

IN THE SUPREME COURT OF OHIO

State of Ohio, <i>ex rel.</i> Meigs County Home)	Case No. 2015-1719
Rule Committee, by its members, Paul K.)	
Strauss, Gregory D. Howard, Dennis Jay)	
Sargent, Kathy Lynn Sargent, and Marsha)	Court of Appeals No. 15CA9
Nagy Whitton,)	
Appellant,)	
-vs-)	
County of Meigs, Board of Commissioners,)	.
Appellee.)	
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)	
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**BRIEF OF APPELLANT MEIGS COUNTY
HOME RULE COMMITTEE**

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STATEMENT OF FACTS

1. Factual Chronology

The Relator, the Meigs County Home Rule Committee (“Appellant Committee”), acting through its members, Paul K. Strauss, Gregory D. Howard, Dennis Jay Sargent, Kathy Lynn Sargent, and Marsha Nagy Whitton, sponsored an initiative petition campaign during the spring and summer months of 2015 to place a county charter proposal on the November 3, 2015 ballot in Meigs County for a referendum vote. If successfully passed, the citizens would create a charter form of government.

This case started when the Board of Commissioners declined to certify the Committee’s county charter proposal petition to the Meigs County Board of Elections for placement on the November 3, 2015 ballot. As a result, on July 20, 2015, Appellant Committee filed a Verified Complaint for Writ of Mandamus in the Fourth District Court of Appeals to compel the Appellees, the duly-elected Board of Commissioners of Meigs County, Ohio (Michael Bartrum, Randy Smith and Tim Ihle) to comply with O.R.C. § 307.94 by certifying to the November 3, 2015 general election ballot Appellant’s “Petition for Submission of Proposed County Charter.” The Petition complied with all requirements of law and had been signed by the required number of electors. (Verified Complaint Exh. A). O.R.C. § 307.94 sets the procedures for gathering signatures on petition forms and submitting the question of the adoption of a county charter to the electors.

On June 24, 2015, Appellant Committee timely filed the signed Petition with the Meigs County Board of Elections (“MCBOE”). According to O.R.C. § 307.94, the MCBOE had until July 6, 2015 to act on the Petition by moving for or against its placement on the upcoming electoral ballot, or not. On July 2, 2015, the MCBOE sent a letter from its Director and Deputy

Director to the Meigs County Commissioners, by which the elections board provided a report and notice of sufficient signatures to the Appellees. (Verified Compl. at Exh. C.) The MCBOE concluded: “These petitions have been examined and the required number of signatures was found to be sufficient as evidenced by the attached report.” (*Id.*) The MCBOE requested that the Appellee Board of Commissioners perform the task of adopting a resolution certifying the Petition to the MCBOE for placement on the November 3 ballot. (*Id.*)

On July 9, 2015, the Board of Commissioners responded to the MCBOE. (Verified Compl. Exh. D). The Commissioners stated that they were unable to proceed with certifying the Petition. They acknowledged that the Petition appeared to have the required number of signatures, but commented that

[T]here is not attached a certificate from the board of elections regarding ‘sufficient valid signatures’ as required by ORC 307.94, further there is nothing in the letter regarding the validity of the petition itself or a certificate from the board of elections showing its certification.

(*Id.*).

On July 13, 2015 the MCBOE held a meeting and the full board voted on the validity of the Petition and that day sent a letter to the Commissioners. (Verified Compl. Exh. E). The letter again certified the validity of the Petition, was signed by all four MCBOE members, and explained that the MCBOE:

...voted as to form on the face of the petition and to the valid and sufficient number of signatures.... These petitions have been examined and the required number of signatures was found to be sufficient as evidenced by the attached report. The Meigs County Board of Elections voted as to form on the face of the petition and to the valid and sufficient number of signatures (567required and 637 valid). Both motions carried.

(*Id.*).

The Commissioners convened a special meeting on July 14, 2015 at which they again failed to adopt a resolution certifying the Petition as requested by the MCBOE. There was a

motion made to certify the Petition, but no second, so the Commissioners did not vote on it. In an email dated July 14, 2015, Meigs County Commissioner Randy Smith told a supporter of the Petition (Verified Compl. Exh. F) that the Board of Commissioners did not certify the Petition because “the Board of Elections failed to certify the signatures and petition by the required 120th day (July 6, 2015) before the General Election.” (*Id.*). He further explained: “[d]ue to the fact the BOE failed to act within the required time frame the issue before the Board of Commissioners died for lack of motion.” (*Id.*). To recap, the Board of Elections had sent its first letter to the Commissioners on July 2, 2015. The Commissioners had waited until July 9, 2015 - beyond the 120th day - to send their first letter to the MCBOE, in which they declined to vote on the Petition. The MCBOE quickly acted to meet and send the second letter and report to the Board of Commissioners on July 13, 2015 but it was rebuked by the Commissioners at their July 14 meeting.

2. Procedural History of the Case

On July 20, 2015, Appellant Committee sued the Meigs County Commissioners in the Fourth District Court of Appeals for a writ of Mandamus to compel certification of the Petition to the November 3, 2015 ballot. The Committee alleged that the Commissioners violated a non-discretionary duty to pass a resolution certifying the Petition.

The Commissioners timely answered the Verified Complaint. Appellant Committee filed a Motion for Summary Judgment on the Verified Complaint and the Appellees responded with their Memorandum *Contra* Petitioners’ Motion for Summary Judgment and Respondents’ Motion for Summary Judgment. Appellant then submitted a Reply in Support of Summary Judgment and Memorandum *Contra* Meigs Motion for Summary Judgment.

On September 9, 2015, the Court of Appeals ruled against the Committee, finding that

“Based upon the language in R.C. 307.94 and the case law governing election laws. . . the Board of Elections failed to properly certify that the petition itself was valid to the Board of County Commissioners on or before the 120-day deadline.” *State ex rel. Meigs County Home Rule Committee v. County of Meigs Board of Commissioners*, 2015-Ohio-3701, 15CA9, ¶ 27 (4th Dist., September 9, 2015). The Court further ruled that “under these circumstances the Meigs County Board of Commissioners did not have a legal duty under R.C. 307.94 to adopt a resolution allowing the question of whether to adopt a county charter to be submitted to the electors.” *Id.* at ¶ 31.

Appellant Committee filed a “Motion for Reconsideration” with the Court of Appeals on September 19, 2015, and on October 13, 2015, the Court of Appeals denied the Motion, holding that “the Commissioners’ duty to certify the petition to the board of elections was not triggered before the expiration of the 120-day deadline because the Board of Elections failed to certify the validity of the petition - a substantive omission, not a procedural irregularity.”

