

**IN THE SUPREME COURT OF OHIO**

**IN RE: CONTEST OF ELECTION  
HELD ON STARK COUNTY ISSUE 6  
(LAKE TOWNSHIP POLICE DISTRICT)  
IN THE GENERAL ELECTION HELD  
NOVEMBER 8, 2011**

**CASE NOS. 2012-0184  
2012-0214**

**BOARD OF TRUSTEES OF LAKE  
TOWNSHIP, STARK COUNTY, OHIO,**

**Appellant and Cross-Appellee,**

**v.**

**PETITIONERS IN THE CONTEST OF THE  
ELECTION HELD ON STARK COUNTY ISSUE  
6 (LAKE TOWNSHIP POLICE DISTRICT) IN  
THE GENERAL ELECTION HELD  
NOVEMBER 8, 2011,**

**Appellees and Cross-Appellants,**

**On Appeal from the  
Court of Common Pleas,  
Stark County, Ohio  
Case No. 2011CV03947**

**Appeal of Right from Final  
Decision in an Election  
Contest pursuant to R. C. 3515.15  
(S.Ct.Prac.R.2.1(C)(2))**

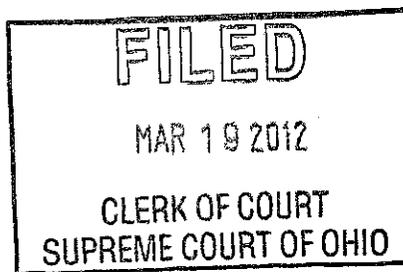
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**MERIT BRIEF OF APPELLANT AND CROSS-APPELLEES  
BOARD OF TRUSTEES OF  
LAKE TOWNSHIP, STARK COUNTY, OHIO**

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## STATEMENT OF FACTS

In March of 2011, the board of trustees of Lake Township, Stark County, Ohio considered the advisability of expanding an existing police district to all the unincorporated territory in the township. Finding that a tax would be necessary to expand the police district, the board of trustees, on March 28, 2011, adopted a resolution of necessity in accordance with R.C. § 5705.03(B)(1) and certified it to the Stark county auditor with a request that the auditor certify to the board the amount of revenue that would be generated by a tax of 4.5 mills. (Supp. p. 24-26). The auditor, in turn, on April 12, 2011, certified to the board that a tax of 4.5 mills would, all things remaining equal, generate revenue in the sum of \$2,591,965 per year. (Supp. p. 18).

Having the required information in hand, the board of trustees, by unanimous vote on June 27, 2011 adopted a resolution to place the issue of expanding the police district before the electors of all the unincorporated territory in the township and levying a tax of 4.5 mills to fund and operate the district. As is common, the resolution contained language for the ballot proposed to be put before the electors in this form:

Shall the unincorporated territory within Lake Township not already included within the Uniontown Police District be added to the township police district to create the Lake Township Police District, and shall a property tax be levied in the new township police district, replacing the tax in the existing township police district, at a rate not exceeding four and one-half (4.50) mills per dollar of taxable valuation, which amounts to forty-five cents per one thousand dollars in taxable valuation, for a continuing period of time commencing in 2011, and first due in calendar year 2012. (Supp. p. 15-17).

It is this language which brings the parties before the Court. Appellants (Contestees below) and Appellees (Contestors below) agreed that 4.5 mills per dollar is not forty-five cents per thousand

dollars of valuation, but is rather, four dollars and fifty cents per thousand dollars of valuation. Appellees stipulated that this was the only irregularity complained of in the contest below, and that Appellant had complied with requisite statutes. (Jan. 6, 2011 Tr. p. 25, l. 5-22).

The resolution to proceed with the expansion of the police district and levying the tax was filed with the board of elections on June 28, 2011, together with county auditor's certification and worksheet showing the fiscal calculations forming the basis of his certification. (Supp. p. 15-19). The board of elections (not a party to this appeal) in turn, prepared ballot language based on the resolution and forwarded the same on July 25, 2011, by electronic mail to the Ohio Secretary of State for review. (Supp. p. 13-14). The ballot prepared by the board of elections contained a correction to the arithmetic in the resolution submitted by Appellant, expressing the tax rate of 4.5 mills per dollar as forty-five cents per hundred dollars of valuation. (Supp. p. 14).

The Secretary of State, by email dated July 29, 2011, returned the proposed ballot, unapproved, with a notation of the discrepancy between the ballot language and the resolution and recommended that the board of elections confirm the millage with the taxing authority. (Supp. p. 21-23). The board of elections subsequently certified the issue for the November 8, 2011 election, assigning it as Issue 6, and indicated that approved ballot language would be forthcoming. (Supp. p. 94). It was proffered by Appellant at the January 23, 2011 hearing (which had been recessed from January 6) that no approved language for the Issue 6 ballot was ever delivered to Appellant. (Jan. 23, 2012 Tr. p. 17, l. 7-20).

It was also proffered at the hearing on the contest that Appellant's first consciousness of an error in the ballot language occurred on October 12, 2011, when the district police chief went to the board of elections and happened to examine the notice of the election posted at the offices

of the board of elections. (Jan. 23, 2012 Tr. p. 17, l. 21-25; p. 18, l.1). Also proffered was testimony that subsequently, on or about October 13, 2011, counsel for the township and the board were directly informed of the discrepancy and were told by board of elections staff that since absentee and early voting were already under way it was too late to make any corrections to the ballot. (Jan. 23, 2012 Tr. p. 18, l. 7-13). The notice of the election containing the irregular ballot language was already posted (as of October 3, 2011) on the board of elections website. (Jan. 23, 2012 Tr. p. 24, l. 4-10; p. 26, l. 1-10). Thereafter, as required by statute, notice of the election was published on October 21, 2011 and October 28, 2011 in the Hartville News, a local newspaper of general circulation in the subdivision whose electors were to decide Issue 6. (Supp. p. 1, 95)

Issue 6, meanwhile, was being publicly noted and discussed, and vigorously contested within Lake Township. The Canton Repository carried five articles (March 28, June 27, July 31, August 10, and November 2, 2011) all of which referenced Issue 6 as a 4.5 mill levy, and variously referred to its cost for the owner of a \$100,000 property as \$11.50 per month (Mar. 28) or \$137.81<sup>1</sup> per year (Nov. 2). (Supp. pp. 27-48) The comments posted on the Repository website following publication of the November 2, 2011 article six days prior to the election

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<sup>1</sup>The reader will note a discrepancy between the \$137.81 per year figure carried in the newspaper article and the \$157.50 per year figure carried in the advertisements of the citizens committee mentioned below. The common level of assessment of a property having a \$100,000 fair market value is \$35,000 by determination of the Ohio tax commissioner under R.C. § 5715.01(B). The \$157.50 figure is derived from the gross calculation of 4.5 mills (\$0.0045) times \$35,000 which equals \$157.50. This gross calculation is further adjusted by deductions totaling 12.5% attributable to tax reductions for residential property of 10% under R.C. § 319.302(B) and owner-occupied homesteads of 2.5% under R.C. § 323.152(B). Reducing the gross tax of \$157.50 by 12.5% yields a net tax on an owner occupied residential property having a fair market value of \$100,000 of \$137.81.

indicate the level of attention and intensity of interest in Issue 6. (Supp. pp. 49-60) The Repository carried a letter to the editor on October 18, 2011, (Supp. p. 41) opposed to Issue 6, authored by one of the Appellees, in which the 4.5 mill levy is referenced, correctly—in round numbers—as generating \$2.6 million annually in revenue, the same figure as certified by the county auditor. On election day, November 8, 2011, the Repository reported the comments of electors opposed to Issue 6 who sufficiently understood the effects of its passage to cast their ballot in their own interests. (Supp. p. Ex. 61-62).

The Hartville News, a community newspaper, carried reports of Issue 6 as a township-wide expansion of the police district with a levy of 4.5 mills, beginning with its April 1, 2011 edition. (Supp. p. 63) The expansion of the police district was the subject of a story on May 27. (Supp. p. 64-65) A page-5 story on July 15, 2011, referenced Issue 6 as a 4.5 mill levy covering the entire unincorporated portion of the township. (Supp. p. 68). On October 14, 2011, the Hartville News carried a front page story on election issues, leading with Issue 6 and pointing out the 4.5 mill rate over the whole township outside the village of Hartville. (Supp. p. 69). Issue 6 again lead the front page on October 21, describing the millage and the township wide coverage which would result from passage. (Supp. p. 70). On October 28, 2011 a page-3 story covered the cost of all levies on the Lake Township ballot, including Issue 6. The article directed readers to the county auditor's website "Tax Estimator" as a tool for calculating the amount of the tax generated by Issue 6 on any given parcel. (Supp. pp. 71-72). And on November 4, 2011, the lead article again explained Issue 6, including gross calculations of a tax of 4.5 mills on a property whose fair market value was \$100,000 . (Supp. p. 73).

Partisans on either side of Issue 6 undertook efforts to persuade the uninformed or unconvinced. The citizens committee (the Appellant in Case No. 2012-0184) in favor of Issue 6 circulated fliers explaining the costs and benefits of the issue to property owners both inside and outside the existing police district using the correct millage applied to a fair market value of \$100,000 and expressed as 43¢ per day or \$157.50 per year. (Supp. p. 74). The township newsletter for October (Supp. p. 75) carried information on the proposed 4.5 mill levy indicating a cost of approximately 40¢ per day for each \$100,000 of valuation. The Suburbanite, another community newspaper, carried an article on page 5 dated October 30, 2011 (Supp. p. 76) explaining the tax levy and its cost per day or annually. One of two advertisements in favor of the levy were sent to every residence in the township, targeted to those electors living either within the existing police district or outside of it. (Supp. pp. 77-84).

Throughout the summer and fall, during “public speaks” portions of the regular meetings of the board of trustees, various residents commented on the police levy, either expressing support or seeking further information. (Supp. pp. 85-89). And opponents of Issue 6 mounted their own campaign, circulating a flyer arguing against its passage. (Supp. p. 91).

Election day, November 8, 2011, came and went; Issue 6 passed with 5,577 in favor and 5,087 opposed. (Jan. 6, 2012 Tr., p. 9, l. 15-19; p. 11, l. 7-15).

Some of the electors who would become contestors below took note of the discrepancy on the ballot and, partly in response to an email message sent after the election, now planned, for the first time outside the voting booth, to change the outcome of Issue 6. (Supp. pp. 92-93).

The board of elections certified the result on November 28, or 29, 2011 (Jan. 6, 2012 Tr., p. 10, l. 13-16). Thereafter, on December 9, 2011, for the first time, Appellees took legal action to contest the result of the special election for Issue 6.

Pleadings and responses thereto were filed below, and request was made a for hearing, which commenced on January 6, 2012 in the Stark County, Ohio Court of Common Pleas, before the Hon. John G. Haas. Stipulations were placed in the record concerning the qualifications of those persons verifying the contest action, the vote count on Issue 6, the timeliness of the contest action, and the nature of the sole irregularity alleged. It was further stipulated that even though the campaign materials did not replicate the irregularity or refer to the cost of Issue 6 in dollars per thousand dollars of valuation, the campaign materials were accurate in expressing the cost of Issue 6, either on a per diem or annual basis. (Jan. 6, 2012 Tr., p. 16-17; p. 26, l. 3-14).

Appellees stipulated, as articulated by the trial court, that in all other ways except the failure to express 4.5 mills per dollar of valuation as \$4.50 per one thousand dollars of valuation, that Appellants had complied with the statutory requirements for putting Issue 6 on the ballot. (Jan. 6, 2012 Tr. p. 25).

The Court, *sua sponte*, called upon the five contestors who verified the petition to testify and elicited from them concerning when and how they learned of the irregularity complained of. Under examination by the Court, three of the five witnesses who verified the petition testified on January 6, 2012, that they knew, either on or before election day, that something was amiss with the ballot. William Doty was alerted by his son who had received, presumably, an absentee ballot, (Mr. Doty referred to it as a “write-in” ballot) sometime in October. His son instructed him to “read the ballot.” (Jan. 6, 2012 Tr., p.37, l. 1-13). Cynthia Shaffer indicated that she

voted absentee and that upon receiving her ballot, followed within a few days by receipt of the township's newsletter, she knew that there was a mistake in it. (Jan. 6, 2012 Tr., p.39). She had ordered her ballot the first week of October and believed that it took at least a week to receive it. (Jan. 6, 2012 Tr., p. 40, l. 21-22). And James Miller indicated to the Court that he first became aware of the mistake at the polls when he voted. (Jan. 6, 2012 Tr., p. 41, l. 20-25). The other witnesses indicated that they did not learn of the irregularity until after the election.

The hearing was recessed until January 23, 2012, with proceedings commencing at 10:00 a.m. During the interim, the parties continued to develop discovery. Both sides submitted and responded to interrogatories and requests for production of documents. Appellees sought to take depositions of representatives of both Lake Township and the Stark County Board of Elections and issued subpoenas to that effect. These were resisted with a motion in limine and a motion to quash the subpoenas on the grounds that such testimony would be prejudicial and misleading; that traditional equitable doctrines were out of place in an election contest (no balancing); and that courts in such cases exercise political, not judicial authority. The trial court did not formally rule on the motions, but the depositions were not taken.

