IN THE SUPREME COURT OF OHIO

State of Ohio, *ex rel* Renee Walker 2933 County Road 3 Swanton, OH 43558	)	Case No. _____
and	)	**VERIFIED COMPLAINT FOR WRIT OF MANDAMUS (Expedited Election Case Pursuant To S.C.R.P. 12.03)**
John P. Ragan 2510 County Road F Swanton, Ohio 43558	)	.
and	)	
Elizabeth Athaide-Victor 1045 County Road B Swanton, Ohio 43558	)	
and	)	
Katharine S. Jones 2606 Hidden Spring Lane Wadsworth, Ohio 44281	)	
and	)	
Lynn Kemp 5730 Wolff Road Medina, OH 44256	)	
and	)	
Douglas S. Arbuckle 5399 Jennifer Lane Wadsworth, Ohio 44281	)	
and	)	
Austin Babrow 12667 N. Peach Ridge Road Athens, OH 45701	)	

and)

John Howell)
7745 Clarks Chapel Ln.
Athens, OH 45701)

and)

Richard McGinn)
44 Graham Drive
Athens, OH 45701)

and)

Sally Jo Wiley)
3050 Glen Finnan Drive
Albany, OH 45710)

Relators,)

-vs-)

Jon Husted)
Secretary of the State of Ohio
180 East Broad Street, 16th Floor)
Columbus, Ohio 43215,
)
Respondent.
)

*

Relators Renee Walker, John P. Ragan, Elizabeth Athaide-Victor, Katharine S. Jones, Lynn Kemp, Douglas S. Arbuckle, Austin Babrow, John Howell, Richard McGinn and Sally Jo Wiley ("Relators"), proceeding by and through counsel, set forth their Complaint as follows:

PRELIMINARY STATEMENT

1. Petitioners seek a writ of mandamus to compel the Respondent, the duly-elected Secretary of State of Ohio, Jon Husted ("Respondent"), to comply with the requirements of

O.R.C. § 307.95 and pertinent constitutional, statutory and common law, to-wit, to certify three certain "Petitions for Submission of Proposed County Charter," exemplars of which are annexed hereto as Exhibits A, B and C and which are incorporated fully herein as though rewritten, to the ballots in Fulton, Medina and Athens counties, respectively for the November 3, 2015 general election.

JURISDICTION

2. Jurisdiction generally lies with this Court pursuant to O.R.C. Chapter 2731, which governs mandamus proceedings in the courts, and specifically lays jurisdiction in Ohio's Supreme Court by O.R.C. § 2731.02.

3. The claims in this matter arise from the denial of Relators' legal rights by Ohio's Secretary of State which occurred when he refused to perform his nondiscretionary legal duty to overrule improper and legally-unsupported protests against the substance of three substantially-similar proposed county charter petitions which had been certified to the ballots of Fulton, Medina and Athens counties for the November 3, 2015 general election. The Secretary of State instead sustained the protests and directed the boards of election in those three counties to remove the duly-certified charter proposals from the public vote.

4. Relators are less than ninety (90) days from the November 3, 2015 election and have no plain or adequate remedy at law to correct the unlawful, unreasonable and/or arbitrary acts and abuses of discretion committed by the Ohio Secretary of State in his improper refusal to reject the ballot protests for lack legal justification and to order the three referenda to proceed.

THE PARTIES

5. Relators John P. Ragan of 2510 County Road F, Swanton, Ohio 43558; and Elizabeth Athaide-Victor, of 1045 County Road B, Swanton, Ohio 43558 are two voters of Fulton County

and members of the Fulton County committee of petitioners who came together for the purpose of gathering elector signatures to a formal petition to propose the transition of the government of Fulton County to a charter form of government with governing mechanisms authorized under the Ohio Constitution and the Ohio Revised Code. Said Relators, along with the other members of a committee of petitioners, helped circulate the Fulton County Petition according to the constraints and requirements of the Constitution of Ohio, Article X, §§ 3 and 4, and Ohio Revised Code §§ 307.94, 307.95, 307.96, 3501.38, and 3513.261. The Petition, if approved by voters in November, would establish a charter form of government in Fulton County by extending legislative powers to the Fulton County Commissioners, and giving the right of initiative and referendum to the electors of the county who live outside of villages and cities. Fulton is not presently a charter county. Ultimately, the Fulton County committee of petitioners turned in part petitions bearing 1,483 valid signatures. A total of 1,084 valid signatures were required. Relators Ragan and Athaide-Victor bring suit on behalf of those electors who may be inclined to vote for the Fulton County Petition, a true and accurate copy of which is attached hereto as "Exhibit A" and which is herein fully incorporated by reference.