Appellant Meigs County Home Rule Committee took a direct appeal to this Court on October 23, 2015 and the case is now before the Court for review.

ARGUMENT

Proposition of Law No. I: *A county board of elections fulfills its legal responsibility concerning a county charter proposal when it verifies the number of signatures and provides a report to the board of county commissioners along with a request that the commissioners certify the measure to the ballot.*

The Court of Appeals’ ruling effectively leaves citizens who have fully discharged their responsibility when proposing a county charter proposal, and who are completely faultless, utterly dependent upon the vagaries of their county’s board of elections to use correct language and notify the county board of commissioners flawlessly. The Court of Appeals would hold that

the board of elections which does not correct a mistake within the ten-day window for action contained in O.R.C. § 307.94 (*i.e.* by the 120th day before the election) leaves citizen-petitioners with no remedy at all. The Court of Appeals assigns liability for the error to the board of elections and the board of commissioners' refusal to act because of the supposed error will be upheld in court. The Fourth District has negated any recourse for the public if a board of elections intentionally or unintentionally muffs its report to the board of county commissioners. All it takes to nullify the many volunteer hours of effort and sacrifice to gather hundreds of signatures is for a board of elections to drop the ball.

But that's not the way a democratic system functions. The Meigs County Commissioners had a duty to certify the Petition following receipt of both the MCBOE's first (July 2, 2015) and second (July 13, 2015) letter to the County Commissioners.

The Court of Appeals at p. 16 of its September 9, 2015 Decision and Judgment Entry concluded that the Board of Elections did not properly certify the petition itself as valid. The wording used - where the Board of Elections requested that the commissioners adopt a resolution certifying the petition for the ballot - somehow was deemed insufficient by the Court of Appeals to express that the MCBOE had determined the petition to be valid. The appellate court required "magic language" instead of accepting the board of election's obvious intent to certify the petition as valid.

Where the public submitted a valid Petition with the required number of signatures and the MCBOE certified the petition to be valid under O.R.C. § 307.94, the board of commissioners' duty to certify is non-discretionary:

If the petition is certified by the board of elections to be valid and to have sufficient valid signatures, the board of county commissioners shall forthwith and not later than four p.m. on the one hundred eleventh day before the general election, by res

solution, certify the petition to the board of elections for submission to the electors of the county at the next general election.

(*Id.*).

The MCBOE's letter dated July 2, 2015 to the Meigs commissioners constitutes a certification. It states that the MCBOE examined the Petition and further, that the Petition has the required number of signatures. The MCBOE attached a report showing that the required number of signatures had been obtained. Both the Director and Deputy Director of the Meigs County Board of Elections signed it on behalf of the board. Although the July 2, 2015 letter does not expressly state that the Petition is valid, there is no requirement that it do so. The MCBOE's finding of validity is obvious in its request that the commissioners adopt a resolution certifying the Petition to the MCBOE for placement on the ballot. There is nothing in the law which requires that the MCBOE's certification be in a certain form.

Unduly technical interpretations should not impede free and competitive elections. The electors should not be deprived of the opportunity to vote on a measure merely because the Board of Elections failed to use the specific language requested by the County Commissioners in certifying the petition. The fact that the Board of Elections corrected the alleged deficiencies a few days after its statutory deadline for certification should not prevent the measure from being placed on the ballot.

Proposition of Law No. II: A Board of Election's Untimely Action Cannot Deprive Innocent Petitioners Of A Ballot Opportunity to Vote On A County Charter Proposal

Ohio law is clear that the voters cannot be deprived of the opportunity to consider a ballot measure due to inaction, or untimely action, by a government entity or election board. In *State ex rel. Citizens for a Better Portsmouth v. Sydnor*, 61 Ohio St.3d 49, 572 N.E.2d 649 (Ohio 1991), the Ohio Supreme Court granted a writ of mandamus compelling placement of a proposed

charter amendment on the next general election ballot. The city council had tabled the ordinance which would have put the proposal on the ballot because of objections to its substantive content. The court held that “since respondents had the opportunity to adopt an ordinance to place the proposed amendment on the November 6 ballot, a writ of mandamus will issue to compel its submission to the electors on that ballot instead of at a later special election.” *Id.* at 53, 572 N.E.2d at 652; *cf. State ex rel. Concerned Citizens for more Professional Govt. v. Zanesville City Council*, 70 Ohio St.3d 455, 458-459, 639 N.E.2d 421, 424 (Ohio 1994) (where city council had more than a reasonable time to act on ordinance placing issue on ballot, but failed to do so, signatures on petition were presumed valid), *State ex rel. South-Western City School District Bd. of Edn. v. Franklin County Bd. of Elections*, 2004 WL 2070539, at *5 (Ohio Ct. App. Sept. 16, 2004) (strict compliance with deadline for certifying resolutions not required).

Overly technical statutory interpretations may not impede public rights in election cases. It cannot have been the intent of the General Assembly when it legislated O.R.C. § 307.94 to extend to boards of elections a veto power over a constitutional right by mere inaction, or by ineffective action. The strict interpretation of the timetable embedded in the statute cannot be read to destroy the ballot right. Courts must avoid unduly technical interpretations that impede public policy in election cases. *Stutzman v. Madison Cty. Bd. of Elections*, 93 Ohio St.3d 511, 514 (2001), citing *State ex rel. Ruehlmann v. Luken*, 65 Ohio St.3d 1, 3 (1992):

The policy involved here is the preeminent constitutional right of referendum ‘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.’ Section 1f, Article II of the Ohio Constitution. We must liberally construe provisions for municipal referendum so as to permit the exercise of the power and to promote rather than prevent or obstruct the object sought to be attained.

Stutzman, supra at 514, citing *State ex rel. Rose v. Lorain Cty. Bd. of Elections*. 90 Ohio St.3d

229, 230-231 (2000) and *State ex rel. Oster v. Lorain Cty. Bd. of Elections*, 93 Ohio St.3d 480 (2001). The “Courts should strive to nurture and preserve the integrity of the right of referendum.” *Markus v. Trumbull County Bd. of Elections*, 259 N.E.2d 501, 22 Ohio St.2d 197, 200 (1970).

