

IN THE SUPREME COURT OF OHIO

State of Ohio, *ex rel*
Katharine S. Jones, et al.,

Relators,

-vs-

Jon Husted,
Secretary of the State of Ohio, et al.,

Respondents.

) Case No. 2016-1164

)

) **RELATORS' MERIT BRIEF**
) **IN SUPPORT OF**
) **VERIFIED COMPLAINT**

) **Expedited Election Case Pursuant**
) **to S.Ct.Prac.R. 12.08**

)

)

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Relators Katharine S. Jones, Elizabeth A. Jarrell, Lynn Kemp, Georgia Kimble, and Emilie Ann Judy (“Relators”) hereby set forth their merit brief in support of the allegations of the Verified Complaint for the granting of a Writ of Mandamus.

STATEMENT OF FACTS

The facts are fully set forth in Relators' Verified Complaint for Writ of Mandamus, which Relators incorporate herein, and summarize below.

A committee of registered voters in Medina County initiated, circulated, and filed a petition (Exh. A to the Verified Complaint, or “VC”) containing a County Charter proposal (hereinafter “Petition”) for placement on the November 8, 2016 general election ballot. Approval of the proposal by voters would establish a charter form of government in Medina County, which is not presently a charter county. The committee of petitioners turned in 259 valid part petitions bearing 5,501 valid signatures to the Medina County Board of Elections (“MCBOE”). A total of 4,814 valid signatures were required. The part petitions were filed with the BOE on or about June 30, 2016. On July 11, 2016, the BOE deadlocked 2-2 in the formal vote on whether to certify the Petition to the Medina County Commissioners for placement on the ballot.

The tie vote was referred to the Ohio Secretary of State (“SOS”) to break the tie as required by O.R.C. § 3501.11(X). On July 14, 2016, the MCBOE reported the deadlock to the SOS, including position statements from the respective sides. (Exhibits B, C, D to VC). In Exh. C, the two MCBOE members who voted to block the Petition from being put on the ballot stated

Since the above-referenced Ohio Supreme Court decision disqualified the previous petition based on the fact that it did not qualify as a charter since it did not satisfy the requirements of RC 302.02 - we declined to certify the Medina County Charter petition to the Board of Medina County Commissioners.

(Exh. C to VC).

On August 2, 2016, the SOS ruled to bar the Petition from being placed on the ballot. (Exh. E to Verified Complaint; also Appendix Exh. 2 to this Brief).

In his decision, Respondent Secretary of State stated:

A closer review of the specific provisions regarding the duties of the county officers, however, reveals that the language of Section 3.1 rings hollow. In other words, the Proposed County Charter does not actually provide for the performance of all duties imposed upon County officers by general law....

...The Medina County proposal purports to maintain the *status quo* on matters of county offices, officers, and their duties. However, by failing to provide for the performance of all duties of county officers, the proposed charter is invalid because it does not adequately “provide the form of government of the county” which the Ohio Constitution dictates as an essential condition (*i.e.*, a *sine qua non*) of a county charter government.

Moreover, as Assistant Medina County Prosecuting Attorney Bill Thorne clarified, the Proposed Charter “failed to create an alternative form of government.” I see “no change in government,” stated Asst. Prosecutor Thorne. I concur. Despite the wording of their Proposed Charter, the petitioners are not truly attempting to establish the structural change envisioned by Article X, §§ 3 and 4 of the Ohio Constitution and enacted in Cuyahoga and Summit Counties.

Accordingly, I find that the proposed county charter petition is invalid on the “alternative basis” that it “do[es] not satisfy the threshold requirements that define a charter initiative”, and therefore break the tie against the motion to certify the proposed county charter petition to the Medina County Board of County Commissioners.

(Exhibit E pgs. 2, 4).

Relators filed a Complaint for Writ of Mandamus on August 9, 2016, wherein they ask this Court to order the Secretary of State and the Medina County Board of Elections to validate the Petition and to certify it to the November 8, 2016 election ballot.

ARGUMENT

By the 2-2 tie vote, the MCBOE failed to perform its mandatory duty to certify and submit the proffered Petition to the ballot as required by law. The SOS determination to break the tie in favor of not certifying the Petition to the Medina County Commissioners completed the Respondents' abdications of their mandatory duty to certify and submit the proffered Petition as required by law. Respondents exceeded the power granted to them under O.R.C. §§ 3501.11,

307.94 and 307.95 as well as this Court's decision in *State ex rel. Walker v. Husted*, 144 Ohio St.3d 361, 2015-Ohio-3749 (2015).

Proposition of Law No. I: There is no requirement that the ‘form’ of county government be changed in order to enact a Charter; the SOS has confused a ‘charter form of government’ with the completely separate option of an ‘alternative form of government’

Relators, as electors and signature gatherers, were directly damaged and harmed by the MCBOE and SOS determinations not to certify the Petition for placement on the ballot. The right to petition to alter the form of government is guaranteed under the Ohio Constitution and it encompasses other fundamental rights of electors within Medina County. By violating their non-discretionary duty to certify the Petition, the SOS and MCBOE deprived Relators of their fundamental right to have the opportunity to vote for the charter. Article I, § 2 of the Ohio Constitution¹ reserves the people's right to alter their form of government. A proposed charter is one way of altering the form of government. Relators have a clear interest in, and constitutional right to placement of the Petition on the ballot so that they, and the electors of Medina County, may decide whether to alter their form of government as provided in the proposed charter. See *State ex rel. Williams v. Brown*, 52 Ohio St. 2d 13, 20, 368 N.E.2d 838 (1977); *Sticklen v. City of Middletown*, 779 F.2d 52 (1985) (“Under the Ohio Constitution and the Ohio Revised code, citizens have a right to place proposed municipal legislation on the ballot for a referendum vote.”).

The SOS and MCBOE have a non-discretionary duty, as prescribed by the Ohio Constitution and statute, to certify the Petition for placement on the ballot. Respondent Secretary of State's core argument reflects a persistently flawed interpretation of Ohio Const. Art. X, § 3,

1 Ohio Constitution, Art. I, § 2: “All political power is inherent in the people. Government is instituted for their equal protection and benefit, and they have the right to alter, reform, or abolish the same, whenever they may deem it necessary; and no special privileges or immunities shall ever be granted, that may not be altered, revoked, or repealed by the General Assembly.”

O.R.C. Chapter 302 and even of *State ex rel. Walker v. Husted, supra*, which cannot withstand scrutiny.

