

IN THE SUPREME COURT OF OHIO

State of Ohio, *ex rel.* Renee Walker, *et al.*, )  
*Relators,* ) **Case No. 2015-1371**  
v. )  
Jon Husted, Secretary of State of Ohio, ) **Expedited Election Case Pursuant**  
*Respondent,* ) **To S.C.R.P. 12.03**  
and ) **AMENDED MERIT BRIEF OF**  
Joanne Dove Prisley, *et al.*, ) **INTERVENING RESPONDENT**  
*Intervening Respondents.* ) **JOANNE DOVE PRISLEY**

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## MERIT BRIEF OF INTERVENING RESPONDENT JOANNE DOVE PRISLEY

### I. INTRODUCTION.

Relators represent petitioners in Athens, Fulton and Medina Counties who filed petitions in late June 2015 pursuant to Article X, Section 4, of the Ohio Constitution with the boards of elections in those counties seeking to have proposed county charters placed on the ballots for the November 3, 2015, general election.<sup>1</sup> The petitions for proposed county charters are very similar.<sup>2</sup> For example, 94.5% of the text in the proposed county charter for Athens County is repeated in the proposed county charter for Medina County.<sup>3</sup> This similarity is due to two factors. First, the county charter provisions in all three proposed county charters are almost identical. Second, Articles I and II of each proposed county charter, to which about two pages are devoted, contain “Community Bill of Rights” provisions.

Ultimately, protests were filed by eligible electors in each county, including Intervening Respondent Prisley,<sup>4</sup> pursuant to R.C. 307.95(B). Pursuant to R.C. 307.95(C) & (D), those protests were heard by Respondent Jon Husted, Secretary of State of Ohio. R.C. 307.95 (C) states, in part:

The secretary of state, within ten days after receipt of the protests, shall determine the validity or invalidity of the petition . . . . The

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<sup>1</sup> Article X, Section 4, of the Ohio Constitution states, in part: “The legislative authority of any county, upon petition of ten per cent of the electors of the county, shall forthwith, by resolution, submit to the electors of the county . . . the question of the adoption of a charter in the form attached to such petition.”

<sup>2</sup> The petitions for proposed county charters for Fulton, Medina and Athens Counties are attached to the Complaint as Exhibits A, B, & C, respectively, and are incorporated herein by reference as if fully rewritten.

<sup>3</sup> Calculation by counsel for Intervening Respondent Prisley.

<sup>4</sup> For Intervening Respondent Prisley’s credentials as an Athens County eligible elector, see Intervening Respondent Prisley’s Exhibit I.

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.

Respondent Husted found all three petitions proposing county charters to be invalid and declined to order that they be included on ballots for the November 3, 2015, general election. (See Complaint, Exhibit E.) Thereafter, this action was filed.

This brief addresses, in addition to other issues, (i) the authority and discretion of Respondent Husted, as Ohio's Chief Elections Officer, and the Athens County Board of Elections, as an arm of the Office of the Secretary of State of Ohio, an administrative agency, to investigate the petitions for proposed county charters and find them to be invalid, (ii) whether Relators have a clear right to the relief they seek, and (iii) whether there are overriding considerations that should lead this Court to dismiss Relator's mandamus complaint. Each such inquiry demands dismissal of Relators' complaint.

## II. FACTS.

In the spring of 2015, groups in Athens, Fulton and Medina Counties announced their intentions to circulate petitions for proposed county charters that would include Community Bills of Rights.<sup>5</sup> In an August 5, 2015, Reader's Forum column in *The Athens News*, which was

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<sup>5</sup> See the following Intervening Respondent Prisley's Exhibits, which are Internet news articles:

Exhibit II David DeWitt, *The Athens News*, *Democracy Day event elaborates on charter for Athens County*, (6/14/2015)  
[http://www.athensnews.com/news/local/democracy-day-event-elaborates-on-charter-for-athens-county/article\\_4d4043ed-f4e2-5434-a672-e877f7bf631d.html](http://www.athensnews.com/news/local/democracy-day-event-elaborates-on-charter-for-athens-county/article_4d4043ed-f4e2-5434-a672-e877f7bf631d.html) (9/3/2015).

Exhibit III Fulton County Expositor, *Petitions for County Charter Presented*, (6/24/2015)  
<http://fcnews.org/news/296/petitions-for-county-charter-presented> (9/3/2015).

written by Relator Richard McGinn of Athens County, Relator McGinn acknowledged the relationship of the Athens County Bill of Rights Committee (“BORC”) with the Community Environmental Legal Defense Fund (“CELDF”) of Pennsylvania and Thomas Linzey, Esq., the founder of CELDF. Relator McGinn stated: “The Charter itself . . . was crafted by the local Bill of Rights Committee working in cooperation with Linzey and the CELDF organization.”<sup>6</sup>

Relators from Fulton and Medina Counties likewise have acknowledged the role that CELDF has played in the development of their petitions for proposed county charters. As set forth in an August 15, 2015, Internet news article in *The Medina County Gazette*, Relator Katharine S. Jones, an organizer of “Sustainable Medina County,” admitted her ongoing working relationship with Tish O’Dell, the Ohio organizer for CELDF. The article stated that Ms. O’Dell helped Relator Jones and communities in Athens and Fulton Counties draft their petitions for proposed county charters.<sup>7</sup> In preparation for writing a July 13, 2015, article in the *Swanton Enterprise*, the reporter interviewed Relators John P. Ragan and Elizabeth Athaide-Victor of “Common Sense Energy Coalition” (“CSEC”) and “Tish O’Dell, CELDF’s Ohio representative.” The article reported: “The charter proposed by CSEC was developed by the Pennsylvania-based

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Exhibit IV Loren Genson, *The Medina County Gazette*, *Proposed charter aims to address pipeline projects in Medina County*, (4/18/2015)  
<http://medinagazette.northcoastnow.com/2015/04/18/proposed-charter-aims-address-pipeline-projects-medina-county/> (9/2/2015).

<sup>6</sup> See Intervening Respondent Priskey’s Exhibit V, an Internet news article. Dick McGinn, *The Athens News*, *Editor’s column wrong about proposed county Bill of Rights*, (08/05/2015)  
[http://www.athensnews.com/opinion/readers\\_forum/editor-s-column-wrong-about-proposed-county-bill-of-rights/article\\_6780935c-3b8d-11e5-bc47-9fba4e221d7b.html](http://www.athensnews.com/opinion/readers_forum/editor-s-column-wrong-about-proposed-county-bill-of-rights/article_6780935c-3b8d-11e5-bc47-9fba4e221d7b.html) (09/02/2015).

<sup>7</sup> See Intervening Respondent Priskey’s Exhibit VI, an Internet news article. Loren Genson, *The Medina County Gazette*, *Medina County Officials relieved charter issue tossed out*, (08/15/2015)  
<http://medinagazette.northcoastnow.com/2015/08/15/medina-county-officials-relieved-charter-issue-tossed-out/> (09/03/2015).

Community Environmental Legal Defense Fund (CELDF).”<sup>8</sup> In its own press release, CELDF took full credit for drafting the petitions for proposed county charters on behalf of Athens, Fulton and Medina Counties. An August 31, 2015, CELDF press release states:

COLUMBUS, OH: Earlier this month, Ohio Secretary of State Jon Husted declared that **the citizens of Medina, Fulton, and Athens Counties may not vote on their own county charter initiatives**, despite meeting requirements to place those initiatives on the November ballot.

...

*The Community Environmental Legal Defense Fund (CELDF) drafted the county charters and is providing legal support, assisting these counties to secure community rights to local self-government through initiative and referendum, and to secure their rights to clean air and water by banning fracking infrastructure projects as a violation of those rights.*

(Bold emphasis in original; italics emphasis added.)<sup>9</sup>

In Fulton and Medina Counties, the petitions for proposed county charters were certified by the boards of county commissioners and boards of elections. Thereafter, protests were filed by eligible electors pursuant to R.C. 307.95(B) requesting that Respondent Husted, Ohio’s Chief Elections Officer, determine whether the petitions should be placed on the November 3, 2015, ballots.

Athens County followed a different course. On July 6, 2015, a meeting was held by the Athens County Board of Elections. Present were the four members of the board (Mr. Ken Ryan

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<sup>8</sup> See Intervening Respondent Prisley’s Exhibit VII, an Internet news article. Swanton Enterprise, *County government change proposed*, (07/13/2015) <http://swantonenterprise.com/news/354/county-government-change-proposed> (09/03/2015).

<sup>9</sup> See Intervening Respondent Prisley’s Exhibit VIII, an Internet press release. CELDF, *Press Release: Ohio Citizens Protest Against Secretary of State for denying their Constitutional Right to Vote*, (08/31/2015) <http://celdf.org/press-release-ohio-citizens-protest-against-secretary-of-state-for-denying-their-constitutional-right-to-vote-> (09/03/2015).

arrived late but did participate and vote), Keller Blackburn, the Athens County Prosecuting Attorney, Relator Richard McGinn on behalf of BORC, and Dave DeWitt of *The Athens News*.

The minutes included the following:

Mr. Blackburn and the board discussed the County Charter Petition great in detail. It needs to meet the minimum requirements of a charter and he stated four times during the meeting that he felt that it does not meet the requirements.

Relator Richard McGinn, although present representing BORC and the petitioners who proposed the county charter, apparently did not participate. The petition for proposed county charter filed in Athens County was certified as invalid by the Athens County Board of Elections. The board members unanimously voted “that the County Charter petition [was] not a valid charter petition because it [was] not a valid charter.” The board certified the petition for proposed county charter to the Athens County Board of County Commissioners as invalid.<sup>10</sup>

On July 9, 2015, Attorney Terry Lodge, on behalf of the petitioners’ committee, sent an email to Prosecutor Blackburn requesting pursuant to R.C. 307.94 “that the board of elections proceed to establish the validity or invalidity of the petition . . . in an action before the court of common pleas in the county.” The July 15, 2015, decision of the court of common pleas found the petition for proposed county charter to be valid. The court decision was substituted for the action of the Athens County Board of Elections certifying the petition for proposed county charter as invalid.<sup>11</sup> On July 23, 2015, the Athens County Board of Commissioners “perform[ed]

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<sup>10</sup> See Intervening Protestor Prisley’s Exhibit IX, which consists of certified copies of the July 6, 2015, Athens County Board of Elections meeting minutes and several related documents attached thereto.

<sup>11</sup> The July 15, 2015, Decision of the Athens County Court of Common Pleas is attached to the Complaint as Exhibit D. That document is incorporated herein by reference as if fully rewritten.

its duty to certify the petition . . . to be valid . . .” R.C. 307.94. Thereafter, Intervening Respondent Prisley filed her Protest.<sup>12</sup>

On August 13, 2015, Respondent Jon Husted, as the Secretary of State of Ohio and Ohio’s Chief Elections Officer, rendered his decision pursuant to R.C. 307.95(C) and (D) and stating as follows:<sup>13</sup>

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.

“In response to [Respondent] Husted’s decision, this week the **Community Environmental Legal Defense Fund (CELDF) filed a lawsuit against the Ohio Secretary of State on behalf of community members in Athens, Medina, and Fulton Counties** seeking to restore the initiatives to the November ballot.” (Bold emphasis in original.)<sup>14</sup>

Thomas Linzey, Esq., the Executive Director and founder of CELDF, gave an interview to Richard Valdmanis, a Reuters reporter. It was published on June 29, 2015, on the Internet.<sup>15</sup>

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<sup>12</sup> Intervening Respondent Prisley’s Protest is attached to the Motion to Intervene of Joanne Dove Prisley as Exhibit 1 and is incorporated herein by reference as if rewritten.

<sup>13</sup> Respondent Husted’s Decision is attached to the Complaint as Exhibit E and is incorporated herein by reference as if fully rewritten.

<sup>14</sup> See Intervening Respondent Prisley’s Exhibit X, an Internet press release. CELDF, *Fracking Fight Heats Up in Ohio*, (08/20/2015) <http://celdf.org/press-release-fracking-fight-heats-up-in-ohio> (09/02/2015).

<sup>15</sup> See Intervening Respondent Prisley’s Exhibit XI, an Internet news article. Richard Valdmanis, Reuters, *Green group's unconventional fight against fracking*, (06/29/2015)

Mr. Linzey's statements and the information reported by Mr. Valdmanis bear significantly upon whether this Court should dismiss Relators' Complaint. For example, the article states:

*So far, five of the communities that have adopted CELDF-written ordinances, including Grant Township, have had them challenged in court, and one decided to repeal its measure after a federal judge ruled against it. The other communities say they don't expect to win.*

*The fund's rebellious approach has drawn fire from the oil industry, legal experts and established environmental groups. And the criticism is likely to grow as cash-strapped local jurisdictions find themselves on the hook for defending ordinances in court cases they have little chance of winning.*

*But Linzey says his goal is not to write local laws that . . . stand up in court, but rather to trigger a public debate about community rights to local self-government - even if it means a community ultimately falls into financial ruin.*

*[Linzey said:] "And if a town goes bankrupt trying to defend one of our ordinances, well, perhaps that's exactly what is needed to trigger a national movement."*

**. . . The group has never won a case that went to court.**

(Bold and italics emphasis added.)<sup>16</sup>

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<http://www.reuters.com/article/2015/06/29/us-usa-fracking-lawsuits-insight-idUSKCN0P90E320150629> (09/03/2015).

<sup>16</sup> CELDF and Thomas Linzey, Esq. started developing different aspects of what is now known as the Community Bill of Rights at least as early as 2003. See *Mothers Against Drilling in Our Neighborhood v. State of Ohio*, Cuyahoga Common Pleas No. CV-14-836899 (unreported) (Jul. 1, 2015) (Community Bill of Rights); *Bass Energy, Inc. v. City of Broadview Heights, Ohio*, Cuyahoga Common Pleas No. CV-14-828074 (unreported) (Mar. 11, 2015) (Community Bill of Rights); *SWEPI, LP v. Mora County, N.M.*, No. CIV 14-0035 (unreported) (D. N.M. Jan. 19, 2015) (Community Bill of Rights); *Com., Office of Atty. Gen., ex rel. Kelly v. Packer Tp.*, 49 A.3d 495 (Pa.Cmwlth 2012) (Community Bill of Rights); *Range Resources-Appalachia, LLC v. Blaine Tp.*, 649 F.Supp.2d 412 (W.D. Pa. 2009) (attempts by township to strip corporation of its constitutional rights); *Com., Office of Atty. Gen., ex rel. Corbett v. E. Brunswick Tp*, 956 A.2d 1100 (Pa.Cmwlth 2008) (claims that township had inalienable right of self-governance); *Friends and Residents of Saint Thomas Tp., Inc. v. Saint Thomas Dev., Inc.*, 176 Fed.Appx. 219 (3<sup>rd</sup> Cir. 2006) (alleged state action by private corporation); *Burkholder v. Zoning Hearing Bd of*

### III. OBJECTIONABLE PROVISIONS IN PROPOSED COUNTY CHARTERS

The following provisions and phrases have been reproduced from the petition for proposed county charter filed in Athens County. With only a few exceptions, the following language is identical to that found in the corresponding sections of the petitions for proposed county charters filed in Fulton and Medina Counties. These provisions and phrases demonstrate why Reuters reported CELDF has never won in court when defending its Community Bill of Rights.

Preamble (if the Preamble is deemed to have substantive effect), 3rd Paragraph, Line 5: “and the power to articulate and protect fundamental rights free from preemption by other levels of government”.

Preamble (if the Preamble is deemed to have substantive effect), 4th Paragraph, Lines 2 through 4: “to elevate the consent of the governed above administrative dictates and preemptions that serve special privileges rather than general rights, to secure fundamental rights, and to end the violation of those rights by private and public entities”.

Section 1.01, Lines 1 through 4: “Rights Unalienable, Self-Executing, and Enforceable. All rights delineated and secured by this Charter are inherent, fundamental, irrevocable, unalienable, and shall be self-executing and enforceable against private and public entities. Every resident of the County of Athens shall be secure in these rights, and may bring an action to enforce these rights.”

Section 1.02, Lines 3 and 4: “The rights of the people, as secured by this charter, shall not be limited, infringed, or abridged by any law, judicial ruling, preemption, regulation, process, permit, license, Charter, or delegation of privilege or authority.”

Section 1.05, Lines through 4: “Right to Assert the Right of Self-Government. The people of the County of Athens possess the right to use their local government to make law, and the making and enforcement of law by the people through a municipal corporation or any other institution shall not eliminate, limit, or reduce their sovereign right of local, community self-government.”

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*Richmond Tp*, 902 A.2d 1006 (Pa.CmwltH 2006) (municipal ordinances intended to override state law); *Friends and Residents of Saint Thomas Tp., Inc. v. Saint Thomas Dev., Inc.*, 2005 WL 6133388, No. 1:CV-04-627 (M.D. Pa. Mar. 31, 2005) (local government’s attempts to deny rights of corporations). **Mr. Linzey’s client lost in each of the foregoing lawsuits.**

Section 1.06, Lines 1 to 3: “Right to Municipal Autonomy. The residents of every municipality (incorporated City, Village, and Township) in the County of Athens shall retain the right to local self-government and other rights as secured by this Charter.”

Section 1.08, Lines 1 through 2: “along with ecosystems within the County”.

Section 1.09, Lines 1-3: “Rights of Nature. Ecosystems within the County of Athens, including, but not limited to, rivers, streams, wetlands, and aquifers, possess the right to exist, flourish, and naturally evolve, free from activities prohibited by this Charter and other local enactments.”

Section 1.10, Lines 1 through 2: “along with ecosystems within the County”.

Section 1.11, Lines 1 through 5: “Right to Govern Corporate Activities. As corporations are chartered and licensed by the State in the name of the people, and as all political power is inherent in the people, the people of this County retain the power to make laws, rules, and regulations directly, or through their local representatives, to deny the rights, powers, privileges, immunities, or duties of corporations that act within the County when those corporate rights, powers, privileges, immunities, or duties conflict with the rights of the people.”

Section 1.12, Lines 1 through 12: “Rights Secured against Corporations. As corporations are created and empowered to act through the State’s issuance of charters, licenses, and permits, and thus are creatures of the State and state actors, corporations and other business entities that violate rights secured by this Charter or other local enactment, or seek to violate those rights or enactments, shall not be deemed to be “persons” to the extent that such treatment would interfere with the rights, or protections of rights, secured by this Charter or other local enactments, nor possess any other legal rights, powers, privileges, immunities, or duties that would interfere with the rights enumerated for people and nature by State and federal constitutions, this Charter, or other local enactments. “Rights, powers, privileges, or immunities” shall include standing to challenge this Charter or other local enactments, the power to assert state or federal preemptive laws in an attempt to overturn this Charter or other local enactments, and the power to assert that the people of the County lack the authority to adopt this Charter or other local enactments. In addition, no permit, license, privilege, charter, or other authority issued by any state, federal, or international entity shall be deemed valid within the County if it limits or reverses the rights, prohibitions and regulations secured by this Charter or enacted by the County to protect rights.”

Section 1.13, Line 4: “and natural”.

Section 1.14, Line 2: “and natural”.

Section 1.15, Lines 1 through 4: “Rights against Eminent Domain. All residents of the County of Athens have the right to hold private property without threat of expropriation or taking by corporate entities for purposes of private gain rather

than public use. The power of taking private property shall not be delegated. The taking of private property for development and transportation of oil and gas resources and/or waste products by corporations for profit does not constitute public use.”

Section 2.01, Lines 1 through 2: “Prohibitions Necessary to Protect Rights. It shall be unlawful for any private or public entity to violate the rights recognized and secured by this Charter and its amendments, by engaging in the activities herein enumerated and activities as may be further provided by ordinance or resolution by the County Commissioners, by the people through initiative, or by Charter amendment. Accordingly, it shall be unlawful for any private or public entity to:

Section 2.01.1. Deposit, store, treat, inject, dispose of, or process wastewater, produced water, ‘frack’ water, brine or other substances, chemicals, or by-products that have been used in, or result from, the extraction of shale gas and oil by high-volume horizontal hydraulic fracturing, on or into the land, air or waters of the County of Athens. However, this prohibition shall not include wastewater produced in the County of Athens by conventional shallow vertical drilling methods.

Section 2.01.2. Engage in the procurement or extraction of any water from any source, including public water sources, within the County of Athens for use in high-volume hydraulic fracturing for extraction of shale gas and oil.”

Section 3.01, 2nd Paragraph, Lines 2 and 3: “provided that general law does not violate the rights of county residents, their County Charter, or other unalienable rights”.

Section 3.01, 2nd Paragraph, Line 6: “and natural”.

Section 5.02, 1<sup>st</sup> Paragraph, Line 6: “protect rights established by this Charter”.

