

IN THE CIRCUIT COURT OF RAY COUNTY
STATE OF MISSOURI

State of Missouri, ex inf.
Andrew Bailey,
Attorney General of the
State of Missouri

Relator,

v.

Case No. 24RY-CV00208

Scott Childers,
Ray County Sheriff,

Respondent.

**ANSWER TO PETITION FOR QUO WARRANTO
AND AFFIRMATIVE DEFENSES**

COMES NOW, Respondent, Scott Childers, by and through counsel, and in accordance with Section 531.040, RSMo., and Mo. R. Civ. P. 98.06, files his answer and affirmative defenses to the *Petition for Quo Warranto* ("Petition"), stating as follows:

1. Respondent admits that Andrew Bailey is the Attorney General of Missouri. Respondent lacks sufficient information to either admit or deny the remaining allegations of Paragraph 1 of the Petition and therefore denies the allegations on that basis.

2. Respondent admits the allegations of Paragraph 2 of the Petition.

Authority and Jurisdiction

3. Paragraph 3 of the Petition is a legal conclusion to which no response is required. To the extent a response is required, Respondent denies the allegations of Paragraph 3.

4. Paragraph 4 of the Petition is a legal conclusion to which no response is required.

To the extent a response is required, Respondent denies the allegations of Paragraph 4.

5. Paragraph 5 of the Petition is a legal conclusion to which no response is required. To the extent a response is required, Respondent denies the allegation of Paragraph 5.

6. Respondent admits that the Court has jurisdiction of this matter as stated in Paragraph 6 of the Petition.

Introduction

7. Respondent admits the allegations in Paragraph 7 of the Petition.

8. Respondent admits the allegations in Paragraph 8 of the Petition.

9. Respondent denies the allegations in Paragraph 9 of the Petition.

10. Respondent admits that he is an elected official of Ray County. Respondent denies all remaining allegations in Paragraph 10. The statement regarding Section 106.220, RSMo., is a conclusion of law to which no response is required. To the extent that a response is required, Respondent denies the remaining allegations of Paragraph 10 of the Petition.

Allegations

11. Respondent admits that Scott Childers is the duly elected Sheriff of Ray County. The remaining allegations in Paragraph 11 are a conclusion of law to which no response is required. To the extent that a response is required, Respondent denies the remaining allegations of Paragraph 11 of the Petition.

12. Paragraph 12 of the Petition is a legal conclusion to which no response is required. To the extent that a response is required, Respondent denies the allegations in Paragraph 12 of the Petition.

13. Respondent denies the allegations in Paragraph 13 of the Petition.

14. Respondent denies the allegations in Paragraph 14 of the Petition.

15. Respondent admits that he informed the public about the inmate work program, (also known as the *Total Care and Behavior Wellness Program*, the *TCB Community CARE Program*, or the *Inmate Work and Skill Building Program*), including that eligible inmates would perform work in the county under the supervision and custody of the Sheriff's Office, Respondent denies all allegations in Paragraph 15 not specifically admitted.

16. Respondent denies that he allowed any inmates to escape confinement and custody. Respondent admits that some detainees in the Ray County Jail failed to meet conditions and requirements for release and that some detainees are there because they are awaiting trial. Respondent denies all remaining allegations of Paragraph 16 not specifically admitted.

17. Respondent lacks sufficient information to either admit or deny the allegations of Paragraph 17 of the Petition, and therefore denies the allegations on that basis.

18. Paragraph 18 of the Petition is a legal conclusion to which no response is required. To the extent a response is required, Respondent denies the allegations of Paragraph 18 of the Petition.

19. Respondent denies the allegations in Paragraph 19 of the Petition.

20. Respondent denies the allegations of Paragraph 20 of the Petition.

21. Respondent denies the allegations in Paragraph 21 of the Petition.

22. Paragraph 22 of the Petition is a legal conclusion to which no response is required. To the extent a response is required, Respondent denies the allegations of Paragraph 22.

23. Respondent denies the allegations of Paragraph 23 of the Petition.

24. Paragraph 24 is a legal conclusion that requires no response. To the extent that a response is required, Respondent denies the allegations of Paragraph 24.