Upon resumption of the hearing on January 23, 2012, with the margin of passage of Issue 6 being 490 votes, Appellees presented thirteen witnesses. The testimony of one of them was stricken by the court because he had not voted, either in person or by absentee ballot. (Jan. 23, 2012 Tr., p. 80; p. 81, l. 14-17; p. 82, l. 4-6). As expected upon direct examination, all were asked if they had voted in favor of Issue 6. They had. They were further asked, in essentially identical questions, if they had known the correct arithmetical term instead of the irregularity, whether they would still have voted in favor of Issue 6. Eleven said no. Curiously, one of the

twelve said that he still would have voted in favor of Issue 6 because his predisposition as a citizen of the community was to support “EMS, fire, police and schools.” (Jan. 23, 2012 Tr., p. 33). The court, *sua sponte*, confirmed that the witness did not vote yes “because of the lower dollars and cents that was attached to the thousand dollar valuation.” (Jan. 23, 2012 Tr., p. 35).

In addition to the eleven witnesses who changed their minds, Appellees offered as exhibits, received by the court over the objection of Appellant’s counsel, the affidavits of ten more electors who also changed their minds. (Supp. pp. 3-12). Appellees’ counsel invited the court to consider the testimony and affidavits as a sampling, indicating “. . . these witnesses were offered as a sample but should not be taken by the Court as any type of limitation. They’re not the only witnesses we could find; they are simply a sample offering for the Court. That is, that is the light in which they are offered.” (Jan. 23, 2012 Tr., p. 74).

The court rendered judgment on January 25, 2012 finding that the election results of the election for Issue 6 had been certified by the board of elections 5,577 in favor and 5,087 opposed. The irregularity was as agreed, and was the only irregularity under adjudication in the contest. But the court set aside the results of the election. Concerning the laches argument advanced by Appellants, the court grounded its decision in a finding that Appellees, in taking on “the additional responsibility of noticing an error in both the legal notice and the ballot itself. . . .” would be an “obligation on the electors . . . beyond due diligence.” (Appendix p. 7).

The court noted that none of the campaign materials ever expressed the amount of the ballot issue in dollars and cents per one thousand dollars of valuation. And even though it was not assigned as an irregularity, the court cited the circulation of the Hartville News, where the legal notice of the election was published, as “not adequate to put the Contestors on notice of the

irregularity so as to estop them from contesting the results.” The court distinguished the instant case from *Smith v. Scioto Cty. Board of Elections*, 123 Ohio St. 3d 467, 918 N.E.2d 131 (2009) because of the nature of the publication, stating that: “To find otherwise would place too much of a burden on the Contestors.” (Appendix p. 8).

The court concluded that voters were misled into thinking that the tax would be one-tenth of the amount as it was expressed in mills. The court expressed the view that the “error is more than a ‘clerical error’ and the degree of the error is substantial enough to mislead the voters.” (Appendix p. 8). While finding that the irregularity in the instant case was a miscalculation, not a coercive statement, the court applied a standard of strict scrutiny to conclude that the only issue to be decided with respect to the outcome was whether or not the election result was uncertain. (Appendix p. 9). The court further found that: “Based on the witness testimony, the affidavits and the compressed time period for hearings on contested elections, Contestors have met their burden.” (Appendix p. 9). And finding that the contestors had met that burden, the court set aside the election results.

### **ARGUMENT**

#### **Proposition of Law No. I:**

**Contestors of an election under R.C. § 3515.08, *et seq.* are estopped from maintaining the contest where the sole irregularity complained of in the resolution to proceed with a tax levy, the notice of election, and the form of the ballot was plain on its face.**

The sole irregularity alleged in this election contest is that the ballot language put before the electors of the unincorporated territory of Lake Township, Stark County, Ohio to enlarge the existing police district was in error of such a sufficient magnitude as to void the election. This,

in spite of the ready observation (and the stipulation of Appellees' counsel) that the ballot language complies in all respects (save one) with the statute which enables a township to enlarge an existing police district. The irregular ballot language was found in Appellant's resolution to proceed with the tax levy and in each instance of publication of the notice of election.

The statutorily prescribed ballot language is found in R.C. § 505.481(B)<sup>2</sup>, which expressly provides for the expansion of a police district to cover all of the unincorporated territory of a township. It states:

(B) The election on the measure shall be held, canvassed, and certified in the manner provided for the submission of tax levies under section 5705.25 of the Revised Code, except that the question appearing on the ballot shall read substantially as follows:

“Shall the unincorporated territory within ..... (name of the township) not already included within the ..... (name of township police district) be added to the township police district to create the ..... (name of new township police district) township police district?”

The name of the proposed township police district shall be separate and distinct from the name of the existing township police district.

If a tax is imposed in the existing township police district, the question shall be modified by adding, at the end of the question, the following: “, and shall a property tax be levied in the new township police district, replacing the tax in the existing township police district, at a rate not exceeding ..... mills per dollar of taxable valuation, which amounts to ..... (*rate expressed in dollars and cents per one thousand dollars in taxable valuation*), for ..... (number of years the tax will be levied, or “a continuing period of time”).” (Emphasis added.)

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<sup>2</sup>The quoted portion of R.C. § 505.481(B) was transferred without change from former R.C. § 505.482 by amendment in 2011 H 153, effective September 29, 2011. Their governance of Issue 6 was unaffected.

A thorough search of the Revised Code discloses no other instance of prescribed ballot language specifying that tax levy millage per one dollar shall be expressed as dollars and cents per one thousand dollars in taxable valuation. Comparing the ballot language for Issue 6, it is readily observed that it complies exactly with the form prescribed by the statute (Supp. p. 1). The claimed irregularity is that the expression of 45¢ per thousand dollars in taxable valuation used in the ballot should have been \$4.50 per thousand dollars in taxable valuation. And it is stipulated that 4.5 mills per dollar of valuation is not 45¢ per one thousand dollars of taxable valuation. No other irregularity is claimed.

Appellant embarked on the expansion of its police district in March 2011 with a clear statement of the amount of millage required to effectuate the purpose. This was reiterated in the June resolution to proceed with the expansion and the extension of the necessary tax levy (which contained the irregularity.) The issue was filed with and certified to the ballot by the board of elections which published the requisite notices. All of these actions were matters of public record. Any person desiring to be informed of the content and accuracy of the relevant documentation surrounding Issue 6 had every opportunity to be so informed.

Sides were taken. Proponents and opponents vigorously contested the merits of Issue 6. Leading into the election on November 8, 2011, news reports, advertisements, and official publications all carried correct calculations of the proposed tax, either per day or annually, as applied to a property having a specific hypothetical value, generally, \$100,000. Yet, no one opposed to Issue 6 sought to invoke their statutory power to protest the board of elections' certification of Issue 6.

Even among those opposed who later saw fit to join in the contest, it was known before election day that something was amiss with the ballot. The testimony of Appellees, Doty, (Jan. 6, 2011, Tr. p.35) Shaffer, (*Id.*, at 39) and Miller (*Id.* at 41) clearly demonstrates that they knew, either on or before election day, (and could have known well in advance of that) that the dollars and cents to be collected per one thousand dollars of taxable valuation was misstated.

This Court, in the case of *In re Contested Election of Nov. 2, 1993*, 72 Ohio St.3d 411, 650 N.E.2d 859 (1995) at 413-414, determined, with respect to an election contest irregularity centered on ballot language, that:

In cases in which we have found equitable estoppel in an election contest, irregularities were plain on the face of the ballot, and the contestors were aware of the alleged defects prior to the election. See *In re Election of November 6, 1990 for the Office of Attorney General of Ohio* (1991), 58 Ohio St.3d 103, 113–114, 569 N.E.2d 447, 457. Appellants in this case arguably were either aware of or *should have been aware* of the ballot language prior to the November 2, 1993 election, yet they failed to raise this issue prior to learning of the adverse election results. (Emphasis added.)

Estoppel was not found to apply to other irregularities, but, in this case, there is no other irregularity. Every act of Appellant to put Issue 6 before the electors was a public act; every record generated to accomplish that end was a public record, available, for the asking, to any person. Appellees had full opportunity to file a timely protest following the filing of the resolution to proceed with the board of elections and prior to its certification of Issue 6. If denied, Appellees could have sought a writ of prohibition to prevent the issue from going before the electors. In this case, Appellees, possessing ample opportunities to find out, either knew or should have known of the mistaken ballot language now complained of.

In light of the foregoing and this Court's holding in *In re Contested Election of Nov. 2, 1993*, 72 Ohio St.3d 411, 650 N.E.2d 859 (1995) at 413-414, Appellees should be estopped from contesting the ballot language used for Issue 6.

**Proposition of Law No. II:**

**An irregularity in ballot language for a tax levy setting forth a specified arithmetical expression that 4.5 mills per dollar of taxable valuation is equivalent to forty-five cents per one thousand dollars of taxable valuation is ascertainable from its terms and is, thus, plain on its face.**

It is useful, here, to examine the precise nature of the irregularity alleged in this contest. Given the expansive universe of possible irregularities, whether any given one is plain on its face may, necessarily, be determined on case-by-case basis. In the instant case, however, whether or not the irregularity is plain on its face can be ascertained by the answer to a simple question, to wit: Is 4.5 mills per one dollar of taxable valuation equal to \$0.45 per one thousand dollars of taxable valuation?

There is no express definition in the Ohio Revised Code of what a mill is. Nor is an express definition known to be found in O.Jur., *Words and Phrases* or *Black's Law Dictionary*. The relevant definition of "mill" found in the *New Oxford American Dictionary* 1084 (2001) states that a mill is "a monetary unit used only in calculations, worth one thousandth of a dollar." Cases which refer to expressions of mills implicitly use that definition. The Ohio Constitution, Article XII, Section 2, prohibits taxation of property in excess of one percent of its valuation, beyond which voter approval is required.

No property, taxed according to value, shall be so taxed in excess of one per cent of its true value in money for all state and local purposes, but laws may be passed authorizing additional taxes to be levied outside of such limitation, either when approved by at

least a majority of the electors of the taxing district voting on such proposition, or when provided for by the charter of a municipal corporation. . . .

Further, by statutory definition of the ten-mill limitation found in R.C. § 5705.02, we know that one percent of valuation is constituted of 10 mills per dollar.

The aggregate amount of taxes that may be levied on any taxable property in any subdivision or other taxing unit shall not in any one year exceed ten mills on each dollar of tax valuation of such subdivision or other taxing unit, except for taxes specifically authorized to be levied in excess thereof. The limitation provided by this section shall be known as the “ten-mill limitation,” and wherever said term is used in the Revised Code, it refers to and includes both the limitation imposed by this section and the limitation imposed by Section 2 of Article XII, Ohio Constitution.

The arithmetic, then, comports with the dictionary definition of a mill being one thousandth of a dollar.

An expression of 4.5 mills per dollar is, therefore, equal to 0.0045 dollars per one dollar.

The conversion of mills to dollars and cents per thousand dollars thus requires a movement of the decimal three places to the right to yield \$4.50 per thousand dollars.

Let’s concede, for the sake of discussion, that few, if any, among us undertake this calculation on a daily basis. Mills and dollars, however, are the elemental units of ad valorem taxation in Ohio. And the result remains that by examination of the terms alone, an informed elector can know from the plain face of the ballot language whether the arithmetical expression is true or false. No reference to any source outside the ballot is necessary.

Ohio courts have found that voters, when confronted with such errors, are sufficiently equipped to ascertain them. In *Conley v. City of New Boston*, 11 Ohio Supp. 91 (C.P. 1942), the error was a mathematical one, plain on the face of the ballot. In that case, as here, the ballot

correctly stated the estimate of the tax necessary to pay certain bonds in mills on each one dollar, but incorrectly stated the amount of such tax in cents on each one hundred dollars of valuation. *Conley* was not an election contest under the present statutes—it was filed seeking an injunction to prohibit the issuance of certain bonds by New Boston. But in upholding the election results, the court stated:

In the case at bar it can hardly be contended that the electors were deceived or misled. . . . The published notice, as well as the ballot, carried the correct estimate of the tax levy on one dollar. We must presume the electors of the City of New Boston are intelligent and able to discern and value a *clerical error* involving a simple multiplication appearing so clearly as did the error complained of in this case. (Emphasis added.)

In this case, too, the resolution, the notices of the election, and the ballot all contained the correct tax levy on one dollar. The advances in knowledge, especially in science and technology, accessible to all, including children, since 1942 are nearly innumerable. It cannot be plausibly argued that in 2011 the electors of Lake Township were less “intelligent and able to discern and value a clerical error involving a simple multiplication appearing so clearly as did the error complained of in this case.”

*State ex rel Bd. Of Educ. of Plain Local School District v. McGlynn*, 100 Ohio App. 57, 135 N.E.2d 632 (1955), was an original action in mandamus. The respondent, McGlynn, clerk of the board of education, declined to certify proper documents to the county auditor for the purpose of issuing bonds for permanent improvements on the grounds that the notice of election was defective. The notice omitted part of the purpose of the bonds, omitted the rate per one dollar of valuation, and misstated the rate per one hundred dollars of valuation as three and two tenths cents (3.2¢) instead of thirty-two cents (32¢.) The ballot, itself, was correct. But the issue to be

noted here is that the court of appeals found, in its head note, that a plethora of advertisement containing the correct information was sufficient to constitute substantial compliance with the election laws concerning the notice required for the bond issue.