The Fourth District agreed with these sentiments, citing *Markus* favorably at ¶ 30 of its decision.¹ Nonetheless, the appellate court still ruled that “because § 307.94 does not state that substantial compliance is acceptable, the requirements must be strictly filed.” Decision and Judgment Entry, September 9, 2015, ¶ 32, citing *State ex rel. Davis v. Beaver Twp. Bd. Of Trustees*, 133 Ohio St.3d 170, 173, 2012-Ohio-4177, ¶¶ 12-13 (2012). However, there is a critical factual distinction between the precedent relied on by the Fourth District, and the present situation. In the strict compliance precedent, the petitioning parties were the ones who had not strictly complied with the statutes, while in the case at bar, the Appellant Committee and its petitioning citizenry fulfilled all requirements of statute. They have undeniably clean hands. Failure to follow the law was solely the failure of governmental elections officials.

Where the error lies on the side of the election officials as compared to the petitioners, the electorate’s right to referendum should prevail. Public and judicial policy cannot allow for the right to referendum to be suspended by the misdeeds of governmental officials to conform to a standard of strict compliance. Any intentional or unintentional act which causes a balk and negates the right to referendum would induce a chill upon use of the precious right of initiative

¹Decision and Judgment Entry, September 9, 2015 at ¶ 30: “The right of the electors to petition for county charter is an important one, established and preserved by the Ohio Constitution. ‘The requirements for referendum petitions provide the mechanics for securing the ultimate and important goal of the legitimate obtaining of a voted expression of the will of the electorate. Courts should strive to nurture and preserve the integrity of the right of referendum.’”

and referendum. Who, after all, would spend all of the time, money, and effort to obtain signatures, print out petition forms, and force hundreds of encounters with complete strangers to sign petitions, if elections officials could just wipe it all out by not acting on time?

The Supreme Court applies a substantial compliance standard to those rare and unique circumstances where it does no harm to the purposes underlying the election requirement, and the public interest is served. *Stutzman v. Madison Cty. Bd. of Elections*, 93 Ohio St.3d 511, 514, 2001-Ohio-1624 (2001) (“Absolute compliance with every technicality should not be required . . . unless such complete and absolute conformance to each technical requirement . . . serves a public interest and a public purpose.”); *State ex rel. Fite v. Saddler*, 62 Ohio St.3d 170, 172 (1991); *Stern v. Cuyahoga Cty. Bd. of Elections*, Ohio St.2d 175, 180 (1968); *Bd. of Edn. of Ashville Village School Dist. v. Briggs*, 114 Ohio St. 415, 420 (1926).

The case of *State ex rel. Stern v. Quattrone*, 68 Ohio St.2d 9 (1981), is particularly instructive. In *Quattrone*, an elector of the city of Steubenville filed an initiative petition with the city auditor which proposed an ordinance to be put on the ballot for the general election. The certification as originally filed was defective and required a correction less than 75 days before the election. The board of elections found the initiative petition “good and valid” but ruled that the issue could not be placed on the November ballot because the petition had not been certified within 75 days of the election. The relator sued for mandamus to compel the members of the board of elections to place the proposal on the ballot. The *Quattrone* court noted that the purpose behind the 75-day time period was to insure that concerned voters had an adequate amount of time to assess the issue or question, and ordered it onto the ballot. Because the initial attempted certification, although defective, was made 82 days before the election, the court ruled that the public purpose of giving concerned voters adequate time to assess the proposed

ordinance was not undermined. The court stated:

In light of the above, and the board's finding that the petition was in all other respects valid, the form of the certification becomes no more than a technicality; and its correction less than 75-days before the election does not defeat the purposes of the statute. This court has held that the right of initiative should not be denied. . . “on the basis of some mere technical irregularities which will not interfere with that right and disenfranchise the voters of the choice.” *State, ex rel. Williams, v. Brown* (1977), 52 Ohio St. 2d 13, 20. *See, also, State, ex rel. Polcyn, v. Burkhart* (1973), 33 Ohio St. 2d 7. *Id.* at 10.

In *State ex rel. Stewart v. Clinton Cty. Bd. of Elections*, 925 N.E.2d 601 (Ohio 2010), the Supreme Court warned of “avoid[ing] unduly technical interpretations that impede public policy favoring free, competitive elections.” *Id.* at 41 (citing *State ex rel. Ruehlmann v. Luken*, 65 Ohio St.3d 1, 3, 598 N.E.2d 1149, 1151 (1992)). The Court recognized that technical defects in the petition form should not prevent a measure from being placed on the ballot for consideration by the voters. *Id.* at 28 (“The public policy which favors free competitive elections, in which the electorate has the opportunity to make a choice between candidates, outweighs the arguments for absolute compliance with each technical requirement in the petition form”).

Proposition of Law No. III: *This Court will issue a Writ of Mandamus to require the Secretary of State to validate a petition when the petition meets procedural requirements.*

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.² *State ex rel. Asberry v. Payne*, 82 Ohio St.3d 44, 45,

²Mandamus actions are frequently used in the election context, because there is no adequate remedy at law. *See, e.g., State ex rel. Painter v. Brunner*, 128 Ohio St.3d 17, 26, 941 N.E.2d 782, 793 (Ohio 2011) (“because of our recognition of mandamus as the appropriate remedy and the need to resolve this election dispute in a timely fashion, relators lack an adequate remedy in the ordinary course of the law”); *State ex rel. Esarco v. Youngstown City Council*, 116 Ohio St.3d 131, 876 N.E.2d 953, 2007-Ohio-5699 (2007) (entertaining expedited election action for a writ of mandamus). The purpose of Relators’ action for this Writ of Mandamus is to compel the Board of Commissioners to comply with its members’ non-discretionary duty to

693 N.E.2d 794 (1998). This Court grants writs of mandamus to compel placement of proposed charter provisions on the next general ballot. *E.g.*, *State ex rel. Citizens for a Better Portsmouth v. Sydnor*, 61 Ohio St.3d 49, 53, 572 N.E.2d 649 (Ohio 1991) (ordering a proposed charter amendment onto the ballot for which it had been petitioned, despite delay caused by objections to the amendment's substantive content). “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.” *Whitman v. Hamilton Cty. Bd. of Elections*, 97 Ohio St.3d 216, 2002-Ohio-5923, 778 N.E.2d 32, ¶ 11. Here, the Meigs County Commissioners clearly disregarded the public interest and the common law priority assigned to maximizing the right to vote on public issues proffered for the ballot.

CONCLUSION

Appellant Meigs County Home Rule Committee has demonstrated that the balance of equities augurs in favor of their having the right to vote on the proposed charter. The Court should not countenance the absurd circumstance where citizens who invoke the vital initiative and referendum tool see their ballot aims derailed by arbitrary mistake or malevolent misdeed of elections officials who deprive them of a constitutional right.

