

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

DAVID ESRATI,	:	CASE NO. 18 – CV - 0593
Plaintiff,	:	JUDGE RICHARD SKELTON
v.	:	
DAYTON CITY COMMISSION, et al.,	:	<u>ANSWER OF DEFENDANTS,</u>
	:	<u>DAYTON CITY COMMISSION</u>
Defendants.	:	<u>AND COMMISSIONER JEFFREY</u>
	:	<u>J. MIMS JR.</u>
	:	

Defendants, Dayton City Commission (“Dayton”) and Commissioner Jeffrey J. Mims Jr. (“Comm. Mims”), submit the following as their Answer to Plaintiff’s Complaint:

FIRST DEFENSE

1. Defendants admit to the allegations in paragraph 1 to the extent that an injunction is an appropriate remedy to compel compliance with R.C. 121.22.
2. Defendants admit the allegations contained in paragraph 2 to the extent that the generally the Court of Common of Pleas of Montgomery County has jurisdiction in actions brought under R.C. 121.22 for injunctions.
3. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 3 through 13.
4. Defendants admit the allegations contained in paragraph 14 to extent that Comm. Mims is a City Commissioner of the City of Dayton and a former Dayton School Board Member, that Shelley Dickstein is the City Manager of the City of Dayton, and that John Gower is a former City of Dayton employee, and are without knowledge or information sufficient to form a belief of the truth of the remaining allegations contained in paragraph 14.
5. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs 15 through 19. Moreover, Defendants deny that the task force is subject to or violating the Open Meetings Act.
6. Defendants admit to the allegations in paragraph 20 to the extent that the Commission constitutes the governing body of the City of Dayton.

7. Defendants admit to the allegations contained in paragraph 21 to the extent that Comm. Mims is a resident of the City of Dayton and the Dayton City School District.
8. Defendants admit to the allegations contained in paragraph 22 to the extent that Comm. Mims is a Commissioner of the City of Dayton and resigned from the State Board of Education at or around the end of 2013.
9. Defendants admit to the allegations contained in paragraph 23 to the extent that Comm. Mims was a former Member of the Dayton Board of Education and was the President of the Dayton Board of Education.
10. Defendants admit to the allegations contained in paragraph 24 that Comm. Mims was a member of the Dayton Board of Education prior to being elected on to the State Board of Education.
11. Defendants admit to the allegations contained in paragraph 25 to the extent that Comm. Mims is the Co-Chair of a School Facilities Task Force.
12. In response to paragraph 26, Defendants admit that the task force is not a public body and that the City of Dayton Commission did not pass a resolution choosing Mims to be the Co-Chair. Defendants are without knowledge or information sufficient to form a belief to the truth of the remaining allegations contained in paragraph 26.
13. Defendants deny the allegations contained in paragraph 27 to the extent that Comm. Mims “presided” over a meeting, as defined by R.C. 121.22 and the case law interpreting it, and that a R.C. 121.22 meeting actually occurred.
14. Defendants admit that a document was provided to people at the gathering but are without knowledge or information sufficient to form a belief to the truth of the allegations contained in Paragraph 28 concerning the information the contained in the document and/or to whom the document was handed to.
15. Defendants admit to the allegation contained in paragraph 29 to the extent that Com. Mims stated “We’re going to ask you to leave and then you can challenge this later.”
16. Defendants admit that the allegations contained in paragraph 30 to the extent that Com. Mims previous comment, “We’re going to ask you to leave and then you can challenge this later,” was recorded by local media.
17. Defendants admit to the allegations contained in paragraph 31 to the extent that the Dayton Board of Education is the governing body of the Dayton City School District and Dayton Public Schools.

18. Defendants admit to the allegations contained in paragraphs 32 through 35, with the exception of the allegation in paragraph 34 as to when Mr. Al-Hamdani was sworn in as a member of the Board. Defendants are without knowledge or information sufficient to form a belief as to when this occurred.
19. Defendants admit to the allegations contained in paragraph 36 to the extent that Mohammed Al-Hamdani is an attorney registered with the Ohio Supreme Court and are without knowledge or information sufficient to form a belief as to his knowledge concerning Ohio law.
20. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 37.
21. Defendants deny the allegations contained in paragraph 38 to the extent that Mohamed Al-Hamdani “presided” over a meeting, as defined by R.C. 121.22 and the case law interpreting it, and that an R.C. 121.22 meeting actually occurred.
22. Defendants are without knowledge or information sufficient to form a belief to the truth of the allegations contained in paragraphs 39 through 41.
23. Defendants deny the allegations contained in paragraph 42.
24. Defendants admit, deny, and are without knowledge of the allegations incorporated by reference into paragraph 43 of Plaintiff’s Complaint as hereinabove set forth.
25. Defendants admit the allegations contained in paragraph 44 and 45 to the extent that the City of Dayton issued a Press Release on January 4, 2018.
26. Defendants deny the allegation contained in paragraph 46 that the Task Force was labeled as a “committee” but admit that the term “committee” was used in the Press Release.
27. Defendants deny the allegations contained in paragraph 47 that the Task Force held a meeting, as defined by R.C. 121.22 and case law interpreting it, on January 9, 2018.
28. Defendants deny the allegations contained in paragraph 48 to the extent that the Task Force held a meeting, as defined by R.C. 121.22 and the case law interpreting it, and admit that Shelley Dickstein and Elizabeth Lolli were present on January 9, 2018.
29. Defendants are without knowledge or information sufficient to form a belief to the truth of the allegations contained in paragraphs 49 through 52.
30. Defendants deny the allegations contained in paragraph 53.