Affirmative Defenses

Respondent, in further response to Relator's allegations, states and alleges each of the following affirmative defenses to the Petition:

25. Relator's claims are barred in whole or in part for failure to state a claim upon which relief can be granted under Mo. R. Civ. P. 55.27(a)(6).

26. Relator's claims are barred in whole or in part under Mo. R. Civ. P. 55.15 because the Petition fails to plead with particularity the circumstances allegedly violating Section 106.220, RSMo. Because the statute requires a showing of willful or fraudulent violations, Relator must plead the alleged circumstances with particularity, but Relator's allegations instead are bare assertions, general and conclusory.

27. Relator's claims are barred in whole or in part under Rule 98.03 because Relator attached no exhibits of orders, opinions, records, documents, or any other items that would be essential to an understanding of the matters set forth in the Petition for Quo Warranto.

28. Relator fails to state a claim for quo warranto against Respondent because Respondent did not usurp, intrude into, or unlawfully hold or execute any office or franchise under Section 531.010, RSMo.

29. Relator's claims are barred in whole or in part because quo warranto seeking ouster of the Sheriff may not be used when other writs or orders would've sufficed. As the Missouri Supreme Court has admonished on more than one occasion:

The writ of quo warranto is not a substitute for mandamus or injunction nor for an appeal or writ of error. It is not to be used to prevent an improper exercise of power lawfully possessed. Its purpose is solely to prevent an officer or a corporation or persons purporting to act as such from usurping a power which they do not have.

State v. Kinder, 89 S.W.3d 454, 458 (Mo. 2022) (quoting *State ex inf., McKittrick v. Murphy*, 347 Mo. 484, 148 S.W.2d 527, 530 (1941)).

In this case, Respondent was acting under the authority and duties of a county sheriff set forth in Chapter 57 of the Missouri Revised Statutes, including *inter alia* Section 57.100 (sheriff's duties include to quell and suppress assaults and batteries, riots, routs, affrays and insurrections, and to apprehend and commit to jail all felons and traitors), Sections 57.110 (sheriff is a conservator of the peace within his county), and 57.115, RSMo. (safeguard and protect roadways). Moreover, the inmate work program (also known as the *Total Care and Behavior Wellness Program*, the *TCB Community CARE Program*, or the *Inmate Work and Skill Building Program*) was developed in consultation with other corrections officials, legal counsel, the judges in Ray County, the Department of Justice, the Equal Employment Opportunity Commission, mental and physical health professionals, and the Missouri Attorney General's Office, and the program was undertaken with the unanimous approval of the County Commissioners of Ray County.

If it be found that Respondent was performing the functions of Sheriff "in a manner contrary to law," because of the inmate work program, "there is no usurpation and quo warranto will not lie." *Id.* Instead, where the allegations are that the Respondent has "illegally or improperly used powers granted to [him]," as is the case here, then "prohibition or mandamus is the appropriate remedy." *Id.* Quo warranto, on the other hand, is "only available to deal with usurpation of power not possessed." *Id.*

30. Relator fails to state a claim that Respondent has forfeited his office under Section 106.220, RSMo. because Respondent did not engage in misconduct, did not willfully violate or neglect his duties and responsibilities, and did not fail to perform his official acts or duties as the Sheriff of Ray County.

31. Relator fails to state a claim that Respondent should be ousted due to misconduct for implementing an inmate work program. Faced with crowded prisons, mental health issues, and

high recidivism rates,¹ corrections officials in Missouri have developed inmate work programs, work release programs, and other creative approaches that provide inmates with supervised work opportunities. *See, e.g.,* MO Dep't of Corrections, Community Service at <https://doc.mo.gov/programs/community-service> (last visited Mar. 28, 2024); Missouri Vocational Enterprises Correctional Industries, at <https://docservices.mo.gov/mve/index.html> (last visited Mar. 28, 2024); MODOT, Incarcerated Personnel Work Release Program, at <https://epg.modot.org/index.php/Category:823> Incarcerated Personnel Work Release Program (last visited Mar. 28, 2024); MO Dep't of Corrections, Missouri Reentry Process <https://doc.mo.gov/programs/missouri-reentry-process> (last visited Mar. 28, 2024); Callaway County Sheriff's Office, Inmate Work Release, <https://www.callawaysheriff.org/inmate-work-release> (last visited Mar. 28, 2024). Such programs are favored as good policy. In fact, the Governor of Missouri, in partnership with the state Department of Corrections, has implemented such a program:

Inmates from nearby prisons and correction facilities who have shown good behavior and clean records while incarcerated are able to be approved to also manage the upkeep of the [Missouri Governor's] mansion. They help with various manual labor projects, cleaning, and any other task needed by the mansion. The skills they learn while helping upkeep the mansion are something they will be able to use all throughout their life, but also add to their resume whenever they finish their sentence.

Brady Hays, *The Work behind Missouri's historic Governor's Mansion*, The Missouri Times (Feb. 7, 2023). Indeed, such programs have been found to benefit communities, improve the mental and physical health of inmates, decrease violence and contraband in jails, and provide inmates with skills necessary to reintegrate into society.

¹ The MO Dep't of Corrections has stated that "55% of offenders with serious mental health problems return to prison within 5 years of release." MO DOC, Missouri Reentry Process, at <https://doc.mo.gov/programs/missouri-reentry-process> (last visited Mar. 28, 2024).

32. Relator fails to state a claim that Respondent violated Section 575.240, RSMo, because Respondent did not “allow or permit a person in custody or confinement to escape.” Inmates who were part of the inmate work program, (also known as the *Total Care and Behavior Wellness Program*, the *TCB Community CARE Program*, or the *Inmate Work and Skill Building Program*) remained under the supervision and custody of the Sheriff or other assigned corrections officers.

33. Relator fails to state a claim that Respondent violated Section 576.020, RSMo., because Respondent did not accede to corruption by receiving or accepting a benefit in exchange for violating his duties as a public servant.

34. Relator fails to state a claim that Respondent violated Section 221.111, RSMo., because Respondent did not permit inmates to bring prohibited items into the Ray County Jail.

35. Relator’s claims are barred in whole or in part because, upon information and belief, the complaints made and information provided to the Relator about the inmate work program, (also known as the *Total Care and Behavior Wellness Program*, the *TCB Community CARE Program*, or the *Inmate Work and Skill Building Program*) were made not out of a genuine concern for public safety but out of retaliation for Respondent’s efforts to root out corruption and misconduct in Ray County.

36. Relator’s claims are barred in whole or in part because Respondent was legally justified when—faced with an old and crowded county jail, with inmates who often were incarcerated in county jail longer than is typical due to a backlog of unprosecuted cases, and with inmates who were struggling with mental health and addiction issues—Respondent, as part of his duties as a county sheriff under Missouri law, implemented an inmate work program, which he developed in consultation with other corrections officials, legal counsel, the judges in Ray County,

the Department of Justice, the Equal Employment Opportunity Commission, mental and physical health professionals, and the Missouri Attorney General's Office. The program was instituted to help the County and the citizens of Ray County with services that the inmate workers (called "trustees") could provide as well as to help improve the morale and mental health of inmates and to provide them with work skills that they could use upon reentry to society. The program was undertaken with the unanimous approval of the County Commissioners of Ray County.

WHEREFORE, Respondent prays for a judgment denying the petition for quo warranto, for a judgment in favor of Respondent preserving his term of office and preventing his ouster as Ray County Sheriff, for costs and attorney fees under Section 531.050, RSMo, and for such other relief as this Court deems appropriate.

Respectfully submitted,

Dated: March 28, 2024

PATHGUIDE LAW LLC

By: /s/ Kevin R. Corlew

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ATTORNEYS FOR RESPONDENT

CERTIFICATE OF SERVICE

I hereby certify that on this, the 28th day of March, 2024, a copy of the foregoing document was filed with the Court's electronic filing system, which will automatically send notice thereof to all counsel of record.

By: /s/ Kevin R. Corlew

Attorney for Respondent