

IN THE SUPREME COURT OF OHIO

**The State of Ohio Ex Rel,  
Renee Walker, et al.,  
Relators,**

Vs.

**Jon Husted, Secretary of State of Ohio,  
Respondent,**

and

**Joanne Dove Prisley,  
Intervenor**

and

**Charles Melvin Saunders  
6772 US Highway 20  
Metamora Ohio**

and

**R.J. Lumbrezer  
11475 State Route 120  
Lyons, OH 43533-9608**

and

**Roy Norman  
11802 County Road D  
Wauseon, OH 43567-9574.**

*Proposed Interveners of Fulton County*

**Case No. 2015-1371**

**Expedited Election Case**

**Pursuant To S.C.R.P. 12.03**

**MOTION FOR LEAVE TO  
INTERVENE AND BE ALIGNED AS  
RESPONDENTS**

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**MOTION TO INTERVENE OF CHARLES MELVIN SAUNDERS, ET. AL**

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**MOTION TO INTERVENE**

Now comes Charles Saunders, R.J. Lumbrezer, and Roy Norman (hereafter "Proposed Interveners of Fulton County"), the sole Fulton County protestors to the Petition for Proposed County Charter in the election administrative proceeding before Respondent Jon Husted, Secretary of State of Ohio, and hereby moves the Court pursuant to the First Amendment to the United States Constitution and Civ. R. 24(A)(2) and Civ. R. 24(B)(2) to issue an order granting her leave to intervene as a Respondent. The Proposed Interveners of Fulton County below set for a Memorandum in Support. In addition, The Proposed Fulton County Intervener's Protest, which was filed with the Fulton County Board of Elections and referred to Respondent Husted in the election administrative proceeding, is attached hereto as Exhibit 1 and incorporated herein by reference for the purpose of demonstrating why Respondent Jon Husted, Secretary of State of Ohio, cannot be expected to represent Proposed Intervenor Fulton County's interests adequately. The Answer of Charles Saunders, R.J. Lumbrezer, and Roy Norman has been filed contemporaneously with that filing of this motion.

Respectfully submitted,  
Charles M. Saunders /s/



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*Proposed Intervenor and Counsel for Proposed Interveners R.J. Lumbrezer and Roy Norman*

**MEMORANDUM**

***I. Introduction***

Proposed Interveners Charles Saunders, R.J. Lumbrezer, and Roy Norman are residents of Fulton County, qualified electors and objectors to the Proposed Fulton County Election Petition hereby moves this Court, pursuant to the First Amendment of the United States Constitution, which guarantees their rights of freedom of speech and to petition the government, and Civ. R. 24(A)(2) and Civ. R. 24(B)(2) for an order allowing them to intervene as a Respondents. Proposed Interveners of Fulton County wish to defend and advocate the legal basis for their Protest filed in opposition to the Petition for Proposed Fulton County Charter pursuant to R.C. 307.95(B) with Respondent Jon Husted, Secretary of State of Ohio, for the reasons that (i) Respondent Husted, in his August 13, 2015, Letter of Decision failed to address many of the legal propositions and arguments advocated on behalf of Proposed Interveners of Fulton County, which are grounded primarily in the Ohio Revised Code, and (ii) as a result, the Attorney General of Ohio, in his representation of Respondent Husted, would not be expected to advocate those positions sufficiently and but instead would defend only Respondent Husted's Letter of Decision.

The Letter of Decision discusses some constitutional and statutory aspects of the law. It also ignores the Secretary of State's power to review proposed ballot measures for the use of illegal, vague, confusing, and precatory ballot language, which is contained in the petitions. This is a subtle but important distinction. In his decision, the Secretary of State argues that his office has broad authority to rule on whether or not ballot measures violate the Ohio Constitution. The Proposed Interveners of Fulton County also argue that

the Secretary's scope of authority at minimum enables him to make determinations concerning confusing, vague, or illegal ballot language per se. This is in addition to the grounds identified in his Letter of Decision. The Proposed Interveners of Fulton County respectfully move that it allow the Secretary to strike the proposed ballot language of Athens, Fulton, and Medina Counties based on the proposal's use of confusing, vague, illegal, or precatory language. This position is not represented in either Intervenor Prisley's Motion and may not be fully argued by the Attorney General.

