

In the Supreme Court of Ohio

STATE <i>ex rel.</i> CITY OF YOUNGSTOWN	:	Case No. 2015-1422
	:	
Relator,	:	
	:	
v.	:	Expedited Election Case Pursuant to
	:	S.Ct.Prac.R. 12.08
MAHONING COUNTY BOARD OF	:	
ELECTIONS, <i>et al.</i>	:	
	:	
Respondents.	:	
	:	

BRIEF OF AMICI CURIAE THE OHIO OIL AND GAS ASSOCIATION, THE OHIO GAS ASSOCIATION, AND LOCAL UNIONS IN SUPPORT OF THE MAHONING COUNTY BOARD OF ELECTION'S DECISION TO DENY CERTIFICATION OF THE PROPOSED YOUNGSTOWN CHARTER AMENDMENT

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INTEREST OF AMICI CURIAE

Amicus Curiae the **Ohio Oil and Gas Association** (the “OOGA”) is a trade association whose 3,100 members involve themselves in all aspects of the exploration, production, and development of oil and natural resources within the State of Ohio. The OOGA exists to protect, promote, foster, and advance the common interest of its members and those engaged in all aspects of the oil and natural gas industry.

Amicus Curiae the **Ohio Gas Association** (“OGA”) is a natural gas trade organization that represents over 30 local distribution companies and cooperatives, the vast majority of intra- and inter-state gas transmission firms, and over 10 natural gas commodity marketers whose customers include residential, commercial, and industrial gas users. The OGA functions as an information exchange for technical and operational support and to promote customer satisfaction, public safety, and public awareness. The member companies of the OGA serve over 3.6 million customers in Ohio.

Amici Curiae **Local Unions** (“Unions”) refers to seventeen local labor unions representing tens of thousands of workers in the Mahoning Valley, including the United Association Local Union #396, Heat and Frost Insulators #84, Laborers #125, Laborers #809, Laborers #935, Boilmakers #744, Bricklayers #8, Bricklayers #10, Carpenters #171, Cement Masons #179, Electricians #64, Electricians #573, Glaziers #847, Mill Wrights / Piledrivers #1090, Operating Engineers #66, Sheet Metal Workers #33, Teamsters #377,¹ and the Mahoning-Trumbull AFL-CIO Labor Council. The Unions are dedicated to protecting the rights of workers and creating jobs for working families throughout Ohio.

The OOGA, OGA, the Unions, and their respective members have a profound, vested

¹ These unions collectively represent the local labor unions of the building and construction trades of the Mahoning Valley.

interest in this mandamus action as the City of Youngstown (“the City”) seeks to place on the November ballot a sweeping, unprecedented police-power regulation—under the guise of a “city charter amendment”—that specifically targets *Amici Curiaes*’ members by abolishing and criminalizing future **and existing** lawful oil and gas drilling and operations in the City. Unlike prior ballot initiatives by the City that have targeted “fracking” technologies and future operations only,² the newest proposal goes much further. It seeks to completely ban legal, state-approved and regulated oil and gas operations in the Youngstown region **in their entirety** by: (1) prohibiting the extraction of oil and gas, and “all related activities,” within Youngstown; (2) imposing strict liability to operators adjacent to Youngstown; (3) purporting to extinguish the legal rights of its corporate members in their entirety, including any right to contest the authority of the City or the constitutionality of such provisions in court once enacted; and (4) imposing criminal penalties for non-compliance. (*See* Compl., Ex. A. (hereinafter, the “Petition”), Sections 122-3(A)-(E).)