6. Relator Renee Walker, of 2933 County Road 3, Swanton, OH 43558, is an elector of Fulton County who signed the Fulton County Petition, who is actively campaigning in concert with Relators Ragan and Athaide-Victor for its passage, and who fully intends to vote for it should it be restored to the November 3, 2015 general election ballot.

7. Relators Katharine S. Jones of 2606 Hidden Spring Lane, Wadsworth, Ohio 44281 and Lynn Kemp of 5730 Wolff Road, Medina, OH 44256 are two registered voters of Medina County and are members of the Medina County committee of petitioners who came together for the purpose of gathering elector signatures to a formal petition to propose the transition of the

government of Medina County to a charter form of government with governing mechanisms authorized under the Ohio Constitution and the Ohio Revised Code. Said Relators, along with the other members of the committee of petitioners, helped circulate the Medina County Petition according to the constraints and requirements of the Constitution of Ohio, Article X, §§ 3 and 4, and Ohio Revised Code §§ 307.94, 307.95, 307.96, 3501.38, and 3513.261. The Petition, if approved by voters in November, would establish a charter form of government in Medina County, which is not presently a charter county. Ultimately, the Medina County committee of petitioners turned in part petitions bearing 4,867 valid signatures. A total of 4,814 valid signatures were required. Relators Jones and Kemp bring suit on behalf of those electors who may be inclined to vote for the Medina County Petition, a true and accurate copy of which is attached hereto as "Exhibit B" and which is herein fully incorporated by reference.

8. Relator Douglas S. Arbuckle of 5399 Jennifer Lane, Wadsworth, Ohio 44281 is an elector of Medina County who signed the Medina County Petition, who is actively campaigning for its passage. Relator Arbuckle fully intends to vote for it should it be restored to the November 3, 2015 general election ballot.

9. Relators Austin Babrow of 12667 N. Peach Ridge Road, Athens, OH 45701 and Sally Jo Wiley of 3050 Glen Finnan Drive, Albany, OH 45710 are two registered voters of Athens County and are members of the Athens County committee of petitioners who came together for the purpose of gathering elector signatures to a formal petition to propose the transition of the government of Athens County to a charter form of government with governing mechanisms authorized under the Ohio Constitution and the Ohio Revised Code. Said Relators, along with the other members of the committee of petitioners, helped circulate the Athens County Petition according to the constraints and requirements of the Constitution of Ohio, Article X, §§ 3 and 4,

and Ohio Revised Code §§ 307.94, 307.95, 307.96, 3501.38, and 3513.261. The Petition, if approved by voters in November, would establish a charter form of government in Athens County, which is not presently a charter county. Ultimately, the Athens County committee of petitioners turned in part petitions bearing 1,544 valid signatures. A total of 1,486 valid signatures were required. Relators Babrow and Wiley bring suit on behalf of those electors who may be inclined to vote for the Athens County Petition, a true and accurate copy of which is attached hereto as "Exhibit C" and which is herein fully incorporated by reference.

10. Relator Richard McGinn of 44 Graham Drive, Athens, OH 45701 is an elector of Athens County who signed the Athens County Petition, who is actively campaigning along with Relators Babrow and Wiley for its passage in his capacity as Chair of the Athens County Bill of Rights Committee. Relator McGinn fully intends to vote for the Petition should it be restored to the November 3, 2015 general election ballot.

11. Relator John Howell of 7745 Clarks Chapel Ln., Athens, OH 45701 is an elector of Athens County who signed the Athens County Petition, who is actively campaigning for its passage and who fully intends to vote for it should it be restored to the November 3, 2015 general election ballot.

12. Jon Husted is Ohio Secretary of State who, as chief elections officer, is legally responsible under various provisions of the Ohio Constitution and Ohio Revised Code for the conduct of elections in Ohio according to law. The Secretary of State is being sued in his official capacity. Secretary of State Husted is capable of being sued and of having his decisions relative to the content of referendum election ballots challenged and determined by Ohio law courts.

