

IN THE CIRCUIT COURT FOR CECIL COUNTY

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**ALAN McCARTHY**  
652 Biddle Street  
Chesapeake City, MD 21915

*Plaintiff*

v.

**DANIELLE M. HORNBERGER**  
260 Lums Road  
North East, MD 21901

**and**

**CECIL COUNTY BOARD OF ELECTIONS**  
200 Chesapeake Blvd.  
Suite 200  
Elkton, MD 21921

**SERVE ON RESIDENT AGENT:**

Cameron Brown, Esquire  
149 E. Main Street  
Elkton, Maryland 21921

*Defendants*

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Case No.

**COMPLAINT**

**NOW COMES** the Plaintiff, Alan McCarthy, through his attorneys, Timothy Maloney, Esq. and Joseph Greenwald and Laake, P.A. and William F. Riddle, Esq., and Justin B. Hill, Esq. of the Law Office of Justin B. Hill, LLC, and sues Danielle M. Hornberger (hereinafter “Hornberger”) and the Cecil County, Maryland Board of Elections (hereinafter “CCBOE”) for cause, petitions for a writ of mandamus, requests declaratory and injunctive relief, and in support states as follows:

## **JURISDICTION AND VENUE**

Jurisdiction is appropriate in Maryland pursuant to MD. CODE ANN. CTS. & JUD. PROC. § 6-103 *et seq.* because the transaction and occurrence happened in the State of Maryland. Venue is appropriate in Cecil County, Maryland pursuant to MD. CODE ANN. CTS. & JUD. PROC. § 6-201 *et seq.* because the Defendants carried on regular business in Cecil County.

## **FACTS COMMON TO ALL COUNTS**

1. Plaintiff, Alan McCarthy, was elected as county executive of Cecil County on November 8, 2016. He was sworn into office on December 5, 2016, and has held that office ever since. He is a resident of Cecil County, and is a registered voter, and taxpayer.

2. Alan McCarthy was the Republican nominee for that office when he was elected.

3. Plaintiff has since been the Cecil County Executive for Cecil County.

4. On February 2, 2019, Alan McCarthy filed a certificate of candidacy to seek the Republican nomination for re-election as county executive of Cecil County.

5. As of November 5, 2019, Danielle Hornberger filed a certificate of candidacy to for the Republican nomination for county executive of Cecil County

6. On June 2, 2020, Danielle Hornberger won the primary election for the Republican nomination for county executive of Cecil County. She is currently the Republican nominee for the general election which will be held on November 3, 2020.

7. Candidates for local officer in Cecil County are required to file a financial disclosure form on or before the time they file their certificate of candidacy. Cecil County Ethics Code §39-23B provides that:

A candidate to be an elected local official shall file a statement required under this article:

(1) In the year the certificate of candidacy is filed, no later than the filing of the certificate of candidacy;

- (2) In the year of the election (if the candidate filed a certificate of candidacy in a previous year), on or before the earlier of April 30 or the last day for the withdrawal of candidacy; and
- (3) In all other years for which a statement is required, on or before April 30.

8. Additionally, the provisions of Maryland election law, EL §5-304(d)(3) require that the certificate of candidacy be accompanied by evidence that the individual has filed a Financial Disclosure form with the State Ethics Commission “ in accordance with the requirements of Title 5, Subtitle 6 of the General Provisions Article” and “any other financial disclosure report required by law.” On November 5, 2019, at the time of filing the Certificate of Candidacy, Danielle Hornberger was required to file a Financial Disclosure Statement.

9. Danielle Hornberger did not file a Financial Disclosure Statement at the time she filed her Certificate of Candidacy on November 5, 2019.

10. Pursuant to Cecil County Ethics Code §39-23E. the County Clerk or Board of Election Supervisors may not accept any certificate of candidacy unless a statement required under this article has been filed in proper form. Additionally, the provisions of EL 5-304(e) authorize the local board of election to accept the certificate of candidacy only if all of the legal requirements are met, including the filing of a financial disclosure statement.

11. If a candidate fails to file a Financial Disclosure Statement, the Board of Elections cannot accept a Certificate of Candidacy.