Where all proceedings of a board of education in inaugurating an election on a bond issue for the construction and improvement of school buildings are regular and in accordance with law up until the time of the notice of election, in which notice of election, through error or inadvertence, the amount of the average annual tax levy expressed in mills for each one dollar of valuation and a portion of the purpose of the issue were omitted, and the amount of the average annual tax levy expressed in cents for each one hundred dollars of valuation was stated as being 3.2 cents rather than 32 cents, and where such bond issue was, by newspaper articles, fully and completely advertised in such school district, and the ballot therefor was legal in every respect, such irregularities in the proceedings are not such as would prejudice or harm anyone and there is a substantial compliance with the notice of election required by law. *McGlynn*, at 633.

In the instant case, it is undeniable that the electors of Lake Township were fully and accurately supplied with information regarding the cost of Issue 6. That information was available to every voter wanting to know as much.

When the error on the ballot is so plain as to be ascertainable from its terms and the error is further expurgated by voluminous and truthful public discourse, the error cannot be said to have confused so many electors as to permit an unscientific sampling of those who changed their minds to render the result of the election uncertain. Appellees mustered eleven witnesses to testify as to their reversal of opinion. Even when combined with the ten affidavits objected to, the result does not begin to render the election uncertain. When truthful information concerning the amount and cost of a tax levy is put before the electors, an error in the ballot at odds with that information is plain on its face.

**Proposition of Law No. III:**

**Contestors of an election for a tax levy who knew or should have known before the election of an irregularity in ballot language, plain on its face, who fail to seek available pre-election remedies are barred by laches from contesting the results of the election.**

The ballot language complained of was first put before the public on June 27, 2011 with the adoption of the resolution to proceed with the expansion of the existing police district and the levy of the necessary taxes to do so. The resolution was filed with the board of elections on June 28, 2011, which prepared the ballot and certified Issue 6 in August, 2011. No action of any kind was taken by the Appellees until the election contest was filed on December 9, 2011, and that only on the basis of an email solicitation generated after the election. (Supp. p. 92-93).

The trial court found (Appendix p. 7) that the electors of Lake Township had no “additional responsibility of noticing an error in both the legal notice and the ballot itself.” And that “[s]uch an obligation on the electors is beyond due diligence.” The court found that the publication of the notice of the election in the Hartville News, a newspaper of general circulation in the subdivision (and stipulated by Appellees) was not “adequate to put the Contestors on notice of the irregularity so as to estop them from contesting the results. . . . *To find otherwise would place too much of a burden on the Contestors.* The Court thus finds that the Contestors acted with due diligence.” (Emphasis added.) (Appendix p. 8).

“The elements of laches are (1) unreasonable delay or lapse of time in asserting a right, (2) absence of an excuse for the delay, (3) knowledge, actual or constructive, of the injury or wrong, and (4) prejudice to the other party.” *State ex rel. Polo v. Cuyahoga Cty. Bd. of Elections*, 74 Ohio St.3d 143, 145, 656 N.E.2d 1277 (1995). Appellees waited more than five months after

the first publication of the ballot language in the township's June 27, 2011 resolution to take any action whatever. Three signers of Appellees' verified contest petition testified that they knew on or before election day that the ballot language was problematic. While Appellees have offered a sampling of those who voted yes, and who, upon learning of the irregularity, changed their minds, they have offered no explanation whatever for their delay in exercising their right to protest the ballot language before the election.

This Court has long held that the diligence due in election matters is "utmost" or "extreme." *State ex rel. Carberry v. Ashtabula*, 93 Ohio St.3d 522, 757 N.E.2d 307 (2001). The point has been reiterated many times. "We have consistently required relators in election cases to act with the utmost diligence." *Blankenship v. Blackwell*, 103 Ohio St.3d 567, 2004-Ohio-5596, 817 N.E.2d 382, ¶ 19. "If relators do not act with the required promptness, laches may bar the action for extraordinary relief in an election-related matter." *State ex rel. Steele v. Morrissey*, 103 Ohio St.3d 355, 2004-Ohio-4960, 815 N.E.2d 1107, ¶ 12. The precedents on this point are so numerous as to be almost black letter law. The trial court in the instant case undeniably applied the wrong standard of diligence due in this election matter.

Of the precedents issued to date by this Court, factually and legally, this case is most nearly like *Smith v. Scioto Cty. Bd of Elections*, 123 Ohio St.3d 467, 918 N.E.2d 131 (2009). Contestors there sought to overturn the outcome of an election which revised the charter of the city of Portsmouth. The ballot language specified that the amendment would become effective upon passage by a majority of the electors of the City of Portsmouth, (not a majority of those voting.) The language in a petition and ballot were claimed to have violated statutory requirements and were inaccurate and misleading. The trial court, as in the instant case, set aside

the election results. This Court held that the contestors could have raised their claims in a timely pre-election protest, pursuant to R.C. § 3501.39(A). “Election contests may not be used as a vehicle for asserting an untimely protest.” *Smith*, at ¶12.

This Court found, after reciting the standards of diligence due in election matters, that “the challenged language, however, was contained in the proposed charter amendment incorporated in the petition filed in August 2008. Appellees could have raised their claims in a timely pre-election protest to the petition under R.C. § 3501.39(A). Again “[e]lection contests may not be used as a vehicle for asserting an untimely protest.” *Portis v. Summit Cty. Bd. of Elections*, 67 Ohio St.3d 590, 592, 621 N.E.2d 1202 (1993). That is precisely the situation presented in the instant case. Appellees knew or should have known of the ballot irregularity in Issue 6 from June 27, 2011 forward and waited five months to take any action in that regard. Laches is, thus, a bar to this election contest.

**Proposition of Law No. IV:**

**An election result must not be disturbed except in extreme circumstances that clearly affect the validity of the election.**

This Court has long held that the will of the electorate shall not be disturbed by the courts unless one or more election irregularities has occurred, and that the irregularities affected enough votes to change or make uncertain the outcome of an election. *Crane v. Perry Cty BOE*, 107 Ohio St.3d 287, 2005-Ohio-6509, 839 N.E.2d 14. The burden of proof in an election contest, under R.C. 3515.08 et seq. is placed upon contestors, to prove, by clear and convincing evidence, that an irregularity occurred and that it affected enough votes to render the outcome of the election different, or in doubt. “Clear and convincing evidence” is that measure or degree of proof which is more than the mere preponderance of evidence...the evidence must produce, in the

mind of the trier of facts, a firm belief or conviction as to the facts sought to be established. *Copeland v. Tracy*, 111 Ohio App.3d 648, 676 N.E.2d 1214 (1996). In the instant case, Lake Township's Issue 6 had 5,577 electors voting "yes", and 5,087 voting "no", a 490-vote margin of approval. The parties stipulated to the "irregularity": a mathematical miscalculation in converting 4.5 mills per one dollar of valuation to the amount of dollars and cents per one thousand dollars of valuation (Jan. 6, 2012 Tr., p. 25, l. 5-22). Appellees' burden, then, was to prove affirmatively, by clear and convincing evidence, that enough votes were effected by the miscalculation to change, or make uncertain, the outcome of the election. *Election on the Issue of Zoning in Southeasterly Section of Swanton Twp.*, 2 Ohio St.3d 37, 442 N.E.2d 758 (1982).

Appellees presented 13 witnesses at the resumed hearing on January 23, 2011. The second witness, Mr. Gallina, testified that he voted for Issue 6 and would have voted for it even if he had noticed the miscalculation (Jan. 23, 2012 Tr., p. 34, l. 5-7). Mr. Brown's testimony was stricken by the trial court, because Board of Elections' records showed he did not vote in the November 8, 2011 election. That left eleven witnesses who testified that they would change their votes. Giving Appellees every inference in favor of their position, the witnesses testified that they voted "yes" for Issue 6 because of the miscalculation, and but for that, they would have voted "no." Appellees proffered, and the trial court relied upon, over Appellant Lake's objections, the affidavits of ten voters who could not appear at trial. Those affidavits said exactly the same thing as the eleven witnesses' testimony. (Supp. pp. 3-12). Counsel for Appellees stated to the Court "...the issue of these witnesses were offered *as a sample* but should not be taken by the Court as any type of limitation. *They are not the only witnesses we could find; they*

are simply a sample offering for the Court.” (Emphasis added). (Jan. 23, 2012 Tr., p. 74, l. 5-10).

A court may not infer, as the Judgment Entry herein appealed from seems to do, that more votes were affected by an irregularity than clear and convincing evidence presented by Appellees proves. *McMillan v. Ashtabula Cty. Bd. of Elections*, 68 Ohio St.3d 31, 623 N.E.2d 43 (1993). The Appellees herein, quite simply, did not meet their burden of proof. Accepting, for the moment, the affidavits as testimony, the trial court had testimony of twenty-one witnesses. That is simply insufficient, in an election contest, to disenfranchise the remaining 5,556 voters (certified by the Board of Elections as having voted “yes,” less the twenty-one witnesses) who voted as the majority for Issue 6.

**Proposition of Law No. V:**

**In determining election contests, a court exercises only delegated political authority, and may not, in determining the contest, resort to substantive criteria beyond those established by the general assembly.**

The Ohio Constitution Article

, §21 gave the general assembly the authority to determine how the trial of election contests shall be conducted. This Court has long held that in an election contest, courts exercise delegated political authority, not judicial authority. *In re Election of November 6, 1990 for the Office of Attorney General of Ohio*, 58 Ohio St.3d 103, 569 N.E.2d 447 (1991); *Foraker v. Perry Twp. Rural School Dist. Board of Education*, 130 Ohio St. 243, 199 N.E. 74 (1935). Since an election contest is a special statutory proceeding, there is no “balancing of the equities,” as is done when the court sits as a court of equity. *Link v. Karb*, 89 Ohio St. 326, 104 N.E. 632 (1914). In this case, the trial court, by relying on unauthorized criteria, lessened Appellees’ burden of proof.

“Based on the witness testimony, the affidavits and *the compressed time period for hearings on contested elections, Contestors have met their burden.*” (Appendix p. 9). (Emphasis added).

There is nothing in the statutes or case law that diminishes the burden of proof of Appellees due to the “compressed time period for hearings.” The General Assembly created that time period, applicable to all who file an election contest; courts have consistently upheld it. The trial court was not free to create criteria that might, in its opinion, be more suitable than those the legislature has established. *Mirlisena v. Fellerhoff*, 11 Ohio Misc.2d 7, 463 N.E.2d 115 (1984).

Furthermore, the trial court added criteria when it stated, (Appendix p. 8), “Finally, the Court finds that the circulation of the Hartville News, where legal notice was published, was not adequate to put Contestors on notice of the irregularity so as to estop them from contesting the results.” Not only was the sufficiency of the legal notice not challenged by Appellees, they specifically stipulated to its sufficiency. (Jan. 6, 2012 Tr., p. 25, l. 5-22). The record reflects that the Hartville News meets the requirements of R.C. §7.12 to be considered a newspaper of general circulation, so that publication of Issue 6 in that newspaper by the Stark County Board of Elections complied with R.C. §5705.25. (Supp. pp. 63-73; 95-96; Jan. 23, 2012 Tr., p. 24, l. 4-10 re: Board of Elections web page posting, and p. 26, l. 8-10: Appellees stipulate to web page posting of notice). A weekly newspaper is “generally circulated” even though another newspaper is more widely circulated. *Stevens v. Bass* (N.D. Ohio, 12-28-1995) 197 B.R. 57. Insofar as the trial court appears to have relied on its determination of the sufficiency of the notice herein to reach its decision, the trial court added criteria to the election contest that the legislature did not intend and the court cannot do.

## CONCLUSION

Appellees here, for their own reasons, were adamantly opposed to Issue 6. They campaigned against it. Their comrades wrote letters to the editor of the largest local newspaper in opposition to it. They shared among themselves, and all others who would listen, the reasons why Issue 6 was a bad idea. But, on election day, November 8, 2011, they lost. Seizing upon an irregularity in the ballot language for Issue 6, which was a public record for more than five months prior to the election, they filed an election contest action to overturn it. They are too late.

Appellees are estopped from bring the election contest below because an election contest is not a substitute for a timely election protest. By exercising the utmost and extreme diligence required in election cases, they could have found the offending ballot language and had it excluded from the ballot on November 8. Had the election protest failed, a timely action in prohibition might have succeeded. But they did not.

Appellees are estopped from maintaining an election contest action based on defective ballot language because the error in the ballot language complained of is plain on its face. An informed elector could tell from examining the text of the ballot alone that 4.5 mills per one dollar of valuation was not equal to forty-five cents per one thousand dollars of valuation. No other resource was necessary to ascertain the truth of that arithmetical expression. Where a defect in ballot language is plain on its face and by utmost and extreme diligence can be ascertained without further reference, an election contestor is estopped from bringing an election contest on that sole irregularity.