#### **IV. STANDARD FOR DECISION.**

“A writ of mandamus is an order, in this case to a public officer, to perform an act which the law specifically enjoins as a duty resulting from his office. R.C. 2731.01.” *State ex rel. Hodges v. Taft*, 64 Ohio St.3d 1, 3 591 N.E.2d 1186 (1992). “Mandamus is an extraordinary remedy, ‘to be issued with great caution and discretion and only when the way is clear.’” *State ex rel. Gilmour Realty, Inc. v. City of Mayfield Heights*, 180 Ohio App.3d 430, 434, 2009-Ohio-29, 905 N.E.2d 1238 (8<sup>th</sup> Dist. 2009) (citing *State ex rel. Kriss v. Richards*, 102 Ohio St. 455,

457, 132 N.E. 23 (1921); *State ex rel. Skinner Engine Co. v. Kouri*, 136 Ohio St. 343, 25 N.E.2d 940 (1940)). In *State ex rel. Harris v. Rhodes*, 54 Ohio St.2d 41, 374 N.E.2d 641 (1978), this

Court stated:

In order to be entitled to a writ of mandamus, relator must show (1) that he has a clear legal right to the relief prayed for, (2) that respondents are under a clear legal duty to perform the acts, and (3) that relator has no plain and adequate remedy in the ordinary course of the law.

*Id.*, at 42 (citation omitted).

A court in a mandamus proceeding cannot create the legal duty the relator would enforce through it; creation of the duty is the distinct function of the legislative branch of government. *State, ex rel. Stanley, v. Cook* (1946), 146 Ohio St. 348, 32 O.O. 419, 66 N.E.2d 207; *Davis v. State, ex rel. Pecsok* (1936), 130 Ohio St. 411, 5 O.O. 20, 200 N.E. 181, paragraph one of the syllabus.

. . .

Mandamus cannot be used to compel the performance of a permissive act. *State, ex rel. Niles, v. Bernard* (1978), 53 Ohio St.2d 31, 7 O.O.3d 119, 372 N.E.2d 339. A writ cannot issue to control an officer's exercise of discretion, but it can be issued to compel him to exercise it when he has a clear legal duty to do so. See *State, ex rel. Martin, v. Corrigan* (1986), 25 Ohio St.3d 29, 25 OBR 24, 494 N.E.2d 1128.

*Hodges*, at 3, 4.

To establish the requisite legal right and legal duty, [Relators] must prove that the board of elections [and Secretary of State] engaged in fraud, corruption, abuse of discretion, or clear disregard of statutes or other pertinent law. . . .

*Rust v. Lucas County Bd. of Elections*, 108 Ohio St.3d 139, 2005-Ohio-5795, 841 N.E.2d 766, ¶ 8 (citations omitted).<sup>17</sup> Where abuse of discretion is claimed, simple abuse will not support the

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<sup>17</sup> Also, “[e]xtreme diligence and promptness are required in election-related matters.” *State ex rel. Valore v. Summit County Bd. of Elections*, 87 Ohio St.3d 144, 146, 1999-Ohio-317, 718 N.E.2d 415 (1999) (citations omitted).

issuance of a writ of mandamus. [R]elator[s] must establish a clear dereliction of duty, not merely a showing that [he] should [have] perform[ed] the desired act.” *Fasone v. Clinton Township*, 10th Dist. Franklin No. 93AP-578, 1993 Ohio App. LEXIS 5589, at \*7 (1993) (citations omitted).

“[T]he burden is on the appellant to ‘demonstrate that there is plain, clear, and convincing evidence which would require the granting of the writ.’” *State ex rel. Henslee v. Newman*, 30 Ohio St.2d 324, 325, 285 N.E.2d 54 (1972) (quoting with approval the opinion of court of appeals below).

## V. ARGUMENT.

### A. **The Petitions for Proposed County Charters Exceed the Constitutional and Statutory Limitations Placed on County Charters Thereby Causing Them to Be Deceptive, Confusing and Forbidden.**

#### 1. **The Petitions for Proposed County Charters Exceed the Limitations in Article X, Section 3, of the Ohio Constitution.**

Unlike the charter of a municipal corporation, which does not confer home rule powers but can enhance them significantly, the county charter is necessary in order to give the county “limited ‘home rule’ powers”. 9 Ohio Constitutional Revision Commission 1970-1977, at 27. (The Ohio Constitutional Revision Commission is referred to hereinafter as the “OCRC”.) “The powers which may be conferred upon or granted to a county by a charter, however, probably are not coextensive with those granted to municipalities under Article XVIII, Section 3, except, possibly, in the case where the charter, as authorized by Article X, Section 3 ‘provide[s] for the organization of the county as a municipal corporation. . . .’” 7 OCRC 1970-1977, at 3494. (The proposed county charters at issue in this action do not provide for organization of the entire county as a municipal corporation. They only claim any or all municipal powers of a non-charter municipality.)

“There is not to be found in the Constitution any provision with respect to counties analogous to Article XVIII, Section 3, which is the direct grant of powers of local self-government to municipalities.” 7 OCRC 1970-1977, at 3493. Instead, Article X, Section 3, contains confined, limited grants of powers and obligations to charter counties. They are divided into mandatory requirements and elective provisions. The mandatory requirements are:

**“Every such charter shall”**

“provide the form of government of the county”

“determine which of its officers shall be elected and the manner of their election”

“provide for the exercise of all powers vested in, and the performance of all duties imposed upon counties and county officers by law.”

The third of the requirements, that the county continue as an arm of the State, has far reaching effects. Chartered municipal corporations have no such limitation on their independence. With respect to this obligation, the OCRC stated:

The proposal retains the provision that any county charter must “provide for the exercise of all powers vested in, and the performance of all duties imposed upon counties and county officers by law.” The intention of this provision seems to be to make it clear that even counties having charters continue to be administrative arms of the state for purposes of carrying out certain functions throughout the state. While, therefore, a county could by charter change its form of government and expand the powers which it may exercise and be less inhibited by statutory provisions in the manner of the exercise of those powers, those duties required by general law of counties and county officers would still have to be carried out.

8 OCRC 1970-1977, at 25.

Since the words “by law” are used without restriction, it seems that the term includes both existing and future statutory enactments. . . .

[T]he General Assembly would maintain the power to impose upon counties and county officers other duties which must be carried out. No provision similar to that just quoted is found in the provisions of the Constitution dealing with the powers of municipal corporations.

7 OCRC 1970-1977, at 3495.

The authorized permissive provisions that may be included in a county charter are:

**“Any such charter may”**

“provide for the concurrent or exclusive exercise by the county, in all or in part of its area, of all or of any designated powers vested by the constitution or laws of Ohio in municipalities”

“provide for the organization of the county as a municipal corporation” [(not applicable in this action)]

“provide for the succession by the county to the rights, properties, and obligations of municipalities and townships therein incident to the municipal power so vested in the county”

“[provide] for the division of the county into districts for purposes of administration or of taxation or of both.”

Additionally,

“the right of the initiative and referendum 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”

The proposed county charters at issue here claimed “all or of any designated powers vested by the constitution or laws of Ohio in municipalities” (home rule) and “the right of initiative and referendum.” In *State ex rel. Vickers v. Summit County Council*, 93 Ohio St.3d 526, 528, 2001-Ohio-1622, 757 N.E.2d 310 (“*Vickers I*”), this Court reviewed the Summit County Charter,

which likewise claimed all of such powers of a municipality. The Supreme Court, likely referring to Article XVIII, Section 2, of the Ohio Constitution, stated: “[T]he county charter incorporates general law relating to municipalities . . . .”<sup>18</sup> For comparison, a certified copy of the Summit County Charter is submitted as Intervening Respondent Prisley’s Exhibit XII. That 22-page document, first adopted in 1979 and amended 16 times, includes provisions specifically and impliedly authorized by Article X, Section 3. There are no legislative-type laws similar to the Community Bill of Rights included in the petitions for proposed county charters.

Article X, Section 3, does not specifically permit legislative-type standards and rights of the type found in the Community Bill of Rights included in the proposed county charters. Additionally, there is no language from which the right to include such laws can be implied. Consequently, inclusion of the Community Bill of Rights and other similar legislative-type provisions exceeds the specific and implied authorizations found in Article X, Section 3. Those specific and implied authorizations therefore establish the limits of what may be included. The legal doctrine for this is the maxim *expressio unius est exclusio alterius*, which means “expression of one thing is the exclusion of another.” BLACK’S LAW DICTIONARY, at 692 (rev. 4<sup>th</sup> ed. 1968).

In construing the Ohio Constitution, the Supreme Court of Ohio has applied the maxim *expressio unius est exclusio alterius*. *State ex rel. Giovanello v. Lowellville*, 139 Ohio St. 219, 222, 39 N.E.2d 527 (1942). “That maxim has peculiar application to any statute which in terms

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<sup>18</sup> Non-charter municipal corporations operate under the Constitution and the “[g]eneral laws”, as provided in Article XVIII, Section 2, of the Ohio Constitution. By contrast, charter municipal corporations derive their authority to exercise powers from Article XVIII, Section 7, of the Ohio Constitution. It states, in part: “Any municipality may frame and adopt . . . a *charter* . . . and . . . exercise *thereunder* all powers of local self-government.” (Emphasis added) Thus, charter municipalities derive their powers from the Constitution and their charters.

limits a thing to be done in a particular form, and in such case it necessarily implies that the thing shall not be done otherwise. That maxim finds its chief use as an aid in ascertaining the whole scope of a law.” *Cincinnati v. Roettinger*, 105 Ohio St. 145, 152, 105 Ohio St. 145 (1922).

Here, the tight-knit group of items being considered are set forth explicitly in Article X, Section 3, of the Ohio Constitution. The restrictions inherent in Article X, Section 3, for charter counties become particularly apparent when juxtaposed with the virtually unrestrained empowerment found in Article XVIII, Sections 3 and 7, for charter municipal corporations.

Even more compelling is the language of Article X, Section 3. First, the requirement “provide for the exercise of all powers vested in, and the performance of all duties imposed upon counties and county officers by law” demands that significant control be placed on the provisions allowed in a county charter. Otherwise, significant conflicts could develop between the State and the charter county. Second, Article X, Section 3, seeks to protect the balance between counties, townships and municipal corporations. The unrestrained inclusion of legislative-type provisions in county charters could upset that balance.

Accordingly, the inclusion of the Community Bill of Rights and other legislative-type provisions in the petitions for proposed county charters exceed the express and implied restrictions inherent in Article X, Section 3, of the Ohio Constitution. The petitions for proposed county charters do not meet the requirements of the law, as required by R.C. 307.94, 307.95(A), and 3501.39(A)(1), (2), and (3), because they transgress the Constitutional restrictions expressly and impliedly imposed on county charters by Article X, Section 3.

The Athens County Board of Elections properly exercised its discretion when its members voted on September 6, 2015, that the proposed county charter set forth in Relators’ petition was “not a charter” and they denied certification as valid. Likewise, Respondent Husted

properly exercised his discretion by refusing to certify all of the petitions for proposed county charters as valid. Relators' Complaint for writ of mandamus should be dismissed.

- 2. The Petitions for Proposed County Charters are in direct conflict with the mandatory provision in Article X, Section 3, which requires the county charter to “provide for the exercise of all powers vested in, and the performance of all duties imposed upon counties and county officers by law”.**

The Community Bill of Rights that is included in the proposed county charters contain numerous provisions that would place demands on the boards of county commissioners of Athens, Fulton and Medina Counties in conflict with the required Constitutional requirement that the charter counties “provide for the exercise of all powers vested in, and the performance of all duties imposed upon counties and county officers by law”. Those commissioners would be expected to observe and at times enforce the new fundamental rights conferred upon nature and ecosystems. This likely would put them at odds with the State's statutes exercising police powers with respect to counties. They would be expected to defend the counties from the State with respect to the Community Bill of Rights and advocate that all conflicting statutes must give way to the Community Bills of Rights in the counties' charters. They would be expected to defy the State's dominion and control over eminent domain. The commissioners, not the State, would be expected to charter and authorize municipal corporations, and they would have duties to invade the province of the State in chartering corporations by stripping corporations and similar business organizations of their constitutional rights, thereby exposing the counties to constitutional tort claims and liability. Of course, the commissioners would be expected to oppose and even shut down all oil and gas wells, oil and gas pipelines or saltwater injection wells, as the case may be, which would give rise to even more lawsuits.

Certainly the proposed county charters would create even more conflicts and tensions with the State than is set forth above. The inclusion of the Community Bill of Rights in a county

charter is untenable, especially in light of the Constitutional requirement that the charter counties “provide for the exercise of all powers vested in, and the performance of all duties imposed upon counties and county officers by law”. That requirement alone, being Constitutional in nature and part of the defining requirements and provisions for county charters set forth in Article X, Section 3, would invalidate the bulk of the provisions in the Community Bill of Rights. Why then should a Community Bill of Rights, so very offensive to the natal purposes of a county charter in Ohio, be included in the very document it could destroy?

The Athens County Board of Elections and Respondent Husted, as Ohio’s Chief Elections Officer, both acting on behalf of the Office of the Secretary of State of Ohio, an Ohio administrative agency, have been granted sufficient authority and discretion to investigate petitions and determine whether they meet the requirements of the law. They did just that and properly exercised their discretion when they determined the petitions for proposed county charters violate the requirements of the law and should not be certified as valid for inclusion in the ballots for the general election.

Relators’ Complaint for writ of mandamus should be dismissed.

**3. The Petitions for Proposed County Charters Combine (i) Elector Petitions for Proposed County Charters Drafted pursuant to Article X, Sections 3 and 4, with (ii) Unauthorized Elector Initiatives for Legislation.**

The petitions for proposed county charters contain two types of provisions. First, there are the provisions for county charters, which were discussed above. Second, there are the legislative-type laws set forth in the Community Bill of Rights. With respect to the legislative-type laws, at the present time in Athens, Fulton and Medina Counties, neither the boards of county commissioners nor the electors, through initiative, have the present right to cause that

legislation to be passed. The commissioners have no home rule powers, and the electors do not have the right of initiative.

If those counties should adopt county charters, then home rule powers and elector rights of initiative for legislation (see Article X, Section 3) arguably would permit a Community Bill of Rights to be adopted in each county, however ill-advised. In that situation, the Community Bill of Rights would be an ordinance. It would not have the power and authority of a county charter provision.

After a county charter is adopted, county electors would have no right by petition to have a Community Bill of Rights submitted directly to the electorate. All charter amendments must be recommended by a charter commission, even when the charter commission is initiated by elector petition. Article X, Section 4, of the Ohio Constitution.

The point at which a county charter takes life occurs in the blink of the eye. Presumably that point of time is after an election either when the board of elections certifies the county charter or when the Secretary of State receives that certification. Prior to the blink of the eye, county electors have no legislative powers whatsoever. After the blink of the eye, county electors have no powers by petition to have legislative provisions placed in a charter amendment and submitted to the electors. Clearly, the drafters of Article X, Sections 3 and 4, did not intend for petitioners to have the power to insert legislative-type provisions, not explicitly authorized by Article X, Section 3, into a proposed county charter at the very moment of the blink of the eye. That would be entirely inconsistent with the carefully conceived plan found in Article X, Sections 3 and 4.

Moreover, the inclusion of the legislative Community Bill of Rights initiative with the petitions for proposed county charters is quite confusing. The Community Bill of Rights in the

proposed county charters dominate, and the provisions for proposed charter government are lost, especially where, as here, so little thought was put into the proposed charter government.

The inclusion of the initiative for legislation with the petition for proposed county government is not within the requirements of the law. The Athens County Board of Elections and Respondent Husted, as Ohio's Chief Elections Officer, were well within their realm of administrative discretion when they certified the petitions for proposed county charters as invalid. Relators' Complaint should be dismissed.

**4. The Petitions for Proposed County Charters Combine (i) Elector Petitions for Proposed County Charters Drafted pursuant to Article X, Sections 3 and 4, with (ii) Unauthorized Zoning Regulations.**

“Zoning ordinances have reference to the use of land, not personal property, nor the persons who own land.” 10 O.JUR. 3D, *Buildings, Zoning and Land Controls* § 84, at 284 (1995) (footnotes omitted). “The right of the individual to use and enjoy his private property is not unbridled, but is subject to the legitimate exercise of the local police power. Zoning regulations are a valid exercise of the police power. They are adopted and enforced pursuant to such power under which government may enact law in furtherance of the public safety, health, morals, or general welfare.” *Id.* § 86, at 287 (footnotes omitted).

The power to plan and zone or regulate land use belongs to the state. The Ohio Constitution, Article II, § 1, vests the state's legislative power, which includes the police power, in the General Assembly. Through its constitution and enabling statutes, Ohio has delegated most of its planning and police power authority to regulate land use to the local level. In recent years, the state has enacted statutes which address land use issues of statewide concern and, in effect, take back some of the delegated power. These statutes reflect, for example, a greater concern for the environment by regulating the location of hazardous waste facilities and for disempowered groups by regulating the location of group homes for the disabled and day care facilities. The statutes include full or partial preemption of local regulatory systems.

OH. PLAN. & ZONING L. § 3:1 (2014 ed.) (footnote omitted). Even for a charter government, zoning powers fall within the State’s police powers, and a local government’s exercise of those powers cannot conflict with general law.

The Ohio Supreme Court has ruled that the enactment of zoning laws by a municipality is an exercise of the “police power,” rather than an exercise of the power of “local self-government” as granted by the home rule amendment; the phrase “not in conflict with general laws” in Ohio Constitution, Article XVIII, § 3 applies to the “police power.” Under home rule, municipalities may enact their own police power measures, such as zoning and subdivision regulations, but these measures cannot conflict with the general law of the state. Where there is conflict, it must be related to the same subject matter and must be specific and not implied.

OH. PLAN. & ZONING L. § 3:2 (2014 ed.) (footnotes omitted). If a charter county has claimed municipal zoning powers, as has been done in the proposed county charters, then such restrictions applicable to all municipalities also restrict that charter county.

Two provisions, 2.01.1 and 2.01.2 in the proposed county charter for Athens County, which control the use of land and land resources, appear to be the primary reasons for the Proposed County Charter.<sup>19</sup> By definition, they are zoning regulations that have not been developed in the usual and accepted manner, and they have been developed without even a general plan. “The underlying basis for zoning is to, when need be, enforce conformity to a general plan . . . . [Z]oning should conform to a “general plan[.]” . . . .” *Bd. of Trs. v. Dray*, 11<sup>th</sup> Dist. Trumbull No. 2004-T-0137, 2006-Ohio-3402, ¶ 52 (quoting the trial court). There was no zoning plan whatsoever. Section 2.01.1 prohibits oil and gas wastewater injection wells, an

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<sup>19</sup> In Article II of the proposed county charters for Fulton and Medina Counties, the proposed regulations cover oil and gas wells or oil and gas pipelines, or both. Nevertheless, since they regulate the use of land, they are zoning regulations. The arguments made in this section with respect to the proposed county charter for Athens County are equally applicable to the proposed county charters for Fulton and Medina Counties.

activity regulated and permitted by ODNR. See R.C. 1509.22. Section 2.01.2 prohibits the use of fresh water for oil and gas related activities. “A zoning ordinance, rule or resolution which violates an explicit statutory command of the General Assembly is clearly preempted and is therefore invalid and unenforceable.” *Newbury Township Bd. of Township Trustees v. Lomak Petroleum (Ohio)*, 62 Ohio St.3d 387, 583 N.E.2d 302, Syllabus ¶ 1 (1992) (finding preemption of zoning regulations by oil and gas statutes in Chapter 1509).

The only zoning available in unincorporated Athens County at this time is county rural zoning, see R.C. Chapter 303, which requires a zoning commission study of the proposed zoning and public hearings and is to be presented as a comprehensive plan to the county commissioners for acceptance. R.C. 303.02(A), 303.03, 303.05, 303.06, 303.08, 303.10. Once accepted by the commissioners, the electors in the unincorporated parts of the county must vote. R.C. 303.11. The zoning goes into effect only in those townships in which a majority of the electors vote in favor of the zoning plan. *Id.* Townships also can adopt zoning, and it is more the norm in unincorporated areas than is county rural zoning. See R.C. Chapter 519.

The zoning regulations in Sections 2.01.1 and 2.01.2 would also apply within municipalities—something that the county government simply cannot achieve at this time. Zoning inside of a municipality would involve a planning commission, which would be responsible for “mak[ing] plans and maps of the whole or any portion of the municipal corporation, and of any land outside thereof, which, in the opinion of the commission, is related to the planning of the municipal corporation . . .” R.C. 713.02. A public hearing would be required. R.C. 713.12. There are many other requirements with respect to municipal zoning. The foregoing are sufficient to demonstrate that zoning regulations could not be included properly in the petitions for proposed county charters. Thus, even if the county should adopt a

charter and assume all municipal powers, any attempt by the county to adopt zoning regulations that would be effective within municipalities would be problematic.

Recently in *Morrison*, the Supreme Court stated:

Under the city's ordinances, a state permit holder cannot begin "any excavation" or "drill a well for oil, gas, or other hydrocarbons" without fully complying with local provisions. . . . Because [the oil and gas operator] obtained a valid state permit in accordance with R.C. Chapter 1509, the city cannot "extinguish privileges arising thereunder through the enforcement of zoning regulations."

. . .

