

IN THE SUPREME COURT OF OHIO

<b>STATE OF OHIO, EX REL.</b>	:	<b>Supreme Court Case No. 2015-1371</b>
<b>RENEE WALKER, et al.,</b>	:	
	:	<b>Original Action in Mandamus</b>
<i>Relators,</i>	:	
v.	:	<b>Expedited Election Case Pursuant</b>
	:	<b>to S.Ct.Prac.R. 12.08</b>
<b>JON HUSTED,</b>	:	
<b>OHIO SECRETARY OF STATE,</b>	:	
	:	
<i>Respondent.</i>	:	

**BRIEF OF THE OHIO CHAMBER OF COMMERCE,  
AFFILIATED CONSTRUCTION TRADES OF OHIO, AND  
THE AMERICAN PETROLEUM INSTITUTE,  
AMICI CURIAE IN SUPPORT OF RESPONDENT JON HUSTED, SECRETARY OF STATE**

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## **INTERESTS OF AMICI CURIAE**

***Amicus Curiae* the Ohio Chamber of Commerce** (“Ohio Chamber”), founded in 1893, is Ohio’s largest and most diverse statewide business advocacy organization. The Ohio Chamber works to promote and protect the interests of its nearly 8,000 business members and the thousands of Ohioans they employ while building a more favorable business climate. An independent and informed point of contact for government and business leaders, the Ohio Chamber is a respected participant in the public policy and economic development arenas. Through its member-driven standing committees and the Ohio Small Business Council, the Ohio Chamber formulates policy positions on issues as diverse as energy, environmental regulations, education funding, taxation, public finance, health care and workers’ compensation. The Chamber’s advocacy efforts are dedicated to the creation of a strong pro-jobs environment and a business climate responsive to expansion and growth.

***Amicus Curiae* Affiliated Construction Trades of Ohio** (“ACT Ohio”) was created by the Ohio State Building & Construction Trades Council to facilitate economic and industrial development and promote industry best practices for Ohio’s public and private construction projects. ACT Ohio works on behalf of fourteen regional councils, one hundred thirty-seven local affiliates, and close to 92,000 of the most highly-skilled, highly trained construction workers in this State. ACT Ohio is funded by union construction workers who believe it is their duty to protect the State’s construction industry and the many working families it supports.

***Amicus Curiae* American Petroleum Institute** (“API”), doing business in Ohio through its Columbus offices as API-Ohio, is the primary national trade association of

America's technology-driven oil and natural gas industry. The over 625 API members are involved in all segments of the industry, including the exploration, production, refining, shipping, and transportation of crude oil and natural gas. In Ohio alone, over 250,000 jobs are supported by the industry API represents, which provides more than \$12 billion in labor income and more than \$28 billion in value added to the State's economy. According to the Bureau of Labor Statistics, over 13,000 energy-related businesses call Ohio home. Together with its member companies, API-Ohio is committed to ensuring a strong, viable oil and natural gas industry capable of meeting the energy needs of our Nation and the State of Ohio in a safe and environmentally responsible manner. For that reason, API joined an *amicus* brief filed in this Court in *State ex rel. Morrison v. Beck Energy Corp.*, Case No. 2013-0465, Slip Opinion No. 2015-Ohio-485, seeking to preclude the unlawful, ineffective, and preempted municipal regulation of an industry already comprehensively regulated by the State in Chapter 1509 of the Revised Code.

These *amici curiae* submitted a joint brief to the Ohio Secretary of State ("Secretary") in the underlying protest action challenged here by Relators. (*See generally* API, ACT Ohio, & Ohio Chamber *Amicus Br.*; Appx. A1). In that brief, these *amici* noted that the county charter petitions ("Petitions") invalidated by the Secretary constituted an unlawful attempt to bypass the limitations on county home rule established under Article X of the Ohio Constitution, as well as an attempt to endow counties with powers that the Ohio Constitution simply does not authorize. In his Decision, the Secretary agreed. (*See* Decision Re: Protests Filed Pursuant to R.C. 307.95 (August 13, 2015); Appx. A18-24.)

These *amici curiae* share profound concerns about the various, far-reaching prohibitions contained within the proposed county charters appended to the Petitions

invalidated by the Secretary, many of which specifically target Ohio's critical oil and natural gas industry. These *amici* respectfully submit that the Secretary properly granted the protests concerning the Petitions and prohibited them from being placed on the ballot.

The Medina and Fulton County proposals, for example, would prohibit "the exploration for or extraction of gas or oil" within these counties, "with the exception of gas and oil wells installed and operating" at the time of the charters' enactment. (*See* Medina & Fulton County Petitions (Relators' Verified Compl., Exhs. A & B) at 3, Art. II, § 2.01.1.) The Medina and Fulton County proposals would also prohibit the "siting or operation of equipment to support extraction of oil or gas, including pipelines, compressors, or other infrastructure" within these counties, the disposal or processing of wastewater or chemicals used in oil and natural gas operations, and the "procurement or extraction of water from any source" within these counties for use in hydraulic fracturing operations. (*Id.*, Art. II, § 2.01.2; § 2.01.4.) The Athens County proposal includes the latter water-related prohibitions. (*See* Athens County Petition (Relators' Verified Compl., Exh. C) at 3, Art. II, § 2.01.1; § 2.01.2.) All three proposals include a so-called "Community Bill of Rights" purporting to give "ecosystems" (among others) various vague and undefined rights, such as "the right to exist, flourish, and naturally evolve." (*See* Art. I of each Petition.) What they do not do are the things that the Ohio Constitution provides may be done by such petitions.

For the following reasons, *amici curiae* the Ohio Chamber, ACT Ohio, and API respectfully ask this Court to reject Relators' request for an extraordinary writ of mandamus. This Court should not disturb the Secretary's statutorily authorized and substantively correct determination that the Petitions are invalid and insufficient under R.C. 307.95(C) – a determination that the Secretary was well within his discretion to make.

## STATEMENT OF THE FACTS

*Amici Curiae* adopt the Statement of Facts set forth by the Secretary as if fully set forth herein.

## LAW AND ARGUMENT

- A. Relators cannot establish a clear legal right to an extraordinary writ of mandamus because the General Assembly expressly empowered the Secretary to make the discretionary determination challenged here, and there has been no abuse of that discretion.**

As this Court recently confirmed in denying another writ sought against the Secretary, Relators must shoulder a heavy burden to demonstrate entitlement to extraordinary relief in mandamus. *State ex rel. Linnabary v. Husted*, 138 Ohio St.3d 535, 2014-Ohio-1417, 8 N.E.3d 940, ¶ 13. Specifically, Relators must “establish a clear legal right to the requested relief, a clear legal duty on the part of Secretary Husted to provide it, and the lack of an adequate remedy in the ordinary course of the law.” *Id.* Moreover, “[i]n extraordinary writ actions challenging a decision of the secretary of state, the standard is whether the secretary engaged in fraud, corruption, or abuse of discretion, or acted in clear disregard of applicable law.” *Id.* at ¶ 14, quoting *State ex rel. Lucas Cty. Republican Party Executive Commt. v. Brunner*, 125 Ohio St.3d 427, 2010-Ohio-1873, 928 N.E.2d 1072, ¶ 9.

Here, Relators cannot establish a clear legal right to the relief they seek, nor can they demonstrate a clear legal duty on the part of the Secretary to “reject and dismiss the objections to the three Petitions so that they may proceed to a vote” in the November 2015 general election. (Relators’ Verified Compl., ¶ 34.) They cannot do so because the General Assembly in R.C. 307.95(C) expressly empowered the Secretary to make the very sort of discretionary determination that he made here, and this Court properly declines to insert new limitations into the General Assembly’s enactments. Moreover, given the numerous

fundamental shortcomings in the charter petitions he reviewed, Relators cannot show that the Secretary abused his discretion or acted contrary to law in sustaining the Protests and disallowing the Petitions from being presented on the ballot in the general election.

- 1. The plain language of R.C. 307.95(C) calls for the Secretary to do more than simply examine proposed county charter petitions for mere technical or signature-related defects.**

Relators are unhappy with the Secretary's meaningful and substantive review of their proposed county charter petitions. In their Verified Complaint, Relators accuse the Secretary of "arrogating to himself the power to peremptorily 'invalidate' the three Petitions because of his particular quibbles over their content and legality." (Verified Compl., ¶ 21.) This accusation is a strange one to make, given that the statute in question expressly endows the Secretary with the power to determine whether the Petitions are valid or invalid. To assess whether the Secretary has complied with or exceeded his statutory duty under R.C. 307.95 in connection with the underlying protests, this Court will appropriately start with the plain text of that statute, which requires the Secretary to "determine the validity or invalidity of the petition and the sufficiency or insufficiency of the signatures." R.C. 307.95(C). The two phrases utilized by the General Assembly thus embrace two distinct inquiries the Secretary is empowered to make when he or she is called upon to review and determine a protest lodged against a county charter petition:

- (1) the "validity or invalidity of the petition"; *and*
- (2) the "sufficiency or insufficiency of the signatures."

And what scope of review did the General Assembly contemplate by referring to the "validity or invalidity of the petition," as distinct from the "sufficiency or insufficiency of the signatures"? There are guideposts available to help resolve this question.

For one, Black's Law Dictionary, a reference regularly and recently consulted by this Court,<sup>1</sup> provides the following common legal definitions of the term "valid":

**valid**, *adj.* 1. Legally sufficient; binding <a valid contract>. 2. Meritorious <that is a valid conclusion based on the facts presented in this case>. -**validate**, *vb.*—**validation**, **validity**, *n.*

*Black's Law Dictionary* 101 (New Pocket Edition, 1996) (underscoring added; other emphasis *sic*). The common meaning of the statutory term "validity" in R.C. 307.95(C) thus directs the Secretary to assess whether the proposed county charters contained in each Petition are *legally sufficient* and *meritorious* – not simply technically correct as a matter of formatting and signatures. As the Secretary properly concluded, and as will be discussed in greater detail *infra*, the Petitions are neither legally sufficient nor meritorious because the proposed charters included within each of the Petitions do not frame a charter as provided in Article X, Section 3 of the Ohio Constitution and do not address matters which counties are authorized to control by legislation. (*See Secretary's Decision* at 4-7; Appx. A21-24.)

Another guidepost for ascertaining the scope of the Secretary's review of the "validity or invalidity" of the Petitions comes later in R.C. 307.95(C), when the Secretary is empowered to "determine whether to permit matters not raised by protest to be considered in determining such validity or invalidity or sufficiency or insufficiency, and may conduct hearings, either in Columbus or in the county where the county charter petition is filed." (Emphasis added). This provision affording the Secretary broad discretion to consider any "matters not raised by protest" would be superfluous (at the

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<sup>1</sup> In *Cunningham v. Testa*, Slip Opinion No. 2015-Ohio-2744, for example, both the majority (at ¶ 22) and dissent (at ¶ 35) recently cited Black's Law Dictionary in their opinions for its definitions of the terms "verify" and "irrebuttable presumption," respectively.

very least overbroad) if all that the Secretary was empowered to consider were technical, non-substantive issues such as the validity of individual signatures on the Petitions.

Still another guidepost confirming the *discretionary* nature and scope of the Secretary's review of proposed county charter petitions for "validity or invalidity" under R.C. 307.95 comes from this Court's precedent interpreting similar language in other election statutes such as R.C. 731.28, in the context of municipal initiative petitions. In *State ex rel. Sinay v. Sadders*, 80 Ohio St.3d 224, 685 N.E.2d 754 (1997), this Court analyzed 1991 amendments to R.C. 731.28 that granted new authority to city auditors or clerks to determine the "sufficiency and validity" of municipal initiative petitions, and concluded that the General Assembly's addition of this language "afforded city auditors and village clerks *discretionary* authority to determine the sufficiency and validity of municipal initiative and referendum petitions." *Id.*, 80 Ohio St.3d at 230 (emphasis added).

For the foregoing reasons, the plain language of R.C. 307.95 anticipates the Secretary's *discretionary* – not merely ministerial – review of proposed county charter petitions for *legal sufficiency* and *merit*.

**2. This Court properly avoids inserting new limitations and exceptions into the General Assembly's enactments.**

As noted above, far from "arrogating to himself" the power to review the protested charter Petitions for validity and sufficiency, as Relators claim (Verified Compl., ¶ 21), the Secretary was simply exercising a discretionary duty expressly bestowed upon him by the General Assembly. It is Relators who effectively ask this Court to re-write R.C. 307.95 to impose new limitations and exceptions on the scope of the Secretary's review – limitations that the General Assembly did not see fit to include in the statute, and limitations that no

Ohio court has previously read into the statute. In Relators' view of the world, R.C.

307.95(C) should read as follows:

(C) The board of elections shall deliver or mail by certified mail one copy of each protest filed with it to the secretary of state. The secretary of state, within ten days after receipt of the protests, shall determine the validity or invalidity of the petition and the sufficiency or insufficiency of the signatures; provided that, in determining the validity or invalidity of the petition, the secretary shall not consider whether the petition is properly seeking the adoption of a county charter as authorized by the Ohio Constitution. 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, and may conduct hearings, either in Columbus or in the county where the county charter petition is filed. The determination by the secretary of state is final.

That is not what the statute says, and this Court properly declines to judicially insert new limitations and exceptions into the General Assembly's enactments.