Appellees, who knew or should have known of an irregularity in ballot language, plain on its face, months before an election, and who failed to invoke available pre-election remedies are

barred by laches from invalidating the election in an election contest action. Appellees waited until after the election to do anything, apart from campaigning against it, remotely aimed at stopping Issue 6. Whatever the mistakes in putting Issue 6 on the ballot were, by the time the offending language was discovered to be in error the board of elections had already prepared the ballots, absentee ballots had been issued, and early voting had begun. Appellees delayed far too long to, and in fact never did, exercise their right to protest the issue. Appellees have failed to offer any excuse for the delay in exercising their right to protest. And they knew or should have known (it was plain on its face) of the irregularity in the ballot. After the election, neither Appellant nor the Stark County Board of Elections had any means whatever to rectify the error. And a “do-over” is not an option.

Appellees have failed in their burden of proof. They offered a sampling of eleven electors, twenty-one only if the affidavits are counted, to disenfranchise the votes of 5,556 electors who cast their ballots in favor of Issue 6. An election contest is held for the very purpose of determining the results the election. Boards of election are made statutory parties to contests because a change in outcome involves recounts and interpretations of voters’ intent that are, by law, vested in them, not the courts. Appellees had to show by clear and convincing evidence (not an unscientific sampling done without supporting expert testimony) that Issue 6 had failed, or that such an indeterminate number of invalid votes had been cast in the election to render the result unascertainable. The determination of the results of an election is an exercise in positive integers. Appellees failed by every known measure to render the results of Issue 6 uncertain.

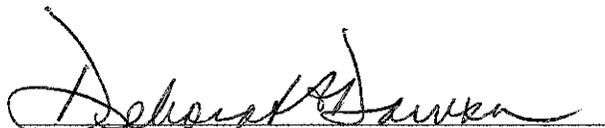
Appellees induced error into the election contest by inviting the court to rely on a sampling of votes, including affiants who were unexamined, for whose affidavits there was no

supporting testimony, no expert knowledge or opinion. They might as well have asked Gallup or Rasmussen to determine the results of the November 8 election. Appellees' excuses that the Hartville News is unread by a sufficient number of electors to be informative is rebutted by the fact that it is a newspaper of general circulation and that they stipulated to the sufficiency of the publication of the notice of the election. The trial court's holding was that the compressed time frame of the election contest excused Appellees' lapse of diligence; if only they had had more time, their proof would have been fully sufficient. But that is contrary to the statutory provisions. Appellees did not meet their burden.

For all the foregoing reasons Appellant prays this honorable Court to reverse the judgment of the Stark County Court of Common Pleas in the instant matter.

Respectfully submitted,  
JOHN D. FERRERO  
STARK COUNTY PROSECUTING ATTORNEY

By:



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**PROOF OF SERVICE**

A copy of the foregoing Merit Brief of Appellants was sent to the following by regular U.S. Mail this 19<sup>th</sup> day of March, 2012 to:

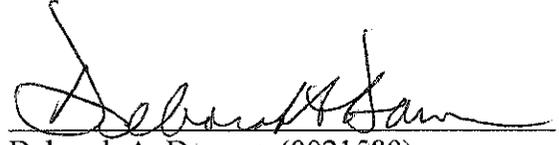
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## **APPENDIX**

IN RE: CONTEST OF ELECTION  
HELD ON STARK COUNTY ISSUE 6  
(LAKE TOWNSHIP POLICE DISTRICT)  
IN THE GENERAL ELECTION HELD  
NOVEMBER 8, 2011

BOARD OF TRUSTEES OF LAKE  
TOWNSHIP, STARK COUNTY, OHIO

Appellant and Cross-Appellee,

v.

PETITIONERS IN THE CONTEST OF THE  
ELECTION HELD ON STARK COUNTY ISSUE  
6 (LAKE TOWNSHIP POLICE DISTRICT) IN  
THE GENERAL ELECTION HELD  
NOVEMBER 8, 2011

Appellees and Cross-Appellants,

ORIGINAL

IN THE SUPREME COURT OF OHIO  
COLUMBUS, OHIO

12-0214

IN RE: CONTEST OF ELECTION  
HELD ON STARK COUNTY ISSUE 6  
(LAKE TOWNSHIP POLICE DISTRICT)  
IN THE GENERAL ELECTION HELD  
NOVEMBER 8, 2011

CASE NO. \_\_\_\_\_

BOARD OF TRUSTEES OF LAKE  
TOWNSHIP, STARK COUNTY, OHIO,

Contestee-Appellant,

-vs-

PETITIONERS IN THE CONTEST OF THE  
ELECTION HELD ON STARK COUNTY ISSUE  
6 (LAKE TOWNSHIP POLICE DISTRICT) IN  
THE GENERAL ELECTION HELD  
NOVEMBER 8, 2011,

Contestors-Appellees,

On Appeal from the  
Court of Common Pleas,  
Stark County, Ohio  
Case No. 2011CV03947

Appeal of Right from Final  
Decision in an Election  
Contest pursuant  
to R. C. 3515.15  
(S.Ct.Prac.R.2.1(C)(2))

NOTICE OF APPEAL OF APPELLANT  
BOARD OF TRUSTEES OF LAKE  
TOWNSHIP, STARK COUNTY, OHIO

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**NOTICE OF APPEAL OF CONTESTEE-APPELLANT**

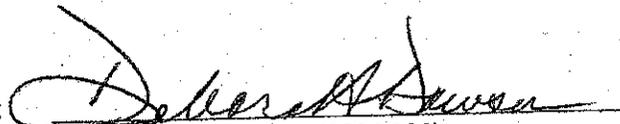
Contestee-Appellant Board of Trustees of Lake Township, Stark County, Ohio, hereby gives notice of appeal to the Supreme Court of Ohio from the judgment of the Stark County Court of Common Pleas entered in the Court of Court of Common Pleas, Case No. 2011 CV03947 on January 25, 2012.

This case is an appeal of right in a contest of election on questions of law pursuant to R. C. 3515.15 and S. Ct. Prac. R. 2.1 (C)(2).

Respectfully submitted,

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STARK COUNTY PROSECUTING ATTORNEY

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**PROOF OF SERVICE**

A copy of the foregoing Notice of Appeal was sent to the following by regular U. S. Mail  
this 3<sup>rd</sup> day of February, 2012:

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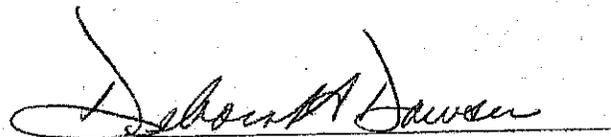
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Township Police, Bob Moss, Treasurer

Jeanette Mullane, Director  
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Contestee



Deborah A. Dawson (0021580)  
David M. Bridenstine (0001233)



for each one thousand dollars of valuation....," when said language should have read "...at a rate not exceeding four and one-half (4.50) mills for each dollar of valuation, which amounts to four dollars and fifty cents (\$4.50) for each one thousand dollars of valuation."

### Election Contests

Grounds for election contests include fraud and various types of irregularities. Contestors have asserted in their petition, and it is stipulated, that the only irregularity is the ballot language which contains a miscalculation in the expression of dollars and cents per one thousand dollars of valuation. In all other respects, the ballot language for Issue 6 was accurate. This is not a case about the merits of Issue 6.

Under Ohio law, a contestor of an election must establish by clear and convincing evidence that (1) one or more election irregularities occurred, and (2) the irregularity or irregularities affected enough votes to change or make uncertain the result of the election.<sup>1</sup> Clear and convincing evidence is the standard because Courts must be restrained from invalidating elections, and the relief sought – the rescission of an election – is equitable in nature.<sup>2</sup>

"Additionally, every reasonable presumption should be indulged in favor or upholding the validity of an election and against ruling it void."<sup>3</sup> "In sum, the message of the established law of Ohio is clear: our citizens must be confident that their vote, cast for a candidate or an issue, will not be disturbed except under extreme circumstances

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<sup>1</sup> *McMillan v. Ashtabula Cty. Bd. Of Elections* (1993), 68 Ohio St.3d 31, 34.

<sup>2</sup> See, R.C. 3515.11. *In re Election of Nov. 6, 1990 for Office of Atty. Gen. Of Ohio* (1991), 58 Ohio St.3d 103.

<sup>3</sup> *Copeland v. Tracy* (1996), 111 Ohio App.3d 648, 655.

that clearly affect the integrity of the election."<sup>4</sup> On the other hand, it is axiomatic that for citizens to have confidence in their government, they must be able to have trust in the integrity of the election process.

### **Equitable Estoppel and Laches**

The threshold issue is whether or not the petition is barred by the doctrine of laches. Laches will bar an action for relief in an election-related matter if the persons seeking this relief failed to act with the requisite due diligence.<sup>5</sup>

Contestees argue that Contestors are estopped from attacking the validity of the election because of the vast amount of information made available to the voters in Lake Township about Issue 6, including the proposed ballot language with the miscalculation. In sum, according to the Contestees, the protest is untimely because Contestors knew or should have known the correct information regarding Issue 6, and that the ballot contained an error.

This argument cuts both ways. On the one hand, the Contestees contend that because so much information was available with the correct amounts, any error on the legal notice and ballot does not matter. On the other hand, they attempt to persuade this Court to find that even though all mailings and new articles gave the correct amount, an elector had the additional responsibility of noticing an error in both the legal notice and the ballot itself. Such an obligation on the electors is beyond due diligence.

R.C. § 505.481(B) specifically requires that the mills shall be stated in dollars and cents per one thousand dollars of taxable valuation. The legislature chose to require this

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<sup>4</sup> *In re Election of Nov. 6, 1990 for Office of Atty. Gen. Of Ohio, supra*

<sup>5</sup> *State ex rel. Stoll v. Logan Cty. Bd. Of Elections* (1993), 117 Ohio St.3d 76.

mandatory language when putting a tax levy on the ballot in conjunction with the expansion of a township police district.

A review of all the material submitted by Contestees demonstrates that other than the June 27, 2011, meeting minutes, the legal notice and the ballot language, none of the campaign materials ever expressed the amount of the ballot issue in dollars and cents per one thousand dollars of valuation as required by R.C. § 505.481(B). Instead, the cost of the levy was either expressed in millage, cost per day, or an annual cost.

Finally, the Court finds that the circulation of the Hartville News, where the legal notice was published, was not adequate to put the Contestors on notice of the irregularity so as to estop them from contesting the results. This case is distinguishable from *Smith v. Scioto Cty. Board of Elections*<sup>6</sup> because of the nature of the publication chosen. To find otherwise would place too much of a burden on the Contestors. The Court thus finds that the Contestors acted with due diligence.

### **Outcome Placed in Doubt**

The mistake leads a voter to the conclusion that the tax he or she is approving is ten times less than the amount that the Contestees seek to collect. Contrary to the assertions of the Contestees, this error is more than a "clerical error" and the degree of this error is substantial enough to mislead the voters.

Contestors argue that because Issue 6 involved a tax levy, and because the irregularity is substantial, the ballot is fatal on its face and requires the rejection of the election results.<sup>7</sup> While this Court agrees that the irregularity was substantial and in theory could be a basis for a rejection of the result, the Court is reluctant to find that the

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<sup>6</sup> (2009) 123 Ohio St.3d 467.

<sup>7</sup> See, *Beck v. city of Cincinnati* (1955), 162 Ohio St. 473.

*Beck* case is dispositive. There, the court was concerned with the persuasive language inserted into the ballot that was not authorized by law. Here, the ballot contains a miscalculation not a coercive statement. However, it is clear from the *Beck* case that tax issues are to be closely scrutinized. Accordingly, the only issue is whether the irregularity made the result of the election uncertain.

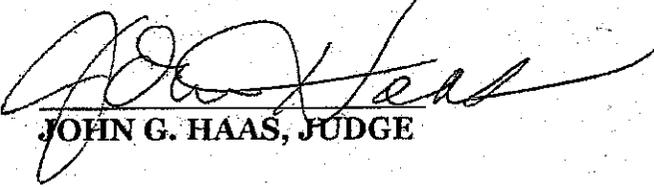
Contestors are not required to show that a different result would have been certain. Their burden is to show that the irregularity made the result uncertain. This they have done. Contestors are not required to bring into court 246 voters who voted "yes" to say they would have voted "no". Based on the witness testimony, the affidavits, and the compressed time period for hearings on contested elections, Contestors have met their burden. The Court is convinced that the result of the election was uncertain due to the irregularity contained in the ballot language.

This Court is sensitive to the axiom that citizens must be confident that their votes will not be disturbed except under extreme circumstances that clearly affect the integrity of the election, and this Court is reluctant to set aside an election result. However, for the electorate to be confident in their government they must be able to trust in the integrity of the election process.

Accordingly, this Court holds that the relief sought by Contestors is **GRANTED** and the result of the November 8, 2011 election as to Issue 6 is hereby set aside. Costs to be paid by the County per statute.