Notwithstanding the ultimate futility of the City’s attempts to regulate oil and gas operations at the municipal level in contravention of state and federal preemptive laws, the enactment of the “amendment” would have a near-immediate, far-reaching effect on *Amici Curiae* and tens of thousands of employees, their families, landowners, and residents throughout the Mahoning Valley—it would require the cessation of oil and gas drilling operations in the Youngstown region, compromising jobs, infrastructure, and even preventing the extraction of natural gas for pure landowner use during the crucial winter months. Even if immediate legal

² *See, e.g.* Youngstown “Community Bill of Rights” Fracking Ban Charter Amendment (May 2014) (seeking to ban “the extraction of shale gas or oil using the unconventional high volume, high pressure, horizontal drilling technology commonly known as ‘hydro-fracturing,’ within The City of Youngstown”). The full text of the May 2014 proposal is available at [http://ballotpedia.org/Youngstown_%22Community_Bill_of_Rights%22_Fracking_Ban_Charter_Amendment_\(May_2014\)](http://ballotpedia.org/Youngstown_%22Community_Bill_of_Rights%22_Fracking_Ban_Charter_Amendment_(May_2014)), last accessed September 11, 2015.

recourse is taken, OOGA, OGA, and the Unions' members will be irreparably harmed as they will be forced to engage in needless, repetitive, and expensive litigation to assert rights that have time and again been confirmed by Ohio Courts; most recently by this Court earlier this year. *See, e.g., State ex rel. Morrison v. Beck Energy Corp.*, 2015-Ohio-485, ¶ 34 (local efforts to prohibit or limit oil and gas operations in conflict with R.C. 1509 *et seq.* are preempted and unenforceable).

To add insult to injury, all of this disruption would have been for naught—the proposed amendment is patently invalid and unconstitutional. This Court has conclusively ruled that oil and gas drilling and operations are regulated almost exclusively by the Ohio Department of Natural Resources (the “ODNR”), pursuant to the comprehensive, statewide regulatory scheme found in Ohio Revised Code Chapter 1509 *et seq.* *Morrison*, at ¶ 34. Further, the City’s thinly-veiled attempt to insulate its efforts under the guise of a “city charter” amendment is as ineffective as it is disingenuous. A city charter is simply not the proper vehicle to enact police ordinances, nor can it supersede the authority of the State.

For these and the following reasons, the OOGA, OGA, and the Unions respectfully ask this Court to reject the City’s request for an extraordinary writ of mandamus. This Court should not disturb the Mahoning County Board of Election’s decision to deny the certification of the proposed city charter amendment to the ballot because it exceeds the City’s authority as a home-rule city, is not the proper subject of a ballot initiative in light of this Court’s holding in *Morrison*, and is nothing short of a police-power regulation transparently disguised as a “home-rule” city charter amendment.

STATEMENT OF FACTS

Amici Curiae adopt and incorporate by reference, as if fully rewritten herein, the Statement of Facts set forth by Respondent Mahoning County Board of Elections (“the Board”) in its merit brief.

LAW AND ARGUMENT

I. THE CITY OF YOUNGSTOWN’S WRIT MUST BE DENIED BECAUSE IT CANNOT ESTABLISH A CLEAR LEGAL RIGHT TO ENACTMENT OF THE PETITION AND THE BOARD WAS OBLIGATED BY DUTY TO PREVENT THE PETITION FROM REACHING THE ELECTORATE.

The City is not entitled to the extraordinary remedy of a writ of mandamus. *State ex rel. Brown v. Ashtabula Cty. Bd. of Elections*, 142 Ohio St.3d 370, 372, 2014-Ohio-4022, 31 N.E.3d 596 (holding that a writ of mandamus must be issued with caution and only when the right is clear). “The requirements for a writ of mandamus are well established: (1) the relator must demonstrate a clear legal right to relief, (2) the respondent must have a clear legal duty to perform the requested relief, and (3) there must be no adequate remedy in the ordinary course of law.” *Id.* at 371. The City cannot establish the essential elements for the writ to lie.