This Court has consistently applied this principle of judicial restraint and has done so in the context of the State's election laws. In *State ex rel. Stoll v. Logan Cty. Bd. of Elections*, 117 Ohio St.3d 76, 2008-Ohio-333, 881 N.E.2d 1214, this Court held that it would be inappropriate for it to add an exemption to a statutory referendum procedure, saying:

The elections board and its members claim that there is an exception to the filing requirement of R.C. 519.12(H) for rural townships in which the township building "is not regularly manned and documents are not 'filed' as that term is commonly understood." But the statute contains no exception, and we cannot add one to its express language. *State ex rel. Lee v. Karnes*, 103 Ohio St.3d 559, 2004-Ohio-5718, 817 N.E.2d 76, ¶ 25, quoting *State v. Hughes* (1999), 86 Ohio St.3d 424, 427, 715 N.E.2d 540 ("In construing a statute, we may not add or delete words").

*Stoll*, 2008-Ohio-333 at ¶ 39 (emphasis added; internal citations omitted). See also *State ex rel. Cincinnati Enquirer v. Jones-Kelley*, 118 Ohio St.3d 81, 2008-Ohio-1770, 886 N.E.2d 206,

¶¶ 35, 44 (refusing to insert a “good-sense” exception to the Public Records Act, noting that it is for the legislature to weigh and balance the competing public policy considerations between the public’s right to know how its state agencies make decisions and the potential harm or burden imposed on the agency by disclosure.) *See also United Tel. Credit Union, Inc. v. Roberts*, 115 Ohio St.3d 464, 2007-Ohio-5247, 875 N.E.2d 927, ¶¶ 7-9 (refusing to engraft a judge-made exception onto the procedures prescribed by the General Assembly in a case challenging the appointment of a conservator over a credit union).

As these cases demonstrate, it would be wrong for this Court to take up its judicial pen to insert any new, judge-made limitations on the Secretary’s statutory power and duty under R.C. 307.95(C) to review and determine protests filed concerning county charter petitions. Yet that is precisely what Relators ask this Court to do by seeking an extraordinary writ challenging the scope of the Secretary’s review of the underlying Protests. R.C. 307.95 has been on the books for more than thirty-five years without any such judicial limitation, and the facially invalid Petitions at issue here present no occasion to change course now and unduly constrain the Secretary from undertaking the type of discretionary review the General Assembly directed him to accomplish.

**3. The legislative history of R.C. 307.95 confirms that the General Assembly desired the Secretary to play a key, *discretionary* role in hearing and deciding protests regarding proposed county charter petitions – and mandamus will not lie to control the Secretary’s exercise of that discretion.**

To the best of *amici curiae’s* knowledge, no court has yet opined in any reported decision on the scope of the Secretary’s review of proposed charter petitions being protested pursuant to R.C. 307.95. Relators characterize the Secretary’s legal duty as “nondiscretionary” (Compl., ¶ 3), presumably to support their claim for an extraordinary

writ of mandamus, which will not lie to control discretionary acts. But the legislative history of R.C. 307.95 (in addition to the plain text discussed above) confirms that the General Assembly anticipated the Secretary playing far more than a merely ministerial role in the context of hearing and deciding protests on proposed county charter petitions.

The bill that became what is now R.C. 307.95 was first introduced in the Ohio General Assembly in April 1979 by former Senator Kenneth Cox. *See* Am. Sub. S.B. 169, 138 Ohio Laws, Part I, 607; Appx. A25. At that point in time, Anthony J. Celebrezze, Jr. was serving as Ohio's Secretary of State. Before becoming Secretary of State, Mr. Celebrezze had served on the Ohio Constitutional Revision Commission (OCRC), which (in June 1977) issued its Final Report concerning recommended amendments to the Ohio Constitution.

In the June 1977 Final Report, Mr. Celebrezze and his colleagues on the OCRC had recommended several amendments to Article X of the Ohio Constitution, concerning counties and townships. *See* OCRC Final Report, *available at*: <http://www.lsc.ohio.gov/ocrc/> (last accessed August 28, 2015). Among the recommendations made by the OCRC was to amend Section 4 of Article X of the Constitution, regarding the framing and submission to the electors of proposed county charters. *Id.*, Summary of Recommendations, p. 28. The General Assembly adopted some, but not all, of the OCRC's recommended amendments. Amended Senate Joint Resolution No. 11, adopted on June 22, 1978, put the OCRC's recommended amendment to Article X, Section 4 on the ballot of the November 1978 election, where it was adopted by the voters. *See* Am. Sen. J. Res 11, 137 Ohio Laws, Part II, 4017.

After the voters in the November 1978 election adopted OCRC's proposed amendment to Article X, Section 4 of the Constitution, two bills related to that amendment

were introduced in the Ohio Senate on the same day (April 17, 1979). Both of these bills were sponsored by Senator Cox. One was called Senate Bill 169, and the other was a Substitute Bill bearing the same number. *See* 1979 S.B. 169; *see also* 1979 Sub. S.B. 169. The original bill, notably, made no provision for the Secretary of State's hearing/determination of protests concerning proposed county charters. *See generally* 1979 S.B. 169. But the Substitute Bill did, and an amended version of the Substitute Bill was ultimately enacted into law, preserving this discretionary role for the Secretary. *See* Am. Sub. S.B. 169, 138 Ohio Laws, Part I, 607; Appx. A25-34. So, from the opening bell in the legislative process, it was apparent that the General Assembly preferred the Secretary of State to play a key role in the process of reviewing proposed county charter petitions for validity or invalidity, in the context of protests filed against them.

As Senator Cox's Substitute Bill moved through the Senate & House committees to which it was assigned, the Ohio Legislative Service Commission ("LSC") summarized the Substitute Bill and Amended Substitute Bill at different stages of the process. *See* LSC Bill Analyses of Sub. S.B. 169 & Am. Sub. S.B. 169. This Court has often cited LSC Bill Analyses as persuasive evidence of legislative intent.<sup>2</sup> For that reason, it is notable that the LSC expressly referred to the Secretary's "discretion" in each of its analyses ("Other matters not raised in the protest may, at the Secretary of State's discretion, be considered.") LSC Bill Analysis of Am. Sub. S.B. 169 (As Reported by H. Elections) at 4 (Emphasis added). This reference to the Secretary's "discretion" in reviewing protests filed against county charter

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<sup>2</sup> *E.g.*, *Meeks v. Papadopoulos*, 62 Ohio St.2d 187, 191, 404 N.E.2d 159 (1980) ("we may refer to [LSC analyses] when we find them helpful and objective.") *See also* *State ex rel. Cincinnati Enquirer v. Jones-Kelley*, *supra*, 118 Ohio St.3d at 92, Fn.2; *R.K.E. Trucking, Inc. v. Zaino*, 98 Ohio St.3d 495, 2003-Ohio-2149, 787 N.E.2d 638, ¶ 25; *State v. Am. Dynamic Agency, Inc.*, 70 Ohio St.2d 41, 43, 434 N.E.2d 735, Fn.3 (1982).

petitions undermines Relators' action for a writ of mandamus. It is black-letter law in Ohio that the writ lies only to enforce performance of *ministerial* acts or duties—not to control the exercise of administrative discretion. 67 Ohio Jurisprudence 3d, § 15 (2009) (“Mandamus lies only to enforce the performance of a ministerial act or duty. \*\*\* Where the duty ceases to be mandatory and becomes discretionary, the writ will not issue.”) (internal citations omitted).

**4. The Secretary did not abuse his discretion in upholding the protests lodged against the facially invalid Petitions.**

Once this Court confirms that the Secretary acted within the scope of the General Assembly's statutory grant of authority in R.C. 307.95 to review the Petitions for substantive, legal validity and merit in the context of the Protests brought before him, the only issue left for this Court to resolve in the context of this original action is whether the Secretary abused his discretion in doing so. Relators' own cited cases confirm this highly deferential, abuse-of-discretion standard of review. *E.g., State ex rel. Kilby v. Summit Cty. Bd. of Elections*, 133 Ohio St.3d 184, 2012-Ohio-4310, 977 N.E.2d 590, ¶ 8 (noting that “[i]n extraordinary actions challenging the decisions of the Secretary of State and boards of elections, the standard is whether they engaged in fraud, corruption, or abuse of discretion, or acted in clear disregard of applicable legal provisions.”) (quoting *State ex rel. Husted v. Brunner*, 123 Ohio St.3d 288, 2009-Ohio-5327, 915 N.E.2d 1215, ¶ 9) (other internal citations omitted).

Here, it is apparent that there has been no fraud, corruption, abuse of discretion, or clear disregard of applicable legal provisions. On the contrary, the Secretary's Decision on the Protests reflects the Secretary's careful consideration of relevant constitutional and statutory restrictions on proposed county charters, supporting his well-reasoned

conclusion that “substantive provisions of these petitions contain questions on which a county is not authorized to control by legislative action.” (Secretary’s Decision at 3, Appx. A20.) As the Secretary also noted, none of the Petitions provide for the election or appointment of a county executive, which are statutory requirements for alternative forms of county government established in Chapter 302 of the Revised Code. (*Id.* at 5; Appx. A22.)<sup>3</sup> And each of the Petitions improperly purports to endow counties with greater home-rule powers vis-à-vis oil and natural gas operations than may be constitutionally exercised by home-rule municipalities, which makes no sense whatsoever. (*Id.* at 6, citing this Court’s decision in *State ex rel. Morrison v. Beck Energy*, Slip Opinion No. 2015-Ohio-485.) “Common sense, and the law, both dictate that a county charter may not grant to a county *more* authority than a municipality can have pursuant to the Ohio Constitution. Yet that is exactly what the restrictive ‘fracking-related’ provisions of these charter petitions propose to do.” (Secretary’s Decision at 7; Appx. A24.)

All three of the Petitions propose county charters that are facially defective under the prerequisites laid out in Article X of the Ohio Constitution because none of the Petitions seek to establish an “alternative form of county government” that differs from the current statutory form already in place in each of the three counties. Article X, Section 1 of the Constitution provides, in part, that the General Assembly shall provide “by general law” for the organization and government of counties. The General Assembly did so in Title III of the Revised Code. *See generally* R.C. Chapter 301. The same provision of the Constitution allows the General Assembly to enact general laws permitting “alternative forms of county

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<sup>3</sup> *See also* R.C. 302.02 (“An alternative form of county government shall include either an elective county executive \*\*\* or an appointed county executive \*\*\* [.]”); R.C. 302.14 (“There shall be a county executive, who shall be the chief executive officer of the county.”)

government.” Again, the General Assembly did so in Title III. *See* R.C. 302.02. But when electors in a county invoke the home-rule amendment to the Ohio Constitution to propose a new county charter to be approved by a majority of electors in the county, the Constitution expressly contemplates a charter or amendment “which alters the form and offices of county government or which provides for the exercise by the county of power vested in municipalities by the constitution or laws of Ohio, or both \*\*\* [.]” Article X, Section 3, Ohio Constitution (emphasis added).<sup>4</sup> Here, the proposed charters within the challenged Petitions do neither of these things.

For example, the Medina County proposal does not seek to establish an alternative form of county government any different than the current statutory form. On the contrary, it expressly maintains the county’s existing, statutory form of government, saying:

**Section 4.01 County Officers, Duties, Powers, and Manner of Election.** The offices and duties of those offices, as well as the manner of election to and removal from County offices, and every aspect of county government not prescribed by this Charter, or by amendments to it, shall be continued without interruption or change in accord with the Ohio Constitution and the laws of Ohio that are in force at the time of the adoption of this Charter and as they may subsequently be modified or amended.

*See* Medina County Petition at 3, Art. IV, § 4.01 (emphasis in original). The Athens and Fulton proposals say the very same thing. *See* Athens & Fulton County Petitions at 3, Art.

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<sup>4</sup> Although Article X, Section 3 of the Ohio Constitution also contemplates the possibility of a charter or amendment “providing for the exclusive exercise of municipal powers by the county or providing for the succession by the county to any property or obligation of any municipality or township without the consent of the legislative authority of such municipality or township” the proposed charters at issue here expressly disclaim such powers. *See* Petitions at 3, Art. III, § 3.02 (“This Charter does not empower the County to exercise exclusively any municipal powers nor to provide for the succession by the County to any property or obligation of any municipality or township without the consent of the legislative authority of such municipality or township.”)

IV, § 4.01. The fact that the Relators seek to continue the existing forms of county government in all three counties without alteration underscores the fundamentally subversive nature of their proposals – to make the *existing* county government simply do their bidding with respect to issues the General Assembly has already comprehensively addressed on a statewide basis. This is a fundamental perversion of the intent behind the county home-rule amendment. Indeed, as one commentator has noted, “a home rule charter which leaves the present structure of the county intact is hardly worthy of the name.” Stephen Cianca, *Home Rule in Ohio Counties: Legal and Constitutional Perspectives*, 19 Dayton L. Rev. 533, 539 (Winter 1994).