***II. Argument***

A. The Proposed Interveners of Fulton County satisfy the requirements for Intervention as of Right as Set Forth In Civ.R. 24(A)(2). Ohio R. Civ. P. 24(A) provides: (A) Intervention of right. Upon timely application, anyone shall be permitted to intervene in an action: . . . (2) when the applicant claims an interest relating to the property or transaction that is the subject of the action and the applicant is so situated that the disposition of the action may as a practical matter impair or impede the applicant's ability to protect that interest, unless existing parties adequately represent the applicant's interest. This Honorable Court construes Ohio Civil Rule 24 liberally to permit intervention. *State ex rel. Merrill v. Ohio Dep't of Natural Res., 130 Ohio St.3d 30, 2011-Ohio-4612, 955 N.E.2d 935, ¶ 41 (Internal Citations Omitted.)* The Proposed Interveners of Fulton County are the only electors to protest the Petition for the Proposed Fulton County Charter. The matter before the bench would not exist in its current form without the Proposed Interveners of Fulton County's protest of the Proposed Charter Government Petition. Certainly, as citizens, property owners, and nearly life-long residents of Fulton County, the Proposed Interveners of Fulton County have an interest in

this matter. This Court has allowed protestors to intervene in an expedited elections mandamus action in order to protect their interests. *Blankenship v. Blackwell, 103 Ohio St.3d 567, 2004-Ohio-5596, 817 N.E.2d 382, ¶ 15*. The Proposed Interveners of Fulton County ask this Court to do the same for them. Respondent Husted upheld The Proposed Interveners of Fulton County's Protest without identifying the issues raised grounds advocated in the Fulton County Protest.

B. The Proposed Intervener's of Fulton County agree with Intervenor Prisely's summation of Respondent Husted ruling that (1) the proposed county charters did not change the forms of the county governments sufficiently, (2) county charter governments and alternative forms of government are synonymous, and (3) the proposed county charters failed because they did not provide for county executives, which are required for every alternative form of government to be part of those county charter governments. Secretary Husted very broadly addresses what he believes to be his office's powers to determine the adequacy of the proposed county charters by identifying an inadequate constitutional basis inherent in the proposed county charters. He does not identify other conflicts of law and in his letter does not find the language of the proposal per se vague, precatory, or misleading.

C. The Proposed Interveners of Fulton County ask this Court to consider fully the scope of and restrictions upon a county charter adopted pursuant to Article X of the Ohio Constitution. "In order to pass constitutional muster, "[t]he text of a ballot statement \* \* \* must fairly and accurately present the question or issue to be decided in order to assure a free, intelligent and informed vote by the average citizen affected."

*Markus v. Bd. of Elections (1970), 22 Ohio St. 2d 197*, paragraph four of the syllabus.  
***State ex rel. Bailey v. Celebrezze, 67 Ohio St.2d 516, 519, 426 N.E.2d 493 (1981).***