There is no requirement that the “form” of a county's government be changed in order to enact a Charter. The SOS and MCBOE appear to have misread the law; they have confused a “charter form of government” with an “alternative form of government,” when in fact these are completely separate alternatives. Ohio Const. Art. X, § 3, and O.R.C. Chapter 302 provide two distinct alternative means of structuring county government. Article X of the Constitution does not require a change in the form of county government for the citizens of Medina County to enact a Charter.

Medina County is currently a statutory form of county government as provided by Title 3 of the Ohio Revised Code. Title 3 of the Ohio Revised Code provides the overall framework for statutory form of county governments in Ohio. General statutory forms of county government are authorized by Article X, Section 1 of the Ohio Constitution. *See* Ohio Const., Art. X, § 1 (“the General Assembly shall provide by general law for the organization and government of counties”). Under the statutory form of county government, Medina County has a Board of County Commissioners. O.R.C. Chapter 307 enumerates the powers of the Board of County Commissioners.

In addition, Ohio electors may establish a county charter. See Charters and Alternative Forms of County Government, Chapter 10, Ohio Secretary of State, Ballot Questions and Issues Handbook, available at www.electionsonthe.net/oh/clark/pdfs/IncomeTaxMuniSchool.pdf (last visited on August 15, 2016), which states that “The Ohio Constitution authorizes the adoption of charters by counties and municipal corporations; many Ohio municipalities, and two of its counties, operate under charters approved by the voters. Additionally, the Ohio Revised Code provides for other alternative plans of government that may be adopted by municipalities,

townships and counties.” According to the Ohio County Commissioners Handbook, “Ohio counties have two options for structural change - county charters and a statutory alternative form of county government.” *Id.*, Chapter 2, “County Structural Options” (Aug. 2010), available at: www.ccao.org/userfiles/HDBKCHAP002-2010.pdf (last visited on August 15, 2016).

Adopting a county charter is one form of changing county government, while establishing a statutory alternative form of county government is another.¹ The Ohio Attorney General has described the adoption of a county charter as a way by which “the people of any county may increase the authority of their county government.” (Attorney General Opinion, OAG 85-047, available at www.ohioattorneygeneral.gov/getattachment/521ab19e-b3f4-48fd-aace-be83bee1ee2f/1985-047.aspx (last visited August 15, 2016).

In proposing a charter, the people of Medina County are exercising their inherent right of local, self-government. This right is secured by Art. I, § 2 of the Ohio Constitution, which provides:

All political power is inherent in the people. Government is instituted for their equal protection and benefit, and they have the right to alter, reform, or abolish the same, whenever they may deem it necessary; and no special privileges or immunities shall ever be granted, that may not be altered, revoked, or repealed by the general assembly.

In addition, Article X of the Ohio Constitution sets forth provisions specific to county charters. Article X, § 3 secures the people’s authority to adopt a county charter and sets forth the

¹ Establishing a charter is distinct from the process to establish an alternative form of county government which is governed by Ohio Rev. Stat. §§ 302.01 to 302.24. *See* Ohio Rev. Stat. § 302.01 (“The electors of any county may adopt an alternative form of county government authorized by the provisions of sections 302.01 to 302.24, inclusive, of the Revised Code. Upon adoption as provided by such sections, said alternative form of government shall take the place of the form of government then existing in such county and the provisions of sections 302.01 to 302.24, inclusive, of the Revised Code, applicable to the adopted alternative form of government shall be controlling in such county as to all matters to which they relate, and other provisions of the general laws of the state shall be operative therein only insofar as they are not inconsistent with the aforesaid provisions.”)

minimal requirements for a county charter, stating in relevant part:

The people of any county **may** frame and adopt or amend a charter as provided in this article but the right of the initiative and referendum is reserved to the people of each county on all matters which such county may now or hereafter be authorized to control by legislative action. Every such charter shall provide the form of government of the county and shall determine which of its officers shall be elected and the manner of their election. It shall provide for the exercise of all powers vested in, and the performance of all duties imposed upon counties and county officers by law.

(Emphasis supplied). The word “may” implies discretion. *See, e.g., Creed v. Sauline*, 74 Ohio St.3d 402, 407-408 (1996). Relators as a committee of petitioners exercised discretion and authority, as is clearly evident in Article IV of the Charter Proposal.

In the Charter Proposal, Relators provided much more information on the form of government than is required by the law. That is further discussed *infra*. But nowhere does the Ohio Constitution require the alteration of the form of government or the creation of a new county executive position. There is no mandate that the form of the county government be changed at all, just as long as the form of government is delineated in the Charter. No change from the existing form of government is necessary as a prerequisite for the citizens to initiate and pass the Charter Proposal. By contrast, O.R.C. § 302.01 sets forth a completely different procedure and is at odds with what the SOS and MCBOE persistently (and incorrectly) maintain. Even the title assigned to the statute makes the point: “Electors **may** adopt alternative form of county government.” (Emphasis added.) Section 302.01, contrary to the beliefs of the SOS and MCBOE, says:

The electors of any county **may** adopt an alternative form of county government authorized by the provisions of sections 302.01 to 302.24, inclusive, of the Revised Code. Upon adoption as provided by such sections, said alternative form of government shall take the place of the form of government then existing in such county and the provisions of sections 302.01 to 302.24, inclusive, of the Revised Code, applicable to the adopted alternative form of government shall be controlling in such county as to all matters to which they relate, and other provisions of the general laws of the state shall be operative therein only insofar as they are not inconsistent with the aforesaid provisions.

(Emphasis added). It is accepted that “[t]he word ‘may’ connotes discretion.” *Thomas v. Thomas*, 2004-Ohio-2136, 03AP1106, 04-LW-1828 (10th Dist.); *Coleman Young Motors, Inc. v. Limbach*, 51 Ohio App.3d 117, 121, 554 N.E.2d 1349 (11th Dist. 1988). The Medina petitioners' committee exercised the discretion under the statute and did not adopt an alternative form of county government pursuant to ORC Chapter 302.

Nowhere does the Ohio Constitution or any statute require the alteration of the existing form of government in order for there to be a valid county charter proposal, so long as the form of that government is sufficiently detailed within the petition so that a voter need not look outside the document to understand what is being proposed. There is no mandate that the form of the county government be changed at all, so long as the form of government is delineated in the Charter. This is the essence of the holding in *State ex rel. Walker v. Husted*.

The Secretary of State quotes the *Walker* Court's description of the SOS's own argument, found at ¶ 22, as though it were part of the Court's ruling. Review of that paragraph reveals, however, that the Court did not endorse Secretary Husted's argument that O.R.C. § 302.02 “requires” a county executive, but merely recounted Husted's legal position, reproduced below:

However, Husted presented an alternative basis for invalidating the charter petitions, namely, that the charters do not satisfy the threshold requirements that define a charter initiative. Specifically, Article X, Section 3 of the Ohio Constitution requires that every county charter “shall provide the form of government of the county and shall determine which of its officers shall be elected and the manner of their election.” And R.C. 302.02 mandates that an alternative form of county government “shall include either an elective county executive * * * or an appointive county executive.”