. . . We hold that the Home Rule Amendment to the Ohio Constitution, Article XVIII, Section 3, does not allow a municipality to discriminate against, unfairly impede, or obstruct oil and gas activities and production operations that the state has permitted under R.C. Chapter 1509.

*Id.*, ¶¶ 28, 34 (citations omitted). Sections 2.01.1 and 2.01.2 would ban oil and gas activities and would be inconsistent with the holding of this Court in *Morrison*.

Sections 1.08, 1.09, 1.10, 1.13, 1.14, and 3.01 also are attempts at zoning. These sections, which concern the control of ecosystems and nature, are attempts to control the use of land and nature. Rights cannot be granted to land and nature, but uses of land and nature can be controlled. That control is a type of zoning. The comments above pertaining to Sections 2.01.1 and 2.01.2 apply to these sections as well.

Article X, Sections 3 and 4, of the Ohio Constitution do not authorize zoning regulations to be included in the county charter. Zoning regulations usually are the result of meticulous planning and require a complex development code to be adopted by electors. Sections 2.01.1 and 2.01.2 directly conflict with general law. The charter's zoning regulations have not been adopted in accordance with county rural zoning or any zoning act set forth in Ohio's general law.

Indeed, it would not be possible to comply with any zoning act and include zoning regulations in a proposed county charter. The presence of zoning regulations in the proposed county charters does not meet the requirements of the law and requires the petitions for proposed county charters to be certified as invalid. Relators' Complaint should be dismissed.

**B. Contrary to Relators' Assertions, Ohio Boards of Elections and Respondent Husted, All Part of the Office of the Secretary of State of Ohio, a State Administrative Agency to Which Ohio Courts Defer, Have Very Broad Powers and Discretion to Investigate Form and Substance Before and After Elections.**

Relators argue that prior to an election, only the form of petitions may be reviewed by Ohio administrative agencies and courts, and the substance of petitions may not be considered until after the election has concluded. Such law applies only to legislative councils of municipal corporations, boards of county commissioners, and officials and employees of municipal and county governments. Time and again this Court and the courts of appeals of Ohio have expressed and applied that rule.

*The city council's constitutional authority to review the sufficiency of petitions is limited to matters of form, not substance. State ex rel. Polcyn v. Burkhardt (1973), 33 Ohio St.2d 7, 10-11, 62 O.O.2d 202, 203-204, 292 N.E.2d 883, 885 (emphasis added). A city council's authority to determine if all applicable statutory requirements have been met is therefore more restricted than that of a board of elections. See State ex rel. Watkins v. Quirk (1978), 59 Ohio App.2d 175, 13 O.O.3d 202, 392 N.E.2d 1302. A city council may not engage in judicial or quasi-judicial determinations, e.g., analyzing if the requirements of R.C. 3501.38(F) have been satisfied. See id.; see, also, Polcyn, supra; State ex rel. Citizens for a Better Portsmouth v. Sydnor (1991), 61 Ohio St.3d 49, 52, 572 N.E.2d 649, 651. In other words, council cannot inquire into questions not apparent on the face of the petitions themselves or which require the aid of witnesses to determine.” Morris v. City Council of Macedonia, 71 Ohio St.3d 52, 55, 641 N.E.2d 1075*

(1994) (emphasis added). “[C]ouncil’s power to examine initiative petitions for sufficiency has not been declared by this court to extend beyond matters of form, or “administrative determinations” concerning the number of valid signatures. . . . None of the cases decided by this court . . . should be construed to invest municipal legislative authorities with the power to determine what substantive errors, if any, are grave enough to warrant the withdrawal of a whole issue from the electorate, whether they appear “on the face” of the petitions or not. That is a judicial function, and Section 9, Article XVIII, does not contemplate that legislative authorities be clothed with that prerogative.” *State ex rel. Citizens for Better Portsmouth v. Sydnor*, 61 Ohio St.3d 49, 52, 572 N.E.2d 649 (1991) (quoting *State, ex rel. Polcyn, v. Burkhart*, 33 Ohio St.2d 7, 10-11, 292 N.E.2d 883 (1973)). *Accord, State ex rel. Ebersole v. City of Powell*, 141 Ohio St.3d 17, ¶ 6 (2014) (“*Ebersole II*”); *State ex rel. N. Main St. Coalition v. Webb*, 106 Ohio St.3d 437, 2005-Ohio-5009, 835 N.E.2d 1222, ¶ 30-32; *State ex rel. Lautz v. Diefenbach*, 165 Ohio St. 495, 496, 137 N.E.2d 749 (1956); *State ex rel. Werner v. Koontz*, 153 Ohio St. 325, 91 N.E.2d 473, Syllabus (1950).

Boards of election and Respondent Husted enjoy much broader powers, before and after elections. R. C. 3501.11(K) states: “Each board of elections shall exercise by a majority vote all powers granted to the board by Title XXXV of the Revised Code, shall perform all the duties imposed by law, and shall . . . [r]eview, examine, and certify the sufficiency and validity of *petitions* and nomination papers, and, after certification, return to the secretary of state all petitions and nomination papers that the secretary of state forwarded to the board . . .”

(Emphasis added.) This Court has said often that “boards of elections ‘are the local authorities best equipped to gauge compliance with election laws.’” *State ex rel. Stevens v. Geauga County*

*Bd. of Elections*, 90 Ohio St.3d 223, 228, 2000-Ohio-66, 736 N.E.2d 882 (2000) (quoting *State ex rel. Sinay v. Sadders*, 80 Ohio St. 3d 224, 231, 685 N.E.2d 754, 760 (1997)).

““Under the provisions of Section 4785-13, General Code [Section 3501.11, Revised Code], and cognate sections, a county board of elections is authorized to review, examine and certify the sufficiency and validity of petitions and nominating papers even in the absence of a protest thereto. (*State, ex rel. McGinley, v. Bliss et al., Board of Elections*, 149 Ohio St. 329, approved and followed.)”” *State ex rel. Janasik v. Sarosy*, 12 Ohio St.2d 5, 5-6, 230 N.E.2d 346 (1967) (quoting *State, ex rel. Ehring, v. Bliss et al., Board of Elections of Summit County*, 155 Ohio St. 99, 97 N.E.2d 671 (1951)). *Accord, State ex rel. Markulin v. Ashtabula County Bd. of Elections*, 65 Ohio St.3d 180, 183, 1992-Ohio-84, 602 N.E.2d 626 (1992); *Wiss v. Cuyahoga County Bd. of Elections*, 61 Ohio St.2d 298, 301, 401 N.E.2d 445 (1980) (pre-election investigation); *State, ex rel. Ehring, v. Bliss et al., Board of Elections of Summit County*, 155 Ohio St. 99, 97 N.E.2d 671, Syllabus ¶ 1 (1951) (*State, ex rel. McGinley, v. Bliss et al., Board of Elections*, 149 Ohio St., 329, approved and followed).

Clearly a board of elections has authority to investigate substantive matters prior to an election and act upon its conclusions that “applicable legal requirements” have not been satisfied, even without a written protest. *See State ex rel. O’Beirne v. Geauga County Bd. of Elections*, 80 Ohio St.3d 176, 181-182, 1997-Ohio-348, 685 N.E.2d 502 (1997). Boards of election are entitled and also required to weigh evidence and exercise considerable discretion. *State ex rel. Kelly v. Cuyahoga County Bd. of Elections*, 70 Ohio St.3d 413, 414, 639 N.E.2d 78 (1994) (citing *State ex rel. Herdman v. Franklin Cty. Bd. of Elections*, 67 Ohio St.3d 593, 596, 621 N.E.2d 1204, 1206 (1993)).

Boards of elections clearly are authorized to investigate matters of substance prior to elections and act on their conclusions. The character of a document, for which a board of elections has responsibility, must be determined from the substance of the document. *State ex rel. Werner v. Koontz*, 153 Ohio St. 325, 332, 91 N.E.2d 473 (1950). *Accord, State ex rel. N. Main St. Coalition v. Webb*, 106 Ohio St.3d 437, 2005-Ohio-5009, 835 N.E.2d 1222, ¶ 34. In *Skinner Engine Co.*, a mandamus case, this court stated: “[W]here there is doubt about the character of an instrument the substance rather than the form will prevail.” 136 Ohio St. at 349. Where such instrument was doubtful, this Court said that the writ of mandamus would not issue.

In *State ex rel. Ebersole v. Del. County Bd. of Elections*, 140 Ohio St.3d 487, 2014-Ohio-4077, 20 N.E.3d 678 (“*Ebersole P*”), this Court upheld a board of election’s refusal to certify a referendum petition as valid. The board of elections had certified the petition as invalid because the referendum petition concerned an administrative action, not a legislative action. *Id.*, ¶ 27. The Supreme Court stated: “Because citizens of a municipality cannot exercise referendum powers greater than what the Constitution affords, an administrative action is beyond the scope of the referendum power.” *Id.*, ¶ 29 (citation omitted). The referendum power only applied to legislative actions. The Supreme Court upheld the board of election’s refusal to certify and held: ***“[T]he subject matter of the proposed referendum and initiative is not proper for the ballot.”*** *Id.*, ¶ 42 (bold and italics emphasis added). Clearly, substance was a proper area for inquiry.

Boards of elections may refuse to certify a petition if it conveys a mistaken or confusing impression. *See State ex rel. Stevens v. Geauga County Bd. of Elections*, 90 Ohio St.3d 223, 228, 2000-Ohio-66, 736 N.E.2d 882 (2000); *State ex rel. O’Beirne v. Geauga County Bd. of Elections*, 80 Ohio St.3d 176, 181-182, 1997-Ohio-348, 685 N.E.2d 502 (1997).

Finally, Ohio courts defer to boards of elections. “We will not substitute our judgment for that of a board of elections if there is conflicting evidence on an issue. *State ex rel. O’Beirne v. Geauga Cty. Bd. of Elections* (1997), 80 Ohio St. 3d 176, 181, 685 N.E.2d 502, 506; *State ex rel. Kelly v. Cuyahoga Cty. Bd. of Elections* (1994), 70 Ohio St. 3d 413, 414, 639 N.E.2d 78, 79 (‘Boards of elections are obligated to weigh evidence of a candidate’s qualifications, and courts should not substitute their judgment for that of the board.’).” *State ex rel. Wolfe v. Delaware County Bd. of Elections*, 88 Ohio St.3d 182, 185, 2000-Ohio-294, 724 N.E.2d 771 (2000).

Clearly the board of elections, with its authority to conduct broad judicial and quasi-judicial investigations and hearings has the authority to consider the substance of petitions prior to an election. *Morris v. City Council of Macedonia*, 71 Ohio St.3d 52, 55, 641 N.E.2d 1075 (1994).

Finally, a board of elections must apply election laws strictly. A failure to do so is an abuse of discretion. In *State ex rel. Stoll v. Logan County Bd. of Elections*, 117 Ohio St.3d 76, 2008-Ohio-333, 881 N.E.2d 1214, the Supreme Court stated: **“Under R.C. 3501.39(A)(2), a board of elections must reject any petition if it ‘violates *any* requirement established by law.’ ‘[T]he settled rule is that election laws are mandatory and require strict compliance and that substantial compliance is acceptable only when an election provision expressly states that it is.”** *Id.*, ¶ 32 (citation omitted) (bold and italics emphasis added). In *Stoll*, the Supreme Court held that the board of elections abused its discretion when it denied a protest and certified a petition. *Stoll*, ¶ 47. Thus, a board’s failure to investigate the substance of a petition prior to an election to determine if the petition would meet the requirements of the law itself would be an abuse of discretion.

The Secretary of State of Ohio, as Ohio's chief elections officer, likewise has all of the authority given to boards of elections and more. For example, he is entitled to interpret elections statutes to determine their meanings. *State ex rel. S. Cent. Ohio Educ. Serv. Ctr. Governing Bd. v. Adams County Bd. of Elections*, 4<sup>th</sup> Dist. Adams No. 03CA761, 2003-Ohio-5273, ¶ 30 (citing *State ex rel. Herman v. Klopfleisch* (1995), 72 Ohio St.3d 581, 586, 651 N.E.2d 995).

**C. The Athens County Board of Elections Properly Exercised Its Broad Discretion When It Certified the Petition for Proposed Athens County Charter as Invalid, and Respondent Husted, Ohio's Chief Elections Officer, Properly Exercised His Broad Discretion When He Certified the Proposed County Charters as Invalid, Thereby Entitling the Board of Elections and Respondent Husted to the Respectful Deference Afforded to Administrative Agencies by Ohio Courts.**

The minutes from the July 6, 2015, meeting of the Athens County Board of Elections (Intervening Respondent Prisley Exhibit IX) demonstrate that the members properly investigated the character and deficiencies of the petition for proposed county charter and made an independent determination that the petition was "not a charter." They exercised their discretion and certified it as invalid. This Court should defer to that board's exercise of its discretion.

The decision of the Athens County court of common pleas should not deter that result. First, this Court has the discretion to ignore it if it was wrong. Second, that portion of R.C. 307.94 that authorizes the court's actions is unconstitutional and void on its face. The proceeding was for an advisory opinion. It simply substituted the court's opinion for the decision of the Athens County Board of Elections. There was no justiciable case or controversy. "An actual controversy is a genuine dispute between adverse parties. . . . It is more than a disagreement; the parties must have adverse legal interests." *Kincaid v. Erie Ins. Co.*, 128 Ohio St.3d 322, 2010-Ohio-6036, 944 N.E.2d 207, ¶ 10 (citations omitted). "To be justiciable, a controversy must be grounded on a present dispute, not on a possible future dispute." *Id.*, ¶ 10

(citation omitted). This violated Article IV, Section 4(B), of the Ohio Constitution.

Additionally, R.C. 307.94 requires the common pleas court to act as an arm of the Office of the Ohio Secretary of State by making a decision for and on behalf of the board of elections. Thus, it commands a judicial officer to act in an executive role. Alternatively, R.C. 307.94 requires a judicial officer to act when Article IV jurisdiction is absent. Either way, R.C. 307.94 violates the constitutional doctrine of separation of powers. “The separation-of-powers doctrine represents the constitutional diffusion of power within our tripartite government. The doctrine was a deliberate design to secure liberty by simultaneously fostering autonomy and comity, as well as interdependence and independence, among the three branches.” *City of Norwood v. Horney*, 110 Ohio St.3d 353, 2006-Ohio-3799, 853 N.E.2d 1115, ¶ 114.

The decision of the Athens County Court of Common Pleas in no way binds the Athens County Board of Elections.

Respondent Husted likewise enjoys enormous discretion to which Ohio courts defer.

F.C. 307.95(C) states, in part:

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.

Respondent Husted’s discretion under that statute was unfettered.

For the foregoing reasons, this Court should defer to the Athens County Board of Elections and Secretary of State of Ohio and dismiss Relators’ Complaint.

**D. This Court Should Refuse to Issue a Writ of Mandamus, and Relators’ Mandamus Complaint Should Be Dismissed.**

Notwithstanding the compliance or non-compliance of the Athens County Board of Elections and Secretary of State of Ohio with the election laws, this Court should exercise its own discretion and deny the writ of mandamus. The petitions for proposed county charters are very confusing when read. The chance of elector mistake when voting is high. Such documents should never be printed on a ballot. *State ex rel. Stevens v. Geauga County Bd. of Elections*, 90 Ohio St.3d 223, 228, 2000-Ohio-66, 736 N.E.2d 882 (2000).

There is little doubt that the proposed county charters, if adopted in an election, would be ruled void within one to two years thereafter. In that case, it makes no sense to place the petitions on the ballot. In *State ex rel. Werner v. Koontz*, 153 Ohio St. 325, 91 N.E.2d 473 (1950), this Court refused to issue a writ of mandamus because to do so would have been futile. *Id.*, at 332-34. "Mandamus will not issue to compel a vain act." *State ex rel. Moore v. Malone*, 96 Ohio St.3d 417, 2002-Ohio-4821, 775 N.E.2d 812, ¶ 38.

Thomas Linzey's interview given to Reuters should put to rest any doubts in this area. He made it clear that the petitions for proposed county charters are not intended to become serious governmental documents. They are just intended to produce conversation, which they already have done. This Court should exercise its independent discretion and refuse to issue the writ of mandamus.

**VI. CONCLUSION.**

For the foregoing reasons, Relators' Complaint seeking a writ of mandamus should be dismissed.

Respectfully submitted,

/s Michael M. Hollingsworth

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**CERTIFICATE OF SERVICE**

I hereby certify that copies of the foregoing *Amended Merit Brief of Intervening Respondent Joanne Dove Prisley* were served this 7<sup>th</sup> day of September, 2015, by electronic email delivery on the following:

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---

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**Certificate of Registration  
ATHENS COUNTY OHIO**

COUNTY ID #: 8573

NAME: JOANNE DOVE PRISLEY  
RESIDENCE: 40 GROSVENOR ST  
CITY: ATHENS OH 45701

PARTY: D - DEM  
REG. DATE: 02/08/63

STATUS: A - ACTIVE VOTER  
ACTIVITY: 11/04/14

PRECINCT: 0014/1 ATHENS 3-4

**VOTING HISTORY:**

Vtd Election Type	Vtd Election Type	Vtd Election Type
D 05/05/15 PS	X 11/04/14 G	D 05/06/14 P
X 11/05/13 G	D 05/07/13 PS	X 11/06/12 G

*Joanne Dove Prisley*

THIS IS TO CERTIFY THAT THE ABOVE IS A TRUE AND ACCURATE COPY OF RECORDS  
ON FILE WITH THE BOARD OF ELECTIONS.

*Olga Thomas*  
\_\_\_\_\_  
CLERK

*1/22/15*  
\_\_\_\_\_  
DATE

# Democracy Day event elaborates on charter for Athens County

David DeWitt Jun 14, 2015 0



Greg Howard, at podium, addresses a crowd of advocates gathered at Democracy Day at the Shade Community Center on Saturday. Photo by Dennis E. Powell.

Advocates for turning Athens County into a charter government argued that it would give power back to residents and allow the county to impose standards on the oil and gas industry similar to what Athens City Council passed in 2013. Those standards have yet to be tested as no oil- or gas-drilling activity has occurred in the city of Athens.

Democracy Day at the Shade Community Center on Saturday featured a variety of speakers and panels,

and was sponsored by the local activist group Democracy Over Corporations, the Appalachian Peace and Justice Network, and a variety of local businesses.

A heavy focus of the event was the Athens County Bill of Rights Committee's proposal to voters this November for turning Athens County into a charter government. A similar proposal is underway in Meigs County and several others throughout Ohio. Currently, only Summit and Cuyahoga counties are charter governments in Ohio, with the rest being statutory.

A panel speaker, Nancy Pierce, explained that a charter would not change the way Athens County government is set up, but it would give the county board of commissioners the ability to make law, and it would allow citizens the right to petition initiatives and referendum.

She pointed to Chapter 47 of the city of Athens municipal code, enacted by City Council in 2013, that calls for the imposition of various fees and controls on companies looking to conduct horizontal hydraulic fracturing oil-and-gas drilling business within city limits (thus far, no companies have made such an attempt).

The city's code includes fees for monitoring for groundwater contamination and air pollution, control over industry trucks such as weight limits, and the funding of insurance premiums for liability concerns.

"The charter would allow the commissioners to pass something similar, or the citizens could do the same," Pierce said.

Athens County Bill of Rights spokesperson Dick McGinn, who helped lead the effort to get a "Bill of Rights" that bans fracking activity in the city of Athens passed by voters by a wide margin (79 percent support) this past November, also spoke about what the proposed charter would allow.

The proposal does include a Bill of Rights for the county that would seek to ban fracking activities, McGinn said, but it is set up to allow for what's known as severability, so that if that portion or any portion is struck down by a court, for instance, the rest of the charter remains intact.

"If part of it is thrown out for some reason, the other parts will stay," he said.

This would seem to be important, as recent Ohio court decisions, including a pivotal Ohio Supreme Court decision earlier this year, have backed up the state of Ohio and drilling industry's contention that the state

has primacy over oil and gas regulation, basically stating, "what the state allows, local government can't prohibit."

Moreover, a local court decision in Broadview Heights, Ohio, earlier this year cited that Supreme Court decision in tossing out a bill of rights fracking ban similar to the one in Athens and the one proposed for Athens County.

Nevertheless, pointing to the keynote speech delivered earlier in the day by WOUB's Tom Hodson, McGinn called the question whether county charter home rule could prevail in court "critical" and "still open."

McGinn provided a review of a handbook for county commissioners in Ohio, which takes its declarations from Ohio Revised Code. He explained that under ORC, local municipalities can assert home rule, and under charter government, counties can do the same, but if a conflict arises between a municipality and the county, the municipal law prevails.

Athens County Fracking Action Network Andrea Reik provided an update on the injection of waste from fracking activities in Athens County, showing that through the first quarter of 2015, more waste had been injected in Athens County than any other, with a total of nearly 1.1 million barrels, over 1 million of which have come from out-of-state.