The City has no clear legal right to enact police ordinances, cloaked in powers of “local self-government,” that subject (1) the oil and gas industry, (2) related and supportive industries, and (3) the governmental agencies and agents regulating and permitting those industries to criminal and civil liability, including strict liability, in clear disregard of deeply-rooted constitutional principles and this Court’s recent ruling in *Morrison*. (See Petition, Sections 122-1, 122-3.) Recognizing these deficiencies, the Board had no legal duty to place this Petition on the November ballot; rather, the Board had a clear legal duty to invalidate the Petition and prevent it from reaching the electorate. See *State ex rel. Shumate v. Portage Cty. Bd. of Elections*, 64 Ohio St.3d 12, 16, 591 N.E.2d 1194 (1992) (citing *State ex rel. Flynn v. Bd. of*

Elections, 164 Ohio St. 193, 129 N.E.2d 623 (1955)) (holding that the board of elections had an affirmative duty to prevent unlawful petitions from reaching the electorate).

The City cannot establish that it has a clear legal right to the relief it seeks, nor can it demonstrate that the Board had a clear legal duty to “certify a proposed amendment to the Charter of the City of Youngstown to appear on the November 3, 2015 ballot.” (Compl., ¶ 1.) Therefore, this Court should deny the requested writ of mandamus.

II. THE CITY HAS NO LEGALLY-RECOGNIZED RIGHT TO PLACE A PETITION THAT EXCEEDS ITS AUTHORITY AS A HOME-RULE CITY ON THE NOVEMBER BALLOT.

This Court should accept the Petition for what it is: This Petition is a thinly-veiled attempt to cloak impermissible police regulations in the protections of home-rule, self-governance. (Petition, Section 122-3.) This Petition is a clear attempt by the City to outlaw and criminally penalize the extraction of all oil and gas within the City by not only private corporations, but also governmental entities, including the ODNR. (Petition, Sections 122-3(A), (E).) This Petition is a clear attempt to strip all private corporations of any “rights, privileges, powers, or protections” afforded them under the laws and constitutions of the State of Ohio and the United States of America, including, but not limited to, the right to challenge the City’s authority to enact this very Petition and the right to assert state or federal preemption as a defense. (Petition, Section 122-3(C).) This Petition is a clear attempt to invalidate all permits, licenses, privileges, and charters issued by any state or federal government that would “violate” the Petition. (Petition, Section 122-3(D).)

And, this Petition is clearly ***void***, whether this Court chooses to uphold the Board’s determination now, or whether this or another court—after years of litigation and hundreds of thousands of dollars later—reaches that same conclusion. *State ex rel. Taylor v. French*, 96 Ohio St. 172, 183-84, 117 N.E. 173 (1917) (“Any provision in a charter which purports to confer

powers upon a municipal government in excess of those permitted to be granted by the constitution, or which disregards in any way the limitations imposed by that instrument, would of course be void.”); *see also State ex rel. Oberlin Citizens for Responsible Dev. v. Talarico*, 106 Ohio St.3d 481, 2005-Ohio-5061, 836 N.E.2d 529, ¶¶ 17-18; *State ex rel. Moore v. Malone*, 96 Ohio St.3d 417, 2002-Ohio-4821, 775 N.E.2d 812, ¶ 38 (both holding that relators are not entitled to a writ of mandamus to compel a vain act).

a. The Petition Is an Impermissible Attempt to Circumvent the Clear Legal Principles Articulated by this Court in *State ex rel. Morrison v. Beck Energy*.

The Petition has taken every well-established principle of home-rule authority, reaffirmed by this Court in *Morrison*, and impermissibly attempted to circumvent it. The City has no legal right to present such a petition to the electorate.

i. A City’s Home-Rule Authority Is Not without Limits.

The City does not have unlimited home-rule authority. *See State ex rel. Ebersole v. Del. Cty. Bd. of Elections*, 140 Ohio St.3d 487, 2014-Ohio-4077, 20 N.E.3d 678, ¶ 40 (citing *Buckeye Community Hope Found. v. Cuyahoga Falls*, 82 Ohio St.3d 539, 541-542, 697 N.E.2d 181 (1998)) (a municipality’s home-rule powers are limited by other provisions of the Ohio Constitution); *accord Bazell v. Cincinnati*, 13 Ohio St. 2d 63, 233 N.E.2d 864, paragraph 1 of syllabus (1968).

