

IN THE SUPREME COURT OF OHIO

State of Ohio *ex rel.* Valeria E. Goncalves,
et al.,

Relators,

v.

Mahoning County Board of Elections, *et al.*,

Defendants.

Case No. 2015-1475

Original Action in Mandamus

Request for Expedited Relief

RELATORS' MERIT BRIEF

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STATEMENT OF FACTS

Relators Valeria E. Goncalves, Mary C. Khumprakob, Edson A. Knight, Heidi Jo Kroeck, Young Tensley, and Hattie W. Wilkins (“Relators”) seek a writ of mandamus to compel the Respondents, Mahoning County Board of Elections and Board of Elections members David Betras, Mark Munroe, Robert Wasko, Tracey Winbush, together with Ohio Secretary of State Jon Husted (“Respondents”) to certify a proposed amendment to the Charter of the City of Youngstown which would add a Community Bill of Rights and for it to appear on the November 3, 2015 ballot. The Community Bill of Rights would amend the City of Youngstown Charter approved by the voters on May 15, 1923.

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

Respondent Mahoning County Board of Elections (“MCBOE”) is legally responsible under various provisions of the Ohio Constitution and Ohio Revised Code for the conduct of elections in Mahoning County, Ohio. (Verified Compl. ¶ 14). Respondents David Betras, Mark Munroe, Robert Wasko, and Tracey Winbush are the duly appointed members of the MCBOE. Respondents have a mandatory legal duty, pursuant to O.R.C. § 3501.11, to perform ministerial acts in order to ensure that properly certified charter amendments appear on the ballot. Respondent Husted is the Secretary of State of the State of Ohio.

It is undisputed that Relators needed One Thousand One Hundred and Twelve (1,112) valid signatures for the proposed charter amendment to appear on the ballot. (Verified Compl. ¶

13). On August 3, 2015, Relators presented the proposed Community Bill of Rights charter amendment to the Youngstown City Council with One Thousand Five Hundred and Thirty-four (1,534) valid signatures. *Id.*

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

On August 26, 2015, Respondents David Betras, Mark Monroe, Robert Wasko, and Tracey Winbush held a Board of Elections meeting and voted 4-0 to not certify the proposed charter amendment. (Answer of MCBOE, ¶¶ 4, 6). In doing so, the Mahoning Board of Elections failed to perform its mandatory duty to certify and submit the proposed charter amendment as required by law. (Verified Compl. ¶ 4). The Board of Elections exceeded the power granted to it and to its members under O.R.C. § 3501.11. The Mahoning County Board of Elections and its members also disregarded the County Prosecutor's legal opinion. County Prosecutor, Paul Gains, had written a legal opinion stating that the Board had a legal duty to place the Community Bill of Rights proposal on the November 3, 2015 ballot if the petition had the valid number of signatures. *See Transcript of Board of Elections Meeting* at page 18, a true and correct copy of which is filed as an associated exhibit, and video of August 26, 2015 Board of Elections meeting available at <http://youngstownhappenings.com/videos/embed/board-elections-2015-08-26/>.¹

Respondent Board Member David Betras encouraged the Board to disregard the law and the County Prosecutor's advice and, instead, offered his own legal opinion. *See Transcript of Board of Elections Meeting* at pages 16-22. Respondent Betras based his opinion upon the Ohio

¹ Relators request that the Court take judicial notice of the meeting transcript and video as public records.

Supreme Court's 2015 opinion in *State ex rel. Morrison v. Beck Energy Corp.*, 2015-Ohio-485, and the opinion of Respondent Ohio Secretary of State, Jon Husted, issued in regard to County Charter Proposals. (Verified Compl. at Exhibit B.)²

On September 4, 2015, Relators filed a Verified Complaint in Mandamus requesting a Writ of Mandamus issue to require Respondents to perform their mandatory legal duty.³ There are fewer than ninety (90) days remaining until the November 3, 2015 election and Relators have no plain or adequate remedy at law to correct the unlawful, unreasonable and/or arbitrary acts and abuses of discretion committed by Respondents by improperly refusing to perform their nondiscretionary duties to certify the proposed Community Bill of Rights for placement on the November 3, 2015 ballot.

WRIT OF MANDAMUS

Mandamus relief is appropriate where (1) the respondents have a clear legal duty, (2) the petitioners have a clear legal right to the relief sought, and (3) there is no plain and adequate remedy in the ordinary course of the law. *State ex rel. Asberry v. Payne*, 82 Ohio St.3d 44, 45, 693 N.E.2d 794 (1998).