She said the amount of fracking waste injected in Athens County in 2014 was the same amount, in barrels, as how much oil was dumped into the ocean during the BP deepwater horizon oil spill of 2010.

She pointed out that the Ohio Department of Natural Resources, which has been given sole regulatory authority in Ohio over oil-and-gas operations, has refused to hold a public hearing on any injection well applications in Athens County, despite hundreds of comments and letters, and repeated requests by the county commissioners.

"It's unbelievable to me. I worked as a public servant," said Reik, who retired in 2012 as executive director of the county Children Services. "It's insulting. It's degrading."

She said that a charter government would return some measure of power and say to the people, with opportunities for initiative and referendum.

"It gives me hope," she said. "It doesn't change the set-up of government. It gives us a voice to vote on what happens."

Retired Athens County Job & Family Services director Jack Frech also gave a speech at the event, on how local interests are overlooked by the collusion of corporate interests and state government.

"There are no disposable people," Frech emphasized. "But we are intimidated and we are controlled by money and fear."

He pointed out that no frack waste injection occurs in areas with money and influence, but in poor areas such as Athens County the people are kept fearful of losing what few jobs we have, and are made to accept these things. He said that politicians cater to the moneyed interests that donate to their campaigns.

"I want everyone to take this personally," Frech said. "I want them to be afraid of us. And what are they most afraid of? They're afraid when we take collective action."

# Petitions for County Charter presented

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On Wednesday, members of the Common Sense Energy Coalition of Fulton County planned to present petitions to the Fulton County Board of Elections in Wauseon for a Proposed County Charter in the November election.

The County Charter contains a Community Bill of Rights. The Bill of Rights states that residents have a right to peaceful enjoyment of their property, a right to clean air, water, soil, the rights of nature, the right to a sustainable community, the right to be free from chemical trespass and rights against corporations.

The County Charter was prepared to expand current rights. The County Charter would give residents a voice when, for instance, for-profit corporations, attempt to intrude on residents by taking land, destroying their property, or the environment.

In Ohio petitions are being presented at the Boards of Elections in four counties: Medina, Fulton, Athens, and Meigs. Counties who already have this legislation are Cuyahoga and Summit counties.

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## Proposed charter aims to address pipeline projects in Medina County



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A group of Medina County residents are hoping to make it the first in the state to create a new county charter through a ballot initiative.

Sustainable Medina County is launching a petition campaign to create a charter that would include a community bill of rights aimed at preventing projects such as the proposed 36-inch NEXUS gas pipeline to be constructed across 20 miles in Medina County.

"I think we have a really strong group in Sustainable Medina County," said Kathie Jones, of Sharon Township.

"We're really hoping we can do this, and we're getting a lot of support."

The group needs to collect 4,900 signatures by June 24, and said they would work to build community support in the coming weeks.

At 6:30 p.m. Thursday, Sustainable Medina County will hold a community kick-off meeting at the Medina County Library, 210 S. Broadway St., Medina.

The event will include a discussion with attorney Terry Lodge, who will lead a discussion on the NEXUS pipeline, residents' rights and health and safety issues.

"He's an environmental attorney with many years of experience," Jones said. "He's going to provide detail about what we're planning to do with the county charter."

Sustainable Medina County has partnered with the Ohio Community Rights Network and the Community Environmental Legal Defense Fund (CELDF) to help draft the language of the petition to create a charter. Tish O'Dell serves as a coordinator for the Ohio Community Rights Network and as the Ohio organizer for the CELDF. She said the charter proposal in Medina County is the first of its kind in the state.

"We've researched and, according to the state constitution, you can draft a county charter. It's just never been done before by the people," she said.

She said there are other communities in Ohio that are considering creating a charter and drafting a similar bill of rights and they're looking to Medina County to see how the process works here.

O'Dell said the petition is one of the only tools local grassroots groups have to fight against proposals for the pipeline and other petroleum-industry projects, such as drilling wells.

"The pipelines come in and say you can't stop this deal, they bully us with intimidation and lawsuits, and they can hire more attorneys than us," she said. "But this is about the community being able to assert their rights to be protected from harm."

O'Dell said the proposed petition would not disrupt the current government structure and would keep county elected positions in place, but it would add a citizens' bill of rights to the county government.

"It gives us the right to protect our water and our air," O'Dell said.

The community rights movement is growing, said Emilie Judy of Montville Township. Judy said more people are looking for ways to protect their properties from the oil and gas industry.

"We have an inalienable right to protect the places where we live, and Medina County residents are working to codify that right in our county charter," she said.

The formal language for the petition is scheduled to be posted on the group's website, <http://sustainablemediacounty.org>. The group hopes to get the initiative placed on the county ballot in November.

For more information, visit the website or visit [www.facebook.com/SustainableMedinaCounty](http://www.facebook.com/SustainableMedinaCounty).

Contact reporter Loren Genson at (330) 721-4063 or [lgenson@medina-gazette.com](mailto:lgenson@medina-gazette.com).

## IF YOU GO

The group Sustainable Medina County is hosting a community campaign meeting to create a county charter that includes a community bill of rights.

**WHEN:** 6:30 p.m. Thursday

**WHERE:** Medina County Library, 210 S. Broadway St., Medina



### About Loren Genson

Loren Genson is The Gazette's senior reporter. She covers Brunswick city and state and national government. She's been with The Gazette since August 2012. Contact her at (330) 721-4063 or via email at [lgenson@medina-gazette.com](mailto:lgenson@medina-gazette.com).

# READER'S FORUM

## Editor's column wrong about proposed county Bill of Rights

Dick McGinn Aug 5, 2015 0

On Sunday, a friend stopped me on the street to ask for clarification regarding the proposed Charter for a Bill of Rights for environmental protection from fracking waste, something many Athens residents, myself included, have spent months, and untold hours of grinding hard work, attempting to create.

She had read that it appears our good intentions have been "hijacked by some radical, anarchist" group from Pennsylvania. She also noted her frustration and deep disappointment to have seen in the Sunday paper that injection well dumping can now begin near Torch, using the new injection well.

Acknowledging a Charter interface with the Community Environmental Legal Defense Fund (CELDF), I clarified that if she was referring to what *Athens NEWS* Editor Terry Smith said in his last opinion piece ("Wearing Thin," July 30), she could rest assured Smith is dead wrong. Her parting words were, "Well, if he's wrong, you'd better correct him."

Let me try to do that now.

It just so happens that Thomas Linzey, Esq., the founder of the Community Environmental Legal Defense Fund (CELDF) will speak in Athens soon after the Nov. 3, 2015, election. Linzey's visit does not depend in any way on the outcome of the election, nor on whether the proposed Charter even makes it to the ballot. In fact, his visit is co-sponsored by WOUB's Water Project, together with a number of OU departments and schools, and local organizations.

Which brings me to Terry Smith's "Wearing Thin" editorial feature (*The NEWS*, July 30) referred to above by my friend. Smith quotes extensively from a Reuters news article critical of Linzey and CELDF.

Unfortunately, however, Smith's editorial contains a number of misunderstandings.

Despite earlier letters to the editor where I have attempted to correct Smith's inaccurate assessment that

“the Ohio courts have always ruled against these Bills of Rights,” he insists on that point. Perhaps citing longtime Athens lawyer (and former Judge) Tom Hodson’s excellent keynote address at the June 13 Democracy Day conference in Shade can provide further evidence to the contrary.

Further, Smith’s assumption that rights are somehow determined by unalterable laws and therefore cannot be extended beyond the privileged few is a misinterpretation that totally ignores that personhood rights, for example, were denied to women until they campaigned to assert their unalienable right to vote and own property, and won those rights – but only after many legislative and court battles.

In the same July 30 *Athens NEWS*, an unnamed reader expressed alarm over media references to the Reuters article, suggesting that “radicalism – almost anarchism – rules their (CELDF’s) agenda.” Since when are constitutional rights considered a radical agenda – let alone “almost anarchism”? On the contrary, CELDF has supported local Bills of Rights and environmental protection ordinances in more than 160 communities nationwide, including the city of Pittsburgh and five municipalities in Ohio. In all cases, CELDF has come by invitation.

In Athens, the original invitation came from Athens City Council member Kent Butler. In 2011, Butler, concerned about the potential threat to the city water supply should fracking occur locally, requested that CELDF help the city craft an anti-fracking ordinance. On Sept. 28, 2011, 11 local citizens spoke to City Council in support of the ordinance, but it never got past the first reading in council.

Frustrated after a year of inactivity, local citizens approached John Howell and me, urging us to reopen the discussion at City Council. On Sept. 24, 2012, I urged council to either vote on the ordinance or place it on the ballot so the people could vote on it. Again, when nothing happened, Athens residents organized the Bill of Rights Committee, and, in the form of a citizen initiative, placed a modified form of the ordinance on the 2014 ballot. The rest is history: by an overwhelming 78 percent of the vote, the ordinance passed into law.

Of course, there is much more to say, pro and con, about the proposed County Charter and its stated purpose of extending community and individual Home Rule rights to every citizen of the county. The Charter itself – which follows closely the language of the anti-fracking ordinance passed in Athens City last November – was crafted by the local Bill of Rights Committee working in cooperation with Linzey and the CELDF organization.

Let us hope that the upcoming dialogue and debate will be lively and civil, and provide a positive

educational experience for all citizens, no matter which way the final vote goes down. In the election, hopefully, the people of Athens will have an opportunity to vote on whether they want a Charter containing a Bill of Rights and environmental protections in the form of bans on two things: dumping of poisonous and highly volatile fracking wastes in the county; and the procurement of fresh water from the county for use in fracking.

*Dick McGinn chairs the Athens County Bill of Rights Committee, and also helps lead the Athens city BORC. He lives on Graham Drive in Athens.*

## Medina County officials relieved charter issue tossed out



Filed on August 15, 2015 by [Loren Genson](#)

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County leaders said Friday that they are relieved Ohio Secretary of State Jon Husted tossed out a ballot issue creating a county charter on Thursday, but supporters of the legislation vow to continue the fight.

Husted issued a seven-page ruling Thursday explaining his decision to remove charter proposals from the ballot in three Ohio counties — Medina, Fulton and Athens. All three charter proposals asked voters to approve a “home rule” type of government.

In his ruling, Husted said the three county charter proposals failed to provide for an election or appointment of a county executive as required by Ohio law.

“The language of each petition confirms as much, explicitly providing for the continuation of the same offices that exist in their current county governments ... while not providing for a county executive,” Husted said.

The news was welcomed by County Commissioner Tim Smith, who had pledged to campaign against the initiative, along with commissioners Adam Friedrick and Pat Geissman.

“I think it was wise for him to kick it out,” Smith said of Husted’s ruling. “It would have gone to the courts and they would have kicked it out there.”

The charter proposal included a bill of rights aimed at preventing projects such as the 36-inch NEXUS gas pipeline that has been proposed for construction across 20 miles of Medina County.

Supporters of the charter proposal also would have created a method to prevent hydraulic fracturing activities, or “fracking,” in the county. Fracking is a method used by the oil and gas industry that involves injecting water, particles and chemicals underground at high pressure to break up shale and release natural gas.

Smith, who previously served as Brunswick’s economic development director, said he worried about the effect on development for oil and gas companies and other industries that provide products to the oil and gas industry.

“We have a terrific county,” he said. “I think the charter would have stymied economic development and hurt other areas of our county.”

But Kathie Jones, the organizer of Sustainable Medina County who helped circulate the petitions for the ballot issue, said she was disappointed in Husted’s action. She said the move was an attempt to silence the more than 5,600 Medina County residents who signed the petition and the more than 20,000 signers statewide for the three similar county charter issues.

“We’re angry,” she said. “We’re upset that we’re not permitted to vote on this, but we’re not going to back away.”

Jones opposes the NEXUS gas pipeline and is an opponent of fracking operations, arguing that both are harmful to the environment. She said oil and gas companies have influenced state and local leaders in their position against the charter proposal.

“The oil and gas industry is afraid this will pass,” she said. “They instructed our elected officials on how to protest us, and now our elected officials have turned their backs on us.”

Jones said Husted’s argument about how a new county charter should be created using home rule should not be based on how other county charters are established. She said the idea of creating a county executive position was the choice of Summit and Cuyahoga counties and shouldn’t serve as a precedent for others.

“Summit and Cuyahoga County established a charter, but it was by committee,” she said. “This is by petition of the people and it can be different.”

She said the decision should not be Husted’s to determine whether the charter violates the Ohio Constitution, and said if a court finds a section of the charter is in violation of the law, it can be removed.

“We wrote in the petition that anything that’s found to violate the law can be removed,” she said. “We did that so the charter could be amended — we can add to it and remove things from it.”

Jones and Tish O’Dell, who helped Jones and communities in Fulton and Athens create their charter petitions, vowed to fight the removal from the ballot. O’Dell serves as a coordinator for the Ohio Community Rights Network and as the Ohio organizer for the Community Environmental Legal Defense Fund.

“In my mind, the state has given a very special privilege to the oil and gas industry,” she said. “It’s up to the people to fight back and not back down.”

She and Jones said they will conduct meetings to determine the next step.

“We’re currently looking at our options,” she said. “We will fight back. We’re not going away.”



#### **About Loren Genson**

Loren Genson is The Gazette's senior reporter. She covers Brunswick city and state and national government. She's been with The Gazette since August 2012. Contact her at (330) 721-4063 or via email at [lgenson@medina-gazette.com](mailto:lgenson@medina-gazette.com).

# County government change proposed

First Posted: 4:24 pm - July 13th, 2015 - 71 Views

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Environmental activists with proposed natural gas pipelines in their sights are now gunning to establish a charter government for Fulton County.

Last Thursday, the county’s commissioners unanimously approved a petition requesting the proposal be placed on the ballot in the Nov. 3 general election. A charter government—which permits elected county officials to create legislation more suited to the needs of the community—would replace Fulton County’s present form of government regulated by the Ohio Revised Code.

The petition for a charter government was sponsored by a committee of the Common Sense Energy Coalition (CSEC), comprised of local opponents of proposed pipeline installation, specifically the NEXUS Gas Transmission pipeline.

Received by the county Board of Elections June 24, the petition contains 1,708 signatures, 624 more than were required. The board certified the petition’s validity and sent it to the county commissioners July 6 to be approved in resolution form. Now certified, it returns to the board for placement on the November ballot.

BOE Director Melanie Gilders said placement on the ballot would be held up if a formal protest is filed. In that case, the proposal would be sent to Ohio Secretary of State John Husted to decide its fate.

Gilders said during her tenure as BOE director, “We haven’t had a petition like this filed.”

Liz Athaide-Victor, a Swanton area resident and CSEC committee member, is also a vocal opponent of NEXUS.

She said the request for a charter government was born directly out of the current pipeline controversy.

“People would have a say about the kinds of things going on in the county,” Athaide-Victor said. “We just don’t want to see a repeat of (NEXUS) – any industry that could come in and disrupt people’s property rights or have a negative effect on the environment.”

She argued that, to date, any type of industry can locate to the county and be proven harmful to multiple neighborhoods.

The charter proposed by CSEC was developed by the Pennsylvania-based Community Environmental Legal Defense Fund (CELDF). According to the non-profit organization’s website, it provides legal services to communities facing threats to their environment, agriculture, local economy, and quality of life.

Tish O’Dell, CELDF’s Ohio representative, said the charter would permit all Fulton County residents the opportunity to propose local law by an initiative.

“It’s to allow the people to have a say and a vote. All we’re trying to do is get the people’s voice heard,” she said. “A democracy supposedly by the people should have laws that impact them directly.”

A charter government would also give the county commissioners the ability to pass laws, O’Dell said. “They’re like an arm of the state. If they want to protect the people of the county...this gives them a leg to stand on,” she added.

And that’s what CSEC would like: an additional tool the commissioners can wield while dealing with major corporations whose operations could cause environmental harm, said John Ragan, one of the coalition’s committee members. He said the power to draft legislation locally could help secure the quality of the county’s air, water and land.

“It would alleviate the pressure these corporations seem to exert on people,” Ragan said. “The general public in the county would, in fact, be able to have a vote, and the commissioners wouldn’t be put in that position.”

Only two Ohio counties presently operate under charter governments. Summit County became the first, adopting a charter in 1981 and replacing its commissioners with an 11-member council, eight of whom represent specific districts. Cuyahoga County reverted to a charter government in 2009, led by a County Executive.

Athaide-Victor said CSEC’s proposed charter model would leave the structure of Fulton County’s government intact.



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## Press Release: Ohio Citizens Protest Against Secretary of State for denying their Constitutional Right to Vote

**OHCRN**

**August 31st, 2015**

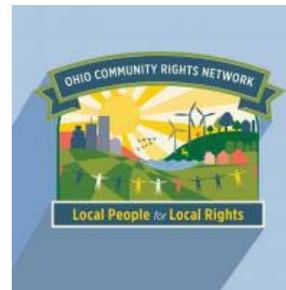
FOR IMMEDIATE RELEASE

Contact:

Tish O'Dell, Ohio Community Organizer

tish@celdf.org, 440-838-5272

COLUMBUS, OH: Earlier this month, Ohio Secretary of State Jon Husted declared that **the citizens of Medina, Fulton, and Athens Counties may not vote on their own county charter initiatives**, despite meeting requirements to place those initiatives on the November ballot.



**Mr. Husted's ruling has broad implications for the right of initiative in the state of Ohio.** Residents intend to make clear to Mr. Husted that his decision to strip communities of their right to vote will not be accepted by the people. **Residents from across the state will protest outside the Athletic Club this Wednesday, September 2.** The Secretary of State is the keynote speaker at the Metropolitan Club Luncheon that day.

The protest will take place in front of the Athletic Club (136 E. Broad Street) beginning at 11:00 and will continue until the luncheon is over. The group will proceed to the Ohio Supreme Court to make clear to the justices that the people want their initiatives placed on the November ballot.

People in Ohio are realizing that our legal and governing structure does not represent their interests, but rather the moneyed interests of the oil and gas industry. Mr. Husted's claims of "unfettered authority and being empowered by the Ohio Revised Code" cannot be allowed to stand, denying the people their constitutional right. According to Article 1, Section 2 of the Ohio Constitution, "All political power is inherent in the people. Government is instituted for their equal protection and benefit and they have the right to alter, reform or abolish the same whenever they may deem it necessary...."

Wednesday's protest will inform not only Mr. Husted and the Supreme Court Justices of the peoples' dissatisfaction with the decision, but will build awareness among Ohioans that decisions such as Mr. Husted's are unjust and illegitimate, denying the peoples' constitutional rights. Whether it is about fracking, workers' rights or changing their local government structure, this decision, if allowed to stand, will be nothing less than chaining the people's hands, disallowing any effort to make change unless the state deems it acceptable.

There was a time in our history when electeds such as Mr. Husted said women and African Americans were property with no rights to protect themselves, as well. It was not until people started directly challenging unjust laws and decisions – entering voting booths and sitting at segregated lunch counters illegally – that growing numbers of people understood the law was unjust and illegitimate, and created movements to change it.

The **Community Environmental Legal Defense Fund (CELDF)** drafted the county charters and is providing legal support, assisting these counties to secure community rights to local self-government through initiative and referendum, and to secure their rights to clean air and water by banning fracking infrastructure projects as a violation of those rights.

CELDF partners with the **Ohio Community Rights Network (OHCRN)**, which is creating a network of communities across the state to drive community rights to the state level, and to fight efforts to quash the people's democratic rights.

**It is becoming increasingly clear that the people of Ohio need to alter their government not only at the local level, but the State level as well. Municipal, township, and county residents across the state are working with CELDF and OHCRN to draft and advance a state constitutional amendment that will secure and protect community rights to local self-government.**

*OHCRN is establishing a network of communities working to advance, secure and protect the inalienable rights of all Ohioans to democratic, local self-governance, to sustainable food, energy and economic systems, and the rights of nature to exist and flourish throughout Ohio. For more information, contact us at [ohiocrn@gmail.com](mailto:ohiocrn@gmail.com).*

###

*Helen Walker*  
*Chair*

**Athens County Board of Elections**  
15 South Court St., Room 130  
Athens, Ohio 45701  
(740) 592-3201  
Fax (740) 592-3262

*Aundrea S. Carpenter-Colvin*  
*Member*

*Debra L. Quivey*  
*Director*

*Kate McGuckin*  
*Member*

*Penny L. Brooks*  
*Deputy Director*  
(pbrooks@athensoh.org)

*Kenneth E. Ryan*  
*Member*

September 3, 2015

Mr. Hollingsworth,

Attached you will find the approved and signed minutes of the July 6, 2015 board meeting for the Athens County Board of Elections.