**IT IS SO ORDERED.**

**This is a final appealable order and there is no just cause for delay.**



**JOHN G. HAAS, JUDGE**

To: Atty. Michael J. Grady  
Atty. Eric J. Stecz  
Atty. Deborah A. Dawson  
Atty. Charles Hall

IN THE COURT OF COMMON PLEAS  
STARK COUNTY, OHIO

FILED  
FEB 14 2012  
NANCY S. REINBOLD  
STARK COUNTY, OHIO  
CLERK OF COURTS

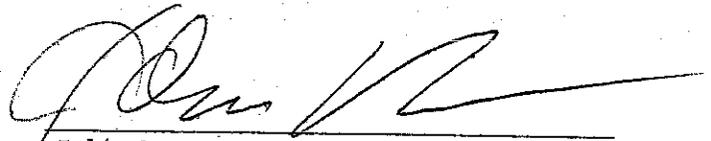
IN RE: CONTEST OF ELECTION HELD  
ON STARK COUNTY ISSUE 6  
(LAKE TOWNSHIP POLICE DISTRICT)  
IN THE GENERAL ELECTION HELD  
November 8, 2011,

) Case No. 2011cv03947  
)  
) **JUDGE HAAS**  
)  
) **JUDGMENT ENTRY**  
)

This matter came on for consideration on the Motion filed by Contestors to Vacate this Court's Order of stay of judgment pending the appeal of the within matter to the Supreme Court of Ohio. The Court, having considered the filings and the arguments of counsel hereby continues the stay previously ordered for an additional period of 60 days from the date of this order.

A hearing concerning the status of the stay and the status of the appeal to the Supreme Court of Ohio shall be held on April 9, 2012 at 12:30 p.m.

IT IS SO ORDERED.

  
John G. Haas, Judge

Copies to:

Atty. Eric Stecz  
Atty. Michael Grady  
Atty. Deborah Dawson  
Atty. Charles Hall



**C**

Baldwin's Ohio Revised Code Annotated Currentness

Constitution of the State of Ohio (Refs & Annos)

▣ Article II. Legislative (Refs & Annos)

→→ **O Const II Sec. 21 Election contests; authority of legislature**

The General Assembly shall determine, by law, before what authority, and in what manner, the trial of contested elections shall be conducted.

CREDIT(S)

(1851 constitutional convention, adopted eff. 9-1-1851)

CROSS REFERENCES

Contest of election; appeal, see 3515.08 to 3515.16

LIBRARY REFERENCES

Elections  269 to 308.

Westlaw Topic No. 144.

C.J.S. Elections § 1(10), 219, 245 to 267, 269 to 270, 272 to 277, 279, 281, 283 to 284, 288 to 292, 295 to 296, 298 to 301, 305 to 306, 308, 310, 312, 314, 317 to 319, 321.

RESEARCH REFERENCES

Encyclopedias

OH Jur. 3d Counties, Townships, & Municipal Corp. § 529, Determination of Validity of Election and Qualification of Members.

OH Jur. 3d Elections § 268, Generally; Nature and Basis of Proceeding.

OH Jur. 3d Elections § 273, Jurisdiction.

OH Jur. 3d Quo Warranto § 8, Relationship to Other Remedies--Election Contest.

Treatises and Practice Aids

**C**

Baldwin's Ohio Revised Code Annotated Currentness

Title XXXV. Elections (Refs &amp; Annos)

▣ Chapter 3515. Recount; Contest of Elections (Refs &amp; Annos)

▣ Contest of Election

→→ **3515.08 Contest of election**

(A) Except as otherwise provided in this division, the nomination or election of any person to any public office or party position or the approval or rejection of any issue or question, submitted to the voters, may be contested by qualified electors of the state or a political subdivision. The nomination or election of any person to any federal office, including the office of elector for president and vice president and the office of member of congress, shall not be subject to a contest of election conducted under this chapter. Contests of the nomination or election of any person to any federal office shall be conducted in accordance with the applicable provisions of federal law.

(B) In the case of an office to be filled or an issue to be determined by the voters of the entire state, or for judicial offices higher than that of court of common pleas, or for an office to be filled or an issue to be determined by the voters of a district larger than a county, a contest shall be heard and determined by the chief justice of the supreme court or a justice of the supreme court assigned for that purpose by the chief justice; except that, in a contest for the office of chief justice of the supreme court, the contest shall be heard by a justice of the supreme court designated by the governor.

(C) In the case of all other offices or issues, except judicial offices, contests shall be heard and determined by a judge of the court of common pleas of the county in which the contest arose. In the case of a contest for a judicial office within a county, the contest shall be heard by the court of appeals of the district in which that county is located. If any contestant alleges prejudice on the part of the judges of the court of appeals or the court of common pleas assigned to hear a contest, the chief justice of the supreme court, upon application of any such contestant and for good cause shown, may assign judges from another court to hear the contest.

CREDIT(S)

(2006 H 3, eff. 5-2-06; 1953 H 1, eff. 10-1-53; GC 4785-166)

## HISTORICAL AND STATUTORY NOTES

**Ed. Note:** Guidelines for Assignment of Judges were announced by the Chief Justice of the Ohio Supreme Court on 5-24-88, and revised 2-25-94 and 3-25-94, but not adopted as rules pursuant to O Const Art IV § 5. For the full text, see 37 OS(3d) xxxix, 61 OBar A-2 (6-13-88) and 69 OS(3d) XCIX, and 67 OBar xiii (4-18-94).

**C**

Baldwin's Ohio Revised Code Annotated Currentness

Title XXXV. Elections (Refs &amp; Annos)

▣ Chapter 3515. Recount; Contest of Elections (Refs &amp; Annos)

▣ Contest of Election

→→ **3515.09 Filing contest petition**

A contest of election shall be commenced by the filing of a petition with the clerk of the appropriate court signed by at least twenty-five voters who voted at the last election for or against a candidate for the office or for or against the issue being contested, or by the defeated candidate for said nomination or election, within fifteen days after the results of any such nomination or election have been ascertained and announced by the proper authority, or if there is a recount, within ten days after the results of the recount of such nomination or election have been ascertained and announced by the proper authority. Such petition shall be verified by the oath of at least two such petitioners, or by the oath of the defeated candidate filing the petition, and shall set forth the grounds for such contest.

Said petition shall be accompanied by a bond with surety to be approved by the clerk of the appropriate court in a sum sufficient, as determined by him, to pay all the costs of the contest. The contestor and the person whose right to the nomination or election to such office is being contested, to be known as the contestee, shall be liable to the officers and witnesses for the costs made by them respectively; but if the results of the nomination or election are confirmed or the petition is dismissed or the prosecution fails, judgment shall be rendered against the contestor for the costs; and if the judgment is against the contestee or if the results of the nomination or election are set aside, the county shall pay the costs as other election expenses are paid.

## CREDIT(S)

(1953 H 1, eff. 10-1-53; GC 4785-167)

## HISTORICAL AND STATUTORY NOTES

**Pre-1953 H 1 Amendments:** 113 v 388, § 167

## CROSS REFERENCES

Election on question of issuing bonds, contestability, see 133.18

Notification to department of liquor control when petition to recount local option election filed, reissuance of permit, permit in safekeeping, see 4301.39

Oaths, see 3.20, 3.21

**C**

Baldwin's Ohio Revised Code Annotated Currentness

Title XXXV. Elections (Refs &amp; Annos)

Chapter 3515. Recount; Contest of Elections (Refs &amp; Annos)

Contest of Election

→→ **3515.10 Court shall fix time for trial**

The court with which a petition to contest an election is filed shall fix a suitable time for hearing such contest, which shall be not less than fifteen nor more than thirty days after the filing of the petition. Such court shall have a copy of the contestor's petition served upon the contestee or upon the chairman of the committee taking the other side in advocacy of or opposition to any issue, in the same manner as a summons in a civil action. The contestee shall have ten days from the time service has been made upon him in which to answer the petition, and the contestor shall have five days in which to reply to the answer of the contestee. All parties may be represented by counsel and the hearing shall proceed at the time fixed, unless postponed by the judge hearing the case for good cause shown by either party by affidavit or unless the judge adjourns to another time, not more than thirty days thereafter, of which adjournment the parties interested shall take notice.

## CREDIT(S)

(1953 H 1, eff. 10-1-53; GC 4785-168)

## HISTORICAL AND STATUTORY NOTES

**Pre-1953 H 1 Amendments:** 113 v 388, § 168

## CROSS REFERENCES

Days counted to ascertain time, see 1.14

Trial of contested elections, see O Const Art II §21

## LIBRARY REFERENCES

Elections  154(1), 300.

Westlaw Topic No. 144.

C.J.S. Elections §§ 120, 139, 145, 298, 300.

## RESEARCH REFERENCES

## ALR Library

60 ALR 6th 481, Validity, Construction and Application of State Statutory Limitations Periods Governing Elec-

**C**

Baldwin's Ohio Revised Code Annotated Currentness

Title XXXV. Elections (Refs &amp; Annos)

▣ Chapter 3515. Recount; Contest of Elections (Refs &amp; Annos)

▣ Contest of Election

→ → **3515.11 Trial proceedings**

The proceedings at the trial of the contest of an election shall be similar to those in judicial proceedings, in so far as practicable, and shall be under the control and direction of the court which shall hear and determine the matter without a jury, with power to order or permit amendments to the petition or proceedings as to form or substance. Such court may allow adjournments for not more than thirty days, for the benefit of either party, on such terms as to costs and otherwise as seem reasonable to the court, the grounds for such adjournment being shown by affidavit. The hearing shall proceed expeditiously and the total of such adjournments shall not exceed thirty days after the date set for the original hearing.

## CREDIT(S)

(1953 H 1, eff. 10-1-53; GC 4785-169)

## HISTORICAL AND STATUTORY NOTES

**Pre-1953 H 1 Amendments:** 113 v 388, § 169

## CROSS REFERENCES

Days counted to ascertain time, see 1.14

Refusal to appear, produce materials, or answer questions at election proceeding; penalty, see 3599.37

Trial of contested elections, see O Const Art II §21

## LIBRARY REFERENCES

Elections  154(1) to 154(13), 300.

Westlaw Topic No. 144.

C.J.S. Elections §§ 120, 139, 145, 298, 300.

## RESEARCH REFERENCES

Encyclopedias

OH Jur. 3d Elections § 286, Time of Hearing and Allowance of Adjournments.

**C**

Baldwin's Ohio Revised Code Annotated Currentness

Title XXXV. Elections (Refs &amp; Annos)

Chapter 3515. Recount; Contest of Elections (Refs &amp; Annos)

Contest of Election

→→ **3515.12 Court powers and procedure in hearing contest petition**

The court with which a petition to contest an election is filed may summon and compel the attendance of witnesses, including officers of such election, and compel the production of all ballot boxes, marking devices, lists, books, ballots, tally sheets, and other records, papers, documents, and materials which may be required at the hearing. The style and form of summons and subpoenas and the manner of service and the fees of officers and witnesses shall be the same as are provided in other cases, in so far as the nature of the proceedings admits. The court may require any election officer to answer any questions pertinent to the issue relating to the conduct of the election or the counting of the ballots and the making of the returns. Any witness who voted at the election may be required to answer touching his qualification as a voter and for whom he voted.

## CREDIT(S)

(129 v 1653, eff. 6-29-61; 1953 H 1; GC 4785-170)

## HISTORICAL AND STATUTORY NOTES

**Pre-1953 H 1 Amendments:** 113 v 389, § 170

## CROSS REFERENCES

Falsehoods in proceedings relating to elections; fine and imprisonment, see 3599.36

Fees of officers, see 311.17, 311.18, 311.22, 2335.07

Fees of witnesses, see 2335.05, 2335.06

Qualifications of electors, see 2961.01, 3503.01; O Const Art V §1, 4, see 6

Serving pleadings and papers after complaint, Civ R 5

Serving summons, Civ R 4.1 to 4.6

Subpoenas, form and service, Civ R 45

Summons, Civ R 4

Trial of contested elections, see O Const Art II §21

## LIBRARY REFERENCES

Elections  154(1), 300.

Westlaw Topic No. 144.

**C**

Baldwin's Ohio Revised Code Annotated Currentness

Title XXXV. Elections (Refs &amp; Annos)

▣ Chapter 3515. Recount; Contest of Elections (Refs &amp; Annos)

▣ Contest of Election

→ → **3515.14 Judgment of court**

Upon completion of the trial of a contest of election, the court shall pronounce judgment as to which candidate was nominated or elected or whether the issue was approved or rejected by the voters; except that in the case of the contest of election of a member of the general assembly such judgment shall not be pronounced by the court but a transcript of all testimony taken and all evidence adduced in such contest shall be filed with the clerk or executive secretary of the branch of the legislative body to which the contestee was declared elected, which shall determine the election and qualification of its own members.

Any person declared nominated or elected by the court shall be entitled to his certificate of nomination or election. A certified copy of the order of such court constitutes such certificate. If the judgment is against the contestee or incumbent and he has already received a certificate of nomination or election, the judgment of the court shall work a cancellation of such certificate.

If the court decides that the election resulted in a tie vote, such decision shall be certified to the board of elections having jurisdiction and said board shall publicly determine by lot which of such persons shall be declared elected. If the court finds that no person was elected, the judgment shall be that the election be set aside.