State ex rel. Walker v. Husted, ¶ 22. Review of the very next paragraph of *Walker* (¶ 23) shows indisputably that Secretary Husted's assertion that O.R.C. § 302.02 “mandates” a county executive played no part in the basis for the Supreme Court's decision. Rather, the petitioners' use of incorporation-by-reference as a means of describing the form of county government to

substitute for a detailed description of the form within the pages of the petition itself was the reason the Court sustained the SOS decision to strike the charter proposals from the ballot.:

Article IV of the proposed charters, entitled: Form of Government and Elections,” contains Section 4.01, “County Officers, Duties, Powers, and Manner of Election.” It states:

“The offices and duties of those offices, as well as the manner of election to and removal from County offices, and every other aspect of county government not prescribed by this Charter, or by amendments to it, shall be continued without interruption or change in accord with the Ohio Constitution and the laws of Ohio that are in force at the time of the adoption of this Charter and as they may subsequently be modified or amended.”

While purporting to maintain the *status quo* on matters of county offices, officers, and their duties and manner of election, these proposed charters do not “provide the form of government of the county” or “determine which of its officers shall be elected and the manner of their election.” ***One must look to sources outside the proposed charters to determine the form of government they purport to establish, and therefore they do not satisfy the legal prerequisites.***

(Emphasis supplied). *State ex. rel. Walker v. Husted*, ¶ 23.

This is a fatal defect in the Secretary of State’s position, which is echoed in the two MCBOE votes to reject the Petition. The Ohio Supreme Court has never approved the suggestion that a constitutional county charter must also comply with the provisions of O.R.C. § 302.02. The wording that the SOS and MCBOE characterize as part of the Supreme Court’s holding is merely an argument made by the SOS raised for rejecting county charter petitions in 2015. *Walker* does not explicitly address the contention that a county executive is required for a charter county. Both the SOS determination and the two MCBOE votes against the proposal rely centrally on a sheer misinterpretation which is refuted on the face of the Ohio Constitution, pertinent statutes, and *Walker*.

Proposition of Law No. II: The SOS and MCBOE functions respecting the Petition are limited and ministerial and do not allow determinations of the substantive legality of the Petition

Under O.R.C. § 3501.11, the Secretary of State and Medina County Board of Elections have limited, ministerial functions. Section 3501.11(K) of the Ohio Revised Code requires the Board of Elections to “[r]eview, examine, and certify the sufficiency and validity of petitions...”. The operative term here is “petitions,” which are different from the charter proposals which petitions might contain.

The statutes authorizing county charters are completely consistent on this score. In the second paragraph of O.R.C. § 307.94, the authority of elections officials is limited to reviewing whether a petition – not a proposed county charter – meets the requirements of law: the BOE “shall immediately proceed to determine whether the *petition* and the signatures on the petition meet the requirements of law and to count the number of valid signatures and to note opposite each invalid signature the reason for the invalidity.” (Emphasis supplied). Thus even if, *arguendo*, the Secretary of State possesses broader powers of review over petitions than boards of election, boards of election can forward to the SOS only tie-vote exercises of their narrow and circumscribed authority. Here, the MCBOE presumed to have sweeping authority over the charter proposal contained within the Petition, which it did not have, and so delivered a 2-2 tie vote where the antagonists of the charter proposal based their votes on an overly-broad view of their authority.

Moreover, the Secretary of State, likewise, has a narrowly-confined responsibility in the course of petition validity determination. O.R.C. § 307.95 directs that “The secretary of state, within ten days after receipt of the protests, shall determine the validity or invalidity of the *petition* and the sufficiency or insufficiency of the signatures.” (Emphasis supplied).

There is a serious difference between a “petition,” which is a formatted document which contains a proposal and other information and details -- such as prescribed headings, wording, prefatory language, listing of committee of petitioners, notary jurats, signature blanks, a proposed county charter, for starters – and the county charter proposal within the petition, which is only one element of it. The SOS and MCBOE have attempted here to destroy the county charter proposal under the guise of deciding “petition validity.” They have rendered legal determinations of the substance of the charter proposal's contents as reasons for “invalidating” the petitions. These following statements are impermissible legal conclusions by the SOS and/or MCBOE:

> “[T]he Proposed County Charter does not actually provide for the performance of all duties imposed upon County officers by general law. . . .” (SOS ruling, Appendix Exh. 2, p. 2).

> “However, by failing to provide for the performance of all duties of county officers, the proposed charter is invalid because it does not adequately 'provide the form of government of the county' which the Ohio Constitution dictates as an essential condition (*i.e.*, a *sine qua non*) of a county charter government.” (SOS ruling, Appendix Exh. 2, p. 4).

> “Despite the wording of their Proposed Charter, the petitioners are not truly attempting to establish the structural change envisioned by Article X, §§ 3 and 4 of the Ohio Constitution and enacted in Cuyahoga and Summit Counties.” (SOS ruling, Appendix Exh. 2, p. 4).

> “Since the above-referenced Ohio Supreme Court decision disqualified the previous petition based on the fact that it did not qualify as a charter since it did not satisfy the requirements of RC 302.02 - we declined to certify the Medina County Charter petition to the Board of Medina County Commissioners.” (MCBOE position statement against certifying petition, Exh. C to VC).

In reviewing a petition’s validity, neither the SOS nor the MCBOE may consider the legality or constitutionality of the proposed charter presented in the petition. *State ex rel. Walker*

v. Husted, 144 Ohio St.3d 361, 2015-Ohio-3749 ¶15 (2015) (“[T]his authority to determine whether a ballot measure falls within the scope of the constitutional power of referendum (or initiative) does not permit election officials to sit as arbiters of the legality or constitutionality of a ballot measure’s substantive terms.”). *See, e.g., State ex rel. Kilby v. Summit Cty. Bd. of Elections*, 977 N.E.2d 590, 595 (Ohio S.Ct. 2012) (“any claims challenging the validity of the proposed charter amendment are premature when made before the amendment is approved by the electorate.”); *State ex rel. Citizen Action for a Livable Montgomery v. Hamilton Cty. Bd. of Elections*, 875 N.E.2d 902, 909 (Ohio S.Ct. 2007) (“insofar as the board’s claim could be construed as a challenge to the constitutionality or illegality of the substance of the initiative, that challenge is premature before the proposed legislation is enacted by the electorate.”); *State ex rel. DeBrosse v. Cool H*, 716 N.E.2d 1114, 1118 (Ohio S.Ct. 1999) (“Any claims alleging the unconstitutionality or illegality of the substance of the proposed ordinance, or actions to be taken pursuant to the ordinance when enacted, are premature before its approval by the electorate.”); *State ex rel. McGovern v. Bd. Of Elections*, 24 Ohio Misc. 135, 136, 263 N.E.2d 586, 587 (1970) (“nowhere does the court find in R.C. 3501.11, defining the powers and duties of the board of elections, any power or right to make judicial determinations of the legality or nonlegality of issues to be presented to the people. If in fact the proposed Petition was duly passed by council and procedural requirements were met before its submission to the board of elections, the board was duty bound to put it on the ballot for the vote of the people.”).