We have attached the following items:

- 2 letters from the Athens County Prosecuting Attorney addressed to
  1. the Board of Elections
  2. the Ohio Attorney General, Michael DeWine
- The letter from the Athens County Board of Elections to the Athens County Commissioners.
- Copy of the Proposed County Charter Petition

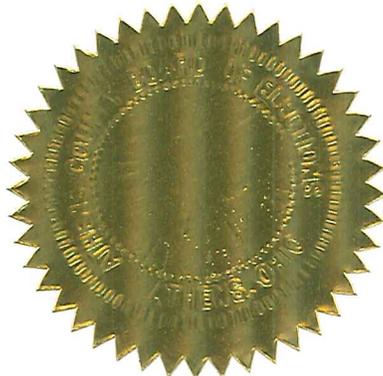
Sincerely,



Debbie Quivey, Director



Penny L. Brooks, Deputy Director



## RECORD OF PROCEEDINGS

Minutes of: The Athens County Board of Elections

Held on: July 6, 2015

The Athens County Board of Elections met on July 6, 2015 at 10:00 a.m. with members Helen Walker, Aundrea Carpenter-Colvin and Kate McGuckin. Present also was Keller Blackburn- Athens County Prosecutor Attorney, Richard McGinn- Athens Co. Bill of Rights Committee and David DeWitt-Athens News.

Mrs. Walker made the motion to recess for 10 minutes to allow time for Mr. Ryan to arrive. (Time 10:10 a.m.) Seconded by Ms. McGuckin. Voting, Mrs. Carpenter-Colvin, yes; Ms. McGuckin, yes; and Mrs. Walker, yes.

Mrs. Walker made the motion to go back into regular session. (Time 10:30 a.m.) Seconded by Ms. McGuckin. Voting, Mrs. Carpenter-Colvin, yes; Ms. McGuckin, yes; and Mrs. Walker, yes.

Mrs. Walker led the pledge.

Mr. Blackburn and the board discussed the County Charter Petition great in detail. It needs to meet the minimum requirements of a charter and he stated four times during the meeting that he felt that it does not meet the requirements. But, we should send it to the voters. If it not valid a court will throw it out. (Attached to the letter from Mr. Blackburn to the board with his opinion concerning the County Charter petition.)

Penny informed the board that there were 91 County Charter petitions filed with 2,111 signatures. After checking the petitions, they had 1,544 valid signatures, which they only needed 1,441 valid signatures.

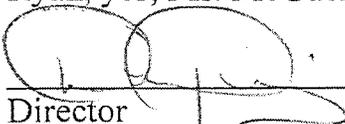
Mrs. Walker made the motion to (approve) certify the County Charter petition for having enough valid signatures. Seconded by Mrs. Carpenter-Colvin. Voting, Ms. McGuckin, yes; Mr. Ryan, yes; Mrs. Carpenter-Colvin, yes; and Mrs. Walker, yes.

The board did a roll call vote on the question: "Is it a Charter?" Vote: Ken, I would lean in favor of our prosecutor, it's not a charter; Aundrea, I would go with the legal opinion, it's not a charter; Kate, it's not a charter; and Helen, it's not a charter.

Mr. Ryan made the motion that the County Charter petition is not a valid petition because it is not a valid charter. Seconded by Mrs. Carpenter-Colvin. Voting, Mrs. Walker, yes; Ms. McGuckin, yes; Mrs. Carpenter-Colvin, yes; and Mr. Ryan, yes.

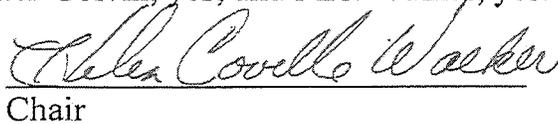
(Attached is a copy of the letter to the commissioners from board concerning the County Charter petition.)

Mrs. Walker made the motion to adjourn. Seconded by Mrs. Carpenter-Colvin. Voting, Mr. Ryan, yes; Ms. McGuckin, yes; Mrs. Carpenter-Colvin, yes; and Mrs. Walker, yes.



---

Director



---

Chair



**KELLER J. BLACKBURN**  
Athens County Prosecuting Attorney

Athens County Courthouse  
1 South Court Street  
Athens, Ohio 45701  
Phone: 740-592-3208  
Fax: 740-592-3291

July 6, 2015

Debbie Quivey, Director  
Penny Brooks, Dep. Director  
Athens County Board of Elections

Re: County Charter

Dear Director Quivey and Dep. Dir. Brooks:

I have requested a formal opinion from the Attorney General's Office with regard to county charter issues that would assist the Board in making decisions. Unfortunately, the Attorney General's Office has indicated that they will not be able to provide the opinion in the short time frame that we have provided, however an opinion will be issued.

It is my opinion that, while the proposed charter does not structurally change the form of government in Athens County as was done with charter governments in Cuyahoga County and Summit County, the Board should approve the proposed charter to the ballot unless an opinion from the Attorney General confirms that the proposal is not a charter. When the exercise of the initiative process is begun, the power of the people to use the democratic process should not be infringed without clear guidance that the action is prohibited by law.

I do not believe that enactment of this charter will allow the Board of County Commissioners to make sweeping changes on horizontal drilling, injection wells, Numbers Fest, or the use of eminent domain, as some may contemplate. The charter process allows a County to take or share power of a municipal corporation. To date, a charter has never taken authority from the state. If a charter could take authority from the state, the impact could be far reaching. Taking this to its logical conclusion, for example, a charter could create a situation where a charter could cause a violation of the Rape Statute, Ohio Revised Code 2907.02, to be penalized disparately in different counties in Ohio.

If you should have any questions, please feel free to contact me.

Sincerely,

Keller J. Blackburn  
Assistant Athens County Prosecuting Attorney

KJB:kaw

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**KELLER J. BLACKBURN**  
Athens County Prosecuting Attorney

Athens County Courthouse  
1 South Canal Street  
Athens, Ohio 45701  
Phone: 740-592-3208  
Fax: 740-592-3291

June 26, 2015

Michael Dewine  
Ohio Attorney General  
30 East Broad Street, 14<sup>th</sup> Floor  
Columbus, Ohio 43215

Re: Request for Opinion

Dear Attorney General Dewine,

The Athens County Board of Elections and the Athens County Board of County Commissioners have presented questions in reference to a proposed charter in Athens County. I have enclosed the petition in question for your review.

I have been asked for my opinion on the proposed language and must provide this opinion by close of business on July 5, 2015 to meet the Board of Elections statutory time frame.

My work on this issue to date reveals that this issue has been raised in Medina County and Meigs County. It appears that this issue is one of import to various regions in the State of Ohio.

The petition in question does not comport with any of the statutory prescribed forms for a county charter, but claims to give home rule to Athens County.

My questions to you sir, are:

How does a Board of Elections determine if a proposed charter is valid? What are the minimum requirements for a charter to be valid? Can a charter give County Government jurisdiction over issues reserved to the State? Can a county charter eliminate the power of Eminent Domain? Does the proposed charter meet the minimum qualifications for a county charter under Ohio law?

Should you have any questions, please do not hesitate to contact me.

Sincerely,

A handwritten signature in cursive script that reads "Keller J. Blackburn".

Keller J. Blackburn, 0080777  
Athens County Prosecuting Attorney

cc: Meigs County Prosecuting Attorney, Medina Prosecuting Attorney

*Helen Walker*

*Chair*

**Athens County Board of Elections**

15 South Court St., Room 130

Athens, Ohio 45701

(740) 592-3201

Fax (740) 592-3262

*Aundrea S. Carpenter-Colvin*

*Member*

*Debra L. Quivey*

*Director*

*Kate McGuckin*

*Member*

*Penny L. Brooks*

*Deputy Director*

(pbrooks@athensoh.org)

*Kenneth E. Ryan*

*Member*

**PAGE FOR 7-16-15 MEETING**

July 6, 2015

To the Athens County Commissioners,

Pursuant to ORC 307.94, we, the Athens County Board of Elections have completed our examination of the petition for submission of Proposed County Charter filed in our office June 24, 2015 and have determined that although the petition contained sufficient valid signatures, the petition is not valid. Upon review and in consultation with the Athens County Prosecutor we find that the petition is not a valid charter as it does not structurally change the form of government in Athens County as it purported. Because the petition does not create a valid charter form of government we find that the petition is not valid.

Very truly yours,

*Helen Walker*  
*Aundrea S. Carpenter-Colvin*  
*Kenneth E. Ryan*  
*Kate McGuckin*

**RECEIVED**

**JUL 06 2015**

**Athens County Commissioners**

23 88  
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PETITION FOR SUBMISSION OF PROPOSED  
COUNTY CHARTER

Constitution of Ohio, Article X, Sections 3 and 4; Revised Code §§ 307.94, 307.95, 307.96, 3501.38, 3513.261.

To be filed with the board of county commissioners not later than 110 days before the date of a general election; or in the alternative, to be filed with the county board of elections not later than 130 days before the date of a general election.

NOTICE - Whoever knowingly signs this petition more than once, signs a name other than his own, or signs when not a legal voter, is liable to prosecution.

To the Board of County Commissioners of the County of Athens, Ohio:

We, the undersigned, qualified electors of the County of Athens, Ohio, respectfully petition the Board of County Commissioners to forthwith provide by Resolution, for the submission to the electors of said county, the question of adopting a county charter in the form attached to this petition, that question being: "SHALL THE ATTACHED COUNTY CHARTER BE ENACTED?"

CHARTER OF THE COUNTY OF ATHENS, OHIO

We, the people of the County of Athens, Ohio, by this Charter secure the right of all County residents to participate in local government, which right is presently unavailable to residents under the statutory form of County government.

The Ohio Constitution, Article I, Section 2 declares that "All political power is inherent in the people. Government is instituted for their equal protection and benefit, and they have the right to alter, reform, or abolish the same, whenever they may deem it necessary. . . ." By this Charter, we exercise this right.

We hereby declare that we deem it necessary to alter the current County government in order to institute one that will guarantee to all of the people their equal protection and benefit. We secure for ourselves and for our successors the right of self-determination, by establishing a County government that provides for initiative and referendum rights, the exercise by the people of the County through their local representatives of all powers vested in but not limited to municipalities, and the power to articulate and protect fundamental rights free from preemption by other levels of government. Therefore, in accordance with Article X, Section 3 of the Ohio Constitution, as well as our inherent right of local, community self-government, 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.

We, the people, adopt this home rule Charter to secure the right of local, community self-government for all residents of the County, to elevate the consent of the governed above administrative dictates and preemptions that serve special privileges rather than general rights, to secure fundamental rights, and to end the violation of those rights by private and public entities.

Article I—COMMUNITY BILL OF RIGHTS (Community Rights)

Section 1.01 Rights Unalienable, Self-Executing, and Enforceable. All rights delineated and secured by this Charter are inherent, fundamental, irrevocable, unalienable, and shall be self-executing and enforceable against private and public entities. Every resident of the County of Athens shall be secure in these rights, and may bring an action to enforce these rights.

Section 1.02 Rights Retained by People. The enumeration of rights in this Charter and elsewhere shall not be construed as a limitation upon rights of the people of the County of Athens, and rights not enumerated are retained by the people. The rights of the people, as secured by this charter, shall not be limited, infringed, or abridged by any law, judicial ruling, preemption, regulation, process, permit, license, Charter, or delegation of privilege or authority.

Section 1.03 Governmental Legitimacy. All governments in the United States owe their existence to the people of the community that those governments serve, and governments exist to secure and protect the rights of the people and those communities. Any system of government that becomes destructive of those ends is not legitimate, lawful, or constitutional.

Section 1.04 Right of Local, Community Self-Government. The people of the County of Athens possess both a collective and individual right of self-government in their community, a right to a system of government that embodies that right, and the right to a system of government that protects and secures their human, civil, and collective rights.

Section 1.05 Right to Assert the Right of Self-Government. The people of the County of Athens possess the right to use their local government to make law, and the making and enforcement of law by the people through a municipal

corporation or any other institution shall not eliminate, limit, or reduce their sovereign right of local, community self-government.

**Section 1.06 Right to Municipal Autonomy.** The residents of every municipality (incorporated City, Village, and Township) in the County of Athens shall retain the right to local self-government and other rights as secured by this Charter. The adoption of this Charter shall not preempt the exercise of power by the people within any municipality in the County, and in case of conflict between the exercise of powers granted by this Charter and the exercise of powers by municipalities, the powers of the municipality shall prevail within its jurisdiction.

**Section 1.07 Right to Untainted Elections, Initiative, Referendum, and Recall.** Elections shall be free and equal, and no power or association, civil or military – including chartered corporations – shall at any time interfere to prevent or influence the free exercise of the right of suffrage or the outcomes of elections. The people at all times retain the right to exercise direct democratic action, including participation in democratic decision-making by initiative, referendum, and recall.

**Section 1.08 Right to Clean Air, Water, and Soil.** All residents of the County of Athens, along with ecosystems within the County, possess the right to clean air, water, and soil.

**Section 1.09 Rights of Nature.** Ecosystems within the County of Athens, including, but not limited to, rivers, streams, wetlands, and aquifers, possess the right to exist, flourish, and naturally evolve, free from activities prohibited by this Charter and other local enactments.

**Section 1.10 Right to be Free from Chemical Trespass.** All residents of the County of Athens, along with ecosystems within the County, possess the right to be free from chemical trespass by toxic substances.

**Section 1.11 Right to Govern Corporate Activities.** As corporations are chartered and licensed by the State in the name of the people, and as all political power is inherent in the people, the people of this County retain the power to make laws, rules, and regulations directly, or through their local representatives, to deny the rights, powers, privileges, immunities, or duties of corporations that act within the County when those corporate rights, powers, privileges, immunities, or duties conflict with the rights of the people.

**Section 1.12 Rights Secured against Corporations.** As corporations are created and empowered to act through the State's issuance of charters, licenses, and permits, and thus are creatures of the State and state actors, corporations and other business entities that violate rights secured by this Charter or other local enactment, or seek to violate those rights or enactments, shall not be deemed to be "persons" to the extent that such treatment would interfere with the rights, or protections of rights, secured by this Charter or other local enactments, nor possess any other legal rights, powers, privileges, immunities, or duties that would interfere with the rights enumerated for people and nature by State and federal constitutions, this Charter, or other local enactments. "Rights, powers, privileges, or immunities" shall include standing to challenge this Charter or other local enactments, the power to assert state or federal preemptive laws in an attempt to overturn this Charter or other local enactments, and the power to assert that the people of the County lack the authority to adopt this Charter or other local enactments. In addition, no permit, license, privilege, charter, or other authority issued by any state, federal, or international entity shall be deemed valid within the County if it limits or reverses the rights, prohibitions and regulations secured by this Charter or enacted by the County to protect rights.

**Section 1.13 Right to a Sustainable Community.** All residents of the County of Athens possess the right to a sustainable community, which includes, but is not limited to, the right to establish local laws establishing policies and prohibitions concerning energy, agriculture, water, construction, transportation, and other activities in order to further secure this right, and the right to be free from activities that may adversely impact the rights of human and natural communities.

**Section 1.14 Right to Own Property.** Each of the residents of the County of Athens possess a right to own property, subject to the rights and privileges of human and natural communities as recognized by this Charter, other local enactments, or by state and federal law.

**Section 1.15 Rights against Eminent Domain.** All residents of the County of Athens have the right to hold private property without threat of expropriation or taking by corporate entities for purposes of private gain rather than public use. The power of taking private property shall not be delegated. The taking of private property for development and transportation of oil and gas resources and/or waste products by corporations for profit does not constitute public use.

## ARTICLE II—PROTECTION OF RIGHTS

**Section 2.01 Prohibitions Necessary to Protect Rights.** It shall be unlawful for any private or public entity to violate the rights recognized and secured by this Charter and its amendments, by engaging in the activities herein enumerated and activities as may be further provided by ordinance or resolution by the County Commissioners, by the people through initiative, or by Charter amendment. Accordingly, it shall be unlawful for any private or public entity to:

**Section 2.01.1.** Deposit, store, treat, inject, dispose of, or process wastewater, produced water, "frack" water, brine or other substances, chemicals, or by-products that have been used in, or result from, the extraction of shale gas and oil by high-volume horizontal hydraulic fracturing, on or into the land, air or waters of the County of Athens. However, this prohibition shall not include wastewater produced in the County of Athens by conventional shallow vertical drilling methods.

**Section 2.01.2.** Engage in the procurement or extraction of any water from any source, including public water sources, within the County of Athens for use in high-volume hydraulic fracturing for extraction of shale gas and oil.

### **ARTICLE III—COUNTY BOUNDARIES, POWERS, AUTHORITIES, RESPONSIBILITIES**

**Section 3.01 Name, Boundaries and Powers.** The County of Athens, as its boundaries now are, or hereafter may be, shall be a body politic representative of and directly responsible to the residents of this county to be known by the name of "County of Athens" with all the powers, authorities, and responsibilities granted by this Charter and by general law, including but not limited to all or any powers vested in municipalities by the Ohio Constitution or by general law.

The County of Athens is responsible within its boundaries for the exercise of all powers vested in, and the performance of all duties imposed upon, counties and County officers by general law, provided that general law does not violate the rights of county residents, their County Charter, or other unalienable rights. 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. The County may create or recognize greater protections for human and natural communities than provided by state law.

All such powers shall be exercised and enforced by ordinance or resolution of the County Commissioners, through exercise of the initiative and referendum powers by the people, or by Charter amendment by the people.

When not prescribed by the Charter or by amendment to this Charter, by ordinance or resolution of the County Commissioners, or by ordinance enacted by the people, such powers shall be exercised in the manner prescribed by general law.

**Section 3.02 Powers Limited.** 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. In case of conflict between the exercise of powers granted by this Charter and the exercise of powers by municipalities or townships granted by the Constitution or general law, the exercise of powers by the municipality or township shall prevail. The County shall have power to levy only those taxes that counties are by general law authorized to levy.

**Section 3.03 Construction.** The powers of the County under this Charter shall be construed liberally in favor of the County, and the specific mention of particular powers in this Charter shall not be construed as limiting in any way the general powers granted under this Charter. The rules for statutory construction contained in the Ohio Revised Code shall govern the interpretation of the provisions of this Charter.

### **ARTICLE IV—FORM OF GOVERNMENT AND ELECTIONS**

**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 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 4.02 Initiative, Referendum and Recall.** The right of initiative and referendum is reserved to the people of the County on all matters that the County may now or hereafter be authorized to control by legislative action. The provisions of general law relating to such right applicable to municipalities in effect at the time of the adoption of this Charter shall govern the exercise of such right in the County of Athens, provided that all powers and duties respecting initiative or referendum petitions by general law shall be ministerial and mandatory and shall be exercised by the County Commission or its designee. The power of recall shall be exercised in the manner of an initiative as herein defined.

**Section 4.03 Charter Amendment.** Proposed amendments to this Charter shall be submitted to the electors of the County in the manner provided by the Ohio Constitution, Article X.

**ARTICLE V—CONTINUANCE OF GOVERNMENT**

**Section 5.01 Pending Matters.** All rights, claims, orders, contracts, and legal administrative proceedings shall continue except as modified pursuant to this Charter, and in each case shall be maintained, carried out, or dealt with by the County department, office, or agency as shall be appropriate under this Charter.

**Section 5.02 Laws in Force.** All County resolutions, orders and regulations that are in force when this Charter becomes fully effective are repealed only to the extent that they are inconsistent with the effective operation of this Charter or of ordinances or resolutions enacted pursuant hereto. All laws relating to or affecting the County or its officers, agencies, departments, or employees that are in force when this Charter becomes fully effective are superseded to the extent that they are inconsistent or interfere with the effective operation of this Charter or of ordinances or resolutions enacted pursuant hereto. The authority and power to enforce county laws, protect rights established by this Charter, and prosecute offenders shall not be abridged.

**ARTICLE VI—SEVERABILITY**

**Section 6.01 Severability of Sections or Subsections.** The provisions of this Charter are severable. If any court decides that any section, subsection, clause, sentence, part, or provision of this Charter is illegal, invalid, or unconstitutional, such decision shall not affect, impair, or invalidate any of the remaining sections, subsections, clauses, sentences, parts, or provisions of the Charter.

We hereby designate the following persons as a committee to represent the petitioners in all matters relating to this petition or its circulation:

NAME	RESIDENCE
Sally Jo Wiley	3050 Glen Finnan Drive Albany, Ohio 45710 (Lee Township)
Austin Babrow	12667 N. Peach Ridge Rd Athens, OH 45701 (Dover Township)
Andrea Reik	8474 Terrell Rd. Athens, OH 45701 (Canaan Township)
Michael O'Brien	1492 Old Rte 33 Shade, OH 45776 (Lodi Township)
Richard E. Hogan	2767 State Route 56 New Marshfield, Ohio 45766 (Waterloo Township)

Signatures on this petition must be from only one county and must be written in ink.