WHEREFORE, Appellant Meigs County Home Rule Committee prays the Court reverse the Fourth District Court of Appeals and issue a writ of mandamus which orders the Meigs County Board of Commissioners to certify Appellant’s Petition to the ballot of the next

certify the Petition for placement on the next general election ballot. The electors have the right to vote on the proposed Petition. Damages cannot provide adequate compensation for a violation of voters’ fundamental right to participate in the democratic process.

general election, together with such other and further relief as the Court may deem proper and necessary in the premises.

Respectfully submitted,

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Committee Members, Appellant

CERTIFICATION

I hereby certify that on December 14, 2015, I mailed a copy of the foregoing Brief of Appellant via regular U.S. Mail, postage prepaid, to Colleen S. Williams, Esq., Meigs County Prosecutor, and Jeremy Fisher, Esq., Assistant Meigs County Prosecutor, 117 West 2nd St. Pomeroy, OH 45769. I also sent the same via email to Jeremy Fisher, Esq. at jfisher@meigscountyprosecutor.com. Finally, I deposited the Brief into the Ohio Supreme Court's electronic filing system and in accordance with its procedures it was to be served upon counsel for Appellee.

/s/ Terry J. Lodge
Terry J. Lodge
Co-counsel for Appellant

This case was commenced in the Fourth District Court of Appeals as an original action for a writ of mandamus and so is an appeal of right to the Ohio Supreme Court.

Further, the case raises a substantial constitutional question. It is also a matter of public or great general interest.

Respectfully submitted,

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CERTIFICATION

I hereby certify that on October 23, 2015, I mailed a copy of the foregoing Notice of Appeal via regular U.S. Mail, postage prepaid, to Colleen S. Williams, Esq., Meigs County Prosecutor, and Jeremy Fisher, Esq., Assistant Meigs County Prosecutor, 117 West 2nd St. Pomeroy, OH 45769, and also sent the same via email to Jeremy Fisher at jfisher@meigscountyprosecutor.com.

/s/ Terry J. Lodge
Terry J. Lodge
Co-counsel for Relators-Appellants

COURT OF APPEALS

IN THE COURT OF APPEALS OF OHIO
FOURTH APPELLATE DISTRICT
MEIGS COUNTY

2015 SEP -9 AM 11: 32

FILED
DIANE LYNCH
CLERK OF COURTS
MEIGS COUNTY, OHIO

State of Ohio, ex rel.
Meigs County Home Rule Committee,
by its members, Paul K. Strauss,
et al.,

Relators,

Case No. 15CA09

v.

County of Meigs
Board of Commissioners,
Michael Bartrum, et al.,

DECISION AND JUDGMENT ENTRY

Respondents.

APPEARANCES:

James Kinsman, Cincinnati, Ohio and Terry J. Lodge, Toledo, Ohio, for Relators.

Colleen Williams, Meigs County Prosecuting Attorney and Jeremy Fisher, Meigs County Assistant Prosecuting Attorney, Pomeroy, Ohio for Respondents.

HARSHA, J:

{11} The Relator Meigs County Home Rule Committee filed a petition for writ of mandamus seeking to compel the Meigs County Board of Commissioners to certify a petition for an adoption of a county charter to the Meigs County Board of Elections pursuant to R.C. 307.94. The Committee alleges that it complied with R.C. 307.94, which governs the procedures for submitting the question of the adoption of a county charter to the electors of the county at the next general election. According to the petition, the Committee filed the petition with the Meigs County Board of Election and the Board of Elections determined that the petition and the signatures on the petition met the requirements of law. The Committee alleges that the Board of Elections

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properly certified the petition to the Board of Commissioners, but that the Board of Commissioners failed to comply with its legal obligation to certify the petition to the Board of Elections for submission to the electors of the county as required in the second paragraph of R.C. 307.94. The Committee seeks a writ of mandamus to compel the Meigs County Board of Commissioners to certify the petition to the Meigs County Board of Elections.

{112} The Committee filed a motion for summary judgment in support of their petition and sought expedited relief. The Board of Commissioners filed an answer, a response to the Committee's motion, and its own motion for summary judgment. The Commissioners argue that because the Board of Elections did not certify whether the petition was valid and there were sufficient valid signatures not later than 120 days before general election, the Commissioners had no statutory duty to certify the petition to the Board of Elections.

{113} The Commissioners also filed a supplemental response in which it argued that the Committee's petition is invalid because the Ohio Secretary of State has recently reviewed the substantive content of the proposed county charters attached to similar petitions in three other counties and determined that the petitions in those counties are invalid. Alternatively, the Commissioners ask us to stay the action pending any appeal from the Ohio Secretary of State's determination.

{114} R.C. 307.94 requires the Board of Elections to make two separate and distinct determinations and certify these findings to the Board of Commissioners not later than 120 days before the day of the general election: (1) whether the petition is

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valid or invalid and (2) whether there are sufficient valid signatures. Here, we find that the Board of Elections timely certified that there were sufficient valid signatures in accordance with R.C. 307.94, but failed to certify whether the petition itself was valid until after the 120-day deadline. The Board of Commissioners has no clear legal duty to certify the petition to the Board of Elections until it receives a timely certification *both* that the petition is valid and that there are sufficient valid signatures. Therefore, the Commissioners have no clear legal duty to certify the petition, by resolution, to the Board of Elections and the Committee is not entitled to the extraordinary judicial remedy of mandamus.

{15} Moreover, our determination of this mandamus action does not require that we examine the petition or the substantive content of the attached charter. We are not making any determination concerning the validity or invalidity of either the petition or the signatures on the petition, nor are we making any determination as to the constitutionality or legality of the contents of the proposed county charter. Rather, to determine whether the Committee is entitled to a writ of mandamus, we review only the procedural requirements of R.C. 307.94 to determine if the Meigs County Board of Commissioner's non-discretionary duty to "forthwith. . . by resolution, certify the petition to the board of elections for submission to the electors" was triggered by the Board of Election.

{16} Thus, we **DENY** the Committee's motion for summary judgment, **GRANT** the Commissioners' motion for summary judgment, **DENY** the Commissioners' motion for stay, **DENY** the writ, and **DISMISS** the petition for a writ of mandamus.