The Court maintains a rule that there can be no substantive review of an initiative before the election for the important policy reasons of separation of powers, of judicial restraint, of a constitutional policy which is against issuance of advisory opinions, and of a constitutional aversion to infringing upon the people's democratic political rights to the initiative procedure. The Secretary of State and Medina County Board of Elections violated this principle and conducted a

substantive review encompassing matters of statutory and constitutional interpretation and by so doing, abused their discretion.

Proposition of Law No. III: A proposed Article X, Section 3 charter 'form of government' is legally sufficient when the voter understands what offices are created or maintained, and there are provisions for them within the charter language.

After contending in *State ex rel. Walker v. Husted* in 2015 that then-proposed Medina County Charter provided insufficient delineation of county officeholders and duties, the Secretary of State in 2016 argues that even though considerably more description of county offices appears in the Petition (a distinct change in the 2016 Petition is the addition of seven single-spaced pages of county office description), there still is not enough information provided. This objection, that there *still* is no “form of government” depicted in the charter proposal, is spurious:

The Medina County proposal purports to maintain the *status quo* on matters of county offices, officers, and their duties. However, by failing to provide for the performance of all duties of county officers, the proposed charter is invalid because it does not adequately “provide the form of government of the county” which the Ohio Constitution dictates as an essential condition (*i.e.*, a *sine qua non*) of a county charter government.

. . . Despite the wording of their Proposed Charter, the petitioners are not truly attempting to establish the structural change envisioned by Article X, §§ 3 and 4 of the Ohio Constitution and enacted in Cuyahoga and Summit Counties.

The contention that the entire universe of elected officeholder duties must be delineated within the county charter in order for there to be a “form of government” discernible to the voters defies logic, Ohio law, and insults the intelligence of the voting public. The use of wording in the Summit County Charter to reference duties which are not expressly contained within the Charter was analyzed by the Ninth District Court of Appeals in *State ex rel. O'Connor v. Davis*, 139 Ohio App.3d 701, 705,745 N.E.2d 494, 2000-Ohio-1923 (App. 9 Dist. 2000). At the time of that litigation, the Summit County Charter provided that the duties of the Prosecutor “shall continue to be determined in the manner provided by general law * * *.”¹ The Court of Appeals explained

¹SECTION 4.01 COUNTY ELECTED OFFICE HOLDERS.

how the county charter must draw its substance from such references to general, state, law:

Section 3, Article X of the Ohio Constitution allows the people of a county to frame a charter, stating:

“Every such charter shall provide the form of government of the county and shall determine which of its officers shall be elected and the manner of their election. It shall provide for the exercise of all powers vested in, and the performance of all duties imposed upon counties and county officers by law.”

Pursuant to this section of the Ohio Constitution, then, the powers and duties of county officers are established by the general laws of the state of Ohio. The Ohio Supreme Court has held that Section 3, Article X of the Ohio Constitution, which allows the people of a county to establish a charter form of government, does not limit the power of the General Assembly “by general laws to provide for the * * * ‘government of counties’” under Section 1, Article X. *Blacker v. Wiethe* (1968), 16 Ohio St.2d 65, 45 O.O.2d 367, 242 N.E.2d 655, paragraph three of the syllabus. Thus, while the powers and duties of county government are established by the general laws of the state of Ohio, the charter document provides for the “form” as well as the “exercise” and “performance” of those powers and duties. Section 4.01, Article IV of the Summit County Charter (“the Charter”), as it existed at the time this litigation was initiated, provided that the duties of the Prosecutor “shall continue to be determined in the manner provided by general law * * *.” Therefore, in order to determine the powers and duties of the Prosecutor, we look to the general laws of Ohio.

State ex rel. O'Connor v. Davis, 139 Ohio App.3d 701, 705.

The Cuyahoga County Charter similarly draws upon Ohio general law by reference to define many of its county offices:

SECTION 4.01 PROSECUTING ATTORNEY: ELECTION, DUTIES AND QUALIFICATIONS.

The Prosecuting Attorney shall be elected, and the duties of that office, and the compensation therefor, including provision for the employment of outside counsel, ***shall continue to be determined in the manner provided by general law.***

SECTION 5.04 CLERK OF COURTS: POWERS AND DUTIES.

All powers and duties now or hereafter vested in or imposed by general law upon

(1) The Clerk of the Court of Common Pleas, County Engineer, Prosecuting Attorney and the Sheriff of the County shall be elected and their duties shall continue to be determined in the manner provided by general law, except where County Council changes those duties by ordinance or resolution. County Council may set the salaries of all County elected office holders with the minimum as set by general law.”

[http://whdrane.conwaygreene.com/NXT/gateway.dll?](http://whdrane.conwaygreene.com/NXT/gateway.dll?f=templates&fn=default.htm&vid=whdrane:OHSummit)

[f=templates&fn=default.htm&vid=whdrane:OHSummit](http://whdrane.conwaygreene.com/NXT/gateway.dll?f=templates&fn=default.htm&vid=whdrane:OHSummit) (last viewed 8/15/2016).

the office of clerk of the court of common pleas relating to serving the operation of the courts shall be exercised and carried out by the appointed Clerk of Courts. ***The Clerk of Courts shall also have such powers and duties as shall be established by this Charter or by ordinance that are not inconsistent with those provided by general law for the office of clerk of the court of common pleas.***

SECTION 5.07 COUNTY TREASURER: POWERS, DUTIES AND QUALIFICATIONS.

All powers and duties now or hereafter vested in or imposed upon county treasurers by general law shall be carried out by the appointed County Treasurer. ***The County Treasurer shall also have such powers and duties as shall be established by ordinance that are not inconsistent with those provided by general law.*** The County Treasurer shall have had at least five years' experience in the management of financial matters for political subdivisions.
[Effective January 1, 2010]

SECTION 5.08 SHERIFF: POWERS, DUTIES AND QUALIFICATIONS.