SIGNATURE	VOTING RESIDENCE ADDRESS STREET AND NUMBER	CITY, VILLAGE OR TOWNSHIP	COUNTY	DATE OF SIGNING
<i>[Signature]</i> ROBERT L. WILEY	3050 GLEN FINNAN DR.	ALBANY LEE	ATHENS	4/19/15
<i>[Signature]</i>	1367 Peach Ridge Rd	Athens	Athens	4/22/15
<i>[Signature]</i> Christina White	4455 Coe Rd Albany, OH 45710	Lee	Athens	4-22-15





# COMMUNITY ENVIRONMENTAL LEGAL DEFENSE FUND

P.O. Box 360, Mercersburg, PA 17236 / 717-498-0054 / [www.celdf.org](http://www.celdf.org)

## **Fracking Fight Heats Up in Ohio**

**Ohio Secretary of State Hands Victory to Oil and Gas Industry – Strips  
Communities of Authority to Even Vote on Fracking Infrastructure Projects**

**CELDF Files Lawsuit Against Secretary of State**

**FOR IMMEDIATE RELEASE**

August 20, 2015

**Contact:**

Tish O'Dell, Ohio Community Organizer  
[tish@celdf.org](mailto:tish@celdf.org), 440-838-5272

COLUMBUS, OH: With the oil and gas industry already reveling in a recent Ohio Supreme Court decision stripping local control on fracking and other extraction activities away from communities, the Secretary of State has now handed the industry another victory, opening the door for fracking infrastructure projects to spread even faster across Ohio.

In a decision issued August 13, **Ohio Secretary of State Jon Husted blocked citizens from voting on Home Rule Charter initiatives which include provisions on fracking infrastructure development.**

In response to Husted's decision, this week the **Community Environmental Legal Defense Fund (CELDF) filed a lawsuit against the Ohio Secretary of State on behalf of community members in Athens, Medina, and Fulton Counties** seeking to restore the initiatives to the November ballot. The complaint cites Article X, Section 3, of the Ohio Constitution which codifies the right of the people to vote on local Charter initiatives.

Ohio communities are being inundated by fracking infrastructure projects – such as frack wastewater injection wells and pipelines. Injection wells have been tied to earthquakes in Ohio, with fracking activities having major impacts on water quality and global warming.

Despite these impacts, Ohio communities have found their **state government, rather than helping protect communities from frack injection wells and other infrastructure projects, is instead authorizing corporations to site those projects.** With the Ohio legislature legalizing

fracking infrastructure projects, and the state Supreme Court ruling in February that the state has exclusive authority over oil and gas extraction (*Munroe Falls v. Beck Energy Corporation*), Ohio communities have been mobilizing at the county level to protect their health, safety, and welfare from fracking projects.

In three counties – Athens, Medina, and Fulton – CELDF assisted community members to draft county Home Rule Charter initiatives. Residents collected more than enough signatures to qualify the initiatives to the November ballot.

Efforts to keep the proposed Charters off the ballot landed on Secretary of State Husted’s desk. Already the Athens County Court of Common Pleas, in July, affirmed the right of the people to direct democracy through the initiative process, requiring the proposed Athens Charter be placed on the November ballot.

**Husted’s decision, however, removed the county measures from the ballot. The decision was supported by the American Petroleum Institute, the Ohio Oil and Gas Association, and the Ohio Chamber of Commerce.** In his decision, Husted stated he was "unmoved" by the arguments of Athens, Medina, and Fulton residents seeking to exercise their democratic right to vote on the measures.

CELDf filed an appeal of the Secretary of State’s decision to the Ohio Supreme Court, on behalf of community members in the three counties. Attorney James Kinsman, stated, “It’s the people’s constitutional right to vote on initiatives. **Mr. Husted – elected to serve the people of Ohio – is instead serving the oil and gas industry.**”

"Secretary Husted has set himself up as Ohio's censorship goalie," said Terry Lodge, co-counsel with Kinsman. "If the 'wrong' idea comes up for a vote, he alone can cancel the election. If the Ohio Supreme Court okays this arrangement, look for every future referendum that involves people vs. corporations to disappear through the Husted Loophole."

CELDf’s Ohio Organizer, Tish O’Dell, explained, “The right of initiative was designed to protect the people’s right to make law without having to receive approval or be interfered with by government. **Secretary of State Husted, however, has determined that he is empowered to interfere with that right as he attempts to protect the oil and gas industry from the democratic decisions of the people of Ohio.**”

The appeal will be “fast-tracked” as an election case. A decision is expected from the Ohio Supreme Court by September 15<sup>th</sup>.

*Through grassroots organizing and the practice of public interest law, the Community Environmental Legal Defense Fund works with communities across the country to establish Community Rights to democratic, local self-governance and sustainability. CELDF has assisted nearly 200 communities to ban shale gas drilling and fracking, factory farming, water privatization, and other threats, and eliminate corporate “rights” when they violate community and nature’s rights.*

###

# Green group's unconventional fight against fracking

BY RICHARD VALDMANIS

The residents of Grant Township, Pennsylvania, were worried about Little Mahoning Creek, a picturesque trout stream best fished in the spring when the water runs fast.

The Pennsylvania General Energy Company had acquired a federal permit to drill an injection well down 7,000 feet about seven miles from the creek to dispose of wastewater from its [natural gas](#) hydraulic fracturing operations.

Fearing the operation would harm the Little Mahoning watershed, the town's supervisors last year passed a "community bill of rights" that blocked the well, stripped the company of its right to inject wastewater underground, and declared that the state had no jurisdiction in the matter.

The ordinance, they openly acknowledged, was likely to be challenged, and defending its legality would be difficult.

Driven largely by opposition to hydraulic fracturing, commonly known as fracking, communities across the United States have passed or are considering measures to assert their right to stop projects with potential to harm local environments - even when the ventures fall squarely under state or federal jurisdiction.

Behind a number of the protests, including the one in Grant, is a little-known activist group, the Community Environmental Legal Defense Fund. In 18 communities across six states the fund has convinced towns, villages or counties to challenge state and federal authorities - and even the U.S. Constitution.

"Our belief is that these communities don't have a fracking problem, they have a democracy problem," said Thomas Linzey, the Pennsylvania-based attorney who founded the fund. "Our premise is that you can't win against the oil and gas industry using the existing legal structure, so the structure needs to be changed."

Fracking, which extracts oil or gas from rock formations by injecting a high-pressure mix of water, sand and chemicals into wells, has helped lift domestic production of natural gas by 35 percent since 2005 and oil by 45 percent since 2010. But it has also been linked to a rise in seismic activity in some places, and triggered fears about water and air pollution.

States have reacted differently to local opposition: Vermont and New York passed sweeping state-wide moratoriums on fracking over the concerns, while Texas and Oklahoma - whose economies rely heavily on the oil and gas industry - this year passed laws forbidding local fracking bans.

For Linzey, all four examples illustrate the same problem: a lack of authority for affected communities to decide their own fates.

So far, five of the communities that have adopted CELDF-written ordinances, including Grant Township, have had them challenged in court, and one decided to repeal its measure after a federal judge ruled against it. The other communities say they don't expect to win.

The fund's rebellious approach has drawn fire from the oil industry, legal experts and established environmental groups. And the criticism is likely to grow as cash-strapped local jurisdictions find themselves on the hook for defending ordinances in court cases they have little chance of winning.

But Linzey says his goal is not to write local laws that are popular, or stand up in court, but rather to trigger a public debate about community rights to local self-government - even if it means a community ultimately falls into financial ruin.

"If enough of these cases get in front of a judge, there is a chance we could start to have an impact within the judiciary," said Linzey. "And if a town goes bankrupt trying to defend one of our ordinances, well, perhaps that's exactly what is needed to trigger a national movement."

CELDf has about 10 staff members spread across several of the states where it is active, and also relies on lawyers volunteering their time. The group has never won a case that went to court.

The city of Lafayette, Colorado, has already paid some \$60,000 so far defending its 2013 CELDF-authored community bill of rights in court, knowing the effort is a form of legal disobedience with little hope of yielding a courtroom win.

"The idea is to push this issue into people's consciousness," said Merrily Mazza, a council member in the city of 27,000 people.

#### "FLATLY UNCONSTITUTIONAL"

About 400 U.S. municipalities have sought to pass bans on fracking over the past ten years, mainly through legal moves like zoning regulations that have been easily overturned, according to Food and Water Watch, a non-profit organization.

But CELDF's strategy of explicitly flouting existing legal structures has made the group one of the fracking industry's most aggravating opponents, according to Kevin Moody, chief counsel for the Pennsylvania Independent Oil and Gas Association. He calls the fund's hard-line view of local self-government "ridiculous," but capable of delaying projects and making them more costly.

"If they want to have this debate, have it in a political arena," Moody said. "Don't enact ordinances that are blatantly unlawful, tie up local townships, expose them to liability, and tie up companies."

Linzey's approach has also not earned him many friends among established environmental groups, big donors, or legal experts. The organization operates on a relatively small annual \$800,000 budget, funded by a handful of left-leaning foundations, including the Park Foundation and the Heinz Endowments, as well as by private donors whose names it withholds.

"I appreciate their opposition to corporate power and their defense of the environment, but it is flatly unconstitutional," says Kent Greenfield, a professor of law at Boston College. He said if communities could reject constitutional rights, nothing could stop them from re-segregating schools, for example.

The Washington-based Natural Resources Defense Council said that while it shares CELDF's goal of combating fracking, it considers CELDF's style too risky for local communities enacting the ordinances.

In Mora County, New Mexico, community leaders this year voted to repeal their CELDF-authored anti-fracking ordinance after a federal court judge ruled against the county in a lawsuit brought by an oil company and landowners.

"We weren't comfortable using our county as the test case to try to overturn two centuries of law," said Mora County Commissioner Paula Garcia. In Grant Township, residents so far have remained willing to fight. The community has spent just a few thousand dollars of its annual \$250,000 budget defending its CELDF-drafted community bill of rights. But it may have to spend more.

Last August, PGE took Grant Township to court, arguing that the measure was unconstitutional and causing it financial harm by delaying a federally-permitted waste injection well.

"If PGE wants to bankrupt this township, that's fine, that's just the way it's going to be," said Jon Perry, 59, one of three township supervisors. "I'm not sure that will look very impressive on their resume."

PGE did not respond to a request for comment.

(Reporting by Richard Valdmanis; Editing by Bruce Wallace and Sue Horton)

CHARTER  
OF  
SUMMIT COUNTY, OHIO

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EDITOR'S NOTE: The Summit County Charter was originally adopted by the voters at an election on November 6, 1979. Dates in parentheses following a section heading indicate that such section was amended or adopted on the date given.

The voters on November 5, 1991 approved the elimination of the elected County Recorder on December 31, 1996, and the transfer of the duties of the County Recorder to the County Auditor. The ordinance amending the Charter directed the Charter wording not contain any reference to the Recorder. The Recorder is a functioning official until December 31, 1996.

On November 6, 2001, voters approved a charter amendment that consolidated the elective office of County Auditor with that of County Treasurer. The consolidation was effective June 17, 2002. Effective upon the consolidation of the Office of County Auditor with the Office of County Treasurer, the County Auditor's powers and duties, including the powers and duties of the previously consolidated Office of County Records, were transferred to the County Treasurer, which was renamed County Fiscal Officer.

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PREAMBLE

ARTICLE I - CORPORATE POWERS, RIGHTS AND PRIVILEGES

- Section 1.01 Names, Boundaries and Powers.
- Section 1.02 Powers Limited.

ARTICLE II - THE COUNTY EXECUTIVE

- Section 2.01 Elected County Executive. (11-3-81)
- Section 2.02 Compensation.
- Section 2.03 Powers and Duties of the County Executive.  
(11-6-84; 11-5-91; 11-4-97; 11-6-01; 11-8-05)
- Section 2.04 Investigations by County Executive. (11-3-98)

ARTICLE III - THE COUNTY COUNCIL

- Section 3.01.1 Election. (11-2-93)
- Section 3.01.2 Term of office. (11-2-93)
- Section 3.01.3 Residency Requirement. (11-5-91; 11-2-93)
- Section 3.01.4 Apportionment. (11-8-88; 11-7-06)
- Section 3.01.5 Vacancy; At-Large Council Members. (11-5-91; 11-2-93)
- Section 3.01.5(A) Vacancy; District Council Members. (11-5-91; 11-2-93)
- Section 3.01.5(B) Vacancy; No Party Affiliation. (11-5-91; 11-2-93)
- Section 3.01.5(C) Vacancy; Length of Appointment. (11-5-91; 11-2-93)
- Section 3.02 Salary.
- Section 3.03 Powers and Duties of the County Council.  
(11-6-84; 11-5-91; 11-2-93; 11-2-99; 11-7-00; 11-6-01; 11-8-05)
- Section 3.04 Organization, Rules and Procedures. (11-4-14)
- Section 3.05 Initiative and Referendum.
- Section 3.06 Investigations by Council. (11-3-98)



**COUNCIL OF COUNTY OF SUMMIT**  
Ohio Building  
175 S. Main Street  
Akron, Ohio 44308-1314

I hereby certify that the foregoing is a true and correct copy of 2015 Summit Co Charter as taken from the records on file in the office of the County of Summit Council.

Clerk of Council

ARTICLE IV - ELECTED OFFICE HOLDERS

- Section 4.01 County Elected Office Holders. (11-3-81; 11-6-01;11-4-03)
- Section 4.02 (Reserved)
- Section 4.03 Medical Examiner; Appointment, Powers and Duties. (11-7-95)
- Section 4.04 Medical Examiner; Qualifications. (11-7-95)

ARTICLE V - GENERAL PROVISIONS

- Section 5.01 Effective Date of Charter.
- Section 5.01.2 Oath of Office. (11-7-00)
- Section 5.01.3 Removal of Elected officials by Recall. (11-7-00)
- Section 5.02 Vacancies. (11-7-89)
- Section 5.03 Meetings of Governmental Bodies to be Public.
- Section 5.04 Records of Governmental Bodies to be Public.
- Section 5.05 Charter Review Commission. (11-7-89; 11-3-92; 11-7-95)
- Section 5.06 Charter Amendments. (11-8-88)
- Section 5.07 Equal Opportunity. (11-5-91)
- Section 5.08 Miscellaneous Duties. (11-5-91)
- Section 5.09 Rearrangement, Reprinting of, and Correction of Typographical Errors in, Charter. (11-7-00)
- Section 5.10 Fairness in County Employment. (11-7-06)

ARTICLE VI - HUMAN RESOURCES

- Section 6.01 Human Resource Commission. (11-7-95; 11-4-97)
- Section 6.02 Department of Human Resources. (11-7-95)
- Section 6.03 Appointing Authority. (11-7-95)
- Section 6.04 Classification. (11-7-95)
- Section 6.05 Authority of Human Resource Commission. (11-7-95)
- Section 6.06 Effective Date. (11-7-95)

ARTICLE VII - PURCHASING

- Section 7.01 Department of Purchasing. (11-7-95)

ARTICLE VIII - COUNTY INFORMATION TECHNOLOGY BOARD

- Section 8.01 County Information Technology Board. (11-4-14)
- Section 8.02 Authority of the County Information Technology Board. (11-4-14)
- Section 8.03 Department of Information Technology. (11-4-14)
- Section 8.04 Chief Information Officer. (11-4-14)
- Section 8.05 Effective Date. (11-4-14)

ARTICLE IX - PUBLIC INFORMATION

- Section 9.01 Department of Public Information; Powers and Duties. (11-7-95)
- Section 9.02 Public Information Commission. (11-7-00; 11-6-01)

ARTICLE X - COUNTY INTERNAL AUDITING

- Section 10.01 County Audit Committee. (11-6-01)
- Section 10.02 Department of Internal Auditing. (11-7-00)
- Section 10.03 Director of Internal Auditing; Qualifications. (11-7-00)
- Section 10.04 Authority of Department of Internal Auditing. (11-7-00)
- Section 10.05 Effective Date. (11-7-00)

## CHARTER OF SUMMIT COUNTY

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### PREAMBLE

The citizens of Summit County, Ohio, believing that they can better govern themselves on the county level, avail themselves of the opportunity afforded by the Constitution of the State of Ohio to adopt this Charter.

### ARTICLE I CORPORATE POWERS, RIGHTS AND PRIVILEGES

#### SECTION 1.01 NAMES, BOUNDARIES AND POWERS.

The County of Summit, as its limits now are, or hereafter may be, shall be a body politic and corporate by the name of County of Summit with all the rights granted by this Charter and by general law.

The County is responsible for the exercise within its boundaries of all powers vested in and the performance of all duties imposed upon counties and county officers by law. In addition, the County may exercise all powers specifically conferred by this Charter or incidental to powers specifically conferred by this Charter and all other powers which the Constitution and laws of Ohio now or hereafter grant to counties to exercise or do not prohibit counties from exercising, including the concurrent exercise by the County of all or any powers vested in municipalities by the Ohio Constitution or by general law.

All powers shall be exercised and enforced in the manner prescribed by this Charter, or, when not prescribed herein, in such manner as may be provided by ordinance or resolution of the County Council, and, when not prescribed by the Charter or amendments thereto or by ordinance or resolution, then such powers shall be exercised in the manner prescribed by general law.

#### SECTION 1.02 POWERS LIMITED.

The 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. In case of conflict between the exercise of powers granted by this Charter and the exercise of powers by municipalities or townships granted by the Constitution or general law, the exercise of powers by the municipality or township shall prevail. The County shall have power to levy only those taxes that counties are by general law authorized to levy.

**ARTICLE II  
THE COUNTY EXECUTIVE**

**SECTION 2.01 ELECTED COUNTY EXECUTIVE.**

The County Executive shall be the chief executive officer of the County. The County Executive shall be elected at the first regular state election following the adoption of this Charter and shall hold office for a term of four years commencing on the first day of January next following such election. Any candidate for election as County Executive shall be an elector of the County at the time filing of the declaration of candidacy, shall be nominated and elected in the manner provided by general law for county officers and during the entire term of office shall remain an elector of the County and shall not, except as authorized by the County Council, hold or accept other employment or public office.  
(Amended 11-3-81 .)

**SECTION 2.02 COMPENSATION.**

The salary of the County Executive shall be \$40,000 per year. It may be changed by ordinance at any time before a primary election for County Executive, but no change shall be effective until the commencement of the ensuing term.

**SECTION 2.03 POWERS AND DUTIES OF THE COUNTY EXECUTIVE.**

The County Executive shall have all the powers and duties of an administrative nature under this Charter and responsibility for the day-to-day running of the departments, offices and agencies of County government under his or her jurisdiction and control. Such powers and duties include, but are not limited to, the following: (Amended 11-8-05.)

- (1) To appoint, suspend, discipline and remove all county personnel except those who, as provided by general law, are under the jurisdiction of officers, boards, agencies, commissions and authorities of a county other than the board of county commissioners, and except those who are appointed by the County Council pursuant to Section 3.03(1) of this Charter.  
(Amended 11-5-91.)
- (2) To appoint officers and members of boards, agencies, commissions and authorities required by general law to be appointed by boards of county commissioners and of such additional boards, commissions, agencies and authorities as may hereafter be created pursuant to this Charter. No such appointment shall be effective until confirmed by the County Council, but if the County Council shall fail to act on an appointment within sixty days, it shall become effective without such approval. The County Executive shall use good faith efforts to reflect the diversity of the people of the County in appointing such officers and members.  
(Amended 11-4-97.)
- (3) To approve or veto any ordinance or resolution as provided in Section 3.04 of this Charter.
- (4) To serve, in person or by his delegate, as a member of the County Board of Revision.
- (5) To execute contracts, conveyances and evidences of indebtedness on behalf of the County.
- (6) To attend meetings of the County Council and take part in the discussion of all matters before County Council.

- (7) To introduce ordinances and resolutions for consideration by the County Council and otherwise to make recommendations for actions to be taken by the County.
- (8) To submit to the County Council a proposed operating budget for each fiscal year which shall contain at least the following:
  - (a) A statement of estimated revenues from all sources, including fund balances from the preceding year;
  - (b) A statement of proposed expenditures, shown by department, office, agency, authority, board and commission, and by activity, character and object and not exceeding estimated revenues for such year;
  - (c) A schedule of estimated revenues and proposed expenditures for each County department, office, agency, authority, board and commission, on a quarterly or more frequent basis; and
  - (d) A summary of the contents of the proposed operating budget.
- (9) To submit annually to the County Council a capital improvements program which shall contain at least the following:
  - (a) The capital improvements scheduled for, or proposed to be undertaken within, the current fiscal year, together with the estimated cost of each improvement and the proposed or established method of financing;
  - (b) The capital improvements proposed for the five years next succeeding the current fiscal year, together with the estimated cost of each improvement and the proposed or established method of financing; and
  - (c) A summary of the detailed contents of the program.
  - (d) A five year debt management projection for capital improvements.  
(Added (d) 11-5-91.)
- (10) To submit a written message to the County Council accompanying the proposed operating budget and capital improvements program explaining the budget both in fiscal terms and in terms of work to be done, outlining the proposed financial policies of the County for the current fiscal year and describing the important features of the budget. The message shall include any proposals for major changes in financial policies and in expenditures, appropriations and revenues as compared with the preceding fiscal year and the reasons for such proposals, and an itemization and explanation of each proposed capital improvement. The operating budget and capital improvements program and accompanying message shall be submitted to the County Council by February 15 of each year.
- (11) To conduct collective bargaining regarding uniform wages and compensatory benefits with any recognized employee bargaining unit and administer uniform personnel procedures for all County employees of the County Fiscal Officer, Clerk of the Court of Common Pleas, Medical Examiner, County Engineer, Prosecuting Attorney, Sheriff, County Council and County Executive.  
(Amended 11-6-84; 11-5-91; 11-6-01.)
- (12) To submit to the County Council annually a five year financial forecast for the general operating funds of the County.  
(Added (12) 11-5-91.)

