



Mahoning County Board of Elections )  
3450 Oak Hill Avenue, Entrance A )  
Youngstown, OH 44503 )

and )

David Betras )  
Mahoning County Board of Elections )  
3450 Oak Hill Avenue, Entrance A )  
Youngstown, OH 44503 )

and )

Mark Munroe )  
Mahoning County Board of Elections )  
3450 Oak Hill Avenue, Entrance A )  
Youngstown, OH 44503 )

and )

Robert Wasko )  
Mahoning County Board of Elections )  
3450 Oak Hill Avenue, Entrance A )  
Youngstown, OH 44503 )

and )

Tracey Winbush )  
Mahoning County Board of Elections )  
3450 Oak Hill Avenue, Entrance A )  
Youngstown, OH 44503 )

and )

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

Respondents. )

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Relators Valeria E. Goncalves, Mary C. Khumprakob, Edson A. Knight, Heidi Jo Kroeck, Young Tensley, and Hattie W. Wilkins (“Relators”), proceeding by and through counsel, set forth their Complaint as follows:

### **PRELIMINARY STATEMENT**

1. Relators seek a writ of mandamus to compel the Respondents, the Mahoning County Board of Elections and its members, Respondents David Betras, Mark Munroe, Robert Wasko, and Tracey Winbush, together with Respondent Ohio Secretary of State Jon Husted to certify a proposed amendment to the Charter of the City of Youngstown to appear on the November 3, 2015 ballot.

2. The proposed Charter Amendment, commonly referred to as the “Community Bill of Rights” proposal, was presented to Youngstown City Council on August 3, 2015, by the Relators, with a sufficient number of valid signatures to comply with the requirements of the Youngstown City Charter and the Ohio Constitution and laws of the State of Ohio to be placed on the November 3, 2015 ballot.

3. On August 24, 2015, Youngstown City Council passed ordinance No. 15-283 directing that the Community Bill of Rights be sent to the Mahoning County Board of Elections for submission to the electors of the City of Youngstown as provided by law.

4. On August 26, 2015, Respondents failed to perform the mandatory duties required by law and exceeded the power granted to the Board of Elections and its members under Ohio Revised Code Section 3501.11. Respondents refused to follow the legal advice of their legal counsel, the Mahoning County Prosecutor, when they declined to certify the “Community Bill of Rights” proposal to be placed on the ballot. Relators therefore request that a Peremptory Writ of

Mandamus issue to require the Respondents to perform their mandatory legal duties.

### **JURISDICTION**

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

6. Respondent Mahoning County Board of Elections ("MCBOE") and its individual members, Respondents David Betras, Mark Munroe, Robert Wasko, and Tracey Winbush refused to perform its and nondiscretionary legal duty, which was to certify the proposed charter amendment known as the "Community Bill of Rights" to appear on the ballot, thus violating Relators' rights. A copy of the formal petition circulated for purposes of obtaining enough signatures to place this measure on the ballot is attached as Exhibit A hereto, and incorporated by reference as though rewritten herein.

7. Respondents MCBOE, Respondents David Betras, Mark Munroe, Robert Wasko, and Tracey Winbush and Respondent Husted do not have legal authority or the discretion to deny certification of a proposed charter amendment to the ballot based upon the content of the proposal. Respondents each have a limited number of ministerial functions outlined in O.R.C. § 3501.11.

8. By relying on the opinion of fellow MCBOE board members and advice of Respondent Husted instead of the legal opinion of the Mahoning County Prosecutor, who advised that the proposed charter amendment should be placed on the ballot, Respondent MCBOE and Respondent MCBOE members exceeded their powers granted under the Constitution and laws of the State of Ohio.

9. Failing to certify the proposed "Community Bill of Rights" is a violation of the First

Amendment to the United States Constitution.

10. The Respondents collectively lack the authority to review the constitutionality of a proposed charter amendment. Issues of constitutionality of a proposed charter amendment can only be adjudicated by a court of law when the matter is ripe for adjudication and a ballot proposal charter amendment is not ripe for adjudication until it has been passed and someone has the right to claim that he or she is aggrieved by the charter amendment that was passed.