All powers and duties now or hereafter vested in or imposed upon county sheriffs by general law shall be carried out by the appointed Sheriff. The Sheriff shall possess and continue to maintain the qualifications provided by general law for the office of county sheriff and in addition shall have had at least five years' experience in law enforcement or in correctional facilities management.

(Emphasis supplied). Cuyahoga County Charter,

http://council.cuyahogacounty.us/pdf_council/en-US/Legislation/Charter/COUNTY%20CHARTER%20WITH%20EXECUTED%20CERTIFICATE%20PAGE%20AS%20OF%202011-3-2015.pdf (last visited Aug. 15, 2016).

The 2016 Medina charter proposal (Exh. A to the VC) contains seven (7) single-spaced pages of provisions to describe the form of the Medina County government. *See* Exh. A of VC, “Article III Corporate Powers, Rights and Privileges” and “Article IV Form of Government and Elections” section. Similarly to the above-cited incorporations of “general law” into the Summit County and Cuyahoga County charters, Article IV of the proposed Medina County Charter extensively details responsibilities, salaries and powers of the elected county officers, repeatedly using the incorporation by reference method. Relators have reproduced excerpts from Article IV below, with highlighting to illustrate the sundry incorporations by reference of “general law” or in many instances, specific O.R.C. provisions. Relators have properly used this common and

accepted method of completing the form of government in their charter proposal.

Section 3.1 Name, Boundaries and Powers . . . The County of Medina is responsible within its boundaries for the exercise of all powers vested in, and the performance of all duties imposed upon, counties and County officers by general law, provided that general law does not infringe the rights of the people of Medina County, including without limitation rights enumerated in this County Charter, or other inalienable rights. In addition, ***the County may exercise all powers specifically conferred by this Charter or incidental to powers specifically conferred by this Charter, including, but not limited to, the concurrent exercise of all or any powers vested in municipalities by the Ohio Constitution or by general law.*** . . . , When not prescribed by the Charter or by amendment to this Charter, by local law enacted by the County Commissioners, or by local law enacted by the people, ***such powers shall be exercised in the manner prescribed by the Constitution of Ohio or by general law.***

Section 4.2.1 Election of County Commissioners . . . Any candidate for election as County Commissioner shall be, and remain for the entire term, an elector of the County at the time of filing the declaration of candidacy, ***shall be nominated and elected in the manner provided by general law for county officers***, and shall not hold or accept other public office.

Section 4.2.2 County Commissioner Compensation The salary of the County Commissioners ***shall be in accordance with ORC 325.10 as may be amended.***

Section 4.2.3 Powers and Duties of the County Commissioner The County Commissioners shall have those powers and duties as responsible for the day-to-day running of the departments, offices and agencies of County government under his or her jurisdiction and control, ***in accordance with general law.*** If there is a conflict between this Charter and general laws, the duties of this Charter shall prevail. . . .
4.2.3.7 To adopt and amend the annual tax budget, the operating budget and the capital improvements program and to make appropriations for the County; however, County Commission shall not have the power to levy and/or increase taxes unless approved by a majority of the electors of the County at a primary or general election, ***in accordance with general laws.*** . . .

Section 4.3.1 Election of County Auditor . . . The Auditor candidates shall (1) be residents of the County for at least sixty (60) days immediately prior to filing of candidacy or appointment to fill a vacancy, (2) must remain residents of the county during their term, (3) possess the same qualifications set forth under the General Laws of the State of Ohio for the county offices of Auditor, (4) possess a CPA certificate, (5) be nominated and, (6) ***elected in the manner provided by general law for county officers.*** If there is a conflict between these requirements and the General Laws, the Charter terms shall prevail. . . .

Section 4.3.2 County Auditor Compensation The salary of the County Auditor shall be ***in accordance with ORC 325.03, as may be amended.***

Section 4.2.3 Powers and Duties of the County Auditor The County Auditor shall have those powers and duties as responsible for the day-to-day accounting of transactions for the County government under his or her jurisdiction and control, *in accordance with general law.*

Section 4.4.1 Election of County Treasurer . . . The Treasurer candidates shall (1) be residents of the County for at least sixty (60) days immediately prior to filing of candidacy or appointment to fill a vacancy, (2) remain residents of the county during their term, (3) possess the same qualifications set forth under the General Laws of the State of Ohio for the county offices of Treasurer, (4) be nominated, and (5) *be elected in the manner provided by general law for county officers.* If there is a conflict between these requirements and the General Laws, the Charter terms shall prevail. . . .

Section 4.4.2 County Treasurer Compensation The salary of the County Treasurer shall be *in accordance with ORC 325.04, as may be amended.*

Section 4.4.3 Powers and Duties of the County Treasurer The County Treasurer shall have those powers and duties as responsible for the day-to-day obtaining and securing county funds under his or her jurisdiction and control, *in accordance with general law.*

Section 4.5.1 Election of County Prosecuting Attorney . . . The Prosecuting Attorney candidates shall (1) be residents of the County for at least sixty (60) days immediately prior to filing of candidacy or appointment to fill a vacancy, (2) remain residents of the county during their term, (3) *possess the same qualifications set forth under the General Laws of the State of Ohio for the county offices of Prosecuting Attorney,* (4) be licensed to practice law in the State of Ohio, (5) not be a member of the general assembly of this state or mayor of a municipal corporation, and (6) be nominated and (7) *be elected in the manner provided by general law for county officers.* If there is a conflict between these requirements and the General Laws, the Charter terms shall prevail. . . .

Section 4.5.2 County Prosecuting Attorney Compensation The salary of the County Prosecuting Attorney shall be *in accordance with ORC 325.11, as may be amended.*

Section 4.5.3 Powers and Duties of the County Prosecuting Attorney The County Prosecuting Attorney shall have those powers and duties as responsible for the prosecution of all complaints, suits and controversies in which the state is a party in the County, *in accordance with general law.*

Section 4.6.1 Election of County Engineer . . . The Engineer candidates shall (1) be residents of the County for at least sixty (60) days immediately prior to filing of candidacy or appointment to fill a vacancy, (2) remain residents of the county during their term, (3) possess the same qualifications set forth under the General Laws of the State of Ohio for the county offices of Engineer, (4) be a registered professional engineer and a registered surveyor, licensed to practice in this state, and (5) be

nominated and (6) ***be elected in the manner provided by general law for county officers***. If there is a conflict between these requirements and the General Laws, the Charter terms shall prevail. . . .

Section 4.6.2 County Engineer Compensation The salary of the County Engineer shall be ***in accordance with ORC 325.14, as may be amended***.