One limit on the City’s home-rule authority is Article XVIII, Section 3 of the Ohio Constitution, which provides:

Municipalities shall have authority to exercise all powers of local self-government and to adopt and enforce within their limits such local police, sanitary and other similar regulations, as are not in conflict with general laws.

See Morrison, at ¶¶ 14-15. Given the language of this constitutional provision, this Court in *Morrison* articulated a three-part test to determine when a local law is preempted by state law.

[A] municipal ordinance must yield to a state statute if (1) the ordinance is an exercise of the police power, rather than of local self-government, (2) the statute is a general law, and (3) the ordinance is in conflict with the statute.

Morrison, at ¶ 15. In an effort to avoid any application of the test articulated in *Morrison*, the Petition simply attempts to invalidate these basic principles within the City's limits.

ii. The City Has No Legal Right To Enact a Petition that Impermissibly Attempts to Cloak Police Ordinances in Local, Self-Governance.

The City's Charter is not the proper vehicle for enacting police ordinances. *See Cleveland Tel. Co. v. Cleveland*, 98 Ohio St. 358, 375, 121 N.E. 701 (1918) (explaining that a city charter is merely a vehicle to outline the city's authority, whereas the city's ordinances are the exercise of that authority).

Simply littering the police ordinance with buzzwords, such as "local, self-governance," does not somehow transform the Petition into an exercise of local, self-government. In *Morrison*, this Court articulated guidance on whether a proposed ballot initiative constitutes an exercise of police power, stating:

Here, the city's ordinances do not regulate the form and structure of local government. Instead, they prohibit – *even criminalize* – the act of drilling for oil and gas without a municipal permit. Therefore, we agree that the ordinances represent an exercise of police power rather than local self-government.

Morrison, at ¶ 18 (emphasis added). Likewise, this Court has held that an exercise of local, self-government relates *solely* to the internal government or administrative affairs of the municipality, whereas an exercise of police power relates to regulation of activities with the purpose of protecting the public health, safety, morals, or general welfare of the municipality. *Ohioans for Concealed Carry, Inc. v. City of Clyde*, 120 Ohio St.3d 96, 2008-Ohio-4605, 896 N.E.2d 967, ¶¶ 24, 30-31.

The Petition is a police ordinance, plain and simple, that has no place in the City's Charter. *See Cleveland Tel.*, at 375. Although the Petition uses terms, such as "self-

government,” “local community self-government,” “fundamental rights,” and “authority to change their municipal system of government,” and seeks to place this law in the City’s Charter rather than its code of ordinances, that is not sufficient to establish an exercise of local, self-government. Tellingly, nowhere does the Petition address the internal government or administrative affairs of the City. (*See generally*, Petition 122-1 – 122-4.) Rather, it purports to grant “rights” to the City’s citizens, strips away the rights of corporations and “other” governments, and invalidates permits and licenses issued by superior legislative authorities. None of these actions relate to the internal or administrative affairs of the City. *See Morrison*, at ¶ 18; *Ohioans*, at ¶ 24. Further, in order to “secure and protect the rights enumerated” to the City’s citizens, the Petition prohibits and criminalizes the act of drilling, the acts of supporting industries, and the granting of permits by the ODNR. It is a police ordinance, regardless of how many times the Petition mentions “local, self-governance.” *See Morrison*, at ¶ 18; *Ohioans*, at ¶¶ 30-31.

iii. The Petition Cannot Eliminate a Conflict with R.C. Chapter 1509 Simply by Eliminating the ODNR’s Authority Within the City and Invalidating All Permits, Licenses, Privileges, and Charters Issued by the State.