The alterations to the forms of county government contemplated under Article X are a fundamental requirement for a valid and sufficient county charter petition, one analogous to the requirement that municipal initiative petitions propose ordinances or measures that are legislative rather than administrative in nature. See Article II, Section 1f, Ohio Constitution. The Ohio Supreme Court has expressly acknowledged that “the local authorities best equipped to gauge compliance with election laws – boards of elections” can and should decide whether such fundamental requirements are satisfied before allowing a petition to go to the ballot. See, e.g., *State ex rel. Oberlin Citizens for Responsible Dev. v. Talarico*, 106 Ohio St.3d 481, 836 N.E.2d 529, ¶ 35 (2005) (holding that an ordinance proposed by initiative petition, by which a citizens’ group sought to repeal a prior ordinance approving a construction development agreement between the City of Oberlin and Wal-Mart, was not to be placed on the ballot, because the prior ordinance constituted administrative action not properly subject to repeal by initiative or referendum under Article II, Section 1f of the Ohio Constitution). Permitting the proposed charters to proceed

to the ballot, notwithstanding their clear violation of the fundamental requirement that the petition propose an alternative form of government, would be a violation of the election laws of no lesser import than allowing a petition to repeal administrative action to proceed.

Petitioners' failure to propose a charter that alters the form and offices of county government stands in stark contrast to the valid charter proposed and adopted in Cuyahoga County in 2009. See Cuyahoga County Charter, available at: <http://charter.cuyahogacounty.us/en-US/charter.aspx> (last accessed Sept. 4, 2015). That charter fundamentally altered the then-existing form of government in Cuyahoga County by providing for an elected county executive, an elected county prosecutor, eleven county council members elected by district, and the appointment of all other county officers by the county executive. The drafters of the Cuyahoga County charter also had the foresight to include within the charter itself provisions for the establishment of a Transition Advisory Group designated by the Board of County Commissioners, to develop recommendations for an orderly and efficient transition to the newly altered form of county government properly established by the charter. See *id.*, Art. XIII. The invalid charters proposed in the Petitions at issue here, though, neither make any alterations to the existing forms of government nor provide any transition guidance to the existing boards of county commissioners concerning how they are expected to enforce the new, capacious "Community Bill of Rights" and Prohibitions.

Nor do any of the proposals provide "for the exercise by the county of power vested in municipalities by the constitution or laws of Ohio" – the other permissible charter purpose expressed in Article X, Section 3 of the Ohio Constitution for charters that are to be approved by a majority of electors. Although each proposed charter *purports* to so

provide,<sup>5</sup> these claims are facially invalid and illusory because, as the Secretary aptly noted, the proposed charters would give the counties *more* power to restrict oil and gas operations than may be exercised by municipalities under well-established home-rule jurisprudence. “Common sense, and the law, both dictate that a county charter may not grant to a county *more* authority than a municipality in Ohio can have pursuant to the Ohio Constitution. Yet that is exactly what the restrictive ‘fracking-related’ provisions of these charter petitions propose to do.” (Secretary’s Decision at 7; Appx. A24.)

For the foregoing reasons, the Secretary clearly did not abuse his discretion by invalidating these facially defective charter Petitions. On the contrary, the Secretary’s Decision is grounded solidly in binding constitutional and statutory law, and is consistent with this Court’s very recent decision in *Morrison v. Beck Energy*, as well as numerous prior decisions recognizing the limits on home-rule authority under the Ohio Constitution. *E.g. Struthers v. Sokol*, 108 Ohio St. 263, 140 N.E. 519 (1923), paragraph two of the syllabus; *see also State ex rel. Morrison, supra*, Slip Opinion No. 2015-Ohio-485, ¶ 26 (citing prior decisions holding that municipal licensing ordinances conflict with state-licensing schemes if the local ordinance restricts an activity which a state license permits).

**B. The cases cited by Relators do not apply in the context of protests heard by the Secretary pursuant to R.C. 307.95.**

Although Relators cite three of this Court’s prior decisions in their Verified Complaint for the proposition that “the substance of the charter proposals \*\*\* is off-limits” as the Secretary hears protests (Verified Compl. at ¶ 24), and although Relators cite the

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<sup>5</sup> See Petitions at 1, preface to Art. I (“we form this Charter so that the people in all incorporated and unincorporated parts of the county may exercise all powers including, but not limited to, those vested by the Constitution and laws of Ohio in home rule municipalities.”)

very same cases in their Merit Brief (at 7), not a single one of those cases addressed protests of the kind at issue here, concerning proposed county charters being reviewed by the Secretary for “invalidity” pursuant to his express duty under R.C. 307.95.<sup>6</sup>

In *State ex rel. Kilby v. Summit Cty. Bd. of Elections, supra*, 133 Ohio St.3d 184, for example, Akron’s city council enacted an ordinance proposing an amendment to the city charter that would eliminate the cost of an extra election, elect all council members at the same election, and limit pay raises for council members and the mayor. A councilman (Mr. Kilby) submitted a protest, but the County Board of Elections and Secretary Husted approved the ballot language. So Mr. Kilby sought writs from this Court to declare the proposal invalid, or compel the Board and Secretary to cause the ballots to be printed with different ballot language. Although this Court deemed Mr. Kilby’s challenge to the validity of the proposed amendment to be premature “before the amendment is approved by the electorate,” *Id.* at ¶ 12, Mr. Kilby (a citizen protesting a proposed amendment to a municipal charter) simply did not stand in the same shoes as the Secretary does in this case (the State’s highest elections official upholding a protest to a proposed county charter under R.C. 307.95(C)). Unlike the Secretary in this case, Mr. Kilby could not point to a statute such as R.C. 307.95(C) permitting a pre-election review and determination of the “validity or invalidity” of the proposal that he challenged. Indeed, R.C. 307.95 is nowhere mentioned in *Kilby*, which thus has no bearing on this action.

Similarly, in *State ex rel. Citizen Action for a Livable Montgomery v. Hamilton Cty. Bd. of Elections*, 115 Ohio St.3d 437, 2007-Ohio-5379, 875 N.E.2d 902, the relator was a group

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<sup>6</sup> Relators cited the very same three cases in an improper “Motion for Summary Judgment and Memorandum of Law in Support” that was rejected by the Supreme Court Clerk but still served on the Secretary.

of citizens called “Citizen Action” in the city of Montgomery, Ohio. The group was formed to place a proposed ordinance (called the “Natural Parkland Initiative”) on the ballot, directing the city to purchase and maintain natural parkland along Montgomery Road. After the city clerk sent the group’s petition to the Board of Elections, which verified the required number of signatures, a resident named Eugene Droder protested the initiative, claiming that the proposed ordinance contained more than one subject, deprived the city of its legislative authority, and was administrative action not subject to initiative. The Board of Elections agreed with the latter argument, concluding that the initiative was administrative action. Citizen Action sought a writ in this Court to compel the Board to include the initiative on the ballot. As it did in *Kilby*, this Court deemed certain substantive objections to the *Citizen Action* petition to be “premature before the proposed legislation is enacted by the electorate.” *Citizen Action* at ¶ 43. Again, however, this Court in *Citizen Action* was not reviewing the Secretary of State’s invalidity determination of a county charter petition under R.C. 307.95. Instead, the Court in *Citizen Action* was reviewing objections to a proposed city ordinance – objections lodged by a different citizens’ group that disagreed with what Citizen Action was trying to accomplish. As in *Kilby*, therefore, there is no mention in *Citizen Action* of R.C. 307.95, much less the scope of the Secretary’s review under that statute.

Finally, in *State ex rel. DeBrosse v. Cool, Piqua City Clerk*, 87 Ohio St.3d 1, 1999-Ohio-239, 716 N.E.2d 1114 (the primary authority cited by this Court in the relevant portions of both *Kilby* and *Citizen Action*), a group of electors in the City of Piqua filed an initiative petition with the city clerk, asking her to place a proposed ordinance on the ballot that would have required the city to retain legal counsel to determine the ownership of the

assets of the Piqua Memorial Medical Center. Although the petition was properly attested and contained a sufficient number of signatures, the clerk did not agree to submit the proposal to the electors after the city law director concluded that the substance of the proposal was prohibited by the city charter. This Court granted the petitioners' requested writ, stating that 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." *DeBrosse*, 87 Ohio St.3d at 6. Again, however, like *Kilby* and *Citizen Action*, the *DeBrosse* case in no way concerned the Secretary's statutory power and duty under R.C. 307.95 to assess the "validity or invalidity" of a county charter petition. Relators thus try to make yet another square peg fit in the round hole of this entirely different legal and procedural context. The Secretary's power and authority with respect to review of petitions proposing county charters is determined by the General Assembly, not by this Court's prior case law interpreting the power and authority of citizen groups or city clerks.

As such, none of the cases cited in the Verified Complaint supports Relators' request for an extraordinary writ. None were decided in the procedural context at issue here involving proposed county charters, and none of them impose any judge-made limitations upon the scope of the Secretary's review of proposed county charters under R.C. 307.95.

To the extent that Relators would have this Court make *Kilby*, *Citizen Action*, and *DeBrosse's* assertions about premature substantive objections applicable here by analogy, there are compelling historical reasons why that analogy should not be made and simply does not fit. Those reasons relate to the unique status of county government in Ohio – a status that differs fundamentally from the status of municipalities and has so differed from

the very beginnings of this State's history. As *amici curiae* explained in their underlying Brief (see Appx. A10-12), counties were created by the State to discharge functions of significance to the State as a whole – to carry out the policy of the State as a matter of administrative convenience. As this Court explained a century and a half ago:

Counties are local subdivisions of a State, created by the sovereign power of the State, of its own sovereign will, without the particular solicitation, consent, or concurrent action of the people who inhabit them. The former organization [a municipality] is asked for, or at least assented to by the people it embraces; the latter is superimposed by a sovereign and paramount authority.

A municipal corporation proper is created mainly for the interest, advantage, and convenience of the locality and its people; a county organization is created almost exclusively with a view to the policy of the State at large, for purposes of political organization and civil administration, in matters of finance, of education, of provision for the poor, of military organization, of the means of travel and transport, and especially for the general administration of justice. With scarcely an exception, all the powers and functions of the county organization have a direct and exclusive reference to the general policy of the State, and are, in fact, but a branch of the general administration of that policy.

*Bd. of Commrs. of Hamilton Cty. v. Mighels*, 7 Ohio St. 109, 118-119 (1857).

Given these stark historical differences between counties and municipalities, and the fact that counties are local subdivisions of the State, it is not hard to imagine why the General Assembly expressly endowed the State's highest elections officer with the power and duty to substantively review proposed county charter petitions purporting to adopt alternative forms of county government (knowing, all the while, that the Secretary's determination would ultimately be reviewable for an abuse of discretion in mandamus). Put another way, the State legislature acts well within its constitutional authority to permit the State's highest elections officer to assess the validity of proposals to modify the

governments of the State's own local subdivisions, which were, after all, created by the State to administer State policy. Here, the Secretary had no difficulty concluding that the proposed county charters at issue deviate sharply from State policy, by purporting to give counties greater home-rule powers vis-à-vis oil and natural gas operations than municipalities may exercise under the Constitution and this Court's very recent precedent.

**C. Statutes that authorize pre-election review of the validity of initiated petitions further the public interest and safeguard the electoral process.**

It is not surprising that the General Assembly endowed the Secretary with the power and duty to review proposed county charter petitions for invalidity in R.C. 307.95. As the Superior Court of Maine has recognized, there are sound policy reasons for doing just that. *Wyman v. Diamond*, Kennebec No. CV-91-414, 1992 Me. Super. LEXIS 82, \*21 (Mar. 31, 1992) (“There must be a rule of reason \*\*\* which would save \*\*\* the needless expense of conducting a referendum concerning a proposal which, if adopted, would be invalid.”) (citing *Javers v. Council of City of New Orleans*, 351 So.2d 247, 249 (La.App. 1977)).

In *Wyman*, a mandamus action was brought against Maine's Secretary of State, after he informed a citizen-petitioner that he would not approve his proposed ballot question or approve the petitioner's circulation of petition forms for the collection of signatures. Although the *Wyman* court determined that the petitioner “should be allowed to exercise his right to circulate petitions prior to either executive or judicial interference,” the court also confirmed that once the petition forms had been circulated, the Secretary was indeed empowered under the law of Maine to examine them “not only for procedural defects, but also to determine whether the subject matter of the petition is clearly and conclusively inappropriate for the initiative process.” *Wyman*, 1992 Me. Super. LEXIS at \*3-4 (Emphasis added). In reaching this conclusion, the *Wyman* court studied the extent of the Secretary's

authority under a Maine statute that, much like R.C. 307.95, called upon the Secretary to “determine the validity of these petitions \*\*\* [.]” *Id.* at \*9, Fn.6 (quoting 21-A M.R.S.A. § 905). The *Wyman* court also carefully studied the approaches of other courts across the country in this context, noting:

It is the prevailing view in the several states whose constitutions provide for initiative process that if the proposed law is clearly beyond the scope of the electorate to enact, the Secretary of State has the authority to prevent submission of the proposal to the public for approval. *See, e.g., White v. Welling*, 89 Utah 335, 57 P.2d 703 (Utah 1936) (the Secretary of State could refuse to certify for election a proposed initiative if it was “unquestionably and palpably on its face \*\*\* unconstitutional,” advisory, not “legislative” in nature, unintelligible, or outside the scope of the initiative power); \*\*\* *State ex rel. Fidanque v. Paulus*, 297 Ore. 711, 688 P.2d 1303, 1307 (Or. 1984) (the distinction drawn is between the substantive validity and the attempt to use the initiative process for an improper purpose); *Holmes v. Appling*, 237 Ore. 546, 392 P.2d 636 (Or. 1964) (Approval by the Secretary is conditioned not only upon verification of the required number of sponsor signatures, but also upon determination that the use of the initiative power in each case is authorized by the Constitution); *Bailey v. County of El Dorado*, 162 Cal. App. 3d 94, 210 Cal. Rptr. 237, 239-240 (Cal.App.3 Dist. 1984) (it is usually more appropriate to review constitutional and other challenges to \*\*\* initiative measures after an election rather than to disrupt the electoral process by preventing the exercise of the people’s franchise, *in the absence of some clear showing of invalidity* [emphasis added]); *Javers v. Council of City of New Orleans*, La.App., 351 So. 2d 247, 249 (If there were any doubt that the substance of the proposal might be valid the Council could not decline to submit the matter to referendum, but in this case no such doubt exists.); *Adams v. Cuevas*, 133 Misc. 2d 63, 506 N.Y.S.2d 614 (Supp. 1986) [aff’d 68 N.Y.2d 188, 499 N.E.2d 1246 (1986)]; *Sinawski v. Cuevas*, 133 Misc. 2d 72, 506 N.Y.S.2d 396, 399 (Supp. 1986) [aff’d 123 A.D.2d 548, 506 N.Y.S.2d 711 (1986)] (City Clerk could refuse to transmit initiative petition to legislative body because recall of the city officials by direct vote of the electorate was not a proper subject for the exercise of the public’s reserved power. Initiative was thus invalid and fatally defective).