Section 4.6.3 Powers and Duties of the County Engineer The County Engineer shall have those powers and duties as responsible for the day-to-day questions of engineering or surveying of the departments, offices and agencies of County government under his or her jurisdiction and control, ***in accordance with general law***.

Section 4.7.1 Election of County Recorder . . . The Recorder candidates shall (1) be residents of the County for at least sixty (60) days immediately prior to filing of candidacy or appointment to fill a vacancy, (2) remain residents of the county during their term, (3) possess the same qualifications set forth under the General Laws of the State of Ohio for the county offices of Recorder, (4) be nominated and (5) ***be elected in the manner provided by general law for county officers***. If there is a conflict between these requirements and the General Laws, the Charter terms shall prevail. . . .

Section 4.7.2 County Recorder Compensation The salary of the County Recorder shall be ***in accordance with ORC 325.09, as may be amended***.

Section 4.7.3 Powers and Duties of the County Recorder The County Recorder shall have those powers and duties as responsible for the day-to-day county record keeping of County information under his or her jurisdiction and control, ***in accordance with general law***.

Section 4.8.1 Election of County Coroner . . . The Coroner candidates shall (1) be residents of the County for at least sixty (60) days immediately prior to filing of candidacy or appointment to fill a vacancy, (2) remain residents of the county during their term, (3) ***possess the same qualifications set forth under the General Laws of the State of Ohio for the county offices of Coroner***, (4) be a licensed physician in the state for at least 2 years prior to commencing the term, (5) if a newly elected coroner, after the general election but prior to commencing the term of office to which elected, shall attend and successfully complete sixteen hours of continuing education at programs sponsored by the Ohio state coroners association, (6) be nominated and (7) ***be elected in the manner provided by general law for county officers***. If there is a conflict between these requirements and the General Laws, the Charter terms shall prevail. . . .

Section 4.8.2 County Coroner Compensation The salary of the County Coroner shall be ***in accordance with ORC 325.15, as may be amended***.

Section 4.8.3 Powers and Duties of the County Coroner The County Coroner shall have those powers and duties as responsible for the day-to-day running of the

medical offices and agencies of County government under his or her jurisdiction and control, *in accordance with general law*.

Section 4.9.1 Election of County Sheriff . . . The Sheriff candidates shall meet the requirements created by the county commissioners, *provided that such requirements will at least meet those of general laws in ORC 311*. During the entire term, the County Sheriff shall not hold other public office.

Section 4.9.2 County Sheriff Compensation The salary of the County Sheriff shall be *in accordance with ORC 325.06, as may be amended*.

Section 4.9.3 Powers and Duties of the County Sheriff The County Sheriff shall have those powers and duties as responsible for keeping the peace in the departments, offices and agencies of County government under his or her jurisdiction and control, *in accordance with general law*.

Section 4.10.1 Election of Clerk of Courts . . . The Clerk of Courts candidates shall meet the requirements created by the county commissioners, *provided that such requirements will at least meet those of general laws*.

Section 4.10.2 Clerk of Courts Compensation The salary of the Clerk of Courts shall be *in accordance with ORC 325.08, as may be amended*.

Section 4.10.3 Powers and Duties of the Clerk of Courts The Clerk of Courts shall have those powers and duties as responsible for keeping the court records in the departments, offices and agencies of County government under his or her jurisdiction and control, *in accordance with general law*.

In *State ex rel. Walker v. Husted*, 2015-Ohio-3749 (2015), the county charter proposals at issue used the following paragraph as the complete description of the “form of government:”

The offices and duties of those offices, as well as the manner of election to and removal from County offices, and every other aspect of county government not prescribed by this Charter, or by amendments to it, shall be continued without interruption or change in accord with the Ohio Constitution and the laws of Ohio that are in force at the time of the adoption of this Charter and as they may subsequently be modified or amended.

Id. at ¶ 23. The Court’s 2015 ruling to the effect that this single passage did not provide an adequate fundamental form of government is understandable. But consistency suggests that the plethora of additional information in the proposal before the Court (Exh. A to the VC) not only meets, but surpasses, the “form of government” threshold set by *Walker*. The Secretary of State and Medina County Board of Elections are reduced to quibbling over whether the voluminous

information is *enough*, or not, to define a county government system which would be set up by passage of the charter proposal. In attempting to argue that there still is insufficient information contained within the proposal, the SOS and MCBOE must wander deep into the realm of making legal and constitutional decisions, which they are forbidden from doing. “R.C. 307.95(C) confers no authority upon the secretary of state to invalidate charter petitions based upon his assessment of the legality or constitutionality of the measure, if enacted.” *Walker*, ¶ 21.

Proposition of Law No. IV: This Court will issue a Writ of Mandamus to require the Secretary of State to validate a petition when the petition meets procedural requirements.

Mandamus relief is appropriate where (1) the respondents have a clear legal duty, (2) the petitioners have a clear legal right to the relief sought, and (3) there is no plain and adequate remedy in the ordinary course of the law. *State ex rel. Asberry v. Payne*, 82 Ohio St.3d 44, 45, 693 N.E.2d 794 (1998). This Court grants writs of mandamus to compel placement of proposed charter provisions on the next general ballot. *E.g.*, *State ex rel. Citizens for a Better Portsmouth v. Sydnor*, 61 Ohio St.3d 49, 53, 572 N.E.2d 649 (Ohio 1991) (ordering a proposed charter amendment onto the ballot for which it had been petitioned, despite delay caused by objections to the amendment's substantive content). “In extraordinary actions challenging the decisions of the Secretary of State and boards of elections, the standard is whether they engaged in fraud, corruption, or abuse of discretion, or acted in clear disregard of applicable legal provisions.” *Whitman v. Hamilton Cty. Bd. of Elections*, 97 Ohio St.3d 216, 2002-Ohio-5923, 778 N.E.2d 32, ¶ 11.

Here, the Secretary clearly disregarded applicable legal provisions by breaking the tie vote of the MCBOE in favor of keeping the charter off the ballot based on his assessment of the proposed county charter's substance and his persistent misinterpretation and misapplication of the precedent of *State ex rel. Walker v. Husted*.

Proposition of Law No. V: Expedited relief is warranted in election matters concerning what measures go onto the ballot

Relators have promptly, timely, diligently, and responsibly acted to bring and pursue this litigation. Relators' efforts to seek adoption of their county charter proposal at the ballot box would be seriously undermined by a delay in the election where the matter is put to a vote. The ballot must be prepared by 60 days prior to the election. Expedited review is essential to securing the people's right to participate in their community governance. *See State ex rel. Cope v. Cooper*, 121 Ohio St. 519, 525, 169 N.E. 701 (1930) ("in emergent cases, where defendant should be brought into court at an earlier date application may and should be made to the court, and a time fixed for appearance and to show cause why the writ should not be granted, within a shorter period than that fixed by the Code relating to services of summons.").