“In extraordinary actions challenging the decisions of the Secretary of State and boards of elections, the standard is whether they engaged in fraud, corruption, or abuse of discretion, or acted in clear disregard of applicable legal provisions.” *State ex rel. Husted v. Brunner*, 123 Ohio St. 3d 288, 2009-Ohio-5327, 915 N.E.2d 1215, ¶ 9 (mandamus), quoting *Whitman v. Hamilton*

2 A challenge to the Ohio Secretary of State's August 12, 2015 opinion letter refusing to place proposed charters for Athens, Fulton, and Medina counties is pending separately before this Court. See *State of Ohio ex rel. Renee Walker, et al. v. Jon Husted*, Case No. 2015-1371.

3 On August 28, 2015, the City of Youngstown filed a Verified Complaint in this Court also requesting a Writ of Mandamus requiring Respondents to perform their mandatory legal duty to certify the Community Bill of Rights proposal to be placed on the ballot. See *State of Ohio, et rel. City of Youngstown v. Mahoning County Board of Elections et al.*, Case No. 2015-1422.

Cnty. Bd. of Elections, 97 Ohio St. 3d 216, 2002-Ohio-5923, 778 N.E.2d 32, ¶ 11 (prohibition).

Although a writ of mandamus will not control a public official's exercise of discretion, it will control an abuse of that discretion. *State ex rel. Sinay v. Soddors*, 80 Ohio St. 3d 224, 232 (1997) (“a writ of mandamus will issue to correct an abuse of such discretion by a nonjudicial public body or official”).

Relators here are alleging that the Mahoning County Board of Elections committed an abuse of discretion and/or that its refusal to certify the Bill of Rights to the ballot was in clear disregard of applicable legal provisions.

ARGUMENT

I. Proposition of Law No. I: Relators have a clear legal right to the relief requested, respondents are under a clear legal duty to provide the requested relief, and relator has no plain and adequate remedy in the ordinary course of law

A. Relators, as electors of Mahoning County and members of the committee of petitioners, have a clear legal right to the relief requested

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

Relators, as electors and signature gatherers, are directly affected by the Mahoning Board of Elections’ decision not to certify the Community Bill of Rights for placement on the ballot. The Community Bill of Rights enumerates and secures numerous fundamental, and other, rights of electors within the City of Youngstown. By violating its nondiscretionary duty to certify the Community Bill of Rights, the Mahoning Board of Elections has deprived Relators of their

fundamental right to participate in the democratic process by having the opportunity to vote on it.

Article I, § 2 of the Ohio Constitution⁴ reserves the people of Ohio's right to alter their form of government. A proposed charter amendment is one way of altering the form of government. Relators have a clear interest in, and constitutional right to, placement of the Community Bill of Rights on the ballot so that they, and other electors in the City of Youngstown, may decide whether to alter their form of government as provided in the proposed charter amendment. *See State ex rel. Williams v. Brown*, 52 Ohio St. 2d 13, 20, 368 N.E.2d 838 (1977); *Sticklen v. City of Middletown*, 779 F.2d 52 (1985) ("Under the Ohio Constitution and the Ohio Revised code, citizens have a right to place proposed municipal legislation on the ballot for a referendum vote.").

B. The Mahoning County Board of Elections has a clear legal duty to place the proposed charter amendment on the ballot for submission to the voters at the November 3, 2015 election

The Mahoning County Board of Elections has a nondiscretionary duty, as prescribed by the Ohio Constitution and by statute, to certify the Community Bill of Rights for placement on the ballot. Under Section 120 of the Youngstown City Charter, amendments to the charter “*shall* be submitted to the Electors of the City of Youngstown in the manner provided by the Constitution and the laws of the State of Ohio.” *Id.* (emphasis added). In this case, both the Ohio Constitution and the laws of the state of Ohio require submission of the proposed charter amendment to the electors.

Article XVIII, § 9 of the Ohio Constitution governs the submission of municipal charter amendments. That provision provides, in part, that “[a]mendments to any charter . . . may be

4 Ohio Constitution, Art. I, § 2: “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; and no special privileges or immunities shall ever be granted, that may not be altered, revoked, or repealed by the General Assembly.”

submitted to the electors of a municipality by a two-thirds vote of the legislative authority thereof, and, upon petitions signed by ten per centum of the electors of the municipality setting forth any such proposed amendment, *shall* be submitted by such legislative authority.” Ohio Const. Art. XVIII, § 9 (emphasis added). Where, as here, the required number of signatures have been presented on the petition and the city council has verified that the required number of signatures have been obtained, it must certify the proposed charter amendment for placement on the ballot.