**SECTION 2.04 INVESTIGATIONS BY COUNTY EXECUTIVE.**

The County Executive may, at any time and without notice, cause the administrative affairs of any County office, department or agency over which the Executive has authority or the official acts and conduct of any official or employee of said entity to be examined. The County Executive or any person appointed by the Executive to conduct such an examination shall have the same power to take testimony, administer oaths and compel the attendance of witnesses and the production of papers, books and evidence and to refer witnesses to the Prosecuting Attorney to be punished for contempt as is conferred upon County Council by this charter. Subpoenas may not be issued pursuant to this section except by resolution adopted by 2/3 vote of Council. (Added 11-3-98)

**ARTICLE III  
THE COUNTY COUNCIL****SECTION 3.01.1 ELECTION.**

The County Council shall be the legislative authority and taxing authority of the County. It shall consist of eleven (11) members who shall be nominated and elected as provided in this Charter and in the manner provided by general law for County officers. County Council candidates shall be electors of the County at the time of filing declarations of candidacy and during their terms in office shall remain electors of the County and shall not hold or accept other public office or be employed by the County.

The three (3) members of County Council elected in 1990 shall serve as at-large members of County Council.

In the regular State election in 1992, eight (8) members of County Council shall be elected, one (1) member from each district.

The term of office for all County Council members shall begin on January 1, following the election. (Amended 11-2-93.)

**SECTION 3.01.2 TERM OF OFFICE.**

All elected members of County Council shall serve for four-year terms. (Amended 11-2-93.)

**SECTION 3.01.3 RESIDENCY REQUIREMENT.**

County Council candidates shall be residents of the County for at least sixty (60) days immediately prior to filing of candidacy or appointment to fill a vacancy. District County Council candidates shall be residents of the district to be served for at least thirty (30) days immediately prior to filing of candidacy or appointment to fill a vacancy. Once elected or appointed, an at-large County Council member shall reside within the County during the tenure of the term and a district Council member shall reside within the County and district during the tenure of the term. (Amended 11-5-91; 11-2-93.)

**SECTION 3.01.4 APPORTIONMENT.**

Beginning in July of 1991, the County Council by ordinance shall apportion the County into legislative districts. Every district shall be of substantially equal populations, compact and composed of contiguous territory and formed by combining the areas of governmental units giving preference in the order named to townships, municipalities and city wards and precincts. In making any new apportionment, district boundaries established by the preceding apportionment shall be adopted to the extent reasonably consistent with the other requirements of law. No later than December 31st of the publication year of each recurring decennial Federal census, except when a County Council district election falls the year after publication of the census in which case no later than October 1st of the year of publication of the census, the County Council shall

apportion the County into districts as herein provided. If the County Council fails to apportion the County into districts by the deadlines set forth herein, the County Executive shall within thirty days thereafter submit to the County Council a plan for apportionment of the County. The County Council shall within thirty (30) days after receiving the County Executive's plan apportion the County as herein provided, and if it does not apportion the County within thirty (30) days the County Executive's plan shall become effective until the next recurring decennial Federal census when the County shall be again apportioned as herein provided. The County Council may at any time, by the affirmative vote of at least two-thirds of the members of the County Council, make minor adjustments to the legislative districts to make the boundaries of the districts identical to precinct boundaries as established by the Board of Elections to facilitate the administration of elections within the County of Summit between each recurring decennial Federal census. (Amended 11-8-88; 11-7-06.)

#### **SECTION 3.01.5 VACANCY; AT-LARGE COUNCIL MEMBERS.**

(EDITOR'S NOTE: See also Section 5.02.)

When a vacancy occurs in an at-large Council seat, the replacement shall be chosen within thirty (30) days of the vacancy by the precinct committee members of the same party as the person vacating the seat. If the precinct committee members fail to make the appointment, the County Council has thirty (30) days to make the appointment. If County Council fails to make the appointment, the County Executive shall make the appointment. (Amended 11-5-91; 11-2-93.)

#### **SECTION 3.01.5(A) VACANCY; DISTRICT COUNCIL MEMBERS.**

When a vacancy occurs in a district Council seat, the replacement, shall be chosen within thirty (30) days of the vacancy by the precinct committee members of the same party from that district as the person vacating the seat. If the precinct committee members fail to make the appointment, the County Council has thirty (30) days to make the appointment. If the County Council fails to make the appointment, the County Executive shall make the appointment. (Amended 11-5-91; 11-2-93.)

#### **SECTION 3.01.5(B) VACANCY; NO PARTY AFFILIATION.**

When a vacancy occurs in either a district or at-large Council seat and the person vacating the seat was not a member of a political party with precinct committee members, the replacement shall be chosen by County Council within thirty (30) days of the vacancy. If County Council fails to appoint a replacement within thirty (30) days, the County Executive shall make the appointment. (Amended 11-5-91; 11-2-93.)

#### **SECTION 3.01.5(C) VACANCY; LENGTH OF APPOINTMENT.**

In all cases, if a vacancy occurs in the first or second year of a four (4) year term, the interim appointment is for a period until the next County-wide general election at which time the position is filled for the remainder of the principal term. If a vacancy occurs in the third or fourth year of a four (4) year term, the interim appointment is until the next County-wide general election at which time the position is filled for the next four (4) year term. (Amended 11-5-91; 11-2-93.)

#### **SECTION 3.02 SALARY.**

The salaries of County Council members shall be \$7,000 per year. They may be changed by ordinance at any time before a primary election for members of the County Council, but no change shall be effective until the commencement of the ensuing term.

#### **SECTION 3.03 POWERS AND DUTIES OF THE COUNTY COUNCIL.**

The legislative and policy-making power of the County shall be vested in the County Council. Such powers and duties include, but are not limited to, the following:

- (1) To appoint and provide for the compensation and duties of the Clerk of Council and such other assistants as the County Council determines to be necessary for the efficient performance of its duties.
- (2) To establish departments, and divisions and sections within departments, under the supervision of the County Executive, and such boards, agencies, commissions, and authorities as the County Council determines to be necessary for the efficient administration of the County.
- (3) To establish procedures under which the County Executive may employ experts and consultants in connection with the administration of the affairs of the County.
- (4) To establish procedures governing the making of County contracts and the purchasing of County supplies and equipment by competitive bidding.
- (5) To adopt and amend the annual tax budget, the operating budget and the capital improvements program and to make appropriations for the County; however, County Council shall not have the power to levy and/or increase sales or use taxes by emergency measure by County Council to levy such taxes to a rate greater than the rate in effect and levied by County Council prior to January 1, 1993, shall not go into effect unless approved by a majority of the electors of the County at a primary or general election.
- (6) To determine which officers and employees shall give bond and to fix the amount and form thereof.
- (7) To provide for the acquisition, construction, maintenance, administration, rental, and leasing of property, as provided by general law.
- (8) To cooperate or join by contract with any municipality, county, state or political subdivision or agency thereof, for the planning, development, construction, acquisition, or operation of any public improvement or facility, or for a common service, and to provide the terms upon which the County shall perform any of the services and functions of any municipality or political subdivision in the County.
- (9) To provide for the procedure for making public improvements and levying assessments for such improvements.
- (10) To establish personnel procedures, job descriptions, rankings, and uniform pay ranges for all County employees of the County Fiscal officer, Clerk of the Court of Common Pleas, Medical Examiner, County Engineer, Prosecuting Attorney, Sheriff, County Council, County Executive, including the Department of Jobs and Family Services and the Department of Human Resources.

Except for the purpose of inquiry, the County Council and its members shall deal with the administrative service solely through the County Executive and neither the County Council nor any member thereof shall give orders to any of the subordinates of the County Executive either publicly or privately.

(Amended 11-6-84; 11-5-91; 11-2-93; 11-2-99; 11-7-00; 11-6-01; 11-8-05.)

**SECTION 3.04 ORGANIZATION, RULES AND PROCEDURES.**

On the first Monday of each year which is not a Saturday, Sunday or legal holiday, the County Council shall organize by electing one of its members as President and one other member as Vice-President for terms of one year. The President shall preside at all meetings of the County Council. The Vice President shall preside in case of the absence or disability of the President. The presiding officer shall be entitled to vote on all matters.

The County Council shall determine its own rules and order of business. The Clerk of Council shall keep and make available for public inspection at all reasonable times a record of proceedings of the County Council in which the vote of each member voting on an ordinance or resolution shall be recorded.

All legislative action shall be by resolution or ordinance introduced in written or printed form. Each resolution and ordinance shall contain no more than one subject which shall be clearly expressed in its title.

No ordinance or resolution shall be passed until it has been read, which may be by title only, at three different regular County Council meetings or the requirement of three readings has been dispensed with by a vote of at least two-thirds of the members of the County Council.

No action of the County Council shall be valid or binding unless adopted by the affirmative vote of at least a majority of the members of the County Council. Each ordinance or resolution shall be signed by the presiding officer and promptly presented by the Clerk of Council to the County Executive for approval or disapproval.

If the County Executive approves such measure, it shall be signed and returned to the Clerk of Council within ten days after its adoption, but if not, the County Executive shall return it to the County Council within said ten days with the written objections, which objections shall be entered in full in the record of proceedings of the County Council. The County Executive may approve or disapprove the whole or any item of an ordinance or resolution appropriating money, but otherwise the approval or disapproval shall be addressed to the entire ordinance or resolution. If such measure is not returned within said ten-day period, it shall take effect in the same manner as if the County Executive had signed it.

When the County Executive has disapproved an ordinance or resolution, or a part or item thereof as herein provided, the County Council shall, not later than its second regular meeting thereafter, proceed to reconsider it, and if upon reconsideration the measure is approved by at least two-thirds of the members of County Council, it shall then take effect as if it had received the approval of the County Executive.

Each ordinance or resolution shall take effect in the manner and at the time provided by general law for ordinances or resolution of cities. Each emergency measure shall take effect, unless a later time is specified therein, upon its signature by the County Executive, or upon the expiration of the time within which it may be disapproved, or upon its passage after disapproval by the County Executive, as the case may be, shall contain a statement of the necessity for such emergency action and shall require the affirmative vote of at least two-thirds of the members of the County Council for enactment.

(Amended 11-4-14.)

**SECTION 3.05 INITIATIVE AND REFERENDUM.**

The right of the initiative and referendum is reserved to the people of the County on all matters which such County may now or hereafter be authorized to control by legislative action. The provisions of general law relating to such right applicable to municipalities in effect at the time of the adoption of this Charter shall govern the exercise of such right hereunder, provided that all powers and duties respecting initiative or referendum petitions imposed upon city auditors or village clerks by general law shall be exercised by the Clerk of Council.

**SECTION 3.06 INVESTIGATIONS BY COUNCIL.**

County Council or any committee of Council is granted authority to investigate the financial transactions of any office, department or agency of County government and the official acts and conduct of any County official relating to any matter upon which Council is authorized to act. In conducting such investigations, the Council or any committee of Council may administer oaths and may, by majority vote, compel the attendance of witnesses and the production of books, papers and other evidence, and for the purpose may use subpoenas which shall be signed by the President of Council or the chair of the Council committee seeking a witness' testimony and which may be served and executed by an officer authorized by law to serve subpoenas and other legal process. In the matter of compelling the attendance of witnesses and the production of evidence, the majority vote of Council, if any, shall take precedence over the vote of a Council committee. If any duly subpoenaed witness shall refuse to testify to any facts within the witness' knowledge, or to produce any papers or books in the witness' possession or in the witness' control, relating to the matter under inquiry before the Council or any such committee, the Council shall have the power to refer the matter to the Prosecuting Attorney for the Prosecuting Attorney to cause the witness to be punished as for contempt. Subpoenas may not be issued pursuant to this section except by resolution adopted by 2/3 vote of Council. (Added 11-3-98)

**ARTICLE IV  
ELECTED OFFICE HOLDERS****SECTION 4.01 COUNTY ELECTED OFFICE HOLDERS.**

(1) The Clerk of the Court of Common Pleas, County Engineer, Prosecuting Attorney and the Sheriff of the County shall be elected and their duties shall continue to be determined in the manner provided by general law, except where County Council changes those duties by ordinance or resolution. County Council may set the salaries of all County elected office holders with the minimum as set by general law. (Amended 11-3-81)

(2) County Fiscal Officer.

(a) Consolidation of Office of County Auditor with Office of County Treasurer; Transfer of Powers and Duties. Effective upon a vacancy or as of March 10, 2003, whichever is earlier, the elective office of County Auditor is hereby consolidated with the Office of County Treasurer, and no election for County Auditor shall be held at the 2002 general election in the County. Effective upon the consolidation of the Office of County Auditor with the Office of County Treasurer, the County Auditor's powers and duties, including the powers and duties of the previously consolidated Office of County Recorder, shall be transferred to the County Treasurer, which shall be renamed County Fiscal Officer.

(b) Powers and Duties. The County Fiscal Officer shall exercise all powers now or hereafter vested in and perform all duties now or hereafter imposed upon county auditors, county recorders and county treasurers by general law, except where County Council changes those duties by ordinance or resolution.

(c) Election. The County Fiscal Officer shall be elected beginning at the general election held in the County in 2004 and shall hold office for a term of four years commencing on the first day of January next following such election. Any candidate for election as County Fiscal Officer shall be an elector of the County at the time of the declaration of candidacy, shall be nominated and elected in the manner provided by general law for county officers and during the entire term of office shall remain an elector of the County and shall not, except as authorized by County Council, hold or accept other employment or public office.

- (d) Vacancy. In the event the Office of County Fiscal Officer becomes vacant by reason of death, resignation, removal from office, failure to remain an elector of the County, or for any reason whatsoever, the position shall be filled as provided by general law for elected county officers.
- (e) Salary. The salary of the County Fiscal Officer shall be determined by County Council by ordinance or resolution and shall be set at a level commensurate with the duties of the office.
- (f) Boards, Commissions and Committees. Upon the effective date of this amendment, the County Fiscal Officer, or his designee, shall serve in the place of the County Auditor on every board, commission, committee, or any other body upon which the County Auditor is required to serve by general law. Upon the effective date of this amendment, the County Executive shall serve in the place of the County Treasurer on the County Budget Commission. Council shall provide by ordinance or resolution for the replacement of the Treasurer on every other board, commission, committee, or any other body upon which the County Treasurer is required to serve by general law.

(3) Eligibility for Candidacy for the Office of County Fiscal Officer. Any person shall be eligible as a candidate and/or appointee for the office of Summit County Fiscal Officer if the person is an elector of Summit County and possesses the same qualifications set forth under the General Laws of the State of Ohio for the county offices of Auditor, Recorder, and Treasurer. All other Charter provisions and Charter amendments that are inconsistent with the foregoing requirements for the office of County Fiscal Officer are repealed in their entirety. (Amended 11-6-01; 11-4-03.)

#### **SECTION 4.02 (RESERVED).**

#### **SECTION 4.03 MEDICAL EXAMINER; APPOINTMENT, POWERS AND DUTIES.**

As of January 5, 1997, the elective office of Coroner is abolished, and no election for such office shall be held at the 1996 general election in the County. Thereafter, all powers now or hereafter vested in and all duties now or hereafter imposed upon coroners by general law shall be exercised and carried out by the Medical Examiner, who shall be appointed by and serve under the direction, and at the pleasure of, the County Executive, subject to confirmation by County Council. The Medical Examiner shall also have such powers and duties not inconsistent with those provided by general law as shall be established by the County Executive. (Added 11-7-95.)

#### **SECTION 4.04 MEDICAL EXAMINER; QUALIFICATIONS.**

The Medical Examiner shall be a licensed physician with preference given for specialized training in forensic medicine and pathology and who shall have final authority as to determinations concerning medical matters within his or her responsibility. The County Executive may appoint deputies to the Medical Examiner, who shall be designated Deputy Medical Examiners and one of whom may be designated the Chief Deputy Medical Examiner. (Added 11-7-95.)

### **ARTICLE V GENERAL PROVISIONS**

#### **SECTION 5.01 EFFECTIVE DATE OF CHARTER.**

The effective date of this Charter shall be January 1, 1980 for the purpose of nomination and election of officers and January 1, 1981 for all other purposes.

**SECTION 5.01.2 OATH OF OFFICE.**

The County Executive, members of County Council, and County elected office holders are hereby required to take an oath of office. The oath shall be administered by any person qualified as a notary and shall consist of a promise by the official to uphold the Constitution and laws of the United States of America and the State of Ohio, the Summit County Charter, and the Codified Ordinances of Summit County. (Added 11-7-00.)

**SECTION 5.01.3 REMOVAL OF ELECTED OFFICIALS BY RECALL.**

The County Executive, a member of the County Council, or any County elected office holder under Article IV, Section 4.01, of this Charter may be removed from office by recall. The procedure to effect such removal shall be as follows:

- (1) A petition signed by qualified electors demanding the election of a successor to the person sought to be removed, shall contain a general statement, in not more than two hundred words, of the grounds upon which removal is sought. In seeking removal of the County Executive, a County elected office holder or an at-large member of County Council, such petition must be signed by qualified electors of the County equal in number to at least ten (10) percent of those who voted for County Executive in the last preceding County election. In seeking removal of a member of County Council representing a particular district, such petition must be signed by qualified electors of that district equal in number to at least twenty (20) percent of those who voted for County Executive at the last preceding County election in that district.
- (2) Petition papers shall be procured only from the Clerk of Council, who shall keep a sufficient number on file for the use as provided by this section. Prior to the issuance of such petition papers an affidavit shall be made by one or more qualified electors of the County and filed with the Clerk, stating the name and office of the official sought to be removed. The Clerk, upon issuing any such petition paper, shall enter, in a record to be kept in his office, the name of the elector to whom issued, the date of such issuance, and the number of papers issued, and shall certify upon each paper the name of the elector to whom issued and the date of issuance. No petition paper so issued shall be accepted as part of a petition unless it bears the certificate of the Clerk and unless it is filed as provided in this section.
- (3) The petition shall be addressed to the County Council. With each signature shall be stated the place of residence of the signer, giving the street and number and ward and precinct. The signatures need not all be on one paper. A person shall be designated in such petition to receive it in case of return by the Clerk for insufficiency, as provided in this section. One of the signers of every such paper shall sign an affidavit stating that each signature on the paper is the genuine signature of the person whose name it purports to be. All such papers for the removal of any one official shall be fastened together and be filed as one instrument within thirty (30) days after the filing with the Clerk of the affidavit stating the name and office of the official sought to be removed. The Clerk, within ten (10) days after the filing of such petitions, shall determine the sufficiency of such petition and attach a certificate showing the result of his examination. If the Clerk shall certify that the petition is insufficient, he shall set forth in the certificate the particulars in which the petition is defective, and shall return a copy of the certificate to the person designated in such petition to receive it.
- (4) Such recall petition may be amended at any time within twenty (20) days after the making of certificate of insufficiency by the Clerk, by filing a supplementary petition upon additional petition papers, issued, signed and filed as provided in this section for the original petition. The Clerk shall, within ten (10) days after such amended petition is filed, make an examination of the amended petition, and if his

certificate shall show the same to be still insufficient, he shall return it to the person designated in such petition to receive it, without prejudice, however, to the filing of a new petition.

- (5) If the Clerk shall determine that the petition or amended petition is sufficient, he shall at once submit the same with his certificate to the Council and forthwith notify the official sought to be recalled of such action. If the official whose removal is sought shall not resign within five (5) days after such notice, the County Council shall thereupon by order fix a day for holding a recall election. Such election shall be held not less than forty (40) nor more than sixty (60) days after the petition has been submitted to the County Council. If possible, the recall election shall take place at the time any general or special election is held within such period, but if no such election is held, within the time previously stated.
- (6) The Clerk shall transmit a duly certified copy of such order to the Director of the Summit County Board of Elections or the successor to this position. The election authorities shall publish notice and make all arrangements necessary for holding an election, and the same shall be conducted and the result returned and declared in all respects, as are the results of general county elections.
- (7) Each ballot at such election shall have printed upon it the following question: "Shall (name of person) be removed from the office of (name of office) by recall?" Immediately following such question, there shall be printed on the ballot the following two propositions in the following order:
  - "For the recall of (name of person)."
  - "Against the recall of (name of person)."
 Immediately to the left on each of said propositions shall be a space in which the elector may vote for either of such propositions.
- (8) If a majority of the votes cast on the question of recalling any elected official shall be against the recall, the elected official shall continue in office for the remainder of his unexpired term, but subject to recall as before. If a majority of such votes be for the recall, then the elected official shall be deemed removed from office upon the announcement of the official result of such an election.
- (9) When a person is removed from office by recall, the vacancy will be filled in accordance with the provisions of this Charter and general law.  
(Added 11-7-00.)