Mandamus actions are frequently used in the election context, because there is no adequate remedy at law. *See, e.g., State ex rel. Painter v. Brunner*, 128 Ohio St.3d 17, 26, 941 N.E.2d 782, 793 (Ohio 2011) ("because of our recognition of mandamus as the appropriate remedy and the need to resolve this election dispute in a timely fashion, relators lack an adequate remedy in the ordinary course of the law"); *State ex rel. Esarco v. Youngstown City Council*, 116 Ohio St.3d 131, 876 N.E.2d 953, 2007-Ohio-5699 (2007) (entertaining expedited election action for a writ of mandamus). The purpose of Relators' action for this Writ of Mandamus is to compel the Secretary of State and Medina County Board of Elections to comply with their non-discretionary duty to certify the Petition for placement on the November 8, 2016 general election ballot. The electors have the right to vote on the proposed charter. Damages cannot provide adequate compensation for a violation of voters' fundamental rights to participate in the democratic process.

CONCLUSION

The facts show that the Secretary of State and Medina County Board of Elections, through their combined actions or omissions, violated Relators' constitutional, statutory and common law rights by voting against and/or otherwise denying certification of the Petition to the November 8, 2016 general election ballot. Relators respectfully request that the Court issue a Writ of Mandamus to the Secretary of State and Medina County Board of Elections which reverses the SOS determination and orders the Petition to be placed on the November 8, 2016 general election ballot in Medina County.

Respectfully submitted,

/s/ James Kinsman

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Co-counsel for Relators

CERTIFICATE OF SERVICE

I hereby certify that on August 15, 2016, I sent a copy of the foregoing “Relators’ Merit Brief” via electronic mail to the following:

William L. Thorne, Esq.,
Brian M. Richter, Esq. and
Lee R. Potts, Esq.,
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and to

Nicole M. Koppitch and
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/s/ Terry J. Lodge
Terry J. Lodge, Esq. (S.Ct. #0029271)

Appendix

Exhibit 1 – Ohio Constitution Article X, Section 3

County Charters; Approval by Voters

The people of any county may frame and adopt or amend a charter as provided in this article but the right of the initiative and referendum is reserved to the people of each county on all matters which such county may now or hereafter be authorized to control by legislative action. Every such charter shall provide the form of government of the county and shall determine which of its officers shall be elected and the manner of their election. It shall provide for the exercise of all powers vested in, and the performance of all duties imposed upon counties and county officers by law. Any such charter may provide for the concurrent or exclusive exercise by the county, in all or in part of its area, of all or of any designated powers vested by the constitution or laws of Ohio in municipalities; it may provide for the organization of the county as a municipal corporation; and in any such case it may provide for the succession by the county to the rights, properties, and obligations of municipalities and townships therein incident to the municipal power so vested in the county, and for the division of the county into districts for purposes of administration or of taxation or of both. Any charter or amendment which alters the form and offices of county government or which provides for the exercise by the county of power vested in municipalities by the constitution or laws of Ohio, or both, shall become effective if approved by a majority of the electors voting thereon. In case of conflict between the exercise of powers granted by such charter and the exercise of powers by municipalities or townships, granted by the constitution or general law, whether or not such powers are being exercised at the time of the adoption of the charter, the exercise of power by the municipality or township shall prevail. A charter or amendment providing for the exclusive exercise of municipal powers by the county or providing for the succession by the county to any property or obligation of any municipality or township

without the consent of the legislative authority of such municipality or township shall become effective only when it shall have been approved by a majority of those voting thereon (1) in the county, (2) in the largest municipality, (3) in the county outside of such municipality, and (4) in counties having a population, based upon the latest preceding federal decennial census of 500,000 or less, in each of a majority of the combined total of municipalities and townships in the county (not included within any township any part of its area lying within a municipality.

(1933, am. 1957)

Exhibit 2 – Secretary of State's Letter “Re: County Charter Initiative Petition Tie Vote”

(Four page letter begins on next page.)



Jon Husted
Ohio Secretary of State

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August 2, 2016

Director Carol A. Lawler
Deputy Director Marian E. Coffey
Medina County Board of Elections
3800 Stonegate Drive, Suite C
Medina, Ohio 44256

Re: County Charter Initiative Petition Tie Vote

Dear Director Lawler and Deputy Director Coffey:

At its meeting on July 11, 2016, the Medina County Board of Elections reviewed a proposed county charter initiative petition submitted by petitioners *Sustainable Medina County*.

After determining that the petition contained a sufficient number of valid signatures, Board Member Welker made a motion to vote on certifying the proposed county charter petition to the Medina County Board of County Commissioners. Board Member Welker and Chairperson Miller voted in favor of the motion. Board Members Ray and Cray voted against the motion.

Pursuant to R.C. 3501.11(X), the Board submitted the vote to me for a tie-breaking decision.

Board Members Ray and Cray cited the recent *State ex rel. Husted v. Walker*¹ decision and appear to have followed the advice of their legal counsel, an Assistant Prosecutor from the Medina County Prosecuting Attorney's office, who, according to Board minutes, advised the Board that the petition "did not adequately provide for the form of government."

To explain their votes to certify the petition, Board Member Welker and Chairperson Miller argue that "it is somewhat unclear as to whether the language of the proposed charter meets the requirements for going forward," and express their preference to let the petition "proceed and to let the courts decide on its legality at a later date."

In the *Walker* case, the Supreme Court ruled that the Secretary of State may not invalidate a proposed charter petition based upon an assessment of the legality or constitutionality of the measure.² On the other hand, the Court recognized "an alternative basis for invalidating [] charter petitions, namely, that the charters do not satisfy the threshold requirements that define a charter initiative."³

The Ohio Constitution establishes the framework of what is known in Ohio as "home rule authority." Ohio Const. Art. X, § 3 reads, in pertinent part:

¹ 144 Ohio St.3d 361, 2015-Ohio-3749.

² *Id.*

³ *Id.*

The people of any county may frame and adopt or amend a charter as provided in this article... Every such charter shall provide the form of government of the county and shall determine which of its officers shall be elected and the manner of their election. It shall provide for the exercise of all powers vested in, and the performance of all duties imposed upon counties and county officers by law... Any charter or amendment which alters the form and offices of county government ... shall become effective if approved by a majority of the electors.