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Civ. R. 56 Requirements

{17} Summary judgment motions are governed by the standards of Civ.R. 56. Summary judgment is appropriate if the party moving for summary judgment establishes that (1) there is no genuine issue of material fact, (2) reasonable minds can come to but one conclusion, which is adverse to the party against whom the motion is made and (3) the moving party is entitled to judgment as a matter of law. Civ.R. 56; *New Destiny Treatment Ctr., Inc. v. Wheeler*, 129 Ohio St.3d 39, 2011-Ohio-2266, 950 N.E.2d 157, ¶ 24; *Chase Home Finance, LLC v. Dunlap*, 4th Dist. Ross No. 13CA3409, 2014-Ohio-3484, ¶ 26.

{18} The moving party has the initial burden of informing the trial court of the basis for the motion by pointing to summary judgment evidence and identifying the parts of the record that demonstrate the absence of a genuine issue of material fact on the pertinent claims. *Dresher v. Burt*, 75 Ohio St.3d 280, 293, 662 N.E.2d 264 (1996); *Chase Home Finance* at ¶ 27. Once the moving party meets this initial burden, the non-moving party has the reciprocal burden under Civ.R. 56(E) to set forth specific facts showing that there is a genuine issue remaining for trial. *Dresher* at 293.

{19} Mandamus actions are governed by Ohio Revised Code Chapter 2731. A mandamus is a writ to enforce performance of a specific act by a public official or agency and will only be issued where there is a clear legal duty to act. A writ of mandamus will not be issued when there is a plain and adequate remedy in the ordinary course of law. See R.C. 2731.05. In order for the court to grant a writ of mandamus, the relator must show that: (1) the relator has a clear legal right to the relief prayed for; (2)

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respondent is under a clear legal duty to perform the acts; and (3) relator has no plain and adequate remedy in the ordinary course of law. *State ex rel. Taxpayers for Westerville Schools v. Franklin Cty. Bd. of Elections*, 133 Ohio St.3d 153, 2012-Ohio-4267, 976 N.E.2d 890, ¶ 12; *State ex rel. Lewis v. Bd. of Cty. Commrs. of Jackson Cty.*, 4th Dist. Jackson App. No. 98CA830, 2002-Ohio-1424; *Conley v. Corr. Reception Ctr.*, 141 Ohio App.3d 412, 415, 2001-Ohio-2365, 751 N.E.2d 528, 530 (4th Dist. 2001). The relator must prove these requirements by clear and convincing evidence. See *State ex rel. Waters v. Spaeth*, 131 Ohio St.3d 55, 2012-Ohio-69, 960 N.E.2d 452, ¶ 13, quoting *State ex rel. Doner v. Zody*, 130 Ohio St.3d 446, 2011-Ohio-6117, 958 N.E.2d 1235, paragraph three of the syllabus (" 'Relators in mandamus cases must prove their entitlement to the writ by clear and convincing evidence' "). Because of the proximity of the November 3, 2015 election, the Committee has established that it lacks an adequate remedy in the ordinary course of the law. *Taxpayers for Westerville Schools* at ¶ 12; *State ex rel. Orange Twp. Bd. of Trustees v. Delaware Cty. Bd. of Elections*, 135 Ohio St.3d 162, 164, 2013-Ohio-36, 985 N.E.2d 441, 444, ¶ 14 (2013).

{¶10} The Commissioners argue that the mandamus petition is barred because the Committee failed to exhaust its legal remedies when it failed to file suit in the Meigs County Common Pleas Court in accordance with the procedure provided in R.C. 307.94. However, that procedure governs committee protests where a board of elections has found the petition to be invalid or to have insufficient valid signatures:

if the petition is certified by the board of elections to be *invalid or to have insufficient valid signatures*, or both, the petitioners' committee may protest such findings or solicit additional signatures as provided in section 307.95 of the Revised Code, or both, or request that the board of elections

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proceed to establish the validity or invalidity of the petition and the sufficiency or insufficiency of the signatures in an action before the court of common pleas in the county.

(Emphasis added) R.C. 307.94. Because the Board of Elections did not address the petition's validity or invalidity, there was no express finding of Invalidity here and the protest procedure available to the Committee is not applicable. Thus, we find no requirement that the Committee ask the Meigs County Board of Election file an action in the Meigs County Court of Common Pleas prior to filing this mandamus petition.

Legal Analysis

{¶11} The dispute between the Committee and the Commissioners involves whether the Commissioners have a clear legal duty to certify the petition to the Board of Elections under R.C. 307.94, the statutory provision which governs the adoption of a county charter. The right of the people of any county to adopt a charter is provided for in the Ohio Constitution, Article X, Section 3. The procedure for placing a county charter question before the electors is governed by R.C. 307.94. Under this section, electors of a county may file a petition asking that the question of the adoption of a county charter be submitted to the electors of the county. The petitioners are required to designate in the petition a committee of three to five persons who will represent them in matters relating to the petition. The Relator, Meigs County Home Rule Committee, is the designated committee and consists of the following five members: Paul K. Strauss, Gregory D. Howard, Dennis Jay Sargent, Kathy Lynn Sargent, and Marsha Nagy Whitton.

{¶12} Electors of a county have two alternative procedures to place a county

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charter question before the voters. They can file a petition with the board of county commissioners or they can file a petition with the board of elections of the county. The Meigs County Home Rule Committee filed the petition with the Meigs County Board of Elections rather than with the Meigs County Board of Commissioners. Thus, the relevant portion of R.C. 307.94 governing this dispute is set forth in the second paragraph:

Such electors may, in the alternative not later than the one hundred thirtieth day before the date of a general election, file such a petition with the board of elections of the county. In such case the board of elections shall immediately proceed to determine whether the petition and the signatures on the petition meet the requirements of law and to count the number of valid signatures and to note opposite each invalid signature the reason for the invalidity. The board of elections shall complete its examination of the petition and the signatures and shall submit a report to the board of county commissioners not later than the one hundred twentieth day before the date of the general election certifying whether the petition is valid or invalid and, if invalid, the reasons for invalidity, whether there are sufficient valid signatures, and the number of valid and invalid signatures. The petition and a copy of the report to the board of county commissioners shall be available for public inspection at the board of elections. If the petition is certified by the board of elections to be valid and to have sufficient valid signatures, the board of county commissioners shall forthwith and not later than four p.m. on the one hundred eleventh day before the general election, by resolution, certify the petition to the board of elections for submission to the electors of the county at the next general election.