11. There are fewer than ninety (90) days remaining until the November 3, 2015 election and Relators have no plain or adequate remedy at law to correct the unlawful, unreasonable and/or arbitrary acts and abuses of discretion committed by the Respondents by improperly refusing to fulfill their mandatory legal duty to certify the proposed “Community Bill of Rights” to appear on the ballot.

#### **THE PARTIES**

12. Relators Valeria E. Goncalves, Mary C. Khumprakob, Edson A. Knight, Heidi Jo Kroeck, Young Tensley, and Hattie W. Wilkins are electors of Mahoning County and members of the committee of petitioners who came together for the purpose of gathering elector signatures for the Community Bill of Rights Petition, in order for it to be placed on the ballot for a vote. Said Relators actively circulated the Petition according to the constraints and requirements of the Constitution of Ohio and Ohio Revised Code.

13. Relators needed One Thousand One Hundred and Twelve (1,112) valid signatures for the proposed charter amendment to appear on the ballot. They turned in petitions and part-petitions bearing One Thousand Five Hundred and Thirty-four (1,534) valid signatures.

14. Respondent MCBOE is legally responsible under various provisions of the Ohio Constitution and Ohio Revised Code for the conduct of elections in Mahoning County, Ohio

according to law. The MCBOE is capable of being sued and of having its decisions relative to the content of election ballots challenged in and determined by Ohio courts.

15. Respondents David Betras, Mark Munroe, Robert Wasko, and Tracey Winbush are the duly appointed members of the MCBOE who have a mandatory legal duty pursuant to O.R.C. § 3501.11 to perform ministerial acts in order to ensure that properly certified charter amendments appear on the ballot.

16. Respondent Husted is the Secretary of State of the State of Ohio. On August 13, 2015, Secretary Husted issued an opinion determining proposed charter provisions in Athens, Fulton, and Medina Counties to be invalid. A copy of the opinion of the Secretary of State is attached hereto as Exhibit B and is incorporated herein as though rewritten. Respondents MCBOE and its individual board members claim to have relied on Secretary Husted's opinion in refusing to certify the Community Bill of Rights to appear on the ballot.

#### **FACTUAL AVERMENTS**

17. Pursuant to Youngstown City Charter Section 120, Amendments to the Charter "shall be submitted to the Electors of the City of Youngstown in the manner provided by the Constitution and law of the State of Ohio." Submission of municipal charter amendments is governed by the Ohio Constitution, Article XVIII, §§ 8 and 9.

18. The council clerk for the City of Youngstown received petitions from Relators on August 3, 2015. Review of the petitions by the council clerk confirmed that Relators had obtained more signatures than the number required to place the proposed charter amendment on the ballot. On August 24, 2015, Youngstown City Council unanimously passed Youngstown City Ordinance No. 15-283, directing that the proposed charter amendment be forwarded to the MCBOE to be placed on the November 3, 2015 ballot. Pursuant to the ordinance, the Mayor and

Clerk of Council certified the proposed amendment to the Board of Elections of Mahoning County, Ohio, for submission to the voters of the City of Youngstown as provided by law.

19. Respondent MCBOE and Respondents Betras, Munroe, Wasko and Winbush then confirmed that Relators had obtained more valid signatures than the minimum number required to place the charter amendment on the ballot. On August 26, 2015, Respondents Betras, Munroe, Wasko and Winbush, meeting as the Mahoning County Board of Elections, voted 4-0 to “not certify” the proposed charter amendment petition and thus, have prevented it from appearing on the November 3, 2015 ballot.

20. Respondents Betras, Munroe, Wasko and Winbush are forbidden by pertinent constitutional principles from arrogating to themselves the power as the Board of the Elections to peremptorily invalidate the proposed charter amendment because of their personal opinions on its legality. Since the proposed charter amendment petitions conform to the requirements of law and have been submitted to the MCBOE with more than the minimum requisite numbers of signatures of eligible electors, the proposed charter amendment mandatorily must be placed on the ballot to be subjected to a formal vote on November 3, 2015. Respondents’ refusal to place the charter amendment petition on the ballot is unconstitutional, arbitrary, illegal and an abuse of discretion.