Consistent with its obligations under the Youngstown City Charter and the Ohio Constitution, the City of Youngstown passed an ordinance directing that the proposed charter amendment be submitted to the electors at the next regular municipal election, to take place on November 3, 2015. The Mayor and Council Clerk certified the proposed charter amendment to the Mahoning County Board of Elections for submission to the voters.

Upon receipt, the Mahoning County Board of Elections was statutorily and constitutionally obligated to certify the proposed charter amendment for placement on the ballot. Instead, despite verifying that the required number of signatures had been obtained, the Mahoning County Board of Elections refused to certify the proposed charter amendment for placement on the ballot in direct violation of its constitutional and statutory obligations.

Under the O.R.C. § 3501.11, the Board of Elections has a limited number of ministerial functions. Section 3501.11(K) of the Ohio Revised Code requires the Board of Elections to “[r]eview, examine, and certify the sufficiency and validity of petitions . . .”. It is undisputed that the petition for the proposed Community Bill of Rights was sufficient and valid: it was in the proper form and contained the required number of signatures. But Respondent Board of Elections refused to certify the proposal to the ballot.

As discussed further below, in reviewing a petition’s validity, the Board of Elections may

not consider the substance of the proposed charter presented in the petition. Neither the Ohio Constitution nor longstanding Ohio Supreme Court case law allows such an inquiry. To the contrary, the Mahoning Board of Elections’ review is ministerial. *See State ex rel. McGovern v. Bd. Of Elections*, 24 Ohio Misc. 135, 136, 263 N.E.2d 586, 587 (1970) (“nowhere does the court find in R.C. 3501.11, defining the powers and duties of the board of elections, any power or right to make judicial determinations of the legality or nonlegality of issues to be presented to the people. If in fact the proposed charter amendment was duly passed by council and procedural requirements were met before its submission to the board of elections, the board was duty bound to put it on the ballot for the vote of the people.”).

There is no valid basis for the Mahoning Board of Elections to deny placement of the proposed charter amendment on the ballot. To the contrary, it has a clear legal duty to do so.

C. Relators have no plain and adequate remedy in the ordinary course of law

In elections cases, mandamus is appropriate where there is a clear disregard of the law or a serious abuse of discretion in excess of delegated authority. Because of the proximity of the November 3, 2015 election, and specifically the looming mid-September deadline for finalizing absentee and military ballots, relators have established that they lack a remedy in the ordinary course of the law. *State ex rel. Ohio Liberty Council v. Brunner*, 125 Ohio St. 3d 315, 2010-Ohio-1845, ¶ 27.

II. Proposition of Law No. II: The substance of the proposed charter is off-limits to pre-election protest

Ohio courts have repeatedly held that boards of elections’ and Secretary of State’s authority to determine “validity” is limited to the procedural validity of the petition form. The Board of Elections cannot consider the proposed charter's substance. The Court recently reaffirmed this principle in *State ex rel. Ebersole v. City of Powell*, 2014-Ohio-4283, 21 N.E.3d

274 in which it held: “The proper time for an aggrieved party to challenge the constitutionality of (a proposed) charter amendment is after the voters approve the measure, assuming they do so.”*Id.* ¶ 2.

This proposition is not new. At least twenty-two of this Court's decisions uniformly hold that reviewing the content of the proposed charter amendment must wait until *after* the election and that the power of clerks of council, boards of election, and the Secretary of State himself are limited to considering the “propriety of its submission to the voters,” not the legality or effectiveness of the initiated proposal. *State ex rel. N. Main St. Coalition v. Webb*, 106 Ohio St.3d 437, 2005-Ohio-5009, ¶ 38 (2005).