FACTUAL AVERMENTS

13. Article X, § 3 of the Ohio Constitution and Ohio Rev. Code § 307.94 allow electors

to file a petition seeking to submit the question of adoption of a county charter to the electors of the county.

14. Three committees of electors, one each in Medina, Fulton and Athens counties, initiated, circulated and filed substantially similar county charter proposals for the November 3, 2015 general election ballot.

15. The Fulton and Medina petitions were filed with their respective county boards of election on June 24, 2015. Each board certified its county's petition to the county board of commissioners, which certified that petition back to the respective board of elections for placement on the ballot.

16. In Athens County, the board of elections certified the petition as invalid to the Athens board of commissioners on July 6, 2015. On July 9, 2015, the Relators Babrow and Wiley along with the other members of the petitioning committee requested the board of elections, pursuant to a statutory procedure in O.R.C. § 307.94, to establish the validity or invalidity of the Athens County petition by requesting a ruling from a judge of the local court of common pleas. The board of elections filed an action on July 13, 2015, a hearing was held on July 15, 2015, and Judge George P. McCarthy of Athens County Court of Common Pleas made a ruling. Judge McCarthy determined that the petition is valid and contains sufficient signatures and that the board of elections could not properly inquire into the substance of the petition in determining its validity. His July 15, 2015 Decision; Judgment Entry and Certification to Athens County Board of Commissioners is annexed hereto as "Exhibit D" and is incorporated by reference as though fully herein rewritten. The court certified the petition to the Athens board of commissioners, which on July 23, 2015 certified it to the board of elections for placement on the November 3, 2015 ballot.

17. On August 3, 2015, ballot protests were filed with the Secretary of State's office from Medina, Fulton and Athens electors.

18. On August 13, 2015, Respondent Secretary of State issued a seven-page decision of all ballot protests. A true and correct copy of the decision is annexed hereto as "Exhibit E" and is incorporated by reference as though fully herein rewritten.

19. In his decision, Respondent Secretary of State ruled as follows:

> I am unconvinced by Petitioners' contention that my legal examination herein is solely restricted to the "part petition" itself, as opposed to a review of the petition *and* the charter proposal which, for all practical purposes, is one document. The initiative petition and the proposed charter are inseparable at this stage of the process.
>
> Nor am I persuaded that the law restricts R.C. 307.95's statutory mandate of legal compliance to merely the administrative or technical aspects of a particular petition, or to the provisions of R.C. 3501.38, as Petitioners claim.
>
> Accordingly, I find nothing to materially limit the scope of my legal review of the petitions (including the language and substantive content of the county charter proposals) in question.
>
> On the contrary, I am empowered by the unique language of R.C. 307.95 that both permits the chief elections officer to consider matters that may have not been raised via the protests, and provides unfettered authority to "determine the validity or invalidity of the petition."
>
> Finally, I am unmoved by Petitioners' argument which flatly asserts that I am unable at this time to consider the *substance* of the proposed county charters as I reach my decision. Among other distinguishing factors, the cases cited by Petitioners involved municipal legislative authorities reviewing municipal petitioners, relied on different fact patterns and different statutes to reach their respective conclusions, and did not involve the constitutionally empowered chief elections officer of the state reviewing a county charter petition pursuant to statutory authority.
>
> I maintain, instead, that the unrestricted language of the sole statute governing this protest plainly and unambiguously authorizes me to examine every aspect of these petitions in more than just a 'ministerial' fashion.

(Emphases in original). Exhibit E at pp. 2-3.

20. Respondent Secretary of State further ruled that "Article X, Section 3 provides for initiative charter petitions, but . . . the Constitution restricts what may be contained in the initiative petition itself." *Id*. at 3. Respondent also stated that "Article X, Section 3 provides that

the initiative process is "reserved to the people of each county on all matters which such county may now or hereafter be authorized to **control by legislative action. . . .**" (Emphasis in original). *Id.* at 3. Following a convoluted discussion of what Ohio law may or may not, in Respondent's opinion, require for a lawful charter proposal, and what county charter proposals may contain by way of controls over horizontal hydraulic fracturing ("fracking") of shale for oil and gas mineral extraction, the injection of fracking wastes into the earth, and the construction of pipeline projects for the transport of natural gas obtained by fracking, Respondent concluded as follows:

> Accordingly, the petitions must be invalidated on the basis that the petitions fail to provide for an alternate form of government consistent with clear statutory and constitutional requirements, and that state law preempts any authority to regulate 'fracking' by political subdivisions of the state, including charter counties.