The language of Art. X, § 3 authorizes a county, through properly adopted charter provisions, to restructure its government with respect to both the form of county government and its offices. Regardless of how a charter county chooses to restructure its government, however, the charter must provide for the exercise of all powers and the performance of all duties imposed by statute on counties and county officers.⁴

According to an Ohio Attorney General opinion, the intent of this provision makes clear that even counties operating under a charter continue to be administrative arms of the state for purposes of carrying out certain functions as political subdivisions of the state.⁵ Thus, while a county could by charter change its form of government, expand the powers which it may exercise, and be less inhibited by some statutory provisions in the manner of the exercise of those powers, those duties required by general law of counties and county officers would still have to be carried out.⁶

The language of the proposed Medina County Charter makes it clear that the petitioners are trying to form a charter county government, as follows:

We hereby declare that we deem it necessary to alter the current statutory County government and create a constitutional County government.⁷

This Charter is enacted pursuant to the Ohio Constitution's Home Rule provision of Article X Section 3, and hereby exercises the people's right and power to form a County Charter government. (This Charter does not form an "alternative" form under the general law, Section 302).⁸

Regarding the duties of county officers under the "new" charter county government, Section 3.1 of the Proposed Medina County Charter even provides as follows:

The County of Medina is responsible within its boundaries for the exercise of all powers vested in, and the performance of all duties imposed upon, counties and County officers by general law...

⁴ 1994 Op. Att'y Gen. No. 94-095 citing 1985 Op. Att'y Gen. No. 85-039; accord 1989 Op. Att'y Gen. No. 89-106. *See also*, Stephen Cianca, Home Rule in Ohio Counties: Legal and Constitutional Perspectives, 19 U. Dayton L. Rev. 533, 538-39 (1994).

⁵ 1985 Op. Att'y Gen. No. 85-039 citing 1970-77 Ohio Constitution Revision Commission in its Final Report at 292.

⁶ *Id.*

⁷ Preamble, Proposed Medina County Charter.

⁸ Section 4.1, Proposed Medina County Charter.

A closer review of the specific provisions regarding the duties of the county officers, however, reveals that the language of Section 3.1 rings hollow. In other words, the Proposed County Charter does not actually provide for the performance of *all duties* imposed upon County officers by general law.

For example, Section 4.2.3 of the Proposed County Charter reads that “[t]he County Auditor shall have those powers and duties as responsible for the day-to-day accounting of transactions for the County government under his or her jurisdiction and control, in accordance with general law.”

This language inadequately provides for the full range of duties that a County Auditor must perform—even under a charter form of government. A County Auditor in Ohio has far greater duties pursuant to the Ohio Revised Code⁹ than merely being “responsible for the day-to-day accounting of transactions for the County government” as enumerated in the Medina County proposed charter.

As just one example, aside from keeping the official record of all county government receipts and disbursements, the County Auditor in Ohio must assure that every parcel of land, and buildings and improvements, are fairly and uniformly appraised and then assessed for tax purposes.¹⁰

The proposed Charter similarly states that the County Treasurer shall have those “powers and duties as responsible for the day-to-day obtaining and securing county funds under his or her jurisdiction and control, in accordance with general law.”¹¹

Again, the Proposed Charter fails to provide for the “performance of *all duties* imposed upon ... county officers by law” as the Ohio Constitution requires (emphasis added).¹²

Ohio law¹³ generally establishes the County Treasurer as the county's banker,¹⁴ however the County Treasurer has additional duties, including investing county funds, redeeming county

⁹ See, R.C. Chapter 319.

¹⁰ County Commissioners Association of Ohio (CCAO) Handbook, Chapter 1: Basic Structure of County Government. The CCAO Handbook also describes the following County Auditor duties, as follows:

1. To distribute funds to various political subdivisions. This includes distributions of motor vehicle license taxes, gasoline taxes, estate taxes, fines, personal property taxes, and state local government fund monies to counties, townships, municipalities, libraries and certain park districts.
2. To serve as an agent for the state Tax Commissioner for administering Ohio's tangible personal property tax law.
3. To administer Ohio's manufactured home law by assessing manufactured homes, preparing a tax duplicate, and distributing manufactured home taxes in the same manner as real property taxes.
4. To serve as an agent for the state Tax Commissioner to process estate tax returns of decedents who had residence in the county, including the inventory of safe deposit boxes. The auditor then distributes monies collected from the estate tax to the state and township or municipality of the decedent.
5. To serve as the sealer of weights and measures by inspecting such devices as scales and gas pumps to protect the consuming public.
6. To issue various licenses including licenses for dogs and kennels, vendor's licenses, and cigarette licenses.

¹¹ Section 4.4.3, Proposed Medina County Charter.

¹² O. Const. Art. 10, § 3.

¹³ See, R.C. Chapter 321.

¹⁴ County Commissioners Association of Ohio (CCAO) Handbook, Chapter 1: Basic Structure of County Government.

warrants issued by the auditor, billing and collecting taxes on real and personal property, manufactured homes, estate taxes, and vendors and cigarette licenses, serving on the county investment advisory committee, and collecting delinquent taxes.¹⁵

Without citing all of the provisions in detail here, it suffices to say that the Proposed Charter similarly fails to provide for the full range of duties in the “new” charter county government for several other county officers.

The Medina County proposal purports to maintain the *status quo* on matters of county offices, officers, and their duties. However, by failing to provide for the performance of all duties of county officers, the proposed charter is invalid because it does not adequately “provide the form of government of the county” which the Ohio Constitution dictates as an essential condition (*i.e.*, a *sine qua non*) of a county charter government.¹⁶

Moreover, as Assistant Medina County Prosecuting Attorney Bill Thorne clarified, the Proposed Charter “failed to create an alternative form of government.”¹⁷ I see “no change in government,” stated Asst. Prosecutor Thorne.¹⁸ I concur. Despite the wording of their Proposed Charter, the petitioners are not truly attempting to establish the structural change envisioned by Article X, §§ 3 and 4 of the Ohio Constitution and enacted in Cuyahoga and Summit Counties.

Accordingly, I find that the proposed county charter petition is invalid on the “alternative basis” that it “do[es] not satisfy the threshold requirements that define a charter initiative,”¹⁹ and therefore break the tie against the motion to certify the proposed county charter petition to the Medina County Board of County Commissioners.

Sincerely,



Jon Husted

cc: Members of the Medina County Board of Elections

¹⁵ *Id.*

¹⁶ O. Const. Art. 10, § 3.

¹⁷ Minutes of the July 11, 2016 Medina County Board of Elections meeting.

¹⁸ *Id.*

¹⁹ *State ex rel. Husted v. Walker.*