*Wyman, supra*, at \*18-20 (emphasis added). As the *Wyman* court concluded, “[t]he trend, therefore, is to find that pre-election authority to invalidate a clearly improper initiative does reside with the Secretary.” *Id.* at \*20. *See also* 42 American Jurisprudence 2d, Initiative and Referendum, Section 35 (noting that “if a proposed initiative seeks a clearly

unconstitutional end, the State may deny certification.”) (citing *Kohlhaas v. State, Office of Lt. Gov.*, 223 P.3d 105 (Alaska 2010)).

The trend noted in *Wyman* serves a valuable public purpose. For as the court in *Wyman* explained, “[s]ome discretion should remain in the Secretary to protect the integrity of the electoral process when it is a foregone conclusion that the electorate does not have the power to enact the proposed legislation. If the public is continually presented with initiatives that are obviously and unequivocally void, it will discourage their participation.” *Wyman, supra*, at \*21 (Emphasis added). Given the fundamental legal shortcomings in the Petitions at issue here, and the manner in which these proposals are continually being presented in jurisdictions across the State, this concern rings true.

**D. Granting the extraordinary writ sought by Relators would only encourage other groups to file facially invalid county charter petitions impermissibly seeking to bypass this Court’s recent decision in *State ex rel. Morrison v. Beck Energy Corp.*, Slip Opinion No. 2015-485, and numerous other decisions recognizing the constitutional limitations on home-rule authority.**

Relators’ petitions are but three recent examples of an emerging phenomenon in Ohio, in which small groups of activists try to foist vague and unenforceable “Community Bills of Rights” (“CBOR”) on their local governments in a misguided and legally baseless attempt to outlaw oil and gas operations that are already permitted and comprehensively regulated by the State of Ohio in Chapter 1509 of the Revised Code.

As detailed by Jackie Stewart in her recent article “*Lifting the Curtain on the Pennsylvania Group behind Ohio’s ‘Local’ Anti-Fracking Campaigns*”<sup>7</sup> these “CBOR” charter petition initiatives do not truly originate in Ohio or in the three counties at issue here; they

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<sup>7</sup> Energy In Depth (July 21, 2015), available at <http://energyindepth.org/national/lifting-the-curtain-on-the-pennsylvania-group-behind-ohios-local-anti-fracking-campaigns/> (last accessed August 26, 2015).

are the brainchild of a Pennsylvania-based environmental activist group called the Community Environmental Legal Defense Fund (CELDF) that has been shopping CBOR language all over the country, including in Colorado, Illinois, and New York – not just Ohio. As Stewart describes, in Youngstown, Ohio, CELDF authored and organized a ballot measure to ban fracking through a CBOR, which has been rejected by the voters no less than four different times – with the taxpayers footing the bill each and every time the State’s costly election machinery is diverted to this baseless purpose. After describing the economic woes faced by localities that have adopted CELDF’s CBOR provisions in one form or another, Stewart notes:

As Reuters recently reported, CELDF is behind more than a dozen anti-fracking ordinances across the country. The organization has never won a case that went to court, and taxpayers are still footing the bill for CELDF’s attempts to use cities as launching pads for a “national movement” against corporations.

Far from giving a voice to communities, CELDF’s advocacy is a direct attack on all businesses, large and small; on all workers, union and non-union; on local government budgets; and, most prominently, local taxpayers.

*Amici curiae*, as associational representatives of the aggrieved businesses and workers Stewart describes, could not agree more. Granting the writ of mandamus sought here by Relators would not only undercut the discretion that the General Assembly expressly endowed on the Secretary under R.C. 307.95, but also encourage an untold number of other groups to file legally baseless charter petitions elsewhere in the State, seeking to accomplish at the level of *county* government what this Court has already confirmed (in *Morrison*, and in numerous other cases construing the limits of home-rule authority) may not be accomplished by municipalities in a manner consistent with the Ohio Constitution.

Relators' attempt to endow counties with home-rule powers that would exceed municipalities' home-rule powers and undercut State policy, in addition to being logically incoherent, flies in the face of the historical role of counties in the State of Ohio – a history that even precedes Ohio's admission to the Union. The taxpayers of this State should not be forced to subsidize costly elections so that voters can cast meaningless ballots for or against legally unenforceable county charters, and that is precisely why the General Assembly gave the Secretary the statutory power and duty to review and determine the "validity or invalidity" of proposed charter petitions before they are placed on the ballot.

**CONCLUSION**

For the foregoing reasons, and for the reasons stated by the Secretary, this Court should decline to issue the extraordinary writ of mandamus sought here by Relators.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

The undersigned counsel certifies that, pursuant to S.Ct.Prac.R. 3.11(B)(3), a copy of the foregoing Brief of *Amici Curiae* The Ohio Chamber of Commerce, Affiliated Construction Trades of Ohio, and The American Petroleum Institute was served via electronic mail upon the following counsel this 4th day of September, 2015:

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# APPENDIX

BEFORE JON A. HUSTED, OHIO SECRETARY OF STATE

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*In re: Ohio Secretary of State Advisory 2015-06  
Protests Filed Under Ohio Revised Code Section 307.95*

**BRIEF OF THE AMERICAN PETROLEUM INSTITUTE,  
THE AFFILIATED CONSTRUCTION TRADES OF OHIO, AND  
THE OHIO CHAMBER OF COMMERCE,  
AMICI CURIAE IN SUPPORT OF PROTESTS FILED UNDER R.C. 307.95**

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## INTRODUCTION

On August 3, 2015, Ohio Secretary of State Jon A. Husted (“Secretary”) issued Advisory 2015-06, which concerns a total of seven protests filed in his office under R.C. 307.95 (“Protests”) challenging the validity of petitions for the submission of proposed county charters in Athens, Fulton, and Medina Counties (“Petitions”). In his Advisory, the Secretary invited interested parties to submit *amicus* briefs concerning his review and determination of the Protests. *Amici curiae* the American Petroleum Institute, Affiliated Construction Trades of Ohio, and Ohio Chamber of Commerce appreciate the opportunity to submit briefing on the Protests. For the reasons that follow, these *amici* respectfully urge the Secretary to determine, pursuant to his duty under R.C. 307.95(C), that the Petitions are invalid and insufficient and should not be placed on the ballot at the next general election. In addition to being an unwarranted attack on Ohio’s oil and natural gas industry – an industry comprehensively regulated by the General Assembly under Chapter 1509 of the Revised Code – the Petitions are an unlawful attempt to bypass the limitations on county home rule established under Article X of the Ohio Constitution, and an attempt to endow counties with powers that the Ohio Constitution does not authorize and therefore may not be submitted by petition.

## INTERESTS OF AMICI CURIAE

*Amicus Curiae* American Petroleum Institute (“API”), doing business in Ohio through its Columbus offices as API-Ohio, is the primary national trade association of America’s technology-driven oil and natural gas industry. The over 625 API members are involved in all segments of the industry, including the exploration, production, refining, shipping, and transportation of crude oil and natural gas. In Ohio alone, over 250,000 jobs are supported by the industry, which also provides more than \$12 billion in labor income and more than \$28

billion in value added to the State's economy. According to the Bureau of Labor Statistics, over 13,000 energy-related businesses call Ohio home. API-Ohio members have invested billions of dollars in Ohio's oil and natural gas industry. Together with its member companies, API-Ohio is committed to ensuring a strong, viable oil and natural gas industry capable of meeting the energy needs of our Nation and the State of Ohio in a safe and environmentally responsible manner. For that reason, API submitted an *amicus* brief in the Ohio Supreme Court in *State ex rel. Morrison v. Beck Energy Corp.*, Case No. 2013-0465, Slip Op. No. 2015-Ohio-485, seeking to preclude the unlawful, inefficient, and preempted municipal regulation of an industry that is already comprehensively regulated by the State of Ohio in R.C. Chapter 1509.

*Amicus Curiae* ACT Ohio was created by the Ohio State Building & Construction Trades Council to facilitate economic and industrial development and promote industry best practices for Ohio's public and private construction. ACT Ohio works on behalf of fourteen regional councils, one hundred thirty-seven local affiliates, and close to 92,000 of the most highly skilled, highly trained construction workers in this State. ACT Ohio is funded by union construction workers who believe it is their duty to protect the State's construction industry and the many working families it supports.

*Amicus Curiae* the Ohio Chamber of Commerce ("Ohio Chamber"), founded in 1893, is Ohio's largest and most diverse statewide business advocacy organization. The Ohio Chamber works to promote and protect the interests of its nearly 8,000 business members and the thousands of Ohioans they employ while building a more favorable Ohio business climate. As an independent and informed point of contact for government and business leaders, the Ohio Chamber is a respected participant in the public policy and economic development arenas. Through its member-driven standing committees and the Ohio Small Business Council, the Ohio

Chamber formulates policy positions on issues as diverse as energy, environmental regulations, education funding, taxation, public finance, health care and workers' compensation. The advocacy efforts of the Ohio Chamber are dedicated to the creation of a strong pro-jobs environment – an Ohio business climate responsive to expansion and growth.

These *amici curiae* share profound concerns about the various, far-reaching prohibitions contained within the proposed county charters appended to the challenged Petitions, many of which specifically target the oil and natural gas industry. The Medina and Fulton County proposals, for example, would prohibit “the exploration for or extraction of gas or oil” within these counties, “with the exception of gas and oil wells installed and operating” at the time of the charters' enactment. *See* Medina & Fulton County Petitions at 3, Art. II, § 2.01.1. The Medina and Fulton County proposals would also prohibit the “siting or operation of equipment to support extraction of oil or gas, including pipelines, compressors, or other infrastructure” within these counties, the disposal or processing of wastewater or chemicals used in oil and natural gas operations, and the “procurement or extraction of water from any source” within these counties for use in hydraulic fracturing operations. *Id.*, Art. II, § 2.01.2; § 2.01.4. The Athens County proposal includes the latter water-related prohibitions. *See* Athens County Petition at 3, Art. II, § 2.01.1; § 2.01.2. All three proposals include a so-called “Community Bill of Rights” purporting to give “ecosystems” (among others) various vague and undefined rights, such as “the right to exist, flourish, and naturally evolve.” *See* Art. I of each Petition. What they do not do are the things that the Ohio Constitution provides may be done by such petitions.

For the following reasons, these *amici curiae* share the Protesters' concern about the Petitions the Secretary will review in this proceeding, and they respectfully ask the Secretary to declare the Petitions invalid and insufficient under R.C. 307.95(C).

## LAW AND ARGUMENT

### **I. The Petitions Are Invalid Under Article X Of The Ohio Constitution Because They Do Not Propose Any Alternative Form Of County Government.**

The Protests previously submitted to the Secretary outline multiple shortcomings in each Petition. The Objection and Protest submitted with respect to the Fulton County Petition, for example, notes that neither the General Assembly nor the drafters of the Ohio Constitution contemplated the type of proposed charter submitted along with that Petition. Mr. Overholt's Protest with respect to the Medina County Petition also raises well-founded objections regarding signatures and Circulator Statements for that Petition. *Amici curiae* hereby support and incorporate the arguments set forth in Sections 1, 3 & 4 of the Overholt Protest.<sup>1</sup>

*Amici curiae* write separately to underscore what they believe to be the fundamental requirement lacking in each of the three Petitions protested here. All three of the Petitions propose county charters that are facially defective under the prerequisites laid out in Article X of the Ohio Constitution because none of the Petitions seek to establish an "alternative form of county government" that differs from the current statutory form already in place in each of the three counties.