12. By not filing the Financial Disclosure Statement at the time of filing a Certificate of Candidacy, the Cecil County Board of Elections should not have accepted the Certificate of Candidacy of Danielle Hornberger.

13. Danielle Hornberger’s filing of the Certificate to run in the general election was void *ab initio* due to the fact that she failed to file a Financial Disclosure Statement.

14. Danielle Hornberger never should have been on the ballot for Cecil County Executive in the June 2, 2020 primary election.

15. Plaintiff recently, within 10 days of the filing of this Complaint, found out about the deficiencies and irregularities involving Danielle Hornberger's filings with the Cecil County Board of Elections.

16. After a diligent search by the Department of Human Resources, who are the custodian of records for Cecil County, Maryland, no Financial Disclosure Statement from Danielle Hornberger was on file.

17. The Department of Human Resources was unable to find a Financial Disclosure Statement for 2018 or any subsequent Financial Disclosure Statements filed on behalf of Danielle Hornberger.

18. The Department of Human Resources reached out to the Board of Elections and Clerk of the Circuit Court for Cecil County to see if either had received a Financial Disclosure Statement by Danielle Hornberger.

19. The Department of Human Resources was told by the Board of Elections and the Clerk of the Court that neither were in possession of a filed Financial Disclosure Statement by Danielle Hornberger.

20. The attorney for the Cecil County Board of Elections was informed by the Maryland State Board of Elections that the Maryland State Board of Elections communicated with the Maryland State Ethic Commission to determine if a Financial Disclosure Statement was filed with either department on behalf of Danielle Hornberger. No such forms were filed.

21. As a result of the communications with the State Board of Elections, it was discovered by the attorney for Cecil County, Maryland and the attorney for the Board of

Elections that a Financial Disclosure Statement was not filed on behalf of Danielle Hornberger with either the Maryland State Board of Elections or the Maryland State Ethics Commission.

22. Laura Walters, the Deputy Director for the Cecil County Board of Elections, communicated with Danielle Hornberger and, unexpectedly, a Financial Disclosure Statement signed by Danielle Hornberger on November 5, 2019 appeared.

23. Laura Walters, the Deputy Director for the Cecil County Board of Elections then filed that Financial Disclosure Statement with the Cecil County Department of Human Resources.

24. But one and a half hours later, Laura Walters, Deputy Director for the Cecil County Board of Elections, came back upstairs to the Cecil County Department of Human Resources with another copy of Danielle Hornberger's Financial Disclosure Statement with a time and date stamp by the Cecil County Board of Elections of November 5, 2019.

25. According to the financial statements on record for Danielle M. Hornberger, one financial statement has a time stamp for July 7, 2020 at 11:10 AM by the Department of Human Resources. Another statement on record has a time stamp for both Department of Human Resources for July 7, 2020 at 12:32 PM and a time stamp for the Cecil County Board of Elections for *November 5, 2019* at 11:37 AM. See attached Exhibits A & B

26. The time and date stamp machine at the Cecil County Board of Elections is a manual date and time stamp machine which can be manually manipulated.

27. The prior Financial Disclosure Statement provided by Laura Walters to the Cecil County Department of Human Resources did not have the Board of Elections time and date stamp.

28. Laura Walters asked the Department of Human Resources if the first Financial Disclosure Statement provided by her on behalf of Danielle Hornberger could be returned.

29. Human Resources informed Laura Walters that the Department of Human Resources, as the Custodian of Records for Cecil County, Maryland, retained all records for a minimum of four (4) years.

30. The Financial Disclosure Statement form that was allegedly signed by Danielle Hornberger on November 5, 2019, which Laura Walters provided to the Department of Human Resources, did not exist on November 5, 2019.

31. The Cecil County Ethics Commission approved changes to the Financial Disclosure Statement form on November 18, 2019.

32. At the *November 18, 2019* meeting of the Cecil County Ethics Commission, the Cecil County Ethics Commission motioned and approved of the motion that the Annual Financial Disclosure Forms would be revised to add language on page one in bold stating “Cecil County Government Employees: I further acknowledge that I have reviewed and understand the required annual Cecil County Government Employee Ethics Training available on [www.ccgovportal.org](http://www.ccgovportal.org)”. See Exhibit C.