The City has no legal right to eradicate and criminalize R.C. Chapter 1509’s comprehensive regulatory scheme within the City’s limits. The Petition invalidates Chapter 1509’s regulatory regime and criminalizes any use of the regulatory scheme by private corporations or the ODNR. (Petition, Sections 122-3(A), (D), and (E).) For example, the Petition subjects any government or corporation to criminal and civil liability if they “engage in the extraction of oil and gas within the City of Youngstown.” (Petition, Sections 122-3(A), (E), (F).) To “engage in the extraction of oil and gas” includes, but is not limited to, “the application for, or issuance of, permits which allow [one to engage in the extraction of oil and gas within the City].” (*Id.*) Only the ODNR is authorized to issue permits to drill oil and gas wells within

Ohio. *See* R.C. 1509.02. Therefore, under the Petition, not only is it criminal to receive a permit to drill an oil or gas well within the City, but also, the ODNR would be criminally responsible if it issued a permit that this Court has held it has the exclusive right to issue under the laws and Constitution of Ohio. *See Morrison*, at ¶¶ 30, 34.

As a whole, the Petition subjects private and governmental entities to civil and criminal liability if they:

- engage in the extraction of gas or oil within the City, defined by a non-exhaustive list of ways one might “engage in the extraction of oil and gas”;
- seek a permit to engage in the extraction of gas or oil in the City;
- issue a permit to engage in the same within the City; or
- do any of the above outside the City and such action results in harm within the City.

(Petition, Sections 122-3(A)-(B).)

As if criminalizing Chapter 1509 was not enough, the Petition purports to nullify the ODNR’s sole and exclusive authority to regulate the permitting of oil and gas wells throughout the state. *See Morrison*, at ¶ 30 (recognizing the ODNR’s sole and exclusive authority to regulate the permitting of oil and gas wells throughout the state pursuant to R.C. 1509.02). The Petition boldly exclaims that no permit or license issued by the ODNR is valid. (Petition, Sections 122-3(A), (D), and (E).) The City cannot get around the conflicts analysis outlined in *Morrison* by simply eliminating the authority of the state within the City.

iv. The Petition Cannot Exempt the City from *Morrison* or Article XVIII, Sections 3 and 7 of the Ohio Constitution by Eliminating the Ability to Challenge the City’s Authority or Rely on Preemption.

Nothing is more brazen than the Petition’s express provision which eliminates legal recourse for private corporations to challenge the authority of the City to enact the Petition. (Petition, Section 122-3(C).) As if this was not enough, the Petition strips private corporations of any and all “legal rights, privileges, powers, or protections,” including the ability to defend itself

from civil or criminal liability through the doctrine of preemption, secured by Article XVIII, Section 3 and recognized by this Court in *Morrison*. *Morrison*, at ¶ 15.

The City has no legal right to have such a Petition appear on the ballot. If the Petition were enacted, corporations would purportedly have no rights and would be denied legal redress in the courts; the long-established home-rule precedent of this Court would not apply to the City or its ordinances; and the City would be permitted to disregard century-old constitutional limitations placed on municipalities. To find that the City has a legal right to enact such a Petition would turn the constitutional system of government in Ohio on its head.

b. The Petition Impermissibly Attempts to Regulate the Ohio Department of Natural Resources and the Ohio Oil and Gas Industry.

The City may not exercise legislative authority, by charter or other means, in excess of the powers granted it by Article II, Section 1f of the Ohio Constitution. *See Buckeye Community Hope Found. v. Cuyahoga Falls*, 82 Ohio St.3d 539, 544, 697 N.E.2d 181 (1998) (a municipality “may not exercise powers of referendum [or initiative], by charter or other means, greater than those powers granted by Section 1f, Article II of the Ohio Constitution”). Because the Petition exceeds the City’s authority, the City has no legal right to have the Petition appear on the November ballot.