31. Defendants admit the allegations contained in paragraph 54 to the extent that there are quotes contained in the article and deny the allegations to the extent that it claims that the task force is a public body governed by the Open Meetings Act.
32. Defendants state that the allegations contained in paragraphs 55 through 68 are legal conclusions that do not require response. To the extent that a response is required, Defendants admit the allegations contained in paragraphs 55 through 68 to the extent that they correctly state and apply Ohio law and deny the allegations to the extent they do not correctly state or apply Ohio law.
33. Defendants deny the allegations contained in paragraphs 69 and 70.
34. Defendants deny the allegations contained in paragraph 71 through 74, labeled Second Action 1 through 4 in Plaintiff's Complaint.
35. Defendants are without information or knowledge sufficient to form a belief to the truth of the allegations contain in paragraphs 75 through 78, labeled 5 through 8 in Plaintiff's Complaint.
36. Defendants deny that Plaintiff is entitled to the relief requested in paragraph 79, labeled 9 in Plaintiff's Complaint.
37. Defendants deny the allegations contained in paragraphs 80, 81, 82, 83, 84, 85, 86, 87, 88, 89 labeled 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, and 21 in Plaintiff's Complaint.
38. Defendants deny that Plaintiff is entitled to any of the relief requested in the prayer/demand portions of the Plaintiff's Complaint.
39. Defendants deny each and every allegation that the Defendants have not specifically admitted as true in this Answer.

SECOND DEFENSE

40. Plaintiff has failed to state a claim upon which relief may be granted.

THIRD DEFENSE

41. Plaintiff's action is barred by the doctrines of waiver, estoppel, laches, and/or unclean hands.

FOURTH DEFENSE

42. Plaintiff will not and has not suffered any harm or prejudice.

FIFTH DEFENSE

43. Plaintiff does not have a clear legal right to the relief requested.

SIXTH DEFENSE

44. Defendants do not have a clear legal duty to provide the relief requested.

SEVENTH DEFENSE

45. No justiciable controversy exists between the parties.

EIGHTH DEFENSE

46. Defendants are immune from liability and/or damages.

NINTH DEFENSE

47. Plaintiff's claim is moot.

TENTH DEFENSE

48. Plaintiff's Complaint fails for insufficiency of process and/or insufficiency of service of process.

ELEVENTH DEFENSE

49. Plaintiff has failed to file suit against a sui juris Defendant.

TWELFTH DEFENSE

50. The Task Force is not a public body, is not a decision-making body, has not and will not engage in deliberations, and is not subject to the Open Meetings Act.

THIRTEENTH DEFENSE

51. The alleged "meetings" were not "meetings" as that term is defined by the Open Meetings Act.

FOURTEENTH DEFENSE

52. Plaintiff has failed to comply with Civil Rule 65.

FIFTEENTH DEFENSE

53. Individual members of the Commission, such as Mr. Mims, are not subject to suite under R.C. 121.22(I). Alternatively, the statute does not authorize a Court to issue an

injunction against a Commissioner in his individual capacity, and the claim against Mr. Mims should be dismissed.

SIXTEENTH DEFENSE

54. Plaintiff had actual notice of, and actually attended, the gatherings of the Task Force.

SEVENTEENTH DEFENSE

55. The Task Force has no decision-making authority.

EIGHTEENTH DEFENSE

56. At all times, the Defendants acted in good faith and with a reasonable belief that their conduct was appropriate and legally permissible.

NINETEENTH DEFENSE

57. The relief Plaintiff seeks is, in whole or in part, barred by the doctrines of separation of powers and/or comity.

TWENTIETH DEFENSE

58. The Task Force does not involve the jurisdiction or the public business of these Answering Defendants.

Respectfully submitted,

**BARBARA J. DOSECK
CITY ATTORNEY**

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City of Dayton Commission and
Commissioner Jeffrey J. Mims, Jr.

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing has been sent via the Court's ECF System this 7th day of March 2018, to:

David Esrati, Pro Se
113 Bonner St.
Dayton, OH 45410
Plaintiff/Petitioner

Brian L. Wildermuth, Esq.
Counsel for Dayton Board of Education and
Mohamed Al-Homdani

S/ John C. Musto
John C. Musto
Chief Trial Counsel