Article X, Section 1 of the Constitution provides, in part, that the General Assembly shall provide "by general law" for the organization and government of counties. The General Assembly did so in Title III of the Revised Code. *See generally* R.C. Chapter 301. The same provision of the Constitution allows the General Assembly to enact general laws permitting

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<sup>1</sup> Under R.C. 307.95(C), the Secretary may consider a variety of issues in the context of a county charter petition protest, including "whether to permit matters not raised by protest to be considered ...[.]" This broad discretion is an important and stark departure from normal practice under Ohio election statutes, which generally provide that decisions on protests be limited to the specific issues and grounds raised by protestors. Accordingly, *amici* urge the Secretary to give appropriate weight to the issues raised in this brief and any other issues relevant to the resolution of these protests. *See also infra* n.8.

“alternative forms of county government.” Again, the General Assembly did so in Title III. *See* R.C. 302.02. But when electors in a county invoke the home-rule amendment to the Ohio Constitution to propose a new county charter to be approved by a majority of electors in the county, the Constitution expressly contemplates a charter or amendment “which alters the form and offices of county government or which provides for the exercise by the county of power vested in municipalities by the constitution or laws of Ohio, or both \*\*\* [.]” Article X, Section 3, Ohio Constitution (emphasis added).<sup>2</sup> Here, the proposed charters appended to the challenged Petitions do neither of these things.

As described in Section 1 of the Overholt Protest, for example, the Medina County proposal does not seek to establish an alternative form of county government any different than the current statutory form. On the contrary, it expressly maintains the county’s existing, statutory form of government, saying:

**Section 4.01 County Officers, Duties, Powers, and Manner of Election.** The offices and duties of those offices, as well as the manner of election to and removal from County offices, and every aspect of county government not prescribed by this Charter, or by amendments to it, shall be continued without interruption or change in accord with the Ohio Constitution and the laws of Ohio that are in force at the time of the adoption of this Charter and as they may subsequently be modified or amended.

*See* Medina County Petition at 3, Art. IV, § 4.01 (emphasis in original). The Athens and Fulton proposals say the very same thing. *See* Athens & Fulton County Petitions at 3, Art. IV, § 4.01.

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<sup>2</sup> Although Article X, Section 3 of the Ohio Constitution also contemplates the possibility of a charter or amendment “providing for the exclusive exercise of municipal powers by the county or providing for the succession by the county to any property or obligation of any municipality or township without the consent of the legislative authority of such municipality or township” the proposed charters at issue here expressly disclaim such powers. *See* Petitions at 3, Art. III, § 3.02 (“This Charter does not empower the County to exercise exclusively any municipal powers nor to provide for the succession by the County to any property or obligation of any municipality or township without the consent of the legislative authority of such municipality or township.”)

The fact that the petitioners seek to continue the existing forms of county government in all three counties without alteration underscores the fundamentally subversive nature of their proposals -- to make the *existing* county government simply do their bidding with respect to issues the General Assembly has already comprehensively addressed on a statewide basis. This is a fundamental perversion of the intent behind the county home-rule amendment. Indeed, as one commentator has noted, "a home rule charter which leaves the present structure of the county intact is hardly worthy of the name." Stephen Cianca, *Home Rule in Ohio Counties: Legal and Constitutional Perspectives*, 19 Dayton L. Rev. 533, 539 (Winter 1994).

The alterations to the forms of county government contemplated under Article X are a fundamental requirement for a valid and sufficient county charter petition, one analogous to the requirement that municipal initiative petitions propose ordinances or measures that are legislative rather than administrative in nature. *See* Article II, Section 1f, Ohio Constitution. The Ohio Supreme Court has expressly acknowledged that "the local authorities best equipped to gauge compliance with election laws -- boards of elections" can and should decide whether such fundamental requirements are satisfied before allowing a petition to go to ballot. *See, e.g., State ex rel. Oberlin Citizens for Responsible Dev. v. Talarico*, 106 Ohio St.3d 481, 836 N.E.2d 529, ¶ 35 (2005) (holding that an ordinance proposed by initiative petition, by which a citizens' group sought to repeal a prior ordinance approving a construction development agreement between the City of Oberlin and Wal-Mart, was not to be placed on the ballot, because the prior ordinance constituted administrative action not properly subject to repeal by initiative or referendum under Article II, Section 1f of the Ohio Constitution). Permitting the proposed charters to proceed to the ballot, notwithstanding their clear violation of the fundamental requirement that the petition

propose an alternative form of government, would be a violation of the election laws of no lesser import than allowing a petition to repeal administrative action to proceed.

Petitioners' failure to propose a charter that alters the form and offices of county government stands in stark contrast to the valid charter proposed and adopted in Cuyahoga County in 2009. That charter fundamentally altered the then-existing form of government in Cuyahoga County by providing for an elected county executive, an elected county prosecutor, eleven county council members elected by district, and the appointment of all other county officers by the county executive. The drafters of the Cuyahoga County charter also had the foresight to include within the charter itself provisions for the establishment of a Transition Advisory Group designated by the Board of County Commissioners, to develop recommendations for an orderly and efficient transition to the newly altered form of county government properly established by the charter. The invalid charters proposed in the Petitions at issue here, though, neither make any alterations to the existing forms of government nor provide any transition guidance to the existing boards of county commissioners concerning how they are expected to enforce the new, capacious "Community Bill of Rights" and Prohibitions.

Nor do any of the proposals provide "for the exercise by the county of power vested in municipalities by the constitution or laws of Ohio" – the other permissible charter purpose expressed in Article X, Section 3 for charters to be approved by a majority of electors. Although each proposed charter *purports* to so provide,<sup>3</sup> for the reasons described below, these claims are facially invalid and illusory.

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<sup>3</sup> See Petitions at 1, preface to Art. I ("we form this Charter so that the people in all incorporated and unincorporated parts of the county may exercise all powers including, but not limited to, those vested by the Constitution and laws of Ohio in home rule municipalities.")

**II. The Petitions Seek To Endow Counties With Powers That The Ohio Constitution Does Not Authorize And Therefore May Not Be Submitted By Petition.**

In February 2015, not long before the Petitions at issue here were submitted to the Boards of County Commissioners in Fulton, Athens & Medina counties, the Ohio Supreme Court issued a long-awaited and critical home-rule decision in *State ex rel. Morrison v. Beck Energy Corp.*, Slip Opinion No. 2015-Ohio-485, which addressed the outer boundaries of municipal home rule in the context of the oil and natural gas industry. In *Morrison*, which concerned the City of Munroe Falls' unlawful attempt to impose its own separate and onerous local licensing scheme upon oil and natural gas operations – operations that were already permitted by the State of Ohio Department of Natural Resources (“ODNR”) – the Supreme Court reaffirmed the bedrock principle of Ohio home-rule jurisprudence that a municipal corporation may not exercise police powers in a manner that conflicts with the State’s general laws, or that prohibits what State law allows, including state-licensed oil and gas production. *Morrison*, 2015-Ohio-485, ¶ 25-26.<sup>4</sup> Interpreting the Ohio Constitution’s home-rule amendment and the plain language of R.C. 1509.02 granting the ODNR “sole and exclusive authority” to regulate oil and gas operations, the Court held that Munroe Falls’ licensing scheme was invalid. The Court further held that the General Assembly intended for oil and gas development to be subject to uniform statewide regulation, and that municipalities are therefore without power to “discriminate against, unfairly impede, or obstruct oil and gas activities and production operations[.]” *Id.*, ¶ 34.

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<sup>4</sup> Citing *Ohio Assn. of Private Detective Agencies, Inc. v. N. Olmsted*, 65 Ohio St.3d 242, 245, 602 N.E.2d 1147 (1992); *Auxter v. Toledo*, 173 Ohio St. 444, 447, 183 N.E.2d 920 (1962); *Anderson v. Brown*, 13 Ohio St.2d 53, 58, 233 N.E.2d 584 (1968); and *Am. Fins. Servs. Assn. v. Cleveland*, 112 Ohio St.3d 170, 2006-Ohio-6043, 858 N.E.2d 776, ¶ 46 (stating that “any local ordinances that seek to prohibit conduct that the state has authorized are in conflict with the state statutes”).

Less than a month after *Morrison* was decided, the Cuyahoga County Court of Common Pleas considered a challenge to a “Community Bill of Rights” (“CBOR”) adopted as an amendment to the municipal charter of the City of Broadview Heights. The charter amendment, adopted by voter initiative in 2012, was representative of many CBORs that have been proposed in municipalities and counties across the State, including the CBORs contained within the proposed county charters at issue here. Like the proposed county charters appended to the Petitions challenged here, the municipal charter amendment in Broadview Heights prohibited the extraction of gas or oil within the City, with the exception of gas and oil wells already installed and operating. And like the proposed county charters at issue here, the municipal charter amendment in Broadview Heights contained numerous other objectionable provisions.<sup>5</sup> Relying on *Morrison*, the trial court granted a declaratory judgment and found that the Broadview Heights charter’s ban on drilling “directly conflicts with the state regulatory scheme.” *Bass Energy, Inc. v. City of Broadview Heights*, Cuyahoga Common Pleas Case No. CV-14-828074. Opinion and Judgment Entry at 7 (March 10, 2015).

At bottom, the Petitions protested here improperly seek to endow counties with even greater home-rule powers than the Ohio Supreme Court deemed impermissible for municipal corporations to exercise in *Morrison*. This attempt to endow counties with powers not given to municipal corporations in *Morrison* and its progeny in *Broadview Heights*, in addition to being

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<sup>5</sup> Article XV of the municipal charter amendment in Broadview Heights contained general provisions purporting to strip corporate entities of their constitutional rights and protections. Compare Sections 1.11 & 1.12 of the Fulton, Athens, and Medina County Petitions at issue here. Moreover, Article XV of the municipal charter amendment in Broadview Heights sought to invalidate any state or federal permit, license, privilege, or charter authorizing activities that would violate the terms of the City’s charter. Compare Section 1.12 of the Petitions at issue here.

logically incoherent, flies in the face of the historical role of counties in the State of Ohio – a history that even precedes Ohio’s admission to the Union.<sup>6</sup>

Historically, counties were created to discharge functions of significance *to the state as a whole* – to carry out the policy *of the state* as a matter of administrative convenience.<sup>7</sup> Judge Brinkerhoff explained this critical distinction between counties and municipalities more than a century ago in an Ohio Supreme Court opinion, as follows:

Counties are local subdivisions of a State, created by the sovereign power of the State, of its own sovereign will, without the particular solicitation, consent, or concurrent action of the people who inhabit them. The former organization [a municipality] is asked for, or at least assented to by the people it embraces; the latter is superimposed by a sovereign and paramount authority.

A municipal corporation proper is created mainly for the interest, advantage, and convenience of the locality and its people; a county organization is created almost exclusively with a view to the policy of the State at large, for purposes of political organization and civil administration, in matters of finance, of education, of provision for the poor, of military organization, of the means of travel and transport, and especially for the general administration of justice. With scarcely an exception, all the powers and functions of the county organization have a direct and exclusive reference to the general policy of the State, and are, in fact, but a branch of the general administration of that policy.

Shoup, *supra* n. 7 at 115, quoting *Comms. of Hamilton Cty v. Mighels*, 7 Ohio St. 109, 118 (1857) (emphasis added). Because the functions of the county have long been so intimately tied to and dependent upon state policy, commentators have long recognized that “it is plain that full power to legislate on them could not be delegated to the individual counties without the

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<sup>6</sup> By the time of its admission to the Union in 1803, the territory of Ohio had already been divided into ten counties. Patterson, *THE CONSTITUTIONS OF OHIO* 71, 72 (1912). Now, of course, Ohio has 88 counties.

<sup>7</sup> Shoup, *Constitutional Problems of County Home Rule in Ohio*, 1 W.Res.L.Rev. 114 (Dec. 1949)

destruction of the unity of the state government.” Shoup at 116. The Petitions at issue here are just such an affront to the unity of State government, because the proposed charters appended to them would allow three of Ohio’s 88 counties to ban a host of activities already comprehensively licensed and regulated as a matter of State policy in Chapter 1509 of the Revised Code.

The passage of the county home-rule amendment to the Ohio Constitution in 1933 did not mean that individual counties adopting home-rule charters could suddenly exercise their police powers in a manner conflicting with general state laws enacted by the General Assembly and signed by the Governor. On the contrary, as commentators have explained, the 1933 amendments to Article X allowed counties to adopt charters “by which they can exercise power of local self-government *analogous to* the home rule powers conferred on municipalities under Article XVIII.” Steinglass and Scarselli, *The Ohio State Constitution*, Oxford Commentaries on the State Constitutions of the United States, at 287 (2011) (emphasis added). If county home-rule powers adopted under Article X shall be “analogous to” municipal home-rule powers, then it follows that Article X is not a panacea for disgruntled electors such as the Petitioners here to bypass or avoid the ramifications of municipal home-rule decisions like *Morrison* and *Broadview Heights*. Yet that is precisely the end-run that these Petitioners seek to accomplish with their proposed county charters.