* * *

R.C. 307.94

{113} The next general election is Tuesday, November 3, 2015. The petition must be submitted to the Board of Elections by the 130th day before November 3, which was Friday, June 26, 2015. The Board of Elections must complete its examination of the petition and the signatures and submit a report to the Board of Commissioners certifying whether the petition is valid and whether there are sufficient valid signatures

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by the 120th day, which was Monday, July 6. If the petition is certified to be valid and to have sufficient valid signatures, the Board of Commissioners shall, by resolution, certify the petition to the Board of Elections for submissions to the electors by 4 p.m. on the 111th day, which was 4 p.m. Wednesday, July 15, 2015.

{114} A board of elections examination of the petition is governed by R.C. 307.95, which specifically incorporates R.C. 3501.38. Those provisions require the board of elections to examine the petition to determine if the petition meets the requirements of R.C. 307.95 and R.C. 3501.38 and to examine the signatures on the petition to determine if there are a sufficient number of valid signatures. If the board finds invalid signatures, it is to note opposite the signature the reason for the invalidity. R.C. 307.95. Under R.C. 3501.38, the board of elections also examines the petition to ensure compliance with provisions (A) through (L) of R.C. 3501.38. For example, subsection (E) requires that the person circulating the petition sign a statement under penalty of election falsification that the circulator witnessed the affixing of every signature. Subsection (I)(1) requires the board of elections to ensure that no alternations, corrections, or additions are made to the petition after it is filed. Subsection (J) requires the petitions to be accompanied by a statement in boldface capital letters, "WHOEVER COMMITS ELECTION FALSIFICATION IS GUILTY OF A FELOY IN THE FIFTH DEGREE." A certification by the board of elections that the petition is valid means that the board of elections has checked the form of the petition against the requirements in R.C. 3501.38 and R.C. 307.95 and determined that it complies.

{115} The board of elections power to review, examine and certify the

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sufficiency and validity of petitions is provided under R.C. 3501.11(K):

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 duties imposed by law, and shall do all of the following:

* * *

(K) Review, examine, and certify the sufficiency and validity of petitions and nomination papers * * *.

The board of elections is authorized to appoint a director and deputy director under R.C. 3501.11(D) and R.C. 3501.09 and is authorized to assign duties to the director and deputy director in connection with the office under R.C. 3501.13 and R.C. 3501.14.

{¶16} When the board of elections "certifies" a petition, it means that the board confirms that the petition meets the standards or criteria of R.C. 307.95 and R.C. 3501.38:

"Certify" means "to confirm or attest often by a document under hand or seal as being true, meeting a standard, or being as represented." Webster's Third New International Dictionary (1986) 367; see also Garner, Black's Law Dictionary (8th Ed.2004) 241, defining "certify" as "[t]o attest as being true or as meeting certain criteria."

State ex rel. Stoll v. Logan Cty. Bd. of Elections, 117 Ohio St.3d 76, 83-84, 2008-Ohio-333, 881 N.E.2d 1214, 1223, ¶ 43. The Supreme Court of Ohio, in construing a statute defining the term "certified copy" as used in city ordinance petitions, has held that a written statement attesting that something is true must be signed:

" 'Attest' means 'to certify to the verity of a copy of a public document formally by signature' and an attested copy of a document is 'one which has been examined and compared with the original, with a certificate or memorandum of its correctness, signed by the persons who have examined it.' " (Emphasis added.) *State ex rel. Crossman Communities of Ohio, Inc. v. Greene Cty. Bd. of Elections* (1999), 87 Ohio St.3d 132, 137, 717 N.E.2d 1091, overruled in part on other grounds, *State ex rel. Comm. for the Referendum of Ordinance No. 3844-02 v. Norris*, 99 Ohio St.3d

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336, 2003-Ohio-3887, 792 N.E.2d 186, ¶ 36–41, quoting Black's Law Dictionary (6th Ed.1990) 127–128.

These definitions are consistent with common usage. See Garner, Black's Law Dictionary (8th Ed.2004) 138, defining "attest" as "[t]o affirm to be true or genuine; to authenticate by *signing* as a witness." Moreover, "attestation clause" is defined as "[a] provision at an end of the instrument (esp. a will) that is *signed* by the instrument's witnesses"; see, also, Webster's Third New International Dictionary (1986) 141, defining "attest" as "to witness and authenticate by *signing* as a witness." (Emphasis added.)

Relators assert that other dictionary definitions of "attest" do not require a signature. They rely on these dictionary definitions to claim that the plain and ordinary meaning of "attest" is to "affirm the truth or accuracy of a particular fact or object." But in order to affirm the truth or accuracy of the proposed Initiative, it is axiomatic that *someone* must affirm the truth of the title and text included in the initiative. That act requires a signature.

In fact, the majority of the definitions of "attest" require a *signature*, a statement made *under oath*, someone *witnessing* the act, or some official *authentication* or *verification*. See Garner, Black's Law Dictionary (8th Ed.2004) 138, defining "attest" to mean "[t]o bear witness; testify," "[t]o affirm to be true or genuine," and "to authenticate by *signing* as a witness"; Webster's Third New International Dictionary (1986) 141, which defines "attest" to include "to bear witness to," "affirm to be true or genuine," "to witness and authenticate by *signing* as a witness," "to *authenticate* *officially*," "to establish or *verify* the usage of," "to be or stand as proof of," "to call to *witness*," and "to put on *oath* or *solemn declaration*"; see, also, American Heritage Dictionary (4th Ed.2001) 119, defining "attest" as "[t]o affirm to be correct, true, or genuine, esp. by *affixing one's signature* as a witness." (All emphasis added.)

State ex rel. Steele v. Morrissey, 103 Ohio St.3d 355, 358-59, 2004-Ohio-4960, 815 N.E.2d 1107, 1111, ¶¶ 22-25.

{¶17} According to the allegations in the mandamus complaint, the Meigs County Home Rule Committee filed its petition with the Meigs County Board of Elections on Wednesday, June 24, 2015, two days before the 130-day deadline of Friday, June 26, 2015. On July 2, 2015, four days before the 120-day deadline of July 6, the Board

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of Elections sent a letter signed by both its Director and the Deputy Director to the Board of Commissioners. The letter stated that a referendum petition was filed by the Home Rule Committee on June 24, 2015 with the Board of Elections. It further stated:

These petitions have been examined and the required number of signatures was found to be sufficient as evidence by the attached report.

The next step is for the Board of County Commissioners to adopt a resolution certifying the petition to the board of elections (see attached pages from the Ohio Ballot Questions and Issue Handbook).

The attached report provided the number of required signatures, the number of valid signatures, and the details of the invalid signatures, including a breakdown of the reasons for the invalidity of each signature. The report concludes, "PETITION VERIFIED: Required number of signatures validated."