#### **SECTION 5.02 VACANCIES.**

(EDITOR'S NOTE: See also Section 3.01.5.)

In the event the office of the County Executive becomes vacant by reason of death, resignation, removal from office, failure to remain an elector of the County, or for any other reason whatsoever, the President of Council shall succeed to the office of County Executive on an interim basis and shall serve until the position is filled as provided by general law for elected County officers.

The vacancy of a member of County Council shall be filled as provided by general law for elected County officers. The interim succession of the President of County Council to the office of County Executive as provided herein shall not create a vacancy in the membership of County Council or in the position of President of County Council.  
(Amended 11-7-89.)

#### **SECTION 5.03 MEETINGS OF GOVERNMENTAL BODIES TO BE PUBLIC.**

All meetings of the County Council and any board, commission, agency or authority of Summit County as well as any similar body created by this Charter or the County Council shall be open to the public, as provided by general law.

**SECTION 5.04 RECORDS OF GOVERNMENTAL BODIES TO BE PUBLIC.**

Records of the County shall be open to the public as provided by general law.

**SECTION 5.05 CHARTER REVIEW COMMISSION.**

Commencing in September, 1999, September 2003, and at intervals of five (5) years thereafter, a Charter Review Commission consisting of nine (9) electors of Summit County, no more than five (5) of whom may be of the same political party, not more than two (2) members may be an officeholder or employee of the County of Summit, shall be appointed by the County Executive with confirmation of the County Council. They shall serve without pay and shall serve on no more than three consecutive Charter Commissions unless they occur within a ten year period. The County Executive shall provide necessary staff services. The Charter Review Commission shall have the authority to propose amendments to this Charter to the County Council. The County Council shall vote within sixty (60) days after the proposals are received on whether or not to submit the proposals to the electors at the next general election held more than sixty (60) days after its vote on the proposed amendments.

(Amended 11-7-89; 11-3-92; 11-7-95.)

**SECTION 5.06 CHARTER AMENDMENTS.**

Proposed amendments to this Charter shall be submitted to the electors of the County by a vote of at least two-thirds of the members of the County Council or upon petitions signed by eight percent of the electors of the County as provided by the Ohio Constitution.

(Amended 11-8-88.)

**SECTION 5.07 EQUAL OPPORTUNITY.**

It shall be the policy of the County that:

- (1) All officers and members of boards, agencies, commissions and authorities appointed by the County Executive pursuant to Section 2.03(2) of this Charter;
- (2) All members of the Charter Review Commissions appointed pursuant to Section 5.05 of this Charter; and
- (3) All County employees shall be appointed, employed, promoted, and compensated without regard to their race, color, religion, sex, national origin, handicap, age, or ancestry.

(Added 11-5-91.)

**SECTION 5.08 MISCELLANEOUS DUTIES.**

Commencing January 1, 1992, the duties of preparing and maintaining the tax maps for the County of Summit shall be that of the County Fiscal Officer.

(Added 11-5-91.)

**SECTION 5.09 REARRANGEMENT, REPRINTING OF, AND CORRECTION OF TYPOGRAPHICAL ERRORS IN, CHARTER.**

Following any election at which any amendment to this Charter is adopted, the Clerk of Council, with the approval of the County Council, the Prosecuting Attorney and the General Counsel, may, prior to any reprinting of this Charter, make such changes therein, including the numbers, titles and arrangement of articles and sections hereof, as may be necessary or desirable to maintain or assure the logical and consistent ordering thereof, but no such change shall, in any way, affect the substance or meaning of this Charter or any part thereof or amendment thereto. The Clerk of Council may, at any time, with the approval of the County Council, correct typographical errors appearing in this Charter, but no such change shall, in any way, affect the substance or meaning of this Charter or any part thereof or amendment thereto.

(Amended 11-7-00.)

**SECTION 5.10 FAIRNESS IN COUNTY EMPLOYMENT.**

In the interest of providing proper and reasonable protection against the negative aspects of nepotism, the following prohibitions are established:

- (A) No person shall be eligible for County employment if the person is related to an elected County official, unclassified County employee, County employee at the level of Director or County employee whose County salary exceeds \$80,000 per year, as a spouse, sister, brother, child, parent, half-sister, half-brother, step-child, step-parent, step-sister, step-brother, grandparent, grandchild, father-in-law, mother-in-law, brother-in-law, sister-in-law, son-in-law, daughter-in-law, niece, nephew or cousin of the first degree.
- (B) No person shall have supervisory responsibility over their spouse, sister, brother, child, parent, half-sister, half-brother, step-child, step-parent, step-sister, step-brother, grandparent, grandchild, father-in-law, mother-in-law, brother-in-law, sister-in-law, son-in-law, daughter-in-law, niece, nephew, or cousin of the first degree.
- (C) This Section shall govern only those seeking County employment after the effective date of this Section and does not prohibit the continued employment by the County of any person who holds County employment on or before the effective date of this Section. This Section also does not prohibit the continued employment by the County of a person employed by the County prior to the election of a County elected official who is related to the employee as a spouse, sister, brother, child, parent, half-sister, half-brother, step-child, step-parent, step-sister, step-brother, grandparent, grandchild, father-in-law, mother-in-law, brother-in-law, sister-in-law, son-in-law, daughter-in-law, niece, nephew or cousin of the first degree.
- (D) Any person hired in violation of this Section shall be immediately terminated. The County Fiscal Officer shall not make salary payments to persons hired in violation of this Section.  
(Added 11-7-06.)

**ARTICLE VI  
HUMAN RESOURCES**

**SECTION 6.01 HUMAN RESOURCE COMMISSION.**

There shall be a Human Resource Commission, consisting of three (3) electors of the County no more than two (2) of whom shall be members of the same political party, which shall be responsible for administering, for and in cooperation with the officers, agencies, boards and commissions of the County, an efficient and economical system for the employment of persons in the public service of the County according to merit and fitness. The County's human resources policies and system, including ethics policies for County employees, shall be established by ordinance and shall be administered in such manner as will eliminate unnecessary expense and duplication of effort, while ensuring that persons will be employed in the public service without discrimination on the basis of race, color, religion, sex, national origin, handicap, age or ancestry.

The members of the Human Resource Commission shall be appointed by the County Executive and confirmed by County Council and shall be persons with experience in personnel matters or personnel administration and supportive of equal opportunity considerations.

The term of office of each member of the Human Resource Commission shall be six years. The terms shall be staggered so that no term expires within less than two (2) years of the expiration of any other term. A vacancy occurring during a term shall be filled by the County Executive for the unexpired term in the same manner as a regular appointment.

Of the terms of office for the initial appointees, one shall be appointed for a term of six (6) years, one shall be appointed for a term of four (4) years and one shall be appointed for a term of two (2) years. The County Executive shall nominate the initial appointees to the Human Resource Commission no later than December 15, 1995, and thereafter within thirty (30) days after the occurrence of a vacancy. If the County Council fails to accept or reject a nomination within forty-five (45) days of its having been presented to it, the nomination shall be deemed confirmed.

No member of the Human Resource Commission shall hold any other public office or public employment with the County of Summit. The per diem compensation of the members of the Human Resource Commission shall be established by the County Council.

The County Executive may remove any member of the Human Resource Commission for inefficiency, neglect of duty or malfeasance in office, after notice and public hearing before the County Council, provided that two-thirds of the members of the County Council concur. (Added 11-7-95; Amended 11-4-97.)

#### **SECTION 6.02 DEPARTMENT OF HUMAN RESOURCES.**

There shall be a Department of Human Resources, which shall serve under the direction of, and perform such functions on behalf of, the Human Resource Commission as the Commission shall prescribe. (Added 11-7-95.)

#### **SECTION 6.03 APPOINTING AUTHORITY.**

The County Executive and the officers, offices, agencies, departments, boards and commissions and other public bodies described in Section 6.04 of this Charter shall be Appointing Authorities. Persons interested in employment with the County shall make application to the Department of Human Resources. No Appointing Authority shall appoint a person to fill a vacancy in the classified service who does not meet the qualifications for that position approved by the Human Resource Commission. (Added 11-7-95.)

#### **SECTION 6.04 CLASSIFICATION.**

The Human Resource Commission shall administer a clear, county-wide classification and salary administration system for technical, specialist, administrative and clerical functions with a limited number of broad pay ranges within each classification. The classification system shall include the employees of the offices listed in Section 4.01 of this Charter, as well as those of the County Executive and County Council, except those employees in positions designated as unclassified by general law, shall, to the extent permitted by the Ohio Constitution, include the employees of all offices, officers, agencies, departments, boards, commissions or other public bodies, other than separate political subdivisions, that are supported in whole or in part from taxes levied, or other financial assistance provided, by the County. (Added 11-7-95.)

#### **SECTION 6.05 AUTHORITY OF HUMAN RESOURCE COMMISSION.**

The Human Resource Commission has:

- (1) Responsibility for the resolution or disposition of all personnel matters, with authority to appoint hearing officers to hear all employee appeals previously under the jurisdiction of the State Personnel Board of Review;
- (2) Responsibility for administration of county-wide compliance with federal and state laws regarding personnel matters for which the County is the reporting unit and for administration of other personnel matters for which the County is responsible, and for maintenance of records required by such laws;

- (3) Authority to ensure:
- pay equity for like positions;
  - standardization of benefits;
  - approval of qualifications;
  - consistent discipline;
  - training of management in personnel practices;
  - training of employees in job functions;
  - training for total quality management;
  - consistent administration of performance management system;
  - coordination of recruitment;
  - compliance to ethics resolutions or ordinances as passed by County Council; and
- (4) Such other functions as may be necessary to carry out its mission and purpose.  
(Added 11-7-95.)

#### **SECTION 6.06 EFFECTIVE DATE.**

This article shall be effective December 15, 1995, for the purpose of appointment of members of the Human Resource Commission.

The Human Resource Commission shall adopt rules and regulations by May 15, 1996, and all authority granted under this article shall be vested in the Human Resource Commission effective July 1, 1996. (Added 11-7-95.)

### **ARTICLE VII PURCHASING**

#### **SECTION 7.01 DEPARTMENT OF PURCHASING.**

There shall be a Department of Purchasing under the direction of the County Executive, which shall, except as otherwise provided by this Charter or by ordinance, be responsible, to the extent permitted by the Ohio Constitution, for the purchase of all goods and services required by all offices, officers, agencies, departments, boards, commissions or other public bodies, other than separate political subdivisions, that are supported in whole or in part from taxes levied, or other financial assistance provided, by the County.  
(Added 11-7-95.)

### **ARTICLE VIII COUNTY INFORMATION TECHNOLOGY BOARD**

#### **SECTION 8.01 COUNTY INFORMATION TECHNOLOGY BOARD.**

There is hereby created a County Information Technology Board whose purpose is to oversee planning, acquiring, integrating, implementing and operating data processing and information systems technology, including, but not limited to, hardware, software and network used by all County elected office holders, appointing authorities, offices, departments, boards, commissions, and agencies of the County of Summit funded in whole or in part with County funds. The Board shall consist of the County Executive, the President of County Council, the County Fiscal Officer, Clerk of the Court of Common Pleas, County Engineer, County Sheriff and County Prosecuting Attorney, or their designees.  
(Added 11-4-14)

**SECTION 8.02 AUTHORITY OF THE COUNTY INFORMATION TECHNOLOGY BOARD.**

The powers and duties to be exercised by the Board include, but are not limited to, the following:

- (1) To develop a work plan on an annual basis, and to develop all policies, procedures and standards, for planning, acquiring, integrating, implementing and operating data processing and information systems technology, including, but not limited to, hardware, software and network, which shall be followed by the Department of Information Technology, and which shall, at a minimum, ensure that all appointing authorities, offices, departments, boards, commissions and agencies are adequately supported in their information systems technology and data processing needs to meet any obligations imposed by the Ohio Revised Code, this Charter, the Codified Ordinances of the County of Summit, or any other applicable federal, state or local law.
- (2) To establish and amend the classification and job description for the Chief Information Officer, and all other employees of the Chief Information Officer, subject to the approval of the County Council.
- (3) To hire or dismiss the Chief Information Officer, and all other employees of the Department of Information Technology.
- (4) To oversee the Department of Information Technology.
- (5) To oversee, and to recommend all contracts to the Executive for, the planning, acquisition, implementation and operation of all data processing and information systems technology by the Department of Information Technology, subject to the exceptions in Section 8.03 of this Article, and the Board's decision shall be binding.
- (6) To charge back through an internal service fund County elected office holders, appointing authorities, offices, departments, boards, commissions, and agencies of the County of Summit funded in whole or in part with County funds in order to account for the financing on a cost-reimbursement basis of information technology goods or services provided by the Department of Information Technology to said offices, boards, commissions and agencies.  
(Added 11-4-14)

**SECTION 8.03 DEPARTMENT OF INFORMATION TECHNOLOGY.**

There shall be a Department of Information Technology under the authority of the County Information Technology Board that shall carry out the Board 's purposes through the exercise of the powers delegated to it and that shall make recommendations to the Board for its consideration and disposition. At a minimum, the Department of Information Technology shall provide the necessary information systems technology and data processing support to all elected officeholders, appointing authorities, offices, departments, boards, commissions and agencies to ensure that any obligations imposed by the Ohio Revised Code, this Charter, the Codified Ordinances of the County of Summit, or any other applicable federal, state or local law are met.

Any employee of any elected officeholder, appointing authority, department, board, commission or agency of the County of Summit, who, at the time of the adoption of this Article, and, in the determination of the Human Resource Commission, is in a position whose job description involves the planning, acquiring, implementing or operating of data processing and information systems technology, shall immediately be transferred to the Department of Information Technology at compensation no less than received at the time of the adoption of this Article, and, commencing with the adoption of this Article, only the Department of Information Technology may employ any employee whose job description involves planning, acquiring, implementing or operating data processing and information systems technology. No other County elected officeholder, appointing authority, department, board, commission or agency of the County of Summit funded in whole or in part with County funds may employ or contract with any person or entity whose job description or contract would involve planning, acquiring, implementing or operating data processing and information systems technology or purchasing or providing information systems technology equipment, provided however, that this provision shall not apply to the Department of Job and Family Services or the Child Support Enforcement Agency.

The Chief Information Officer shall assign to any elected officeholder, appointing authority, department, board, commission or agency, who so reasonably requests, suitable employees of the Department of Information Technology for the purpose of developing software and/or applications to improve the business processes for that elected officeholder, appointing authority, department, board, commission or agency. Any employee assigned in this manner shall remain an employee of the Department of Information Technology and report to the Chief Information Officer, but shall take additional direction from the elected official, appointing authority, department, board, commission or agency on the business needs, business processes and the corresponding development of software and applications for that elected officeholder, appointing authority, department, board, commission or agency.

The Board shall be authorized to enter into a contract, subject to the approval of County Council and execution by the County Executive, with any office, department, board, commission or agency of the County of Summit not governed by the County Charter or with another Ohio political subdivision to provide information technology goods and services through the Department of Information Technology. Prior to adoption of any contract on behalf of the Information Technology Department or Board, it shall be reviewed and approved by the Department of Law, Insurance and Risk Management.

In the event an elected officeholder, appointing authority, office, department, board, commission or agency believes that the Department of Information Technology is not providing the necessary information technology or data processing support to meet its obligations imposed by the Ohio Revised Code, this Charter, the Codified Ordinances of the County of Summit, or any other applicable federal, state or local law, it may petition the County Council for the authority to employ or contract with any person to, on its behalf, engage in planning, acquiring, implementing or operating data processing and information systems technology or purchasing or providing information systems technology equipment. Any such petition may be approved by a two-thirds affirmative vote of County Council determining that the same is necessary, subject to any veto by the Executive, and provided that any such contract is subject to execution by the Executive.

(Added 11-4-14)

**SECTION 8.04 CHIEF INFORMATION OFFICER.**

There shall be a Chief Information Officer who shall head the Department of Information Technology. The Chief Information Officer shall meet the requirements set forth in the classification and job description established by the County Information Technology Board. The County Information Technology Board shall hire or dismiss the Chief Information Officer. The Chief Information Officer shall interview and make recommendations for the hiring of staff for the Department of Information Technology to the Board, which shall approve or reject such recommendations. The Board shall be the appointing authority for the Chief Information Officer, who shall serve at the pleasure of the Board.

(Added 11-4-14)

**SECTION 8.05 EFFECTIVE DATE.**

This Article shall be effective December 15, 2014, for purposes of convening the County Information Technology Board. The County Information Technology Board shall adopt rules and regulations for the Board and in conjunction with the Department of Human Resources, shall establish a classification and job description for the position of Chief Information Officer by May 15, 2015. The County Information and Technology Board shall hire the Chief Information Officer by July 1, 2015.

(Added 11-4-14)

**ARTICLE IX  
PUBLIC INFORMATION****SECTION 9.01 DEPARTMENT OF PUBLIC INFORMATION; POWERS AND DUTIES.**

There shall be a Department of Public Information under the direction of the County Executive. The Department of Public Information shall be responsible, to the extent permitted by the Ohio Constitution, for carrying out the following functions for and on behalf of all offices, officers, agencies, departments, boards, commissions or other public body, other than a separate political subdivision, that is supported in whole or in part from taxes levied, or other financial assistance provided, by the County:

- (1) Assisting in the implementation of public policy through appropriate communication;
- (2) Assisting the news media in coverage of the activities of the County government;
- (3) Reporting to the people of the County on County activities;
- (4) Improving communication with the employees of the County;
- (5) Increasing the County government's sensitivity to the concerns of its people;
- (6) Educating people as to the functions and services of the County and how to access them; and
- (7) In cooperation with other County officials having responsibility for economic development, promoting the County as a good place to live, to work and to invest.

(Added 11-7-95.)

**SECTION 9.02 PUBLIC INFORMATION COMMISSION.**

There shall be a Public Information Commission composed of the County Fiscal Officer, the Sheriff, the Clerk of Courts, the President of County Council, the County Engineer, and the Prosecuting Attorney or their respective designees, and the County Executive, who or whose designee shall chair the Public Information Commission. The commission shall make general policy on matters of public information and communication concerning the County.

(Amended 11-7-00; 11-6-01.)

**ARTICLE X  
COUNTY INTERNAL AUDITING**

**SECTION 10.01 COUNTY AUDIT COMMITTEE.**

A County Audit Committee is hereby created to provide internal auditing to assist the County Executive, County Council, County elected offices, departments, institutions, boards, commissions, authorities, organizations, and agencies of Summit County Government funded in whole or in part with county funds, in providing taxpayers of Summit County efficient and effective services. The County Audit Committee shall consist of the County Fiscal Officer, the County Executive, the President of County Council and two residents of Summit County appointed by the Executive and approved by majority of Council. The County Audit Committee shall meet on a quarterly basis and oversee internal as well as external audits.  
(Amended 11-6-01.)

**SECTION 10.02 DEPARTMENT OF INTERNAL AUDITING.**

There shall be a Department of Internal Auditing which shall serve under the direction of, and perform such functions on behalf of, the County Audit Committee as the Committee shall prescribe. (Added 11-7-00.)

**SECTION 10.03 DIRECTOR OF INTERNAL AUDITING; QUALIFICATIONS.**

There shall be a Director of Internal Auditing, who shall be head of the Department of Internal Auditing. The Director of Internal Auditing shall be a Certified Internal Auditor or working towards an Internal Auditor certification, shall be, or after certification shall become, a member of the Institute of Internal Auditors and shall be subject to, and follow at all times, the Code of Ethics for Certified Internal Auditors established by the Institute of Internal Auditors. The County Audit Committee shall recommend the hiring or dismissal of the Director of Internal Auditing, upon approval of the County Council. The Director of Internal Auditing shall interview and make recommendations for the hiring of staff for the Department of Internal Auditing to the County Audit Committee who shall approve or reject such recommendations.  
(Added 11-7-00.)

**SECTION 10.04 AUTHORITY OF DEPARTMENT OF INTERNAL AUDITING.**

The Department of Internal Auditing shall have the following powers and duties:

- (1) Preparation of an annual budget and work program;
- (2) Development of a department audit fee, which shall be billed to each department audited;
- (3) Guidance of the internal audit process through utilization of:
  - (a) Government Auditing Standards, United States General Accounting Office developed by the Comptroller General of the United States; and
  - (b) Professional Standards of the Institute of Internal Auditors, American Institute of Certified Public Accountants, generally accepted auditing standards.
- (4) Preparation of a preliminary financial and performance auditing report for the department being audited; and
- (5) Any other duties or responsibilities prescribed by the County Audit Committee.  
(Added 11-7-00.)

**SECTION 10.05 EFFECTIVE DATE.**

This article shall be effective December 15, 2000, for purposes of convening the County Audit Committee.

The County Audit Committee shall adopt rules and regulations for the County Audit Committee and the Department of Internal Auditing, and in conjunction with the Department of Human Resources, shall establish classifications and job descriptions for the Director of Internal Auditing and any necessary staff by May 15, 2001. The County Audit Committee shall submit a recommendation for the position of Director of Internal Auditing by July 1, 2001.

(Added 11-7-00.)