Id. at 7.

21. Respondent Secretary of State is forbidden by pertinent constitutional principles from arrogating to himself the power to peremptorily "invalidate" the three Petitions because of his particular quibbles over their content and legality. Since the three Petitions conform to the structural requirements of statute and have been proffered for their respective county ballots by more than the minimal requisite numbers of eligible electors, they must be subjected to a formal vote on November 3, 2015. Respondent's "invalidation" of the three Petitions is unconstitutional, arbitrary, illegal and an abuse of his legal authority.

STATUTORY AND LEGAL FRAMEWORK

22. O.R.C. § 3501.38 requires petitions to be signed by electors qualified to vote on the issue; signatures must be made in ink; each signer must place on the petition the signer's name, date of signing, and location of voting residence; the petitions must have, on each paper, the

circulations' indication of number of signatures and the circulations' statement that they witnessed the signatures of qualified signers; and the petition must be submitted with all part petitions at one time.

23. Respondent Secretary of State claims to draw "unfettered authority" from O.R.C. § 307.95, which provides, in part, as follows:

> (C) . . . The secretary of state may determine whether to permit matters not raised by protest to be considered in determining such validity or invalidity or sufficiency or insufficiency [of ballot protests], and may conduct hearings, either in Columbus or in the county where the county charter petition is filed.

24. It is long-established that the substance of the charter proposals, as duly-initiated referenda, is off-limits to pre-election protest. *See, e.g., State ex rel. Kiley v. Summit CTY. Bd. of Elections*, 977 N.E.2d 590, 595 (Ohio S.Ct. 2012) ("any claims challenging the validity of the proposed charter amendment are premature when made before the amendment is approved by the electorate."); *State ex rel. Citizen Action for a Livable Montgomery v. Hamilton Cty. Bd. of Elections,* 875 N.E.2d 902, 909 (Ohio S.Ct. 2007) ("insofar as the board's claim could be construed as a challenge to the constitutionality or illegality of the substance of the initiative, that challenge is premature before the proposed legislation is enacted by the electorate."); *State ex rel. DeBrosse v. Cool H*, 716 N.E.2d 1114, 1118 (Ohio S.Ct. 1999) ("Any claims alleging the unconstitutionality or illegality of the substance of the proposed ordinance, or actions to be taken pursuant to the ordinance when enacted, are premature before its approval by the electorate.").

25. Moreover, the Secretary of State's premise that the charter proposals are invalid because they do not establish an alternative form of government - besides being an unlawful consideration of the substance of the proposals - exposes a serious misunderstanding of the

distinct nature of the county charter proposal invoked by electors in the three counties.

26. The proposed charters need not, and do not, purport to establish an alternative form of government. Medina, Athens and Fulton counties are currently a statutory form of county government as provided by Title 3 of the Ohio Revised Code. Title 3 of the O.R.C. provides the overall framework for statutory form of county governments in Ohio. General statutory forms of county government are authorized by Article X, § 1 of the Ohio Constitution ("the General Assembly shall provide by general law for the organization and government of counties"). Under the statutory form of county government, the three counties have boards of county commissioners, governed by O.R.C. Chapter 307.

27. In addition, Ohio electors may establish a county charter, according to Chapter 10, "Charters and Alternative Forms of County Government," Ohio Secretary of State, Ballot Questions and Issues Handbook. The Ohio Attorney General has described the adoption of a county charter as a way by which "the people of any county may increase the authority of their county government." (Attorney General Opinion, OAG 85-047, available at www.ohioattorneygeneral.gov/getattachment/521ab19e-b3f4-48fd-aace-be83bee1ee2f/1985-047.aspx, visited July 13, 2015).

28. According to the Ohio Secretary of State Handbook:

> "The Ohio Constitution authorizes the adoption of charters by counties and municipal corporations; many Ohio municipalities, and two of its counties, operate under charters approved by the voters. Additionally, the Ohio Revised Code provides for other alternative plans of government that may be adopted by municipalities, townships and counties."

29. Thus, adopting a county charter is one means of changing county government, while establishing a statutory alternative form of county government is another. The Petitions which

underlay this lawsuit are for proposed county charters, not to establish a statutory alternative form of county government. The Secretary of State's finding that Relators obligatorily must pursue an "alternative form of government" with their petitioning activity is inapposite.