While *Morrison* and *Broadview Heights* invalidated municipal ordinances and municipal charter amendments, respectively, their reasoning would apply equally to county ordinances, county resolutions, and county charters that conflict with general laws. As one appellate court has already held, for example, a charter county’s laws “may not grant power or create a duty that conflicts with the general laws.” *State ex rel. O’Connor v. Davis*, 139 Ohio App.3d 701, 708 (Summit App. 2000) (invalidating as unconstitutional an ordinance in a charter county that

attempted to diminish the statutory duties of the county prosecuting attorney relating to the representation of the county executive). The Ohio Attorney General has reached the same conclusion. *E.g.*, 2007 Ohio Atty. Gen.Ops. No. 35, 2007 Ohio AG LEXIS 37 (Oct. 23, 2007) (a charter county's ordinance would conflict with state law, so the county was therefore "not empowered" to adopt it); *see also* 1989 Ohio Atty. Gen.Ops. No. 25, 1989 Ohio AG LEXIS 41 (May 15, 1989) (a charter county regulation was permissible only where the state building code expressly exempted the class of buildings that the county was attempting to regulate). Indeed, it would be absurd for a county to be able to ban oil and gas development activities when the Supreme Court has just said expressly that municipalities *within* counties may not do so. Yet that very absurdity is presented on the face of the Petitions being protested here, which the Secretary should declare invalid and insufficient consistent with his statutory duty under R.C. 307.95(C).<sup>8</sup>

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<sup>8</sup> The General Assembly did not limit the scope of the Secretary's review in R.C. 307.95(C), and *amici curiae* are not aware of any case interpreting this statute or imposing purely ministerial duties upon the Secretary in this precise procedural context. The fact that the General Assembly expressly instructs the Secretary in R.C. 307.95(C) to determine "the validity or invalidity of the petition" *as well as* "the sufficiency or insufficiency of the signatures" suggests that the Secretary's review may encompass substantive defects in the petitions beyond those relating merely to defective signatures on the part-petitions. Although the Ohio Supreme Court has previously limited the Secretary to a ministerial role with respect to proposed *constitutional amendments* filed in his office, *e.g.*, *State ex rel. Marcolin v. Smith*, 105 Ohio St. 570, 138 N.E. 881 (1922), *Marcolin* was decided more than five decades before R.C. 307.95 became effective in 1979, and *Marcolin* implicated a constitutional directive upon the Secretary not present in this context. *See Marcolin*, 105 Ohio St. at 570, quoting Section 1a, Article II, Ohio Constitution ("the secretary of state shall submit," etc.). *See also id.* at 619 (Marshall, C.J., dissenting) ("In the instant case 10% of the electors desire to invoke legislative action upon a subject which an executive branch of the government, to-wit, the secretary of state, conceives to be forbidden by federal statutes. The secretary of state very properly, as it seems to me, refuses to employ the election machinery, together with large sums of money raised by taxation, for such purpose. If unlawful interference between the different branches of government exists anywhere it consists in the award by this court of the extraordinary writ of mandamus against the executive branch of the government to compel the secretary of state to do that which his judgment and his conscience tell him it is unlawful for him to do.")

## CONCLUSION

While *amici curiae* have a genuine and overarching interest in the particular Petitions at issue, it is worth noting that this matter is about far more than a few isolated attacks on the oil and natural gas industry. Approving the Petitions here for placement on the ballot would establish a dangerously broad interpretation of Article X, Section 3 and open the door to the widespread misuse of that carefully worded, purposely narrow constitutional authorization. It will encourage countless other petitioners to hijack the electoral process in order to block, in their counties, the implementation of state laws with which they disagree. The law in Ohio is that counties are the agents of state government intended to carry out state policy at the local level. Broadening Article X, Section 3 to allow county residents to negate state laws under the ruse of altering the county form of government will bring forth a sea-change in the relationship between the State and its counties.

For the foregoing reasons, and for the additional reasons stated in Sections 1, 3 & 4 of the Overholt Protest, *amici curiae* the American Petroleum Institute, Affiliated Construction Trades of Ohio, and Ohio Chamber of Commerce respectfully ask the Secretary to issue a final and binding determination that the Petitions for submission of proposed charters in Fulton, Athens, and Medina counties are invalid and insufficient under R.C. 307.95(C).

Respectfully submitted,

  
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**CERTIFICATE OF SUBMISSION AND MAILING**

The undersigned certifies that, in accordance with Advisory 2015-06, a copy of the foregoing Brief was delivered by electronic mail on August 7, 2015 to the following:

Ohio Secretary of State  
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The undersigned further certifies that a courtesy copy of the foregoing Brief was sent by U.S. Mail on August 7, 2015, to the following Protestors or their counsel:

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August 13, 2015

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**Re: Protests filed pursuant to R.C. 307.95**

To the Members of the Athens, Fulton, and Medina County Boards of Elections and Boards of Commissioners:

On August 3, 2015, my office received protests against proposed county charter petitions<sup>1</sup> from the Athens, Fulton, and Medina County Boards of Elections.

Pursuant to R.C. 307.95, I am required to “determine the validity or invalidity” of these charter petitions within ten days after receipt of the protests.<sup>2</sup> To aid in my determination, I issued Advisory 2015-06 requesting parties to the protest to submit additional written briefs and supporting documentation, and permitting interested parties to submit *amicus* briefs to my office by 5:00 p.m. on Friday, August 7, 2015.

**FACTUAL BACKGROUND AND PROCEDURE**

The Ohio Constitution (Article X, Section 3) and R.C. 307.94 allow electors of a county to file a petition seeking to submit the question of the adoption of a county charter to the electors of the county.

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<sup>1</sup> For ease of reference, I will refer to these county charter petitions as the “Athens petition,” the “Fulton petition,” and the “Medina petition,” respectively.

<sup>2</sup> “The secretary of state, within ten days after receipt of the protests, shall determine the validity or invalidity of the petition and the sufficiency or insufficiency of the signatures. 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, and may conduct hearings, either in Columbus or in the county where the county charter petition is filed. The determination by the secretary of state is final.” R.C. 307.95(C).

A committee of petitioners in Athens, Fulton, and Medina counties each initiated, circulated, and filed substantially similar county charter petition proposals for the November 3, 2015 general election ballot.

The Fulton and Medina petitions were filed with their respective county Boards of Elections on June 24, 2015. The Boards certified their petition to their respective Board of Commissioners, which, in turn, certified the petition back to that Board of Elections for placement on the ballot.

In Athens County, the Board of Elections certified the petition as invalid to the Board of Commissioners on July 6, 2015, after which, on July 9, 2015, the petitioners requested the Board of Elections, pursuant to R.C. 307.94,<sup>3</sup> to “establish the validity or invalidity” of the Athens petition in an action before the Athens County Court of Common Pleas.

The Board of Elections complied with petitioners’ request and filed an action with the Court of Common Pleas on Monday, July 13, 2015. On July 15, 2015, Judge George P. McCarthy determined that “the petition is valid and contains sufficient valid signatures,” and certified his decision to the Board of Commissioners, which, in turn, certified the petition back to the Board of Elections on July 23, 2015.

## DISCUSSION

According to R.C. 307.95, when certifying a county charter petition a board of elections must determine that the petition does, in fact, “meet the requirements of law.”

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.<sup>4</sup>

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.

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<sup>3</sup> R.C. 307.94 (in relevant part) provides that, “[i]f the petition is certified by the board of elections to be invalid or to have insufficient valid signatures, or both, the petitioners’ committee may protest such findings or solicit additional signatures as provided in section 307.95 of the Revised Code, or both, or request that the board of elections proceed to establish the validity or invalidity of the petition and the sufficiency or insufficiency of the signatures in an action before the court of common pleas in the county.”

<sup>4</sup> See *Durell v. Celebrezze*, 1980 WL 353759 (10<sup>th</sup> Dist. Ct. App. 1980), in which the Court determined that the substance of the initiative legislation at issue was “inseparable” from the initiative petition itself.

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 not have 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<sup>5</sup> involved municipal legislative authorities reviewing municipal petitions, 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<sup>6</sup> 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.

In *Durell v. Celebreeze*, 1980 WL 353759 (10<sup>th</sup> Dist. Ct. App. 1980), the plaintiffs successfully enjoined the Secretary of State from placing on the ballot at the general election an initiative petition on the basis that the proposed initiative sought to pass a law that would clearly violate a provision of the Ohio Constitution that prohibits using the initiative process to authorize a classification of property for the purpose of levying different rates of taxation.<sup>7</sup>

Our situation is analogous. Article X, Section 3 provides for initiative county charter petitions, but, as in *Durell*, the Constitution restricts what may be contained in the substance of the initiative petition itself.

In this case, 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 added.) As I will explain later in my decision, substantive provisions of these petitions contain questions on which a county is not authorized by law to control by legislative action.<sup>8</sup>

As the 10<sup>th</sup> District Court of Appeals in *Durell* wisely noted:

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<sup>5</sup> *State ex rel. Ebersole, et al. v. The City of Powell, et al.*, 141 Ohio St.3d 17 (2014), and a similar line of cases.

<sup>6</sup> R.C. 307.95 (in part): “The secretary of state...shall determine the validity or invalidity of the petition...” (Emphasis added.)

<sup>7</sup> O. Const. Article II, Section 1(e): “The powers defined herein as the ‘initiative’ and ‘referendum’ shall not be used to pass a law authorizing any classification of property for the purpose of levying different rates of taxation thereon or of authorizing the levy of any single tax on land or land values or land sites at a higher rate or by a different rule than is or may be applied to improvements thereon or to personal property.”

<sup>8</sup> See also *State ex rel. Rhodes v. Board of Elections of Lake County*, 12 Ohio St.2d 4 (1967), in which relators failed to force the local board of elections to place an initiative petition on the ballot because it contained proposed legislation that a municipality is not authorized by law to control by legislative action.

“Form should not prevail over substance. The law becomes a laughing stock when such subterfuge succeeds.”

County government in Ohio is established in Article X, Section 1 of the Ohio Constitution,<sup>9</sup> which instructs the General Assembly to provide “by general law for the organization and government of counties...” Consistent with this mandate, the General Assembly enacted various provisions of Chapter 301 of the Revised Code that provide the structure for basic county government in Ohio.

Article X, Section 1 also permits the General Assembly to pass laws providing the structural requirements for “alternative forms of county government.” These laws are enacted in Chapter 302 of the Revised Code.

One of these “alternative forms of government” is a “home rule” county, which is implemented when voters of a county approve a county charter proposal petition via the procedures outlined in R.C. 307.94.

The petitioners in Athens, Fulton, and Medina counties are seeking to implement this home rule type of county government in their county charter proposal petitions.

These petitions, for the most part, contain the same general language and provisions. For example, the Preamble of each petition declares the following:

“... [W]e deem it necessary to alter the current County government...”

“... [W]e form this Charter so that the people in all incorporated and unincorporated parts of the county may exercise all powers including, but not limited to, those vested by the Constitution and laws of Ohio in home rule municipalities.”

“We...adopt this home rule Charter...to elevate the consent of the governed above administrative dictates and preemptions...”

Section 3.01 of each proposal similarly provides:

“The County...shall...[have] all the powers, authorities, and responsibilities granted by this Charter and by general law, including but not limited to all or

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<sup>9</sup> O. Const. Article X, Section 1: The general assembly shall provide by general law for the organization and government of counties, and may provide by general law alternative forms of county government. No alternative form shall become operative in any county until submitted to the electors thereof and approved by a majority of those voting thereon under regulations provided by law. Municipalities and townships shall have authority, with the consent of the county, to transfer to the county any of their powers or to revoke the transfer of any such power, under regulations provided by general law, but the rights of initiative and referendum shall be secured to the people of such municipalities or townships in respect of every measure making or revoking such transfer, and to the people of such county in respect of every measure giving or withdrawing such consent.

any powers vested in municipalities by the Ohio Constitution or by general law.”

Additionally, provisions of each petition clearly aim to regulate what is commonly known as “fracking” within their respective county borders by making it illegal to “[d]eposit, store, treat, inject, dispose of, or process wastewater, produced water, ‘frack’ water, brine or other substances, chemical, or by-products that have been used” in the unconventional extraction (or “high-volume horizontal hydraulic fracturing”) of gas and oil on or into the land, air or waters....”<sup>10</sup>

Likewise, each outright ban the “procurement or extraction of water from any source” for use in hydraulic fracking.<sup>11</sup>

The Fulton and Medina petitions proceed a step further, prohibiting “the exploration for or extraction of gas or oil” within these counties, with an exception for currently operating gas and oil wells,<sup>12</sup> and banning the “siting or operation of equipment to support extraction of oil or gas, including pipelines, compressors, or other infrastructure.”<sup>13</sup>

In a similar vein, each of the petitions contains a “Community Bill of Rights” granting certain rights to “ecosystems,” and a general “right to be free of chemical trespass.”

What these charter petitions do *not* contain, however, is also fundamental to examine.

Significantly, I find that none of the petitions realistically provide for a county executive, or, indeed, provide for *any* meaningful change to the structure of county government.

As mentioned above, the Ohio General Assembly enacted Chapter 302 of the Revised Code to implement the “alternative form of government,” which these petitions purport to create. According to statute, every alternative form of county government in Ohio must include either an elected or an appointed county executive.<sup>14</sup>

None of these petitions, however, provide for the election or appointment of a county executive as required by Ohio law.

In fact, the language of each petition confirms as much, explicitly providing for the continuation of the same offices that exist in their current county governments (each of which include three county commissioners, an auditor, a treasurer, a prosecuting attorney, etc.) while not providing for a county executive:

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<sup>10</sup> See Section 2.01.1, Athens petition; Section 2.01.3, Fulton and Medina petitions.

<sup>11</sup> See Section 2.01.2, Athens petition; Section 2.01.4, Fulton and Medina petitions.

<sup>12</sup> See Section 2.01.1, Fulton and Medina petitions.