See State ex rel. Lange v. King, 2015-Ohio-3440, 2015-1281, ¶ 11 (August 25, 2015) (objections that one-subject rule would be violated and would unconstitutionally impair village’s contract rights improper concerns to deter ballot); *State ex rel. Ebersole v. City of Powell*, 141 Ohio St.3d 17, 2014-Ohio-4283, ¶¶ 6, 7 (unconstitutionality claim was improper objection to vote on initiative); *State ex rel. Brecksville v. Husted*, 133 Ohio St.3d 301, 2012-Ohio-4530, ¶ 14 (holding “the city's claim that public policy requires that the initiative be removed from the ballot because the electorate cannot force the mayor to speak in support of an issue that is contrary to the United States Constitution attacks the substance of the proposed ordinances, and this challenge is premature before adoption of the proposed ordinances by the people” (citation omitted)); *State ex rel. Kilby v. Summit Cty. Bd of Elections*, 133 Ohio St.3d 184, 2012-Ohio-4310, ¶ 12 (objections that initiative overemphasized public cost savings and under-emphasized new term limits in ballot language rebuffed as intrusion into substance); *State ex rel. Ohio Liberty Council v. Brunner*, 125 Ohio St.3d 315, 2010-Ohio-1845, ¶ 24 (objection based on separate-vote requirement was deemed a constitutional challenge and barred).

Also, *see State ex rel. Citizen Action for a Livable Montgomery v. Hamilton Cty. Bd. Of*

Elections, 115 Ohio St.3d 437, 2007-Ohio-5379, ¶ 43 (ballot protest which attacked constitutionality and legality of an initiative requiring city to “comply with all appropriate procedures and law of Ohio” in acquiring parkland was repudiated); *State ex rel. Lewis v. Rolston*, 115 Ohio St.3d 293, 2007-Ohio-5139, ¶ 28 (“suspected illegality [of proposed ordinance] does not bar the fiscal officer from certifying the initiative”); *Mason City School Dist. v. Warren Cty. Bd of Elections*, 107 Ohio St.3d 373, 2005-Ohio-5363, ¶ 21 (protest challenging constitutionality of O.R.C. § 5705.26 cannot be considered, pre-election); *State ex rel. N. Main St. Coalition v. Webb*, 106 Ohio St.3d 437, 2005-Ohio-5009, ¶ 38 (2005) (claim that the ordinance might, if enacted, violate O.R.C. § 5501.31 “is an attack on the legality or effectiveness of the ordinance instead of a challenge to the propriety of its submission to the voters,” and was overruled).

Moreover, see *State ex rel. Commt. For the Charter Amendment v. Westlake*, 97 Ohio St.3d 100, 2002-Ohio-5302, ¶ 43 n. 3 (2002) (city council’s “frivolous claim that the petition contained insufficient signatures, its irrelevant claims of defending the charter, and the city law director's concerns that the amendment, if approved, would be unconstitutional” all ruled improper); *State ex rel. DeBrosse v. Cool*, 87 Ohio St.3d 1, 6 (1999) (“Any claims alleging the unconstitutionality or illegality of the substance of the proposed ordinance, or action to be taken pursuant to the ordinance when enacted, are premature before its approval by the electorate.”); *State ex rel. Hazel v. Cuyahoga Cty. Bd of Elections*, 80 Ohio St.3d 165, 169 (1997) (protest claiming violation of one-subject limitation “addresses the substance or propriety of the ordinance rather than the validity and sufficiency of the initiative petition under the pertinent constitutional and statutory requirements”); *State ex rel. Thurn v. Cuyahoga Cty. Bd of Elections*, 72 Ohio St.3d 289, 293 (1995) (assertion that one invalid zoning petition would bar others from the ballot would be a review of the substance of the proposed ordinances prior to their approval

by the electorate and “is premature”).

Also, see *State ex rel. Williams v. Iannucci*, 39 Ohio St.3d 292, 294 (1988) (“There is no express or implied authority residing in a city auditor to pronounce judgment on the legality of a proposed ordinance. Even a court will not pronounce such a judgment.”); *Jurcisin v. Cuyahoga Cty. Bd. of Elections*, 35 Ohio St.3d 137, 146 (1988) (reversal of trial court’s improper declaration that results of the election and the proposed charter amendment were null and void, and its injunction against implementation of amendment prior to certification of election results); *State ex rel. Walter v. Edgar*, 13 Ohio St.3d 1, 2 (1984) (petitions proposing (1) repeal of emergency measure transferring urban development bonds to a successor corporation and (2) requiring the city to immediately collect a large delinquent account owed to the city’s electric company may not be precluded from ballot on grounds of illegality); *State ex rel. Cramer v. Brown*, 7 Ohio St.3d 5, 6, 7 OBR 317, 318 (1983) (“It is well-settled that this court will not consider, in an action to strike an issue from the ballot, a claim that the proposed amendment would be unconstitutional if approved, such claim being premature.”); *State ex rel. Williams v. Brown*, 52 Ohio St.2d 13, 17-18 (1977):

We cannot intervene in the process of legislation and enjoin the proceedings of the legislative department of the state. That department is free to act upon its own judgment of its constitutional powers. We have not even advisory jurisdiction to render opinions upon mooted questions about constitutional limitations of the legislative function, and we will not presume to control the exercise of that function of government by the General Assembly, much less by the people, in whom all the power abides.