{118} On July 9, 2015, the Board of Commissioners sent a letter to the Board of Elections stating that it had received the July 2, 2015 letter and discussed it at their July 9, 2015 board meeting. The Board of Commissioners identified what it believed were three deficiencies in the July 2 letter: (1) the letter did not certify whether the petition had "sufficient valid signatures," (2) there was nothing in the letter concerning the validity of the petition itself, and (3) there was no certification from the Board of Elections showing its certification:

While it appears that you have the sufficient number of signatures, there is not attached a certificate from the board of elections regarding "sufficient valid signatures" as required by ORC 307.94, further there is nothing in the letter regarding the validity of the petition itself or a certificate from the board of elections showing its certification.

The Board of Commissioners stated that it would table the petition until a special meeting on July 14, 2015 at 11:00 a.m. to give the Board of Elections time to comply

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with R.C. 307.94.

{119} The Board of Elections responded with a second letter on July 13, 2015.

The July 13 letter was identical to the July 2, 2015 letter except that it was signed individually by each of the four members of the Board of Elections and included the statements:

The Meigs County Board of Elections voted as to the form on the face of the petition and to the valid and sufficient number of signatures (567 signatures required and 637 valid). Both motions carried.

{120} The Committee argues that the July 13 letter remedies the three deficiencies identified by the Board of Commissioners. It argues that the two phrases "voted as to the form on the face of the petition" and "motions carried" means that the Board of Elections examined the petition for conformity with R.C. 307.95 and R.C. 3501.38 and certified that the petition itself was valid, curing one of the three deficiencies. The Committee also argues that the phrase "valid and sufficient number of signatures" addressed the Commissioners' concerns that the July 2 letter certified the sufficient number of signatures, but not the validity of the signatures. Finally, the Committee argues that the signatures of all four board members addressed the Commissioners' perceived need for "a certificate from the board of elections showing its certification."

{121} At a special meeting on July 14, 2015, the Commissioners discovered that the Board of Elections July 13 letter was untimely and could not be acted upon. Under R.C. 307.94, the Commissioners' legal obligation to certify the petition by resolution to the Board of Elections is triggered if it receives a properly certified petition from the

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Board of Elections not later than 120 days before the general election. The 120th day was July 6, 2015. The July 13 letter was not submitted to the Commissioners before the 120-day deadline; it was seven days late.

{122} We disagree with the Board of Commissioners' position that the July 2, 2015 letter failed to certify "sufficient valid signatures." We find that the July 2 letter and report certified to the Board of Commissioners that the Board of Elections had examined the petition and confirmed that it contained sufficient valid signatures. The letter states that the petition contains the sufficient number of signatures and the attached report shows that the number of required signatures is 567 and the number of valid signatures is 637. R.C. 307.94 and R.C. 307.95 both expressly states that a report concerning the validity and invalidity of the signatures is to be prepared and submitted with the petition. The letter and report, when taken together, provide all of the information about the signatures that is required under the statute and satisfies R.C. 307.94. As discussed in more detail below, the letter is properly certified by the director and the deputy director as it bears both of these officials' signatures.

{123} Nevertheless, an examination of the signatures is only one part of the process under R.C. 307.94. The Board of Elections also must examine the petition and certify that it is valid. There is nothing in the letter that certifies whether the petition is valid or invalid. It only references the sufficiency and validity of the signatures.

{124} As to the claim that the July 2 letter does not contain a proper "certificate" of certification from the Board of Elections, we find no need to impose an additional non-statutory requirement to have a "certificate" of certification individually signed by all

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board members of the Board of Elections. The case law interpreting the term “certify” does not require the board of elections to create a “certificate” showing certification. The petition is “certified” if it has been confirmed as meeting a standard or criteria and supported by signature. And while R.C. 3501.11 requires boards of elections to exercise their powers by majority vote, R.C. 307.94 does not require a description of that voting process be included in the report.¹ R.C. 307.94 requires a board of elections to “complete its examination of the petition and the signatures” and “submit a report . . . certifying whether the petition is valid or invalid and . . . whether there are sufficient valid signatures . . .” Then, “If the petition is certified by the board of elections to be valid and to have sufficient valid signatures, the board of county commissioners shall forthwith . . . by resolution, certify the petition to the board of elections . . .”

{125} The director and deputy director are appointed by the board of elections under R.C. 3501.11(D) and R.C. 3501.09 and are authorized to perform assigned duties in connection with the office under R.C. 3501.13 and R.C. 3501.14. After the Board of Elections determines by majority vote that both the petition and the signatures are sufficient and valid, there is nothing in R.C. 307.94 that prohibits the director and deputy director from preparing the report on behalf of the board of elections certifying that the petition meets these statutory requirements. Moreover, nothing in R.C. 307.94 requires that each individual board member serving on the Board of Elections sign the report or a separate “certificate” showing certification of a petition.

{126} The Supreme Court of Ohio has held, “ [c]ounty boards of elections are of

¹ We note that the record does not specify the date that the Board of Elections held its vote pursuant to R.C. 3501.11. However, in deciding the Commissioners’ summary judgment motion, we construe the

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statutory creation, and the members thereof in the performance of their duties must comply with applicable statutory requirements.' " *State ex rel. Husted v. Brunner*, 123 Ohio St.3d 288, 291, 2009-Ohio-5327, 915 N.E.2d 1215, 1218, ¶ 11; *Whitman v. Hamilton Cty. Bd. of Elections*, 97 Ohio St.3d 216, 2002-Ohio-5923, 778 N.E.2d 32, ¶ 12, quoting *State ex rel. Babcock v. Perkins*, 165 Ohio St. 185, 187, 59 O.O. 258, 134 N.E.2d 899 (1956). "[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." *State ex rel. Myles v. Brunner*, 120 Ohio St.3d 328, 332, 2008-Ohio-5097, 899 N.E.2d 120, 123, ¶ 18, citing *State ex rel. Ditmars v. McSweeney*, 94 Ohio St.3d 472, 476, 764 N.E.2d 971 (2002). If a statute does not strictly require that an act be done, the courts cannot require it. *State ex rel. Myles v. Brunner*, 120 Ohio St.3d 328, 332, 2008-Ohio-5097, 899 N.E.2d 120, 123-24, ¶ 21 ("Because the statute also does not strictly require that the box next to the qualified-electtor statement be marked, we cannot require it."); *State ex rel. Columbia Reserve Ltd. v. Lorain Cty. Bd. of Elections*, 111 Ohio St.3d 167, 2006-Ohio-5019, 855 N.E.2d 815, ¶ 32 ("We will not add a requirement that does not exist in the statute"). Moreover, we "must avoid unduly technical interpretations that impede the public policy favoring free, competitive elections." *State ex rel. Myles v. Brunner*, 120 Ohio St.3d 328, 332, 2008-Ohio-5097, 899 N.E.2d 120, 124, ¶ 22; *State ex rel. Ruehlmann v. Luken*, 65 Ohio St.3d 1, 3, 598 N.E.2d 1149 (1992).