This court establishes specific parameters for the text of ballot language. The foremost right is that the person voting has a right to know what he or she is voting upon in any given election. ***State, ex rel. Burton, v. Greater Portsmouth Growth Corp. (1966), 7 Ohio St. 2d 34, 37.*** The proposed ballot language of any issue before the voter must be neutral, i.e., cannot persuade in favor of or oppose the particular matter to be decided. ***Beck v. Cincinnati (1955), 162 Ohio St. 473, 474-475.*** Finally, a determination must be made as to whether or not the cumulative effect of the defects found within ballot language is harmless or fatal to the validity of the ballot. ***State, ex rel. Williams, v. Brown (1977), 52 Ohio St. 2d 13, 19; State, ex rel. Comms. of the Sinking Fund, v. Brown (1957), 167 Ohio St. 71.*** The Proposed Interveners of Fulton County agree with Intervenor Prisley’s argument of law that: “The board of elections and therefore the Secretary have discretion to certify a petition proposed for election as invalid because it fails to comply with the substantive requirements of the law. ***In State ex rel. Ebersole v. Del. County Bd. of Elections, 140 Ohio St.3d 487, 2014-Ohio-4077, 20 N.E.3d 678,*** this Court stated: “[T]he subject matter of the proposed referendum and initiative is not proper for the ballot. . . . Because citizens of a municipality cannot exercise referendum powers greater than what the Constitution affords, an administrative action is beyond the scope of the referendum power.” *Id.*, ¶¶ 42, 46. (Prisley Protest, at 6.) Further, the Proposed Interveners of Fulton County agree with the Intervener’s legal proposition the Secretary must apply election laws strictly and to fail to do so is an abuse of discretion. ***State ex rel. Stoll v. Logan County Bd. of Elections, 117 Ohio St.3d 76, 2008-Ohio-333,***

*881 N.E.2d 1214*, ¶¶ 29, 42. “Under R.C. 3501.39(A)(2), a board of elections must reject any petition if it ‘violates any requirement established by law.’ ‘[T]he settled rule is that election laws are mandatory and require strict compliance and that substantial compliance is acceptable only when an election provision expressly states that it is.’” *Id.*, ¶ 32 (Prisley Protest, at 7.) The Proposed Interveners of Fulton County are unpersuaded that all of the issues in Intervenor Prisley’s motion are ripe for adjudication. Ohio courts have long held that they have no power to prevent the enactment of laws simply because it is claimed that the law, if passed, will be invalid. *State, ex rel. Cramer, v. Brown (1983)*, 7 *Ohio St. 3d* 5, 6; *State, ex rel. Kittel, v. Bigelow (1941)*, 138 *Ohio St.* 497, 501; *Pfeifer v. Graves (1913)*, 88 *Ohio St.* 473, 487-88. As to this point, the Proposed Interveners of Fulton County primarily constrained their protest to issues of ballot language incongruities, illegalities, and its constitutional analysis to commensurable comparisons. If the Attorney General confines his response to the Letter of Decision, his arguments may also overlook or under represent the Secretary of State’s statutory authority and the authority conferred upon him via judicial precedent to determine the validity of ballot language per se. The Proposed Interveners vigorously pray that this court uphold the Secretary of State’s Letter of Decision and his decision to strike the language of proposed petitions for charter government, finding that the Secretary acted to prevent confusing or misleading language to appear before the voters of Ohio.

### **CONCLUSION**

Permissive intervention is to be granted liberally, and it excludes many of the requirements of intervention as of right. For example, the Civ.R. 24(A)(2) requirement that a proposed intervenor establish inadequate representation by existing parties is not a

*Proposed Motion To Intervene*

consideration for purposes of Civ.R. 24(B)(2). As discussed above, The Proposed Interveners of Fulton County clearly have an interest in the outcome of this matter. The case is recent, the ultimate issue is not yet before the court, and the proposed intervention cannot and will not prejudice or delay the rights of any of the existing parties or the voting public. For the foregoing reasons, the Proposed Interveners of Fulton therefore request that the Court grant permissive intervention under Civ.R. 24(B)(2), should the Court decide not to grant intervention as of right.

Respectfully submitted,  
/s Charles Melvin Saunders



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Proposed Intervenor and Counsel for Proposed Intervener  
R.J. Lumbrezer and Roy Norman

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the forgoing Motion to Intervene of Charles Melvin Saunders et.al. was served this 2<sup>nd</sup> of September, 2015, by electronic email delivery on the following:

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