RELATORS ARE ENTITLED TO A WRIT OF MANDAMUS

30. The writ of mandamus is an extraordinary remedy that arose historically to deal with situations like this, where there is no other avenue for justice. It is the Court's duty in such situations to review the actions of the Ohio Secretary of State to place limits on the exercise of his discretion to ensure that discretion is not exercised arbitrarily, or abused. It is further the Court's duty, when a governmental official has refused to undertake a nondiscretionary act, to order such act to be undertaken.

31. Relators have been denied justice through the refusal of Respondent Secretary of State to place the three Petitions on the ballots in their respective counties for the November 3, 2015 general election.

32. Consequently, the Respondent Secretary of State's refusal to reject the ballot protests and his refusal to put the three Petitions to a public vote was improper, unlawful, an abuse of discretion and arbitrary, and must be reversed by this Court.

33. The Respondent Secretary of State's acts and omissions are *ultra vires*, as they ignore the requirements of statute, which in turn are constrained by the Ohio Constitution. The Secretary of State's acts and omissions comprise a continuing abuse of discretion that must be corrected by a specific mandate from the Court. The Court must intervene to vindicate the rights of all of the Relators and to protect their rights under the Ohio Constitution to vote on properly-presented county charter proposals in their respective counties.

34. Relators are entitled to a writ of mandamus to compel the Respondent Secretary of State to comply with O.R.C. § 307.95 and the requirements of the Ohio Constitution and to reject and dismiss the objections to the three Petitions so that they may proceed to a vote in the November 3, 2015 general election.

WHEREFORE, Relators pray the Court issue a peremptory writ of mandamus, or alternatively, an alternate writ, pursuant to R.C. Chapter 2731, which requires Respondent Ohio Secretary of State to comply with the requirements of O.R.C. § 307.95 and the Ohio Constitution by immediately dismissing and rejecting the protests entered against Exhibits A, B and C, and to direct the boards of election in Fulton, Medina and Athens counties to restore the respective Petitions to their November 3, 2015 ballots for a public vote. Relators further request to be awarded their costs and reasonable attorneys' fees, and such other and further relief at law or in equity as the Court may deem necessary and proper in the premises.

Respectfully submitted,

/s/ James Kinsman
James Kinsman, Esq. (S.Ct. #0090038)
P.O. Box 24313
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(513) 549-3369
james@jkinsmanlaw.com

/s/ Terry J. Lodge
Terry J. Lodge, Esq. (S.Ct. #0029271)
316 N. Michigan St., Suite 520
Toledo, OH 43604-5627
419.205.7084
lodgelaw@yahoo.com

Co-counsel for Relators

VERIFICATION

I, Elizabeth Athaide-Victor, am a Relator in this lawsuit. I have reviewed the allegations in the Verified Complaint and the factual allegations contained in paragraphs 5 and 12-29 are true to the best of my knowledge, information, and belief.

Elizabeth Athaide-Victor

Elizabeth Athaide-Victor

State of Ohio)
)
County of Fulton) ss:

Sworn to before me and subscribed in my presence this 18th day of August, 2015.

Terry J. Lodge

Notary Public

Terry J. Lodge
My commission does not expire

TERRY J. LODGE, ESQ.
316 N. MICHIGAN STREET
SUITE 520
TOLEDO, OH 43624-1627

VERIFICATION

I, Renee Walker, am a Relator in this lawsuit. I have reviewed the allegations in the Verified Complaint and the factual allegations contained in paragraphs 6 and 12-29 are true to the best of my knowledge, information, and belief.

Renee Walker

Renee Walker

State of Ohio)
)
County of Fulton) ss:

Sworn to before me and subscribed in my presence this 18th day of August, 2015.

Terry Lodge

Notary Public

Terry J. Lodge

My commission does not expire

TERRY J. LODGE, ESQ.
316 N. MICHIGAN STREET
SUITE 520
TOLEDO, OH 43624-1627

VERIFICATION

I, John P. Ragan, am a Relator in this lawsuit. I have reviewed the allegations in the Verified Complaint and the factual allegations contained in paragraphs 5 and 12-29 are true to the best of my knowledge, information, and belief.

X John P. Ragan

John P. Ragan

State of Ohio)
)
County of Fulton) ss:

Sworn to before me and subscribed in my presence this 18th day of August, 2015.