The people’s power of initiative is limited to those “questions which such municipalities may now or hereafter be authorized by law to control by legislative action.” *Id.* at 542. The City has no legal authorization to effectively amend, through invalidation, Article XVIII, Section 3. *Compare* Article II, Section 1a, Ohio Constitution *with* R.C. Title VII (outlining municipal legislative authority). The City has no legal authority to invalidate comprehensive regulatory schemes enacted by the General Assembly. *Compare* Article II, Section 1b, Ohio Constitution; Article II, Section 36, Ohio Constitution; *Morrison*, at ¶ 34 *with* R.C. Title VII. The City has no

legal authority to strip corporations of legal and constitutional rights, privileges, powers, and protections afforded them by state and federal law. *Compare* Article II, Section 1b, Ohio Constitution; Article XIII, Ohio Constitution; R.C. Title XVII *with* R.C. Title VII. And, the City has no legal authority to interfere with the governmental affairs of the state. *State ex rel. Taylor v. French*, 96 Ohio St. 172, 184, 117 N.E. 173 (1917) (finding that to allow a municipality to interfere with the governmental matters of the state and its branches of government would confer powers not contemplated by the home-rule amendments).

Yet, this is exactly and expressly what the Petition seeks to accomplish. The City has no legal authority to accomplish any of these ends by local legislation and is, in fact, expressly prohibited from doing so under the Constitution and laws of this state. Therefore, the City has no legal right to have the Petition appear on the ballot and has no legal right to the extraordinary relief it requests.

III. THE BOARD PROPERLY EXERCISED ITS DISCRETION AND DID NOT ACT IN CLEAR DISREGARD OF APPLICABLE LAW WHEN IT INVALIDATED THE PETITION.

When reviewing decisions by a board of elections, this Court considers “whether the board engaged in fraud, corruption, abuse of discretion, or clear disregard of statutes or applicable legal provisions.” *State ex rel. Kelly v. Cuyahoga Cty. Bd. of Elections*, 70 Ohio St.3d 413, 414, 639 N.E.2d 78 (1994) (quoting *State ex rel. Carr v. Cuyahoga Cty. Bd. of Elections*, 63 Ohio St.3d 136, 138, 586 N.E.2d 73 (1992)). The City has not alleged fraud or corruption. (*See generally*, Complaint.)

a. The Board’s Authority to Review and Examine the Validity of the Petition Allowed It to Consider the Substance and Legality of the Petition.

The Board did not abuse its discretion or act in clear disregard of applicable law when it invalidated the Petition for the reasons articulated above. The General Assembly conferred upon

the Board the authority to “[r]eview, examine, and certify the sufficiency and validity of petitions.” R.C. 3501.11(K). That authority exists regardless of whether a protest is filed. *Wiss v. Cuyahoga Cty. Bd. of Elections*, 61 Ohio St. 2d 298, 301, 401 N.E.2d 445 (1980) (finding that R.C. 3501.11(K) permitted the board to *sua sponte* consider the validity of a petition).

In its exercise of the authority granted it under R.C. 3501.11(K), the Board is permitted to consider the applicable laws of this state, opinions of the Secretary of State, as well as relevant rulings by this Court, in order to determine the validity and sufficiency of the Petition. *See State ex rel. Ebersole v. Del. Cty. Bd. of Elections*, 140 Ohio St.3d 487, 2014-Ohio-4077, 20 N.E.3d 678; *State ex rel. Greene v. Montgomery Cty. Board of Elections*, 121 Ohio St.3d 631, 2009-Ohio-1716, 907 N.E.2d 300; *State ex rel. Choices for Southwestern City Schools v. Anthony*, 108 Ohio St.3d 1, 2005-Ohio-5362; *State ex rel. Kelly v. Cuyahoga Cty. Bd. Of Elections*, 70 Ohio St.3d 413, 639 N.E.2d 78 (1994) (citing *State ex rel. Carr v. Cuyahoga Cty. Bd. Of Elections*, 63 Ohio St.3d 136, 137-138, 586 N.E.2d 73 (1992)); *State ex rel. Shumate v. Portage Cty. Bd. Of Elections*, 64 Ohio St. 3d 12, 16, 591 N.E.2d 1194 (1992); *State ex rel. Zonders v. Delaware Cty. Bd. Of Elections, et al.*, 69 Ohio St.3d 5, 630 N.E.2d 313 (1994); *Wiss*, 61 Ohio St.2d 298, 401 N.E.2d 445; *State ex rel. Flynn v. Bd. of Elections*, 164 Ohio St. 193, 196-98, 129 N.E.2d 623 (1955) (interpreting the board of election’s authority to determine the validity of a petition generally). *See also* R.C. 3501.11(P) (the board shall perform its duties “prescribed by law or the rules, directives, or advisories of the secretary of state”). The Board did just that in its analysis of the validity of the Petition: it considered its duties as board members, the recent decision of the Secretary of State in a matter involving the validity of similar county charter petitions, and this Court’s ruling in *Morrison*.

