonstrate that the purpose of bringing such an action is to correct an improper appointment or election and to achieve the ouster of a person who is illegally occupying a public office.

Moreover, the nature of the Quo Warranto action is to immediately shift the burden to the defendant, to have the Defendant show by what warrant they hold office. See 735 ILCS 5/18-103.

The issues associated with the case at bar are simple. To wit: A) Is the Defendant on the County Board. B) Whether or not the Defendant, Teresa Boehm, was appointed to the Rose Township Cemetery Board of Managers in January 2023 by the Rose Township Board. C) Whether or not the two offices are incompatible with the Public Officers Prohibited Activities Act (50 ILCS 105/1 et seq). The answers to these simple questions are established by A) Teresa Boehm's election to the Shelby County Board for which the Court can take judicial notice; B) Teresa Boehm's erroneous appointment to the Rose Township Cemetery Board is established by the minutes of the public meeting appointing Mrs. Boehm to the (non-elected) position on the Rose Township Cemetery Board; and C) application of the Township Code and the Public Officers Prohibited Activities Act.

Like a declaratory relief action, a Quo Warranto action is adjudicated, the rights of the parties hereto are determined by the Circuit Court but it places the burden on the Defendant to show warrant by which she was lawfully exercising the office. See 735 ILCS 5/18-108.

The Public Officers Prohibited Activities Act, provides as follows:

> No member of a county board, during the term of office for which he or she is elected, may be appointed to, accept, or hold any office other than (i) chairman of the county board or member of the regional planning commission by appointment or election of the board of which he or she is a member, (ii) alderperson of a city or

> member of the board of trustees of a village or incorporated town if the city, village, or incorporated town has fewer than 1,000 inhabitants and is located in a county having fewer than 50,000 inhabitants, or (iii) trustee of a forest preserve district created under Section 18.5 of the Conservation District Act, unless he or she first resigns from the office of county board member or unless the holding of another office is authorized by law. Any such prohibited appointment or election is void. This Section shall not preclude a member of the county board from being appointed or selected to serve as (i) a member of a County Extension Board as provided in Section 7 of the County Cooperative Extension Law, (ii) a member of an Emergency Telephone System Board as provided in Section 15.4 of the Emergency Telephone System Act, (iii) a member of the board of review as provided in Section 6-30 of the Property Tax Code, or (iv) a public administrator or public guardian as provided in Section 13-1 of the Probate Act of 1975. Nothing in this Act shall be construed to prohibit an elected county official from holding elected office in another unit of local government so long as there is no contractual relationship between the county and the other unit of local government. This amendatory Act of 1995 is declarative of existing law and is not a new enactment. See 50 ILCS 105/1.

The legislature also established that violation of the Public Officer's Prohibited Activities Act is a Class 4 felony. In particular, the legislature established the following:

> Sec. 4. Any alderperson, member of a board of trustees, supervisor or county commissioner, or other person holding any office, either by election or appointment under the laws or constitution of this state, who violates any provision of the preceding sections, is guilty of a Class 4 felony and in addition thereto, any office or official position held by any person so convicted shall become vacant, and shall be so declared as part of the judgment of court.

See 50 ILCS 105/4.

The Public Officers Prohibited Activities Act does not authorize the Defendant, Teresa Boehm, to undertake Office as a member of a Cemetery Board of Managers nor any other appointed position in local government, while a county board member. Thus, serving on the Shelby County Board and Rose Township Cemetery Board of Managers are incompatible offices.

At issue in this case is a simple set of undeniable facts which establish a violation of law. Given the mandate of the Quo Warranto Act, and its purpose to ensure that the writ is timely

issued at the time selected by the State's Attorney, This court ought to deny the Defendants Motion to Dismiss.

DEFENDANT'S UNDERDEVELOPED ARGUMENTS

Defendant's Motion to Dismiss fails to cite any authority for its propositions. Perhaps that is the reason that all of the available authority undermines Defendant's position on mootness. This court "is not a repository into which [parties] may foist the burden of argument and research." *Stenstrom Petroleum Services Group, Inc. v. Mesch*, 375 Ill. App. 3d 1077, 1098, 874 N.E.2d 959, 314 Ill. Dec. 594 (2007), quoting *Obert v. Saville*, 253 Ill. App. 3d 677, 682, 624 N.E.2d 928, 191 Ill. Dec. 740 (1993), citing *Pecora v. Szabo*, 109 Ill. App. 3d 824, 825-26, 441 N.E.2d 360, 65 Ill. Dec. 447 (1982).

In the case at bar, Defendant failed to cite to any authority in Defendant's Motion to dismiss. Such a position is an underdeveloped argument. Underdeveloped arguments are waived. Id. When a party does not offer meaningful authority in support of his argument, that argument is forfeited." *Henry v. Waller*, 2012 IL App (1st) 102068, ¶ 47, 975 N.E.2d 93, 363 Ill. Dec. 291.

Under Henry v Waller, the absence of any authority in Defendants motion constitutes a waiver of Defendant's arguments.

Wherefore, The People of the State of Illinois pray this Honorable Court deny Teresa Boehm's motion to dismiss on the basis of mootness and grant the people the relief sought in the first Amended Complaint including a fine of $2,100, and such further relief as the court may deem equitable and just.

Respectfully submitted by the People of the State of Illinois by the State's Attorney in and for Shelby County

/s/Robert T. Hanlon
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