## CREDIT(S)

(1969 H 121, eff. 11-19-69; 1953 H 1; GC 4785-171)

## HISTORICAL AND STATUTORY NOTES

**Pre-1953 H 1 Amendments:** 118 v 223, § 1; 113 v 389, § 171

## CROSS REFERENCES

Each house of General Assembly is judge of its own elections, returns, and members' qualifications, see O Const Art II §6

Trial of contested elections, see O Const Art II §21

## LIBRARY REFERENCES

**C**

Baldwin's Ohio Revised Code Annotated Currentness

Title XXXV. Elections (Refs &amp; Annos)

▣ Chapter 3515. Recount; Contest of Elections (Refs &amp; Annos)

▣ Contest of Election

→ → **3515.15 Appeal on questions of law to supreme court**

The person against whom judgment is rendered in a contest of election may appeal on questions of law, within twenty days, to the supreme court; but such appeal shall not supersede the execution of the judgment of the court. Such appeal takes precedence over all other causes upon the calendar, and shall be set down for hearing and determination at the earliest convenient date. The laws and rules of the court governing appeals apply in the appeal of contested election cases. If the judgment of the lower court is affirmed, the supreme court shall order the judgment of such lower court to be enforced, if the party against whom the judgment is rendered is in possession of the office.

## CREDIT(S)

(1953 H 1, eff. 10-1-53; GC 4785-172)

## HISTORICAL AND STATUTORY NOTES

**Pre-1953 H 1 Amendments:** 116 v 104; 113 v 389, § 172

## CROSS REFERENCES

Days counted to ascertain time, see 1.14

Supreme court docket, order of cases, see 2503.37, 2503.38

Supreme court rules of practice, SCt R 1 to 15

Trial of contested elections, see O Const Art II §21

## LIBRARY REFERENCES

Elections  154(6), 305.

Westlaw Topic No. 144.

C.J.S. Elections §§ 120, 139, 145, 308, 310, 312, 314 to 318.

## RESEARCH REFERENCES

Encyclopedias

OH Jur. 3d Elections § 292, Appeal.

**C**

Baldwin's Ohio Revised Code Annotated Currentness

General Provisions

Chapter 7. Process; Publication

→ → **7.12 Legal publication by state agencies and political subdivisions; newspaper or newspaper of general circulation defined; mediation of disputes**

(A) Whenever a state agency or a political subdivision of the state is required by law to make any legal publication in a newspaper, the newspaper shall be a newspaper of general circulation. As used in the Revised Code, "newspaper" or "newspaper of general circulation," except daily law journals in existence on or before July 1, 2011, and performing the functions described in section 2701.09 of the Revised Code for a period of three years immediately preceding any such legal publication required to be made, is a publication bearing a title or name that is regularly issued at least once a week, and that meets all of the following requirements:

(1) It is printed in the English language using standard printing methods, being not less than eight pages in the broadsheet format or sixteen pages in the tabloid format.

(2) It contains at least twenty-five per cent editorial content, which includes, but is not limited to, local news, political information, and local sports.

(3) It has been published continuously for at least three years immediately preceding legal publication by the state agency or political subdivision.

(4) The publication has the ability to add subscribers to its distribution list.

(5) The publication is circulated generally by United States mail or carrier delivery in the political subdivision responsible for legal publication or in the state, if legal publication is made by a state agency, by proof of the filing of a United States postal service "Statement of Ownership, Management, and Circulation" (PS form 3526) with the local postmaster, or by proof of an independent audit of the publication performed, within the twelve months immediately preceding legal publication.

(B) A person who disagrees that a publication is a "newspaper of general circulation" in which legal publication may be made under this section may deliver a written request for mediation to the publisher of the publication and to the court of common pleas of the county in which is located the political subdivision in which the publication is circulated, or in the Franklin county court of common pleas if legal publication is to be made by a state agency. The court of common pleas shall appoint a mediator, and the parties shall follow the procedures of the mediation program operated by the court.

**C**

Baldwin's Ohio Revised Code Annotated Currentness

Title V. Townships

Chapter 505. Trustees (Refs &amp; Annos)

Police Districts

→ → **505.481 Resolution for expansion of district**

(A) If a township police district does not include all the unincorporated territory of the township, the remaining unincorporated territory of the township may be added to the district by a resolution adopted by a unanimous vote of the board of township trustees to place the issue of expansion of the district on the ballot for the electors of the entire unincorporated territory of the township. The resolution shall state whether the proposed township police district initially will hire personnel as provided in section 505.49 of the Revised Code or contract for the provision of police protection services or additional police protection services as provided in section 505.43 or 505.50 of the Revised Code.

The ballot measure shall provide for the addition into a new district of all the unincorporated territory of the township not already included in the township police district and for the levy of any tax then imposed by the district throughout the unincorporated territory of the township. The measure shall state the rate of the tax, if any, to be imposed in the district resulting from approval of the measure, which need not be the same rate of any tax imposed by the existing district, and the last year in which the tax will be levied or that it will be levied for a continuous period of time.

(B) The election on the measure shall be held, canvassed, and certified in the manner provided for the submission of tax levies under section 5705.25 of the Revised Code, except that the question appearing on the ballot shall read substantially as follows:

“Shall the unincorporated territory within ..... (name of the township) not already included within the ..... (name of township police district) be added to the township police district to create the ..... (name of new township police district) township police district?”

The name of the proposed township police district shall be separate and distinct from the name of the existing township police district.

If a tax is imposed in the existing township police district, the question shall be modified by adding, at the end of the question, the following: “, and shall a property tax be levied in the new township police district, replacing the tax in the existing township police district, at a rate not exceeding ..... mills per dollar of taxable valuation, which amounts to ..... (rate expressed in dollars and cents per one thousand dollars in taxable valuation), for ..... (number of years the tax will be levied, or “a continuing period of time”).”

If the measure is not approved by a majority of the electors voting on it, the township police district shall continue to occupy its existing territory until altered as provided in this section or section 505.48 of the Revised Code, and any existing tax imposed under section 505.51 of the Revised Code shall remain in effect in the existing district at the existing rate and for as long as provided in the resolution under the authority of which the tax is levied.

#### CREDIT(S)

(2011 H 153, eff. 9-29-11; 2004 H 148, eff. 11-5-04)

#### UNCODIFIED LAW

2004 H 148, § 4; See Uncodified Law under RC 505.07.

#### HISTORICAL AND STATUTORY NOTES

**Ed. Note:** RC 505.481 is former RC 505.482, recodified by 2011 H 153, eff. 9-29-11; 2004 H 148, eff. 11-5-04.

**Ed. Note:** Former RC 505.481 amended and recodified as RC 505.482 by 2011 H 153, eff. 9-29-11; 1991 H 77, eff. 9-17-91.

#### CROSS REFERENCES

Police, townships, see 504.16

#### RESEARCH REFERENCES

Encyclopedias

OH Jur. 3d Counties, Townships, & Municipal Corp. § 346, Police Protection.

OH Jur. 3d Counties, Townships, & Municipal Corp. § 359, Establishment of Police District.

Treatises and Practice Aids

Princehorn, Ohio Township Law § 9:5, Regular Meetings.

R.C. § 505.481, OH ST § 505.481

Current through all 2011 laws and statewide issues and 2012 File 80 of the 129th GA (2011-2012).

**C**

Baldwin's Ohio Revised Code Annotated Currentness

Title LVII. Taxation

Chapter 5705. Tax Levy Law (Refs &amp; Annos)

Elections

→→ 5705.25 Submission of proposed levy; notice of election; form of ballot; certification

(A) A copy of any resolution adopted as provided in section 5705.19 or 5705.2111 of the Revised Code shall be certified by the taxing authority to the board of elections of the proper county not less than ninety days before the general election in any year, and the board shall submit the proposal to the electors of the subdivision at the succeeding November election. Except as otherwise provided in this division, a resolution to renew an existing levy, regardless of the section of the Revised Code under which the tax was imposed, shall not be placed on the ballot unless the question is submitted at the general election held during the last year the tax to be renewed or replaced may be extended on the real and public utility property tax list and duplicate, or at any election held in the ensuing year. The limitation of the foregoing sentence does not apply to a resolution to renew and increase or to renew part of an existing levy that was imposed under section 5705.191 of the Revised Code to supplement the general fund for the purpose of making appropriations for one or more of the following purposes: for public assistance, human or social services, relief, welfare, hospitalization, health, and support of general hospitals. The limitation of the second preceding sentence also does not apply to a resolution that proposes to renew two or more existing levies imposed under section 5705.21 of the Revised Code, in which case the question shall be submitted on the date of the general or primary election held during the last year at least one of the levies to be renewed may be extended on the real and public utility property tax list and duplicate, or at any election held during the ensuing year. For purposes of this section, a levy shall be considered to be an "existing levy" through the year following the last year it can be placed on that tax list and duplicate.

The board shall make the necessary arrangements for the submission of such questions to the electors of such subdivision, and the election shall be conducted, canvassed, and certified in the same manner as regular elections in such subdivision for the election of county officers. Notice of the election shall be published in a newspaper of general circulation in the subdivision once a week for two consecutive weeks, or as provided in section 7.16 of the Revised Code, prior to the election. If the board of elections operates and maintains a web site, the board of elections shall post notice of the election on its web site for thirty days prior to the election. The notice shall state the purpose, the proposed increase in rate expressed in dollars and cents for each one hundred dollars of valuation as well as in mills for each one dollar of valuation, the number of years during which the increase will be in effect, the first month and year in which the tax will be levied, and the time and place of the election.

(B) The form of the ballots cast at an election held pursuant to division (A) of this section shall be as follows:

"An additional tax for the benefit of (name of subdivision or public library) ..... for the purpose of (purpose stated in the resolution) ..... at a rate not exceeding ..... mills for each one dollar of valuation, which amounts to (rate expressed in dollars and cents) ..... for each one hundred dollars of valuation, for ..... (life of indebtedness or number of years

the levy is to run).

For the Tax Levy
Against the Tax Levy

(C) If the levy is to be in effect for a continuing period of time, the notice of election and the form of ballot shall so state instead of setting forth a specified number of years for the levy.

If the tax is to be placed on the current tax list, the form of the ballot shall be modified by adding, after the statement of the number of years the levy is to run, the phrase “, commencing in ..... (first year the tax is to be levied), first due in calendar year ..... (first calendar year in which the tax shall be due).”

If the levy submitted is a proposal to renew, increase, or decrease an existing levy, the form of the ballot specified in division (B) of this section may be changed by substituting for the words “An additional” at the beginning of the form, the words “A renewal of a” in case of a proposal to renew an existing levy in the same amount; the words “A renewal of ..... mills and an increase of ..... mills to constitute a” in the case of an increase; or the words “A renewal of part of an existing levy, being a reduction of ..... mills, to constitute a” in the case of a decrease in the proposed levy.

If the levy submitted is a proposal to renew two or more existing levies imposed under section 5705.21 of the Revised Code, the form of the ballot specified in division (B) of this section shall be modified by substituting for the words “an additional tax” the words “a renewal of ....(insert the number of levies to be renewed) existing taxes.”

The question covered by such resolution shall be submitted as a separate proposition but may be printed on the same ballot with any other proposition submitted at the same election, other than the election of officers. More than one such question may be submitted at the same election.

(D) A levy voted in excess of the ten-mill limitation under this section shall be certified to the tax commissioner. In the first year of the levy, it shall be extended on the tax lists after the February settlement succeeding the election. If the additional tax is to be placed upon the tax list of the current year, as specified in the resolution providing for its submission, the result of the election shall be certified immediately after the canvass by the board of elections to the taxing authority, who shall make the necessary levy and certify it to the county auditor, who shall extend it on the tax lists for collection. After the first year, the tax levy shall be included in the annual tax budget that is certified to the county budget commission.

#### CREDIT(S)

(2011 H 153, eff. 9-29-11; 2010 H 48, eff. 7-2-10; 2009 H 1, eff. 10-16-09; 2006 H 3, eff. 5-2-06 (Implemented eff. 6-1-06); 2000 S 173, eff. 10-10-00; 1999 H 268, eff. 8-16-99; 1998 S 201, eff. 12-21-98; 1995 H 99, eff. 8-22-95; 1992 H 416, eff. 8-3-92; 1987 S 137; 1986 H 555; 1985 H 95; 1984 H 572; 1983 H 260; 1980 H 1062, H 810; 1979 H 44; 1976 H 920; 1973 S 44; 132 v S 350; 128 v 574; 126 v 882; 125 v 713; 1953 H 1; GC 5625-17, 5625-17a)

**C**

Baldwin's Ohio Revised Code Annotated Currentness

Title LVII. Taxation

- ▣ Chapter 5715. Boards of Revision; Equalization of Assessments (Refs & Annos)

- ▣ General Provisions

- → **5715.01 Tax commissioner to direct and supervise assessment of real property; procedures; county board of revision to hear complaints; rules of commissioner**

(A) The tax commissioner shall direct and supervise the assessment for taxation of all real property. The commissioner shall adopt, prescribe, and promulgate rules for the determination of true value and taxable value of real property by uniform rule for such values and for the determination of the current agricultural use value of land devoted exclusively to agricultural use. The uniform rules shall prescribe methods of determining the true value and taxable value of real property and shall also prescribe the method for determining the current agricultural use value of land devoted exclusively to agricultural use, which method shall reflect standard and modern appraisal techniques that take into consideration: the productivity of the soil under normal management practices; the average price patterns of the crops and products produced to determine the income potential to be capitalized; the market value of the land for agricultural use; and other pertinent factors. The rules shall provide that in determining the true value of lands or improvements thereon for tax purposes, all facts and circumstances relating to the value of the property, its availability for the purposes for which it is constructed or being used, its obsolete character, if any, the income capacity of the property, if any, and any other factor that tends to prove its true value shall be used. In determining the true value of minerals or rights to minerals for the purpose of real property taxation, the tax commissioner shall not include in the value of the minerals or rights to minerals the value of any tangible personal property used in the recovery of those minerals.