21. Respondent MCBOE’s members claim that they have the legal right to determine that the charter amendment proposal is invalid because provisions of the proposal may be unconstitutional or in conflict with existing state law. That position has no basis in Ohio law. Pursuant to the Ohio Constitution, exclusive jurisdiction to determine the constitutionality of laws is reserved to the judicial branch of government.

22. The suspected unconstitutionality of a proposed charter amendment is not a reason

for the MCBOE to disallow a ballot proposal to be voted upon. *State ex rel. McGovern v. Bd. of Elections*, 24 Ohio Misc. 135, 136, 263 N.E.2d 586 (C.P.1970) (“ . . . nowhere does the court find in R.C. 3501.11, defining the powers and duties of the board of elections, any power or right to make judicial determinations of the legality or nonlegality of issues to be presented to the people. If in fact the proposed charter amendment was duly passed by council and procedural requirements were met before its submission to the board of elections, the board was duty bound to put it on the ballot for a vote of the people.”) In *State ex rel. Ebersole v. City of Powell*, 141 Ohio St. 17 (2014), the Ohio Supreme Court reaffirmed the principle that, “The proper time for an aggrieved party to challenge the constitutionality of (a proposed) charter amendment is after the voters approve the measure, assuming they do so.”

23. Respondent MCBOE’s members cited as a central justification for refusing to place the proposed charter amendment on the ballot the case of *State ex rel. Morrison v. Beck Energy Corp.*, 2015-Ohio-485 (February 17, 2015). They relied on this case to proceed to rule, as a Board of Elections, that the proposed Community Bill of Rights is unconstitutional. In the manner in which they did so, the MCBOE denied Relators notice and an opportunity to respond to its quasi-judicial determination that the charter proposal would be unconstitutional if passed. Indeed, there is no statutory or other basis in Ohio law for the MCBOE even to have proceeded in a quasi-judicial fashion.

24. Relators contend that the content of the Community Bill of Rights is different from the content of the law found unconstitutional in the *Beck Energy* case, and therefore, a different result would be obtained if the constitutionality of the Community Bill of Rights were to be challenged following its passage. There is a good faith argument for the proposition that the proposed charter amendment is not unconstitutional under existing law and/or that a good faith

argument exists for the extension, modification or reversal of existing law, such that the proposed charter amendment may be found to be constitutional and legal.

### **STATUTORY AND LEGAL FRAMEWORK**

25. O.R.C. § 3501.38 requires petitions to be signed by electors qualified to vote on the issue; signatures must be made in ink; each signer must place on the petition the signer's name, date of signing, and location of voting residence; the petitions must have, on each paper, the circulations' indication of number of signatures and the circulations' statement that they witnessed the signatures of qualified signers; and the petition must be submitted with all part petitions at one time.

26. The substance of the charter proposal, as a duly-initiated referendum, is off-limits to pre-election protest and may not be barred from placement on the ballot. *See, e.g., State ex rel. Kiley v. Summit CTY. Bd. of Elections*, 977 N.E.2d 590, 595 (Ohio S.Ct. 2012) (“any claims challenging the validity of the proposed charter amendment are premature when made before the amendment is approved by the electorate.”); *State ex rel. Citizen Action for a Livable Montgomery v. Hamilton Cty. Bd. of Elections*, 875 N.E.2d 902, 909 (“insofar as the board’s claim could be construed as a challenge to the constitutionality or illegality of the substance of the initiative, that challenge is premature before the proposed legislation is enacted by the electorate.”); *State ex rel. DeBrosse v. Cool H*, 716 N.E.2d 1114, 1118 (Ohio S.Ct. 1999) (“Any claims alleging the unconstitutionality or illegality of the substance of the proposed ordinance, or actions to be taken pursuant to the ordinance when enacted, are premature before its approval by the electorate.”). The Community Bill of Rights petition indisputably meets the requirements of law set forth above and is therefore valid for submission to the voters on November 3, 2015.

27. The decision of a Board of Elections is final. *State ex rel. Senn v. Bd. of Elections*, 51 Ohio St.2d 173, 367 N.E.2d 879 (1977). 50. However, the decision of the Respondents remains subject to judicial review for fraud, corruption, abuse of discretion, or clear violation of applicable legal provisions. *State ex rel. Clinard v. Greene Cnty*, 51 Ohio St.3d 87, 88, 554 N.E.2d 895 (1990).