33. The Financial Disclosure Statement form was changed in December of 2019.

34. It is impossible for Danielle Hornberger to have signed the Financial Disclosure Statement form which was provided to the Cecil County Department of Human Resources by Laura Walters on behalf of Danielle Hornberger and allegedly signed on November 5, 2019 as the form, as presented, did not exist on November 5, 2019.

35. The presentation of the form that did not exist on the alleged date of signature on November 5, 2019 is a fraud upon the Board of Elections, Department of Human Resources and Cecil County, Maryland, the voters of Cecil County and the plaintiff. Ms. Hornberger’s candidacy should be disqualified because of the submission of the fraudulent filing of the financial disclosure form.

36. The form that Danielle M. Hornberger signed and submitted on November 5, 2019 did not exist until after the meeting of the Ethics Commission on November 18, 2019 and was not available until December 2019.

37. There are emails between Danielle Hornberger and Laura Walters, Deputy Director of the Cecil County Board of Elections regarding the Financial Disclosure Statement.

38. Those emails have been forwarded to the Cecil County State's Attorney's Office for investigation.

39. Danielle Hornberger should not have been on the ballot for the June 2, 2020 election.

40. The Board of Elections should not have included Danielle Hornberger as a candidate on the June 2, 2020 ballot.

41. Danielle Hornberger's candidacy is void *ab initio*.

42. Danielle Hornberger should be removed forthwith from the November 2020 election ballot.

43. That there is no way to cure the defect as Danielle Hornberger is not a qualified candidate and never was a qualified candidate.

44. Danielle Hornberger has not filed a 2019 Financial Disclosure Statement and therefore she is disqualified as a candidate.

45. The Cecil County Ethics Code §39-23(d) states that a candidate is disqualified for failure to file a Financial Disclosure Statement.

46. That Alan McCarthy was the second highest vote getter for the position of Cecil County Executive.

47. That the other candidates running for Cecil County Executive should not be punished and the highest vote getter, who was a legitimate candidate, should be declared the winner of the primary election on June 2, 2020.

**WHEREFORE**, Alan McCarthy is requesting that Court issue a declaratory judgment granting the following relief:

- A.) That the Court is a declaratory judgment that that Danielle Hornberger's candidacy is void *ab initio*.
- B.) That a writ of mandamus and injunctive relief be issued directing that Danielle Hornberger be removed from the ballot for the November 2020 election and declared legally unqualified.
- C.) That an injunction be entered preventing Danielle Hornberger from being a candidate for the November 2020 election and directing the Board of Elections to remove her name from the general election ballot.
- D.) That Danielle Hornberger's candidacy for Cecil County Executive be declared void.
- E.) That as additional relief Alan McCarthy is requesting that Danielle Hornberger's candidacy be declared void and declare that Danielle Hornberger should have never been on the ballot for the June 2, 2020 election as her candidacy never existed.
- F.) That Alan McCarthy, as the second highest receiver of votes in the June 2, 2020 election, be declared the winner of the Cecil County Executive election.

**COUNT II**

**(WRIT OF MANDAMUS)**

Plaintiff realleges and incorporates by reference all those facts and allegations contained in all paragraphs above and further alleges



48. The defendant Board of Elections is under a legal duty not to certify the candidacy of any candidate who does not have a valid financial disclosure form. Defendant Hornberger did not and has not filed a valid financial disclosure form. The only form which has been filed is a fraudulently backdated form after the election.

49. The defendant Board of Elections has a mandatory and ministerial duty to remove defendant Hornberger's name from the ballot and declare her previous candidacy void ab initio.

WHEREFORE the plaintiff requests this court to issue a writ of mandamus removing the defendant's name from the ballot and declaring her candidacy void ab initio and for such other and further relief as the court deems appropriate.

### **COUNT III**

#### **INTENTIONAL MISREPRESENTATION**

Plaintiff realleges and incorporates by reference all those facts and allegations contained in all paragraphs above and further alleges:

50. On July 24, 2020, plaintiff sent the appropriate tort claims notices under the Maryland Tort Claims Act and the Local Government Tort Claims Act.