<sup>13</sup> See Section 2.01.2, Fulton and Medina petitions.

<sup>14</sup> See R.C. 302.02: “An alternative form of county government shall include either an elective county executive...or an appointive county executive...,” and R.C. 302.14: “There shall be a county executive, who shall be the chief executive officer of the county.”

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

**Section 4.01 County Officers, Duties, Powers and Manner of Election**  
(Emphasis added.)

The unavoidable truth is that the Athens, Fulton, and Medina petitions simply fail to adhere to the Revised Code's clear requirements for a legally constituted "alternative form of government."

In addition, recent court decisions forcefully address "home rule" as it relates to local governments (as political subdivisions of the state) and their attempted regulation of the oil and gas industry.

These cases acknowledge the primacy of the Ohio Constitution (which in Article II, Section 36 grants the General Assembly the power to pass laws providing for the "*regulation of methods of mining, weighing, measuring and marketing coal, oil, gas and all other minerals,*") and a "comprehensive regulatory scheme" found in R.C. 1509.02 that explicitly reserves for the state, to the exclusion of political subdivisions of the state, the right to regulate "all aspects" of the location, drilling, and operation of oil and gas wells.<sup>15</sup>

These provisions prohibit local governments from exercising powers in a way that "discriminates against, unfairly impedes, or obstructs oil and gas activities and operations" already regulated by the state.<sup>16</sup>

In OAG 85-047, the Attorney General describes the adoption of a county charter as a way by which "the people of any county may increase the authority of their county government."

Article X, Section 3 of the Ohio Constitution states in part that county charters "may provide for the concurrent or exclusive exercise by the county...of all or of any designated powers vested by the Constitution or laws of Ohio in municipalities."

Section 3.01 of each county charter petition attempts to provide these municipal powers to their respective counties.<sup>17</sup> In this way, the petitioners seek to "increase the authority of their county government" by authorizing the county to exercise the same local self-government and

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<sup>15</sup> In particular, *State ex rel. Morrison v. Beck Energy Corporation*, 2015 WL 687475 (2015), and *Bass Energy v. City of Broadview Heights, Cuyahoga, C.P. No. CV-14-828074* (Mar. 11, 2015).

<sup>16</sup> *State ex rel. Morrison v. Beck Energy Corporation*, *supra*.

<sup>17</sup> See Section 3.01, Athens, Fulton, Medina petitions. ("In addition, the County may exercise all powers specifically conferred by this Charter or incidental to powers specifically conferred by this Charter, including, but not limited to, the concurrent exercise of all or any powers vested in municipalities by the Ohio Constitution or by general law.")

police powers as a municipality in Ohio. The grant by a county charter of this municipal power may not, however, come into conflict with any constitutional provision.<sup>18</sup>

The courts in Ohio have spoken: a municipality may not “discriminate against, unfairly impede, or obstruct” the operation of oil and gas wells in Ohio.<sup>19</sup>

Common sense, and the law, both dictate that a county charter may not grant to a county *more* authority than a municipality in Ohio can have pursuant to the Ohio Constitution. Yet that is exactly what the restrictive “fracking-related” provisions<sup>20</sup> of these charter petitions propose to do.

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.

#### DECISION

Having carefully reviewed the law, court decisions, and the materials submitted in connection with the protests, I find that the Athens, Fulton, and Medina petitions violate the aforementioned provisions of statutory and Ohio constitutional law.

For the foregoing reasons, the protests in Athens, Fulton, and Medina counties are upheld, the petitions are invalidated, and the county charter proposals appended to each of the petitions shall not be placed upon the November 3, 2015 general election ballot.

Sincerely,

  
Jon Husted  
Secretary of State

<sup>18</sup> See Ohio Attorney General Opinion 85-047 (1985).

<sup>19</sup> See, *Bass Energy v. City of Broadview Heights*, *supra* (in which the court ruled that the City does not have the power to enforce provisions of its Charter that are nearly identical to those in the Athens, Fulton, and Medina petitions) *and State ex rel. Morrison v. Beck Energy Corporation*, *supra*.

<sup>20</sup> See Sections 2.01.1 and 2.01.2, Athens petition; Sections 2.01.1 through 2.01.4, Fulton and Medina petitions.

THE STATE OF OHIO

VOLUME CXXXVIII

# LEGISLATIVE ACTS

(EXCEPTING APPROPRIATION ACTS)

PASSED

AND

# JOINT RESOLUTIONS

ADOPTED

BY THE

ONE HUNDRED AND THIRTEENTH GENERAL ASSEMBLY  
OF OHIO

AT ITS REGULAR SESSION

JANUARY 2, 1979 to DECEMBER 19, 1980, INCLUSIVE

Issued by

**Anthony J. Celebrezze, Jr.**

Secretary of State

Published by

**Sherrod Brown**

Secretary of State, 1985

general and permanent  
the Revised Code.

## AN ACT

*Knott*

vice Commission.

of State at Columbus,  
A. D. 1980,

*Chapman*  
Secretary of State.

October 2, 1980

To amend sections 307.70 and 307.99 and to enact sections 307.94, 307.95, 307.96, and 307.97 of the Revised Code relative to procedures for submitting county charters to the electors, and to declare an emergency.

*Be it enacted by the General Assembly of the State of Ohio:*

SECTION 1. That sections 307.70 and 307.99 be amended and sections 307.94, 307.95, 307.96, and 307.97 of the Revised Code be enacted to read as follows:

Sec. 307.70. In any county electing a county charter commission, the board of county commissioners ~~may~~ SHALL appropriate money for the expenses of such commission in the preparation of a county charter, or charter amendment, and the study of problems involved. No appropriation shall be made for the compensation of members of the commission for their services. The board ~~on its own behalf, or on behalf of any other authority submitting a charter or charter amendment, in accordance with Section 4 of Article X, of the Constitution of Ohio, shall provide funds for the printing and distribution of copies of any charter or charter amendment submitted to the electors of~~ SHALL APPROPRIATE MONEY FOR THE PRINTING AND MAILING OR OTHERWISE DISTRIBUTING TO EACH ELECTOR IN THE COUNTY, AS FAR AS MAY BE REASONABLY POSSIBLE, A COPY OF A CHARTER SUBMITTED TO THE ELECTORS OF THE COUNTY BY A CHARTER COMMISSION OR BY THE BOARD PURSUANT TO PETITION AS PROVIDED BY SECTION 4 OF ARTICLE X, OHIO CONSTITUTION. THE COPY OF THE CHARTER SHALL BE MAILED OR OTHERWISE DISTRIBUTED AT LEAST THIRTY DAYS PRIOR TO THE ELECTION. THE BOARD SHALL APPROPRIATE MONEY FOR THE PRINTING AND DISTRIBUTION OR PUBLICATION OF PROPOSED AMENDMENTS TO A CHARTER SUBMITTED BY A CHARTER COMMISSION PURSUANT TO SECTION 4 OF ARTICLE X, OHIO CONSTITUTION. NOTICE OF AMENDMENTS TO A COUNTY CHARTER SHALL BE GIVEN BY MAILING OR OTHERWISE DISTRIBUTING A COPY OF EACH PROPOSED AMENDMENT TO EACH ELECTOR IN THE COUNTY, AS FAR AS MAY BE REASONABLY POSSI-

BLE, AT LEAST THIRTY DAYS PRIOR TO THE ELECTION OR, IF THE BOARD SO DETERMINES, BY PUBLISHING THE FULL TEXT OF THE PROPOSED AMENDMENTS ONCE A WEEK FOR AT LEAST TWO CONSECUTIVE WEEKS IN A NEWSPAPER PUBLISHED IN THE COUNTY. IF NO NEWSPAPER IS PUBLISHED IN THE COUNTY OR THE BOARD IS UNABLE TO OBTAIN PUBLICATION IN A NEWSPAPER PUBLISHED IN THE COUNTY, THE PROPOSED AMENDMENTS MAY BE PUBLISHED IN A NEWSPAPER OF GENERAL CIRCULATION WITHIN the county. No ~~duly elected county~~ PUBLIC officer ~~shall be disqualified~~ IS PRECLUDED, BECAUSE OF BEING A PUBLIC OFFICER, from also holding office as a member of a county charter commission, EXCEPT THAT NOT MORE THAN FOUR OFFICE-HOLDERS MAY BE ELECTED TO A COUNTY CHARTER COMMISSION AT THE SAME TIME. NO MEMBER OF A COUNTY CHARTER COMMISSION, BECAUSE OF CHARTER COMMISSION MEMBERSHIP, IS PRECLUDED FROM SEEKING OR HOLDING OTHER PUBLIC OFFICE.

Sec. 307.94. ELECTORS OF A COUNTY, EQUAL IN NUMBER TO TEN PER CENT OF THE NUMBER WHO VOTED FOR GOVERNOR IN THE COUNTY AT THE LAST PRECEDING GUBERNATORIAL ELECTION, MAY FILE, NOT LATER THAN ONE HUNDRED DAYS BEFORE THE DATE OF A GENERAL ELECTION, A PETITION WITH THE BOARD OF COUNTY COMMISSIONERS ASKING THAT THE QUESTION OF THE ADOPTION OF A COUNTY CHARTER IN THE FORM ATTACHED TO THE PETITION BE SUBMITTED TO THE ELECTORS OF THE COUNTY. THE PETITION SHALL BE AVAILABLE FOR PUBLIC INSPECTION AT THE OFFICES OF THE COUNTY COMMISSIONERS DURING REGULAR BUSINESS HOURS UNTIL FOUR p.m. OF THE NINETY-SIXTH DAY BEFORE THE ELECTION, AT WHICH TIME THE BOARD SHALL, BY RESOLUTION, CERTIFY THE PETITION TO THE BOARD OF ELECTIONS OF THE COUNTY FOR SUBMISSION TO THE ELECTORS OF THE COUNTY, UNLESS THE SIGNATURES ARE INSUFFICIENT OR THE PETITIONS OTHERWISE INVALID, AT THE NEXT GENERAL ELECTION.

SUCH ELECTORS MAY, IN THE ALTERNATIVE NOT LATER THAN THE ONE HUNDRED FIFTEENTH DAY BEFORE THE DATE OF A GENERAL ELECTION, FILE SUCH A PETITION WITH THE BOARD OF ELECTIONS OF THE COUNTY. IN SUCH CASE THE BOARD OF ELECTIONS SHALL IMMEDIATELY PROCEED TO DETERMINE WHETHER THE PETITION AND THE SIGNATURES ON THE PETITION MEET THE REQUIREMENTS OF LAW AND TO COUNT THE NUMBER OF VALID SIGNATURES AND TO NOTE OPPOSITE EACH INVALID SIGNATURE THE REASON FOR THE INVALIDITY. THE BOARD OF ELEC-

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THE PETITIONERS SHALL DESIGNATE IN THE PETITION THE NAMES AND ADDRESSES OF A COMMITTEE OF NOT FEWER THAN THREE NOR MORE THAN FIVE PERSONS WHO WILL REPRESENT THEM IN ALL MATTERS RELATING TO THE PETITION. NOTICE OF ALL MATTERS OR PROCEEDINGS PERTAINING TO SUCH PETITIONS MAY BE SERVED ON THE COMMITTEE, OR ANY OF THEM, EITHER PERSONALLY OR BY CERTIFIED MAIL, OR BY LEAVING IT AT THE USUAL PLACE OF RESIDENCE OF EACH OF THEM.

Sec. 307.95. (A) WHEN A COUNTY CHARTER PETITION HAS BEEN CERTIFIED TO THE BOARD OF ELECTIONS PURSUANT TO SECTION 307.94 OF THE REVISED CODE, THE BOARD SHALL IMMEDIATELY PROCEED TO DETERMINE WHETHER THE PETITION AND THE SIGNATURES ON THE PETITION MEET THE REQUIREMENTS OF LAW, INCLUDING SECTION 3501.38 OF THE REVISED CODE, AND TO COUNT THE NUMBER OF VALID SIGNATURES. THE BOARD SHALL NOTE OPPOSITE EACH INVALID SIGNATURE THE REASON FOR THE INVALIDITY. THE BOARD SHALL COMPLETE ITS EXAMINATION OF THE PETITION AND THE SIGNATURES NOT LATER THAN TEN DAYS AFTER RECEIPT OF THE PETITION CERTIFIED BY THE BOARD OF COUNTY COMMISSIONERS AND SHALL SUBMIT A REPORT TO THE BOARD OF COUNTY COMMISSIONERS NOT LESS THAN EIGHTY-FIVE DAYS BEFORE THE ELECTION CERTIFYING WHETHER THE PETITION IS VALID OR INVALID AND, IF INVALID, THE REASONS FOR THE INVALIDITY, WHETHER THERE ARE SUFFICIENT VALID SIGNATURES, AND THE NUMBER OF VALID AND INVALID SIGNATURES. THE PETITION AND A COPY OF THE REPORT TO THE BOARD OF COUNTY COMMISSIONERS SHALL BE AVAILABLE FOR PUBLIC INSPECTION AT THE BOARD OF ELECTIONS. IF THE PETITION IS DETERMINED BY THE BOARD OF ELECTIONS TO BE VALID BUT THE NUMBER OF VALID SIGNATURES IS INSUFFICIENT, THE BOARD OF COUNTY COMMISSIONERS SHALL IMMEDIATELY NOTIFY THE COMMITTEE FOR THE PETITIONERS, WHO MAY SOLICIT AND FILE ADDITIONAL SIGNATURES TO THE PETITION PURSUANT TO DIVISION (E) OF THIS SECTION OR PROTEST THE BOARD OF ELECTION'S FINDINGS PURSUANT TO DIVISION (B) OF THIS SECTION, OR BOTH.