### **RELATORS ARE ENTITLED TO A WRIT OF MANDAMUS**

28. The writ of mandamus is an extraordinary remedy that arose historically to deal with situations like this, where there is no other avenue for justice. It is the Court's duty in such situations to review the actions of the MCBOE to place limits on the exercise of discretion to ensure that discretion has not been exercised arbitrarily, or abused.

29. It is further the Court's duty, when a governmental official has refused to undertake a nondiscretionary act, to order such act to be undertaken.

30. Relators have been denied the free exercise of their rights as electors because of the refusals of Respondents, who lack legal discretion to refuse, to place the proposed charter amendment petition on the ballot for the November 3, 2015 general election. The Respondents' refusals to put the Community Bill of Rights proposal on the ballot for a public vote were improper, unlawful, an abuse of discretion and arbitrary, and must be reversed by this Court.

31. The Respondents' acts and omissions were and are *ultra vires*, as they ignore the requirements of statute, which in turn are constrained by the Ohio Constitution. The Respondents' acts and omissions comprise a continuing abuse of discretion that must be corrected by a specific mandate from the Court. The Court must intervene to vindicate the rights of Relators and of all electors in the City of Youngstown and to protect their rights under the

Ohio Constitution to vote on a properly-presented charter amendment proposal.

32. Relators have no adequate remedy in the ordinary course of law, and unless the Court grants the requested writ of mandamus, they and the voting citizens of Youngstown will be deprived of their right to vote on a proposed charter amendment in violation of the Charter of the City of Youngstown, the Constitution and laws of the State of Ohio, and the United States Constitution.

**WHEREFORE**, Relators pray the Court issue a peremptory writ of mandamus, or alternatively, an alternate writ, pursuant to O.R.C. Chapter 2731, which requires Respondents to comply with the requirements of O.R.C. § 3501.11 and the Ohio and United States Constitutions by immediately mandating and requiring the Respondents to place the “Community Bill of Rights” on the ballot for the November 3, 2015 general election for a vote by Youngstown’s electors. Relators further request their costs and reasonable attorneys’ fees, and such other and further relief at law or in equity as the Court may deem necessary and proper in the premises.

Respectfully submitted,

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

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

Co-counsel for Relators

**VERIFICATION**

I, Mary C. Khumprakob, am a Relator in this lawsuit. I have reviewed the Verified Complaint filed in this lawsuit, and the factual allegations contained in it are made upon my personal knowledge and are true to the best of my personal knowledge, information, and belief.

Mary C. Khumprakob  
Mary C. Khumprakob

State of Ohio                    )  
  )  
County of Mahoning         ) ss:

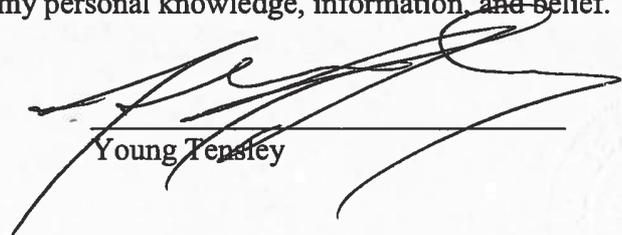
Sworn to before me and subscribed in my presence this 4<sup>th</sup> day of September, 2015.

Jeanne E. Watson - Antol  
Notary Public

**JEANNE E WATSON-ANTOL  
Notary Public, State of Ohio  
My Commission Expires  
NOVEMBER 27, 2016**

**VERIFICATION**

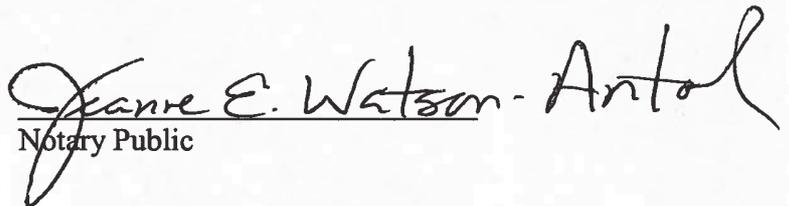
I, Young Tensley, am a Relator in this lawsuit. I have reviewed the Verified Complaint filed in this lawsuit, and the factual allegations contained in it are made upon my personal knowledge and are true to the best of my personal knowledge, information, and belief.