Terry J. Lodge

Notary Public

Terry J. Lodge
My commission does not expire

TERRY J. LODGE, ESQ.
316 N. MICHIGAN STREET
SUITE 520
TOLEDO, OH 43624-1627

VERIFICATION

I, Douglas S. Arbuckle, am a Relator in this lawsuit. I have reviewed the allegations in the Verified Complaint and the factual allegations contained in paragraphs 8 and 12-29 are true to the best of my knowledge, information, and belief.

Douglas S. Arbuckle

State of Ohio)
)
County of Medina) ss:

BETHANY SIEKBERT
Notary Public State of Ohio
My Comm. Expires May 28, 2020

Sworn to before me and subscribed in my presence this 18th day of August, 2015.

Notary Public

VERIFICATION

I, Austin Babrow, am a Relator in this action. I have reviewed the allegations in the Verified Complaint and the factual allegations contained in paragraphs 9 and 12-29 are true to the best of my knowledge, information, and belief.

Austin Babrow

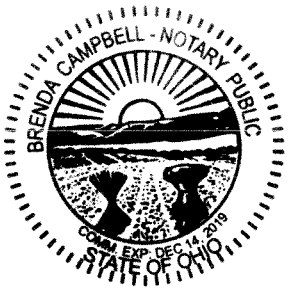
Austin Babrow

State of Ohio)
)
County of Athens) ss:

Sworn to before me and subscribed in my presence this 18th day of August, 2015.

Brenda Campbell

Notary Public



VERIFICATION

I, John Howell, am a Relator in this action. I have reviewed the allegations in the Verified Complaint and the factual allegations contained in paragraphs 11 and 12-29 are true to the best of my knowledge, information, and belief.

John Howell

State of Ohio)
)
County of Athens) ss:

NOTARIAL SEAL STATE OF OHIO

HANNAH MATHSON
Notary Public, State of Ohio
My Commission Expires 10/31/18
Commission Recorded in Athens County

Sworn to before me and subscribed in my presence this 18th day of August, 2015.

Hannah Mathson
Notary Public

VERIFICATION

I, Katharine S. Jones, am a Relator in this lawsuit. I have reviewed the allegations in the Verified Complaint and the factual allegations contained in paragraphs 7 and 12-29 are true to the best of my knowledge, information, and belief.

Katharine S. Jones

Katharine S. Jones

State of Ohio)
)
County of Medina) ss:

Sworn to before me and subscribed in my presence this 18th day of August, 2015.

Gay Bowen

Notary Public

NOTARIAL SEAL
STATE OF OHIO

GAY BOWEN
NOTARY PUBLIC - OHIO
MY COMMISSION EXPIRES JANUARY 24, 2016

VERIFICATION

I, Lynn Kemp, am a Relator in this lawsuit. I have reviewed the allegations in the Verified Complaint and the factual allegations contained in paragraphs 7 and 12-29 are true to the best of my knowledge, information, and belief.

Lynn Kemp

Lynn Kemp

State of Ohio)
)
County of Medina) ss:

Sworn to before me and subscribed in my presence this 18th day of August, 2015.

Notary Public

VERIFICATION

I, Richard McGinn, am a Relator in this action. I have reviewed the allegations in the Verified Complaint and the factual allegations contained in paragraphs 10 and 12-29 are true to the best of my knowledge, information, and belief.

Richard McGinn

Richard McGinn

State of Ohio)
)
County of Athens) ss:

Sworn to before me and subscribed in my presence this 18th day of August, 2015.

TIFFANI COOPER
Notary Public, State of Ohio
My Commission Expires 6-1-2020
Commission Recorded in Athens County

Tiffani Cooper

Notary Public

VERIFICATION

I, Sally Jo Wiley, am a Relator in this action. I have reviewed the allegations in the Verified Complaint and the factual allegations contained in paragraphs 9 and 12-29 are true to the best of my knowledge, information, and belief.

Sally Jo Wiley

Sally Jo Wiley

State of Ohio)
)
County of Athens) ss:

Sworn to before me and subscribed in my presence this 18th day of August, 2015.

Sherry Keirns

Notary Public

SHERRY KEIRNS
NOTARY PUBLIC, STATE OF OHIO
My Commission Expires November 12, 2017
Commission Recorded in Athens County