(B) The taxable value shall be that per cent of true value in money, or current agricultural use value in the case of land valued in accordance with section 5713.31 of the Revised Code, the commissioner by rule establishes, but it shall not exceed thirty-five per cent. The uniform rules shall also prescribe methods of making the appraisals set forth in section 5713.03 of the Revised Code. The taxable value of each tract, lot, or parcel of real property and improvements thereon, determined in accordance with the uniform rules and methods prescribed thereby, shall be the taxable value of the tract, lot, or parcel for all purposes of sections 5713.01 to 5713.26, 5715.01 to 5715.51, and 5717.01 to 5717.06 of the Revised Code. County auditors shall, under the direction and supervision of the commissioner, be the chief assessing officers of their respective counties, and shall list and value the real property within their respective counties for taxation in accordance with this section and sections 5713.03 and 5713.31 of the Revised Code and with such rules of the commissioner. There shall also be a board in each county, known as the county board of revision, which shall hear complaints and revise assessments of real property for taxation.

(C) The commissioner shall neither adopt nor enforce any rule that requires true value for any tax year to be any value other than the true value in money on the tax lien date of such tax year or that requires taxable value to be

obtained in any way other than by reducing the true value, or in the case of land valued in accordance with section 5713.31 of the Revised Code, its current agricultural use value, by a specified, uniform percentage.

#### CREDIT(S)

(2005 H 66, eff. 6-30-05; 1983 H 260, eff. 9-27-83; 1980 H 736; 1977 H 634; 1976 H 920; 1974 S 423; 1972 S 455; 1969 S 199; 131 v H 337; 128 v 410; 127 v 65; 1953 H 1; GC 5579)

#### UNCODIFIED LAW

2005 H 66, § 557.13.03, eff. 6-30-05, reads:

The Tax Commissioner shall review the calculations of the multipliers used in the determination of oil and gas valuations, in light of the amendment by this act to section 5715.01 of the Revised Code, and the enactment by this act of section 5709.112 of the Revised Code. The review shall be conducted in sufficient time to be used in the Commissioner's annual entry adopting the multipliers for tax year 2006, to ensure that oil and gas properties are uniformly assessed as provided by law and this act.

#### HISTORICAL AND STATUTORY NOTES

**Pre-1953 H 1 Amendments:** 123 v 779; 114 v 764; 111 v 486; 106 v 247, § 2; 103 v 786, § 1; 100 v 84, § 10

#### CROSS REFERENCES

County auditor shall be real estate assessor, assessment, procedure, employment and compensation of employees, see 5713.01

Duties of assessor, see 5713.02

Foreclosure of lien, rulemaking, final orders of sale and deeds, duties of clerk of court, see 323.66

Homestead exemption, schedule of reduction in taxable value, see 323.152

Motor vehicle licenses, schedule of reduction in taxable value, see 4503.065

Powers and duties of board of tax appeals, see 5703.02

Valuation of real estate, see 5713.03

#### OHIO ADMINISTRATIVE CODE REFERENCES

Procedure prior to actual appraisal, see OAC 5703-25-08

#### LIBRARY REFERENCES

Taxation  2460 to 2682.

Westlaw Topic No. 371.

**C**

Baldwin's Ohio Revised Code Annotated Currentness

Title LVII. Taxation

▣ Chapter 5705. Tax Levy Law (Refs &amp; Annos)

▣ General Provisions

→ → **5705.02 Ten-mill limitation**

The aggregate amount of taxes that may be levied on any taxable property in any subdivision or other taxing unit shall not in any one year exceed ten mills on each dollar of tax valuation of such subdivision or other taxing unit, except for taxes specifically authorized to be levied in excess thereof. The limitation provided by this section shall be known as the "ten-mill limitation," and wherever said term is used in the Revised Code, it refers to and includes both the limitation imposed by this section and the limitation imposed by Section 2 of Article XII, Ohio Constitution.

## CREDIT(S)

(1953 H 1, eff. 10-1-53; GC 5625-2)

## HISTORICAL AND STATUTORY NOTES

**Pre-1953 H 1 Amendments:** 115 v Pt 2, 412; 114 v 844; 112 v 392, § 2

## CROSS REFERENCES

Allocation to county undivided local government funds, determining proportionate share, see 5747.51  
 Approval of excess levy, see 5705.191  
 Charter prevails over ten-mill limitation, see 5705.18  
 Disposition of fees and earnings of rapid transit commission, annual tax levy, see 747.10  
 Health districts; special levy, see 3709.29  
 Municipal university, annual tax levy, see 3349.13  
 Property taxes exceeding 1% of value must be approved by voters, see O Const Art XII §2  
 Regional water and sewer districts; levy for current expenses of district, see 6119.18  
 Resolution relative to tax levy in excess of ten-mill limitation in other than school districts, see 5705.19  
 Sanitary districts; levy of preliminary tax, see 6115.46  
 Uniform public securities law, tax limitation defined, see 133.01

## OHIO ADMINISTRATIVE CODE REFERENCES

Appeals to the board of tax appeals, see OAC Ch 5717-1

**C**

Baldwin's Ohio Revised Code Annotated Currentness

Title LVII. Taxation

▣ Chapter 5705. Tax Levy Law (Refs & Annos)

▣ General Provisions

→ → **5705.03 Authorization to levy taxes; certification of total current tax valuation of subdivision; collection**

(A) The taxing authority of each subdivision may levy taxes annually, subject to the limitations of sections 5705.01 to 5705.47 of the Revised Code, on the real and personal property within the subdivision for the purpose of paying the current operating expenses of the subdivision and acquiring or constructing permanent improvements. The taxing authority of each subdivision and taxing unit shall, subject to the limitations of such sections, levy such taxes annually as are necessary to pay the interest and sinking fund on and retire at maturity the bonds, notes, and certificates of indebtedness of such subdivision and taxing unit, including levies in anticipation of which the subdivision or taxing unit has incurred indebtedness.

(B)(1) When a taxing authority determines that it is necessary to levy a tax outside the ten-mill limitation for any purpose authorized by the Revised Code, the taxing authority shall certify to the county auditor a resolution or ordinance requesting that the county auditor certify to the taxing authority the total current tax valuation of the subdivision, and the number of mills required to generate a specified amount of revenue, or the dollar amount of revenue that would be generated by a specified number of mills. The resolution or ordinance shall state the purpose of the tax, whether the tax is an additional levy or a renewal or a replacement of an existing tax, and the section of the Revised Code authorizing submission of the question of the tax. If a subdivision is located in more than one county, the county auditor shall obtain from the county auditor of each other county in which the subdivision is located the current tax valuation for the portion of the subdivision in that county. The county auditor shall issue the certification to the taxing authority within ten days after receiving the taxing authority's resolution or ordinance requesting it.

(2) When considering the tangible personal property component of the tax valuation of the subdivision, the county auditor shall take into account the assessment percentages prescribed in section 5711.22 of the Revised Code. The tax commissioner may issue rules, orders, or instructions directing how the assessment percentages must be utilized.

(3) If, upon receiving the certification from the county auditor, the taxing authority proceeds with the submission of the question of the tax to electors, the taxing authority shall certify its resolution or ordinance, accompanied by a copy of the county auditor's certification, to the proper county board of elections in the manner and within the time prescribed by the section of the Revised Code governing submission of the question, and shall include with its certification the rate of the tax levy, expressed in mills for each one dollar in tax valuation as estimated by the county auditor. The county board of elections shall not submit the question of the tax to electors

unless a copy of the county auditor's certification accompanies the resolution or ordinance the taxing authority certifies to the board. Before requesting a taxing authority to submit a tax levy, any agency or authority authorized to make that request shall first request the certification from the county auditor provided under this section.

(4) This division is supplemental to, and not in derogation of, any similar requirement governing the certification by the county auditor of the tax valuation of a subdivision or necessary tax rates for the purposes of the submission of the question of a tax in excess of the ten-mill limitation, including sections 133.18 and 5705.195 of the Revised Code.

(C) All taxes levied on property shall be extended on the tax duplicate by the county auditor of the county in which the property is located, and shall be collected by the county treasurer of such county in the same manner and under the same laws and rules as are prescribed for the assessment and collection of county taxes. The proceeds of any tax levied by or for any subdivision when received by its fiscal officer shall be deposited in its treasury to the credit of the appropriate fund.

#### CREDIT(S)

(2006 H 530, eff. 3-30-06; 2002 H 198, eff. 3-31-03; 1998 S 201, eff. 12-21-98; 1953 H 1, eff. 10-1-53; GC 5625-3)

#### HISTORICAL AND STATUTORY NOTES

**Pre-1953 H 1 Amendments:** 112 v 392, § 3

#### CROSS REFERENCES

Commercial activities tax receipts fund, allocations, see 5751.20  
 County board of trustees of sinking fund, see 129.01 et seq., see 327.01 et seq., see 739.01  
 General personal property tax list and duplicate compiled, see 319.29  
 General tax list and general duplicate of real and public utility property compiled, see 319.28  
 Legislature to provide for sufficient revenue to pay expenses and retire debt, see O Const Art XII §4  
 Levy of taxes, object to be stated; revenue to be applied to stated object, see O Const Art XII §5  
 Penalty assessment for corporations declaring a nominal dividend to evade taxes, see 5711.30  
 Property taxation by uniform rule, see O Const Art XII §2

#### OHIO ADMINISTRATIVE CODE REFERENCES

Appeals to board of tax appeals, see OAC Ch 5717-1

#### LIBRARY REFERENCES

Taxation  2413, 2416.  
 Westlaw Topic No. 371.

**C**

Baldwin's Ohio Revised Code Annotated Currentness

Title III. Counties

▣ Chapter 319. Auditor (Refs &amp; Annos)

▣ Real and Personal Property Taxes

→→ **319.302 Partial exemption; ten per cent reduction; no effect on debt limitation; adjustment to pay debt charges**

(A)(1) Real property that is not intended primarily for use in a business activity shall qualify for a partial exemption from real property taxation. For purposes of this partial exemption, "business activity" includes all uses of real property, except farming; leasing property for farming; occupying or holding property improved with single-family, two-family, or three-family dwellings; leasing property improved with single-family, two-family, or three-family dwellings; or holding vacant land that the county auditor determines will be used for farming or to develop single-family, two-family, or three-family dwellings. For purposes of this partial exemption, "farming" does not include land used for the commercial production of timber that is receiving the tax benefit under section 5713.23 or 5713.31 of the Revised Code and all improvements connected with such commercial production of timber.

(2) Each year, the county auditor shall review each parcel of real property to determine whether it qualifies for the partial exemption provided for by this section as of the first day of January of the current tax year.

(B) After complying with section 319.301 of the Revised Code, the county auditor shall reduce the remaining sums to be levied against each parcel of real property that is listed on the general tax list and duplicate of real and public utility property for the current tax year and that qualifies for partial exemption under division (A) of this section, and against each manufactured and mobile home that is taxed pursuant to division (D)(2) of section 4503.06 of the Revised Code and that is on the manufactured home tax list for the current tax year, by ten per cent, to provide a partial exemption for that parcel or home. Except as otherwise provided in sections 323.152, 323.158, 505.06, and 715.263 of the Revised Code, the amount of the taxes remaining after any such reduction shall be the real and public utility property taxes charged and payable on each parcel of real property, including property that does not qualify for partial exemption under division (A) of this section, and the manufactured home tax charged and payable on each manufactured or mobile home, and shall be the amounts certified to the county treasurer for collection. Upon receipt of the real and public utility property tax duplicate, the treasurer shall certify to the tax commissioner the total amount by which the real property taxes were reduced under this section, as shown on the duplicate. Such reduction shall not directly or indirectly affect the determination of the principal amount of notes that may be issued in anticipation of any tax levies or the amount of bonds or notes for any planned improvements. If after application of sections 5705.31 and 5705.32 of the Revised Code and other applicable provisions of law, including divisions (F) and (I) of section 321.24 of the Revised Code, there would be insufficient funds for payment of debt charges on bonds or notes payable from taxes reduced by this section, the reduction of taxes provided for in this section shall be adjusted to the extent necessary to provide funds from

such taxes.

(C) The tax commissioner may adopt rules governing the administration of the partial exemption provided for by this section.

(D) The determination of whether property qualifies for partial exemption under division (A) of this section is solely for the purpose of allowing the partial exemption under division (B) of this section.