Also, see *State ex rel. Kittel v. Bigelow*, 138 Ohio St. 497, syll. (1941) (“The courts will not interfere with the submission to the electors of a proposed amendment to a city charter, upon a claim that the amendment, if adopted, will contravene the Constitution of Ohio. Such a claim is prematurely asserted.”); *State ex rel. Marcolin v. Smith*, 105 Ohio St. 570, 138 N.E. 881, syll. (1922):

[N]o officer or tribunal may interfere either with the enactment of laws or the amendment of the constitution while the same is in process, upon the ground that such legislation, if enacted, or constitutional amendment, if adopted, will be in conflict with the constitution, state or federal. These questions are and must necessarily be reserved for consideration and determination after the legislative or constitution making body shall have fully performed its function and such new law or constitutional amendment shall have become effective.

Cincinnati v. Hillenbrand, 103 Ohio St. 286, syll. ¶ 2 (1921):

This court has no authority to pronounce a judgment or decree upon the question whether a proposed law or ordinance will be valid and constitutional if enacted by a legislative body or adopted by the electors. And where the mandatory provisions of the constitution or statute prescribing the necessary preliminary steps to authorize the submission to the electors of an initiative statute or ordinance have been complied with the submission will not be enjoined.

Weinland v. Fulton, 99 Ohio St. 10, syll. (1918):

In an action to enjoin the Secretary of State from submitting for the approval or rejection of the electors a constitutional amendment proposed by petition in pursuance of the provisions of Section 1 and Section 1a of Article II of the Constitution Of Ohio, a court cannot consider or determine whether such proposed amendment is in conflict with the Constitution of the United States.

The Mahoning Board of Elections improperly considered and relied upon the Secretary of State's August 13, 2015 Opinion, which, in turn, erroneously relied upon *State ex rel. Morrison v. Beck Energy Corp.*, 2015-Ohio-485 (Sup. Ct. No. 2013-0465, Feb. 17, 2015) as grounds for refusing to certify proposed county charters. In his August 13, 2015 Opinion, the Ohio Secretary of State erroneously refused to certify proposed county charters based upon his conclusion that certain provisions of the proposed charters would be preempted by state law. (See Verified Compl. at Exhibit B). The Secretary of State took it upon himself to interpret the *Morrison* decision and erroneously apply it to the proposed charters. Consideration of a proposed charter or charter amendment's constitutionality, pre-election, is impermissible. Any challenge to the legality of a proposed charter or charter amendment may only be brought after a lawful vote on the proposal. A challenge to a proposed charter amendment's legality is not grounds for

excluding it from the ballot.⁵

III. Proposition of Law No. III: By passing judgment upon the constitutionality of the proposed charter amendment, respondents have violated the doctrine of separation of powers

Respondents have violated the separation of powers doctrine by passing upon the constitutionality of the proposed charter amendment. Any question as to constitutionality of the proposed charter amendment is to be decided by the courts, post-election, not by the Board of Elections, pre-election.

The doctrine of separation of powers is based on the notion that the powers belonging to one of the departments ought not be interfered with by one of the other departments. *State v. Bodyke*, 933 N.E.2d 753, 126 Ohio St. 3d 266, 2010-Ohio-2424 (2010). Put another way, the Board of Elections cannot impede the judicial branch's role. *Id.* By overreaching in its role, the Board of Elections has violated the separation of powers doctrine.

IV. Proposition of Law No. IV: The proposed initiative legislates on a question that a municipality is authorized to control by legislative action.