51. Hornberger and CCBOE knew that the time stamp on the documents were an intentional misrepresentation by the Defendants. The financial disclosure statement provided to the Board of Elections by Danielle Hornberger was not accurate and was falsely prepared.

52. The financial disclosure statement provided to the Board of Elections by Danielle Hornberger was material as without the financial disclosure statement being filed with the Board of Elections by Danielle Hornberger, she would not be a legally eligible candidate for the position of Cecil County Executive for Cecil County.

53. Danielle Hornberger and the Cecil County Board of Elections knew that the financial disclosure statement provided to the Board of Elections was false because it was wrongly backdated.

54. Danielle Hornberger misrepresented the financial disclosure statement by providing an inaccurate date on the form and by filing the financial disclosure statement after the election had occurred.

55. At the time of the election for Cecil County Executive, Danielle Hornberger was not a qualified candidate.

56. As a result of the intentional misrepresentation by the Defendants, the Plaintiff incurred damages.

**WHEREFORE**, this suit is brought against the Defendants Danielle Hornberger and Cecil County Board of Elections requesting that Danielle Hornberger be determined to not have been a qualified candidate at the time of the June 2, 2020 election and that Danielle Hornberger be removed as a candidate from the Cecil County Election Board, that injunctive relief be awarded in the form of her removal from the ballot..

#### **COUNT IV**

#### **TORTIOUS INTERFERENCE WITH PROSPECTIVE ADVANTAGE**

Plaintiff realleges and incorporates by reference all those facts and allegations contained in all paragraphs above and further alleges:

57. The conduct of the Defendants was intentional, willful, and calculated to cause damage to the Plaintiff. The conduct of the Defendants was perpetrated with the intentional and improper purpose of causing damage and was without justifiable cause.

58. As a result of the Defendant's conduct and actions, the Plaintiff has suffered and will continue to suffer lost profits, job prospects, and harm to reputation.

**WHEREFORE**, this suit is brought against the Defendants Danielle Hornberger and Cecil County Board of Elections requesting that Danielle Hornberger be determined to not have been a qualified candidate at the time of the June 2, 2020 election and that Danielle Hornberger be removed as a candidate from the Cecil County Election Board and such other and further relief as Justice may require.

### **COUNT V**

#### **TEMPORAR, PRELIMINARY AND PERMANENT INJUNCTION**

Plaintiff realleges and incorporates by reference all those facts and allegations contained in all paragraphs above and further alleges:

64. Plaintiff was a proper candidate for Cecil County Executive having filed all proper forms with the Cecil County Board of Elections.

65. Danielle Hornberger ran in an election for Cecil county Executive at a time when she was not a qualified candidate and should not have been on the ballot.

66. Plaintiff will suffer immediate, substantial, and irreparable injury if a temporary injunction is not granted.

67. The benefits to Plaintiff in obtaining injunctive relief are equal to or outweigh the potential harm which Defendant would incur if this Court grants the requested injunctive relief.

68. The public interest is best served by granting the injunction.

69. The ballot for the November 2020 general election should not contain a non-qualified candidate whose filing is void ab initio.

**WHEREFORE**, the Plaintiff demands that a temporary and permanent injunction be entered granting the following relief:

- G.) That Danielle Hornberger be removed from the ballot for the November 2020 election.
- H.) That an injunction be entered preventing Danielle Hornberger from being a candidate for the November 2020 election.
- I.) That an injunction be entered wherein Danielle Hornberger not be a candidate on the November 2020 general election ballot.
- J.) That Danielle Hornberger's candidacy for Cecil County Executive be declared void.
- M) That as additional relief Alan McCarthy is requesting that Danielle Hornberger's candidacy be declared void and declare that Danielle Hornberger should have never been on the ballot for the June 2, 2020 election as her candidacy never existed.
- N) That the Plaintiff be granted costs and such other and further relief as this Court may deem just and proper.
- O) And such other and further relief as Justice may require

Respectfully submitted,

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**VERIFICATION**

I do solemnly declare and affirm under the penalties of perjury that the foregoing Complaint is true and correct to the best of my knowledge, information, and belief.

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Alan McCarthy