b. The Board’s Authority Is Not Confined to Determining Ministerial Matters, but Includes the Authority to Review the Substantive Provisions of the Petition.

Given the Board’s broad grant of authority, *Wiss*, at 301, this Court has routinely held that the statutory grant of authority to the Board to review the validity or invalidity of a petition allows, and may even require, a review of the petition’s substance and content to determine whether the petition may lawfully be enacted by the electorate.

Recently, in *State ex rel. Ebersole v. Del. Cty. Bd. of Elections*, this Court considered and upheld a board of election’s decision to invalidate a city initiative petition based on the fact that the substance of the petition was outside the scope of the city’s initiative power under Article II, Section 1f. In upholding the board’s discretion, this Court found that the statutory duty to “review, examine, and certify the sufficiency and validity of petitions” creates “an affirmative duty to review the content of proposed referenda and initiatives[.]” 140 Ohio St.3d 487, 2014-Ohio-4077, 20 N.E.3d 678, ¶ 44. Where the substance or content exceeds the people’s initiative power, this Court has “made clear that in such cases, the board of elections is ‘required to withhold the initiative and referendum from the ballot.’” *Id.* at ¶ 30 (citation omitted).

Similarly, in *State ex rel. Flynn v. Bd. of Elections*, this Court upheld the board of election’s decision to invalidate a nominating petition for a municipal judge. The relator in that case claimed that the board of elections “has authority only to review, examine and certify the sufficiency and validity of petitions and nominating papers and that it is not empowered to determine the professional qualifications of a candidate for judge.” 164 Ohio St. 193, 198, 129 N.E.2d 623 (1955). In rejecting that contention, this Court held that the board of election’s statutory authority to determine the validity or invalidity of a candidate’s nominating petition necessarily included “the authority to determine the facts which will disclose whether the candidate may lawfully be elected to the office he seeks.” *Id.* at 200.

Further, in *State ex rel. Shumate v. Portage Cty. Bd. of Elections*, this Court concluded that the board of elections had an affirmative duty to consider whether the candidate was a lawful candidate. 64 Ohio St.3d 12, 16, 591 N.E.2d 1194 (1992) (citing *Flynn*, 164 Ohio St. 193, 129 N.E.2d 623). In *Flynn*, this Court recognized the authority of the board to undertake the analysis; in *Shumate* it imposed an obligation to do so.

IV. CONCLUSION: THE CITY’S WRIT MUST BE DISMISSED BECAUSE THE BOARD PROPERLY EXERCISED ITS DISCRETION AND DETERMINED THAT THE CITY’S PETITION IS INVALID.

The Board properly exercised its discretion and complied with its duty to undertake a substantive analysis of the Petition’s validity. In doing so, the Board appropriately considered the Secretary of State’s recent ruling and this Court’s ruling in *Morrison*. The Board’s review of the substance of the Petition was not only permissible, but warranted given the City’s impermissible attempts to limit the application of *Morrison* through improper measures, not afforded to the City under the Ohio Constitution. The Board did not abuse its discretion, did not misapply any relevant legal principles, and properly determined that the Petition is invalid. Therefore, the City’s writ cannot lie.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served via email upon the following this 12th day of September, 2015:

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