\_\_\_\_\_  
Young Tensley

State of Ohio                    )  
  )  
County of Mahoning         ) ss:

Sworn to before me and subscribed in my presence this 4<sup>th</sup> day of September, 2015.

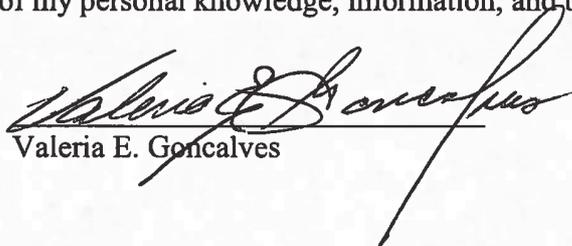


\_\_\_\_\_  
Notary Public

**JEANNE E WATSON-ANTOL  
Notary Public, State of Ohio  
My Commission Expires  
NOVEMBER 27, 2016**

**VERIFICATION**

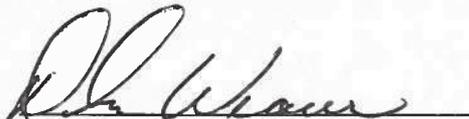
I, Valeria E. Goncalves , am a Relator in this lawsuit. I have reviewed the Verified Complaint filed in this lawsuit, and the factual allegations contained in it are made upon my personal knowledge and are true to the best of my personal knowledge, information, and belief.

  
Valeria E. Goncalves

State of Ohio                    )  
  )  
County of Mahoning         ) ss:



born to before me and subscribed in my presence this 4<sup>th</sup> day of September, 2015.

  
Notary Public

*My Commission does NOT EXPIRE PER O.R.C. 147.03*

**VERIFICATION**

I, Hattie W. Wilkins, am a Relator in this lawsuit. I have reviewed the Verified Complaint filed in this lawsuit, and the factual allegations contained in it are made upon my personal knowledge and are true to the best of my personal knowledge, information, and belief.

*Hattie W Wilkins*  
\_\_\_\_\_  
Hattie W. Wilkins

State of Ohio                    )  
  )  
County of Mahoning         ) ss:



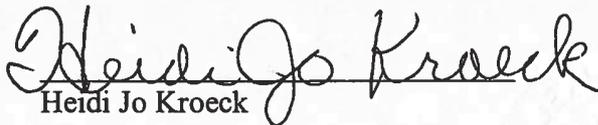
Sworn to before me and subscribed in my presence this 4<sup>th</sup> day of September, 2015.

*D. L. Weaver*  
\_\_\_\_\_  
Notary Public

*My Commission does not expire  
per O.R.C. 147.03*

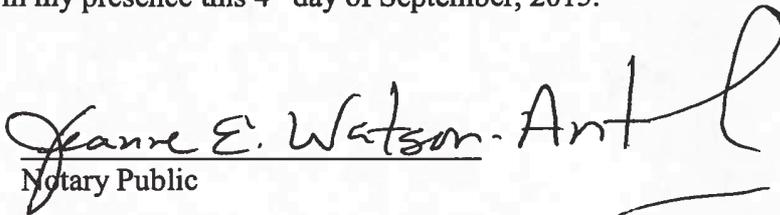
**VERIFICATION**

I, Heidi Jo Kroeck, am a Relator in this lawsuit. I have reviewed the Verified Complaint filed in this lawsuit, and the factual allegations contained in it are made upon my personal knowledge and are true to the best of my personal knowledge, information, and belief.

  
Heidi Jo Kroeck

State of Ohio                    )  
  )  
County of Mahoning         ) ss:

Sworn to before me and subscribed in my presence this 4<sup>th</sup> day of September, 2015.

  
Notary Public

**JEANNE E WATSON-ANTOL**  
Notary Public, State of Ohio  
My Commission Expires  
NOVEMBER 27, 2016