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B) OF THIS SECTION.

(B) PROTESTS AGAINST THE BOARD OF ELECTION'S FINDINGS CONCERNING THE VALIDITY OR INVALIDITY OF A COUNTY CHARTER PETITION OR ANY SIGNATURE ON SUCH PETITION MAY BE FILED BY ANY ELECTOR ELIGIBLE TO VOTE AT THE NEXT GENERAL ELECTION WITH THE BOARD OF ELECTIONS NOT LATER THAN FOUR p.m. OF THE EIGHTY-SECOND DAY BEFORE THE ELECTION. EACH PROTEST SHALL IDENTIFY THE PART OF, OR OMISSION FROM, THE PETITION OR THE SIGNATURE OR SIGNATURES TO WHICH THE PROTEST IS DIRECTED, AND SHALL SET FORTH SPECIFICALLY THE REASON FOR THE PROTEST. A PROTEST MUST BE IN WRITING, SIGNED BY THE ELECTOR MAKING THE PROTEST, AND SHALL INCLUDE THE PROTESTOR'S ADDRESS. EACH PROTEST SHALL BE FILED IN DUPLICATE.

(C) THE BOARD OF ELECTIONS SHALL DELIVER OR MAIL BY CERTIFIED MAIL ONE COPY OF EACH PROTEST FILED WITH IT TO THE SECRETARY OF STATE. THE SECRETARY OF STATE, WITHIN TEN DAYS AFTER RECEIPT OF THE PROTESTS, SHALL DETERMINE THE VALIDITY OR INVALIDITY OF THE PETITION AND THE SUFFICIENCY OR INSUFFICIENCY OF THE SIGNATURES. 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, AND MAY CONDUCT HEARINGS, EITHER IN COLUMBUS OR IN THE COUNTY WHERE THE COUNTY CHARTER PETITION IS FILED. THE DETERMINATION BY THE SECRETARY OF STATE IS FINAL.

(D) THE SECRETARY OF STATE SHALL NOTIFY THE BOARD OF ELECTIONS OF THE DETERMINATION OF THE VALIDITY OR INVALIDITY OF THE PETITION AND SUFFICIENCY OR INSUFFICIENCY OF THE SIGNATURES NOT LATER THAN FOUR p.m. OF THE SEVENTY-FIRST DAY BEFORE THE ELECTION. IF THE PETITION IS DETERMINED TO BE VALID AND TO CONTAIN SUFFICIENT VALID SIGNATURES, THE CHARTER SHALL BE PLACED ON THE BALLOT AT THE NEXT GENERAL ELECTION. IF THE PETITION IS DETERMINED TO BE INVALID, THE SECRETARY OF STATE SHALL SO NOTIFY THE BOARD OF COUNTY COMMISSIONERS AND THE BOARD OF COUNTY COMMISSIONERS SHALL NOTIFY THE COMMITTEE. IF THE PETITION IS DETERMINED BY THE SECRETARY OF STATE TO BE VALID BUT THE NUMBER OF VALID SIGNATURES IS INSUFFICIENT, THE BOARD OF ELECTIONS SHALL IMMEDIATELY NOTIFY THE COMMITTEE FOR THE PETITIONERS AND THE COMMITTEE SHALL BE ALLOWED TEN ADDITIONAL DAYS

AFTER SUCH NOTIFICATION TO SOLICIT AND FILE ADDITIONAL SIGNATURES TO THE PETITION SUBJECT TO DIVISION (E) OF THIS SECTION.

(E) ALL ADDITIONAL SIGNATURES SOLICITED PURSUANT TO DIVISION (A) OR (D) OF THIS SECTION SHALL BE FILED WITH THE BOARD OF ELECTIONS NOT LESS THAN SIXTY DAYS BEFORE THE ELECTION. THE BOARD OF ELECTIONS SHALL EXAMINE AND DETERMINE THE VALIDITY OR INVALIDITY OF THE ADDITIONAL SEPARATE PETITION PAPERS AND OF THE SIGNATURES THEREON, AND ITS DETERMINATION IS FINAL. NO VALID SIGNATURE ON AN ADDITIONAL SEPARATE PETITION PAPER THAT IS THE SAME AS A VALID SIGNATURE ON AN ORIGINAL SEPARATE PETITION PAPER SHALL BE COUNTED. THE NUMBER OF VALID SIGNATURES ON THE ORIGINAL SEPARATE PETITION PAPERS AND THE ADDITIONAL SEPARATE PETITION PAPERS SHALL BE ADDED TOGETHER TO DETERMINE WHETHER THERE ARE SUFFICIENT VALID SIGNATURES. IF THE NUMBER OF VALID SIGNATURES IS SUFFICIENT AND THE ADDITIONAL SEPARATE PETITION PAPERS OTHERWISE VALID, THE CHARTER SHALL BE PLACED ON THE BALLOT AT THE NEXT GENERAL ELECTION. IF NOT, THE BOARD OF ELECTIONS SHALL NOTIFY THE COUNTY COMMISSIONERS, AND THE COMMISSIONERS SHALL NOTIFY THE COMMITTEE.

Sec. 307.96. EXCEPT AS PROVIDED BY SECTION 3 OF ARTICLE X, OHIO CONSTITUTION, A COUNTY CHARTER OR AMENDMENT SHALL BECOME EFFECTIVE IF IT HAS BEEN APPROVED BY THE MAJORITY OF THE ELECTORS VOTING THEREON. THE CHARTER OR AMENDMENT SHALL TAKE EFFECT ON THE THIRTIETH DAY AFTER APPROVAL UNLESS ANOTHER DATE IS FIXED IN THE CHARTER OR AMENDMENT.

NO CHARTER OR AMENDMENT ADOPTED BY THE ELECTORS OF ANY COUNTY SHALL BE HELD INEFFECTIVE OR VOID ON ACCOUNT OF THE INSUFFICIENCY OF THE PETITIONS BY WHICH SUCH SUBMISSION OF THE RESOLUTION WAS PROCURED, NOR SHALL THE REJECTION OF ANY CHARTER OR AMENDMENT SUBMITTED TO THE ELECTORS OF SUCH COUNTY, BE HELD INVALID FOR SUCH INSUFFICIENCY.

ANY CHARTER OR CHARTER AMENDMENT PROPOSAL THAT IS SUBMITTED TO THE ELECTORS OF THE COUNTY SHALL BE POSTED IN EACH POLLING PLACE IN SOME LOCATION THAT IS EASILY ACCESSIBLE TO THE ELECTORS.

Sec. 307.97. (A) THE CIRCULATOR OF A COUNTY CHARTER PETITION, OR HIS AGENT, SHALL, WITHIN FIVE DAYS AFTER SUCH PETITION IS FILED WITH THE

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COUNTY COMMISSIONERS, FILE A SWORN ITEMIZED  
STATEMENT SHOWING IN DETAIL:

(1) ALL MONEYS OR THINGS OF VALUE PAID, GIVEN,  
OR PROMISED FOR CIRCULATING SUCH PETITION;

(2) FULL NAMES AND ADDRESSES OF ALL PERSONS  
TO WHOM SUCH PAYMENTS OR PROMISES WERE MADE;

(3) FULL NAMES AND ADDRESSES OF ALL PERSONS  
WHO CONTRIBUTED ANYTHING OF VALUE TO BE USED  
IN CIRCULATING SUCH PETITIONS;

(4) TIME SPENT AND SALARIES EARNED WHILE  
CIRCULATING OR SOLICITING SIGNATURES TO PETI-  
TIONS BY PERSONS WHO WERE REGULAR SALARIED  
EMPLOYEES OF SOME PERSON WHO AUTHORIZED THEM  
TO SOLICIT SIGNATURES FOR OR CIRCULATE THE PETI-  
TION AS A PART OF THEIR REGULAR DUTIES.

(B) THE STATEMENT REQUIRED BY DIVISION (A) OF  
THIS SECTION IS NOT REQUIRED FROM PERSONS WHO  
TAKE NO OTHER PART IN CIRCULATING A PETITION  
OTHER THAN SOLICITING SIGNATURES TO THEM.

(C) NO PERSON SHALL, DIRECTLY OR INDIRECTLY:

(1) WILLFULLY MISREPRESENT THE CONTENTS OF  
A COUNTY CHARTER PETITION;

(2) PAY OR OFFER TO PAY ANY ELECTOR ANYTHING  
OF VALUE FOR SIGNING A COUNTY CHARTER PETITION;

(3) PROMISE TO HELP ANOTHER PERSON TO OBTAIN  
APPOINTMENT TO ANY OFFICE PROVIDED FOR BY THE  
CONSTITUTION OR LAWS OF THIS STATE OR BY THE  
ORDINANCES OF ANY MUNICIPAL CORPORATION, OR TO  
ANY POSITION OR EMPLOYMENT IN THE SERVICE OF  
THE STATE OR ANY POLITICAL SUBDIVISION THEREOF  
AS A CONSIDERATION FOR OBTAINING SIGNATURES TO  
A COUNTY CHARTER PETITION;

(4) OBTAIN SIGNATURES TO ANY COUNTY CHARTER  
PETITION AS A CONSIDERATION FOR THE ASSISTANCE  
OR PROMISE OF ASSISTANCE OF ANOTHER PERSON IN  
SECURING AN APPOINTMENT TO ANY OFFICE OR POSI-  
TION PROVIDED FOR BY THE CONSTITUTION OR LAWS  
OF THIS STATE OR BY THE ORDINANCE OF ANY MUNICI-  
PAL CORPORATION THEREIN, OR EMPLOYMENT IN THE  
SERVICE OF THE STATE OR ANY SUBDIVISION  
THEREOF;

(5) FAIL TO FILE THE SWORN ITEMIZED STATE-  
MENT REQUIRED IN DIVISION (A) OF THIS SECTION;

(6) ACCEPT ANYTHING OF VALUE FOR SIGNING A  
COUNTY CHARTER PETITION;

(7) BY INTIMIDATION OR THREATS, INFLUENCE OR  
SEEK TO INFLUENCE ANY PERSON TO SIGN OR  
ABSTAIN FROM SIGNING, OR TO SOLICIT SIGNATURES  
TO OR ABSTAIN FROM SOLICITING SIGNATURES TO A  
COUNTY CHARTER PETITION.

Sec. 307.99. (A) Whoever violates section 307.42 of the Revised Code shall be fined not less than twenty-five nor more than one hundred dollars for each offense.

(B) Whoever violates section 307.43 of the Revised Code shall be fined not less than twenty-five nor more than two hundred dollars, and imprisoned not less than ten nor more than sixty days.

(C) Whoever violates section 307.37 of the Revised Code, shall be fined not more than three hundred dollars.

(D) WHOEVER VIOLATES DIVISION (C)(5) OF SECTION 307.97 OF THE REVISED CODE SHALL BE FINED NOT LESS THAN ONE HUNDRED NOR MORE THAN FIVE HUNDRED DOLLARS.

(E) WHOEVER VIOLATES ANY OTHER SUBDIVISION OF DIVISION (C) OF SECTION 307.97 OF THE REVISED CODE SHALL BE IMPRISONED NOT MORE THAN SIX MONTHS OR FINED NOT MORE THAN ONE THOUSAND DOLLARS, OR BOTH.

SECTION 2. That existing sections 307.70 and 307.99 of the Revised Code are hereby repealed.

SECTION 3. This act is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health, and safety. The reason for such necessity is to enable the constitutional amendment adopted by the people in November, 1978, to be implemented in time for the November, 1979 elections. Therefore, this act shall go into immediate effect.

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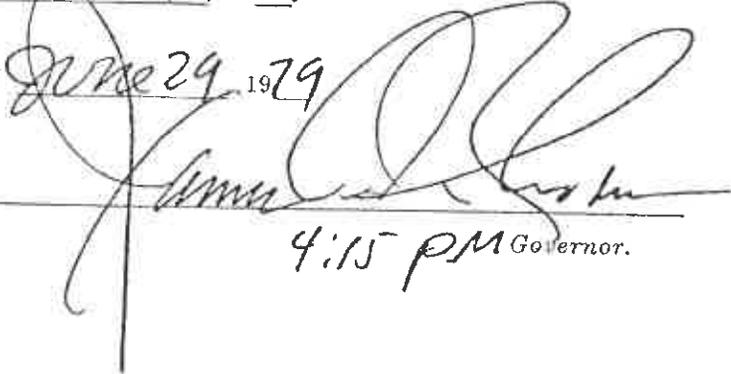
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SECTION 4. Signatures on county charter petitions that conform to the applicable requirements of Section 4 of Article X, Ohio Constitution, and section 3501.38 of the Revised Code as interpreted and applied to such petitions by the Secretary of State shall be counted as valid signatures in 1979 even though the petitions are circulated and electors signed the petitions before the effective date of this act.

  
Speaker \_\_\_\_\_ of the House of Representatives.

  
President \_\_\_\_\_ of the Senate.

Passed JUNE 29, 1979

Approved JUNE 29, 1979  
  
4:15 PM Governor.