Relators anticipate that the Respondents will assert that mandamus cannot require submission of a ballot issue that does not contain a question which a municipality is authorized by law to control by legislative action and that they will cite the pre-emptive effect of *State ex rel. Morrison, Law Dir. v. Beck Energy Corporation*, 2015-Ohio-485, 2013-0465. But *Beck*

5 Even if the Secretary had the authority to assess the constitutionality of the substance of a proposed Charter – which he does not -- his reliance on *Beck Energy Corp.* ignored the significant differences between the Athens, Medina, and Fulton county proposed charters and the local law at issue in *Morrison*. The proponents of the Athens, Medina, and Fulton charters, and of the proposed charter amendment at issue here, can make a good faith argument that the charter provisions are not unconstitutional under existing law, a good faith argument for an extension of the existing law (namely, that a local Charter is a constitutional document of independent force capable of providing rights and liberties protections that are immune from state law preemption, just as the Ohio Constitution can provide greater protections than the United States Constitution, *see, e.g., Arnold v. City of Cleveland*, 67 Ohio St.3d 35, 616 N.E.2d 163 (1993)), or both.

Energy cannot pre-empt the initiation of its purported antithesis.

Article II, § 1f of the Ohio Constitution provides for municipal initiative and states:

The initiative and referendum powers are hereby reserved to the people of each municipality on all questions which such municipalities may now or hereafter be authorized by law to control by legislative action; such powers shall be exercised in the manner now or hereafter provided by law.

The operative phrase is whether the question is on “which such municipalities may now or hereafter be authorized by law to control by legislative action.” As this Court noted in *State ex rel. Morrison, Law Dir. v. Beck Energy Corporation*, 2015-Ohio-485, 2013-0465, ¶ 3, “In 2004, the General Assembly amended that chapter to provide ‘uniform statewide regulation oil and gas production within Ohio and to repeal ‘all provisions of law that granted or alluded to the authority of local governments to adopt concurrent requirements with the state.’” Legislative Service Commission Bill Analysis, Sub. H.B. No. 278 (2004); R.C. 1509.02, Sub. H.B. No. 278, 150 Ohio Laws, Part III, 4157. That legislation, known colloquially as the “Niehaus Bill,” negated decades of local zoning and other local governmental controls over oil and gas drilling.

So local governments once had regulatory authority to direct or ban oil and gas drilling, and they may hereafter be authorized by law to legislate it again. By its wording, Article II, § 1f simply encompasses the notion that local governments generally possess the police power to legislate on a topic that might presently, but not permanently, be pre-empted. The charter proposal in Youngstown, if passed by the electorate and if challenged unsuccessfully in the courts after adoption by the electorate, would comprise just such authority. Accordingly, Respondents’ argument that the Bill of Rights cannot go to a vote because it would probably be stricken on the authority of *Beck Energy* if passed, underscores the unconstitutionality of the Respondents’ pre-emptive, pre-election first strike.

V. **Proposition of Law No. V: The people's reserved initiative power is protected from impermissible burdens by the petition clause in the First Amendment to the United States Constitution, and therefore a County Board of Elections cannot claim the power to decide, based on the substance of a proposed initiative, whether the initiative may appear on the ballot.**

This Court recognizes that “where the people reserve the initiative or referendum power, the exercise of that power is protected by the First Amendment applied to the States through the Fourteenth Amendment and that a state may not impermissibly burden the exercise of the right to petition the government by initiative or referendum.” *State ex rel. Oster v. Lorain Cnty. Bd. of Elections*, 93 Ohio St. 3d 480, 487, 2001-Ohio-160575 (citing and quoting, with internal quotations omitted, *Stone v. Prescott*, 173 F.3d 1172, 1175 (9th Cir. 1999)).

Here, the Board of Election's action is a government action that burdens the exercise of the right to petition the government by initiative. The Board of Elections has completely stripped the people of their initiative right by claiming the power to decide the substantive merits of a proposed initiative. If the Board of Election's interpretation of its power is upheld, then there will be a great departure from historical constitutional practice: people will be allowed to petition the government only upon matters that the Board approves. The First Amendment prohibits the government from burdening the people's initiative right in this way.

CONCLUSION

For the foregoing reasons, Relators submit that Respondent Mahoning County Board of Elections, by its members, and Secretary of State Jon Husted colluded to cause the Board of Elections to abuse its discretion and/or to disregard established legal precepts and standards.

Relators respectfully request that the Court issue a writ of mandamus which requires Respondents, the Mahoning Board of Elections and its individual board members, together

with Ohio Secretary of State Jon Husted, to place the Community Bill of Rights on the ballot for the November 3, 2015 general election for a vote by Youngstown's electors.

Relators further request their costs and reasonable attorneys' fees, and such other and further relief at law or in equity as the Court may deem necessary and proper.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on September 11, 2015, I sent a copy of the foregoing document by email to:

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