#### CREDIT(S)

(2009 H 1, eff. 7-17-09; 2005 H 66, eff. 6-30-05; 2004 H 168, eff. 6-15-04; 1998 S 142, eff. 3-30-99; 1996 H 517, eff. 9-10-96; 1996 H 462, eff. 9-3-96; 1985 H 201, eff. 7-1-85; 1980 H 1238)

#### UNCODIFIED LAW

2005 H 66, § 557.15, eff. 6-30-05, reads:

The amendment by this act of sections 319.302 and 323.152 of the Revised Code first applies in tax year 2005.

#### CROSS REFERENCES

Additional sales tax for school funding, corresponding additional property tax reduction, see 5739.029, 5741.024  
 Commercial activities tax receipts fund, allocations, see 5751.20  
 Complaints, tender of tax or lesser amount, penalties, common level of assessment to be determined, see 5715.19  
 Eastern gateway community college district, effective tax rate defined, see 3354.24  
 Homestead exemption, schedule of reduction in taxable value, see 323.152  
 Manufactured or mobile homes, calculation of taxes, see 4503.06  
 Motor vehicle licenses, schedule of reduction in taxable value, see 4503.065  
 Property tax administration fund, see 5703.80  
 Real property taxes, effective tax rate, defined, see 323.08  
 Redistribution of tax revenues following annexations, see 709.19  
 Reduction of taxes, certificate, appeal from denial, see 323.154  
 Settlement of taxes and assessments by county treasurer with county auditor, see 321.24  
 Tax commissioner shall furnish forms, see 5715.30

#### OHIO ADMINISTRATIVE CODE REFERENCES

Partial exemption from real property tax, see OAC 5703-25-18

#### LIBRARY REFERENCES



Baldwin's Ohio Revised Code Annotated Currentness

Title III. Counties

Chapter 323. Collection of Taxes (Refs & Annos)

Homestead Exemption

→ → **323.152 Schedule of reduction in taxable value**

In addition to the reduction in taxes required under section 319.302 of the Revised Code, taxes shall be reduced as provided in divisions (A) and (B) of this section.

(A)(1) Division (A) of this section applies to any of the following:

(a) A person who is permanently and totally disabled;

(b) A person who is sixty-five years of age or older;

(c) A person who is the surviving spouse of a deceased person who was permanently and totally disabled or sixty-five years of age or older and who applied and qualified for a reduction in taxes under this division in the year of death, provided the surviving spouse is at least fifty-nine but not sixty-five or more years of age on the date the deceased spouse dies.

(2) Real property taxes on a homestead owned and occupied, or a homestead in a housing cooperative occupied, by a person to whom division (A) of this section applies shall be reduced for each year for which an application for the reduction has been approved. The reduction shall equal the greater of the reduction granted for the tax year preceding the first tax year to which this section applies pursuant to Section 803.06 of Am. Sub. H.B. 119 of the 127th general assembly, if the taxpayer received a reduction for that preceding tax year, or the product of the following:

(a) Twenty-five thousand dollars of the true value of the property in money;

(b) The assessment percentage established by the tax commissioner under division (B) of section 5715.01 of the Revised Code, not to exceed thirty-five per cent;

(c) The effective tax rate used to calculate the taxes charged against the property for the current year, where "effective tax rate" is defined as in section 323.08 of the Revised Code;

(d) The quantity equal to one minus the sum of the percentage reductions in taxes received by the property for the current tax year under section 319.302 of the Revised Code and division (B) of section 323.152 of the Revised Code.

(B) To provide a partial exemption, real property taxes on any homestead, and manufactured home taxes on any manufactured or mobile home on which a manufactured home tax is assessed pursuant to division (D)(2) of section 4503.06 of the Revised Code, shall be reduced for each year for which an application for the reduction has been approved. The amount of the reduction shall equal two and one-half per cent of the amount of taxes to be levied on the homestead or the manufactured or mobile home after applying section 319.301 of the Revised Code.

(C) The reductions granted by this section do not apply to special assessments or respread of assessments levied against the homestead, and if there is a transfer of ownership subsequent to the filing of an application for a reduction in taxes, such reductions are not forfeited for such year by virtue of such transfer.

(D) The reductions in taxable value referred to in this section shall be applied solely as a factor for the purpose of computing the reduction of taxes under this section and shall not affect the total value of property in any subdivision or taxing district as listed and assessed for taxation on the tax lists and duplicates, or any direct or indirect limitations on indebtedness of a subdivision or taxing district. If after application of sections 5705.31 and 5705.32 of the Revised Code, including the allocation of all levies within the ten-mill limitation to debt charges to the extent therein provided, there would be insufficient funds for payment of debt charges not provided for by levies in excess of the ten-mill limitation, the reduction of taxes provided for in sections 323.151 to 323.159 of the Revised Code shall be proportionately adjusted to the extent necessary to provide such funds from levies within the ten-mill limitation.

(E) No reduction shall be made on the taxes due on the homestead of any person convicted of violating division (D) or (E) of section 323.153 of the Revised Code for a period of three years following the conviction.

#### CREDIT(S)

(2008 H 130, eff. 4-7-09; 2007 H 119, eff. 6-30-07; 2005 H 66, eff. 6-30-05; 2003 H 127, eff. 3-11-04; 2002 S 200, eff. 9-6-02; 2000 H 595, eff. 4-5-01; 1999 S 6, eff. 8-12-99; 1998 S 142, eff. 3-30-99; 1995 H 117, eff. 6-30-95; 1991 H 66, eff. 7-11-91; 1986 H 182; 1980 H 1238; 1979 H 204, S 6; 1975 S 24, H 23; 1974 H 1064; 1973 S 247, H 86; 1972 S 535; 1971 H 475)

#### UNCODIFIED LAW

2008 H 130, § 5: See Uncodified Law under RC 323.151.

2007 H 119, § 803.06: See Uncodified Law under RC 323.151.

**C**

Baldwin's Ohio Revised Code Annotated Currentness

Title XXXV. Elections (Refs &amp; Annos)

▣ Chapter 3501. Election Procedure; Election Officials (Refs &amp; Annos)

▣ Candidacy

→ → **3501.39 Unacceptable petitions**

(A) The secretary of state or a board of elections shall accept any petition described in section 3501.38 of the Revised Code unless one of the following occurs:

(1) A written protest against the petition or candidacy, naming specific objections, is filed, a hearing is held, and a determination is made by the election officials with whom the protest is filed that the petition is invalid, in accordance with any section of the Revised Code providing a protest procedure.

(2) A written protest against the petition or candidacy, naming specific objections, is filed, a hearing is held, and a determination is made by the election officials with whom the protest is filed that the petition violates any requirement established by law.

(3) The candidate's candidacy or the petition violates the requirements of this chapter, Chapter 3513. of the Revised Code, or any other requirements established by law.

(B) Except as otherwise provided in division (C) of this section or section 3513.052 of the Revised Code, a board of elections shall not invalidate any declaration of candidacy or nominating petition under division (A)(3) of this section after the sixtieth day prior to the election at which the candidate seeks nomination to office, if the candidate filed a declaration of candidacy, or election to office, if the candidate filed a nominating petition.

(C)(1) If a petition is filed for the nomination or election of a candidate in a charter municipal corporation with a filing deadline that occurs after the ninetieth day before the day of the election, a board of elections may invalidate the petition within fifteen days after the date of that filing deadline.

(2) If a petition for the nomination or election of a candidate is invalidated under division (C)(1) of this section, that person's name shall not appear on the ballots for any office for which the person's petition has been invalidated. If the ballots have already been prepared, the board of elections shall remove the name of that person from the ballots to the extent practicable in the time remaining before the election. If the name is not removed from the ballots before the day of the election, the votes for that person are void and shall not be counted.

## CREDIT(S)

(2010 H 48, eff. 7-2-10; 2006 H 3, eff. 5-2-06; 2002 H 445, eff. 12-23-02; 1995 H 99, eff. 8-22-95; 1990 H 405, eff. 4-11-91; 1986 H 555)

## LIBRARY REFERENCES

Elections  144.  
Westlaw Topic No. 144.  
C.J.S. Elections § 108.

## RESEARCH REFERENCES

## ALR Library

33 ALR 6th 513, Validity, Construction, and Application of State Statutory Requirements Concerning Placement of Independent Candidate for President of the United States on Ballot.

## Encyclopedias

OH Jur. 3d Counties, Townships, & Municipal Corp. § 772, Sufficiency or Validity of Petition--Determining Sufficiency or Validity.

OH Jur. 3d Elections § 118, Unacceptable Petitions.

OH Jur. 3d Initiative & Referendum § 34, Protests and Court Proceedings.

OH Jur. 3d Mandamus, Procedendo, & Prohibition § 181, Threatened Exercise of Judicial or Quasi-Judicial Power--County Boards of Elections.

## NOTES OF DECISIONS

Constitutional issues 1/2  
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Procedural issues 4  
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Time requirements 2  
Who may file protest 3

1/2. Constitutional issues

Belated challenge to ballot language describing city charter amendment which raised minimum age qualification for mayoral candidate to 23 years was likely barred by laches as would preclude success on merits of substantive

**C**

Baldwin's Ohio Revised Code Annotated Currentness

Constitution of the State of Ohio (Refs &amp; Annos)

▣ Article XII. Finance and Taxation (Refs &amp; Annos)

→ → **O Const XII Sec. 2 Property taxation by uniform rule; ten-mill limitation; homestead valuation reduction; exemptions**

No property, taxed according to value, shall be so taxed in excess of one per cent of its true value in money for all state and local purposes, but laws may be passed authorizing additional taxes to be levied outside of such limitation, either when approved by at least a majority of the electors of the taxing district voting on such proposition, or when provided for by the charter of a municipal corporation. Land and improvements thereon shall be taxed by uniform rule according to value, except that laws may be passed to reduce taxes by providing for a reduction in value of the homestead of permanently and totally disabled residents, residents sixty-five years of age and older, and residents sixty years of age or older who are surviving spouses of deceased residents who were sixty-five years of age or older or permanently and totally disabled and receiving a reduction in the value of their homestead at the time of death, provided the surviving spouse continues to reside in a qualifying homestead, and providing for income and other qualifications to obtain such reduction. Without limiting the general power, subject to the provisions of Article I of this constitution, to determine the subjects and methods of taxation or exemptions therefrom, general laws may be passed to exempt burying grounds, public school houses, houses used exclusively for public worship, institutions used exclusively for charitable purposes, and public property used exclusively for any public purpose, but all such laws shall be subject to alteration or repeal; and the value of all property so exempted shall, from time to time, be ascertained and published as may be directed by law.

## CREDIT(S)

(1990 HJR 15, am. eff. 1-1-91; 1974 HJR 59, am. eff. 1-1-75; 1970 SJR 8, am. eff. 1-1-71; 115 v Pt 2, 446, am. eff. 1-1-34; 113 v 790, am. eff. 1-1-31; 107 v 774, am. eff. 1-1-19; 1912 constitutional convention, am. eff. 1-1-13; 97 v 652, am. eff. 1-1-06; 1851 constitutional convention, adopted eff. 9-1-1851)

Current through all 2011 laws and statewide issues and 2012 File 80 of the 129th GA (2011-2012).

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(A) If a township police district does not include all the unincorporated territory of the township, the remaining unincorporated territory of the township may be added to the district by a resolution adopted by a unanimous vote of the board of township trustees to place the issue of expansion of the district on the ballot for the electors of the entire unincorporated territory of the township. The resolution shall state whether the proposed township police district initially will hire personnel as provided in section 505.49 of the Revised Code or contract for the provision of police protection services or additional police protection services as provided in section 505.43 or 505.50 of the Revised Code.

The ballot measure shall provide for the addition into a new district of all the unincorporated territory of the township not already included in the township police district and for the levy of any tax then imposed by the district throughout the unincorporated territory of the township. The measure shall state the rate of the tax, if any, to be imposed in the district resulting from approval of the measure, which need not be the same rate of any tax imposed by the existing district, and the last year in which the tax will be levied or that it will be levied for a continuous period of time.

(B) The election on the measure shall be held, canvassed, and certified in the manner provided for the submission of tax levies under section 5705.25 of the Revised Code, except that the question appearing on the ballot shall read substantially as follows:

“Shall the unincorporated territory within ..... (name of the township) not already included within the ..... (name of township police district) be added to the township police district to create the ..... (name of new township police district) township police district?”

The name of the proposed township police district shall be separate and distinct from the name of the existing township police district.

If a tax is imposed in the existing township police district, the question shall be modified by adding, at the end of the question, the following: ”, and shall a property tax be levied in the new township police district, replacing the tax in the existing township police district, at a rate not exceeding ..... mills per dollar of taxable valuation, which amounts to ..... (rate expressed in dollars and cents per one thousand dollars in taxable valuation), for ..... (number of years the tax will be levied, or “a continuing period of time”).”

If the measure is not approved by a majority of the electors voting on it, the township police district shall continue to occupy its existing territory until altered as provided in this section or section 505.48 of the Revised Code, and any existing tax imposed under section 505.51 of the Revised Code shall remain in effect in the existing district at the existing rate and for as long as provided in the resolution under the authority of which the tax is levied.