{127} Based upon the language in R.C. 307.94 and the case law governing election laws, we find that the Board of Elections failed to properly certify that the

evidence most strongly in the Committee's favor and assume the vote was held on or before July 2, 2015.

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petition itself was valid to the Board of County Commissioners on or before the 120-day deadline. The Committee concedes that the July 2 letter does not expressly state that the petition is valid, but it erroneously believes that this is not a requirement. Instead, it argues that the Board of Elections' determination that the petition is valid is made implicitly clear by its request that the Board of Commissioners adopt a resolution certifying the petition for the ballot:

Although the July 2, 2015 letter does not expressly state that the Petition is valid, there is no requirement that it do so. The MCBOE's finding of validity is made clear by its request that MCC adopt a resolution certifying the Petition to the MCBOE for placement on the ballot.

We disagree with the Committee's interpretation of the requirements of R.C. 307.94. The statute expressly states that the board of elections is to certify whether the petition is valid and whether it has sufficient valid signatures. These are two separate requirements as evidence from the subsequent statement, "If the petition is certified by the board of elections to be invalid or to have insufficient valid signatures, *or both*, the petitioners' committee may protest such findings. . . ." (Emphasis added.) R.C. 307.94. The Board of Elections does not satisfy the express requirements of R.C. 307.94 by implying that the petition is valid by instructing the Commissioners that their next step is to adopt a resolution certifying the petition. Nor would it be appropriate for the Commissioners to infer the petition is valid in the absence of an express and clear statement.

{128} We also reject the Committee's argument that the July 13 letter "ratifies" the July 2 letter and therefore extends back to the date of the Director and Deputy Director's original certification, making the July 2 certification proper and timely. This

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argument is based on the incorrect assumption that the July 2 letter is deficient only because it was signed by the Director and Deputy Director of the Board of Elections, rather than each of the several board members of the Board of Elections. Under agent-principal law, a principal may ratify the acts of the agent performed beyond the agent's authority "and such ratification extends back to the doing of the unauthorized act by the agent and binds the principal from that time." *State ex rel. Riley Constr. Co. v. East Liverpool City School Dist. Bd. of Edn.*, 10 Ohio St.2d 15, 29, 225 N.E.2d 246 (1967). The problem with the July 2 letter is not that it exceeded the Director and Deputy Director's authority, but that it failed to certify the validity of the petition itself. Therefore, there is no certification made in the July 2 letter that the July 13 letter can relate back to and ratify.

{129} The Committee also argues that the Commissioners are estopped from using its own "delay tactics" as an excuse not to pass a resolution certifying the petition. However, we find no evidence of delay tactics by the Commissioners. First, we note that the Committee filed the petition with the Board of Elections on June 24, two days within the 130-day deadline, giving the Board of Elections 12 days to complete its duties. The Board of Elections acted promptly, sending its letter on July 2. The record does not indicate whether the letter was hand-delivered or sent via U.S. Mail to the Commissioners. However, in its motion for summary judgment the Board of Commissioners stated that the letter was received on July 2, sometime after their regular meeting was adjourned and the members disbursed. Independence Day was observed on July 3rd due to it falling on a Saturday. Monday, July 6 was the 120-day

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deadline for the Board of Elections to submit a proper certification of the petition and the signatures to the Board of Elections. Therefore, unless the Commissioners notified the Board of Elections of its position on July 6, there was no time for the Board of Elections to certify the petition itself before the 120-day deadline of July 6. The Commissioners argue that it was impossible for them to act prior to July 7 because they would have to have scheduled a special meeting for July 7 and distribute notices for the meeting on July 6 to the press. Under these facts, there was no delay, unreasonable or otherwise. We note that the 130-day deadline in the statute is the *last* possible day on which the Committee may act – nothing prevents the Committee from filing its petition with the Board of Elections earlier so that matters can be addressed without needless urgency and against the backdrop of a holiday weekend.

{130} The right of the electors to petition for county charter is an important one, established and preserved by the Ohio Constitution. “The requirements for referendum petitions provide the mechanics for securing the ultimate and important goal of the legitimate obtaining of a voted expression of the will of the electorate. Courts should strive to nurture and preserve the integrity of the right of referendum.” *Markus v. Trumbull Cty. Bd. of Elections*, 22 Ohio St.2d 197, 200, 259 N.E.2d 501, 503 (1970).

{131} However, under these circumstances the Meigs County Board of Commissioners did not have a legal duty under R.C. 307.94 to adopt a resolution allowing the question of whether to adopt a county charter to be submitted to the electors. “ [T]he settled rule is that election laws are mandatory and require strict compliance and that substantial compliance is acceptable only when an election

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provision expressly states it is.' " *State ex rel. Edwards Land Co., Ltd. v. Delaware Cty. Bd. of Elections*, 129 Ohio St.3d 580, 2011-Ohio-4397, 954 N.E.2d 1193, ¶ 41, quoting *State ex rel. Ditmars v. McSweeney*, 94 Ohio St.3d 472, 476, 764 N.E.2d 971 (2002) (plurality opinion).

{¶132} Because R.C. 307.94 does not state that substantial compliance is acceptable, its requirements must be strictly followed. The Meigs County Board of Elections did not certify the petition and the signatures within the 120-day time period as required by R.C. 307.94. "And although the court liberally construes the rights of initiative and referendum, we will not do so when the applicable statutory requirements are—as here—not satisfied." (Citations omitted.) *State ex rel. Davis v. Beaver Twp. Bd. of Trustees*, 133 Ohio St.3d 170, 173, 2012-Ohio-4177, 977 N.E.2d 578, 581-82, ¶¶ 12-13. Therefore, the Relator does not have a clear legal right to the requested extraordinary relief, nor is there a corresponding clear legal duty on the part of the Board of Commissioners to provide it.

Conclusion

{¶133} Based on the foregoing, the Relator has not established by the requisite clear and convincing evidence that it is entitled to a writ of mandamus to compel the Meigs County Board of Commissioners to adopt a resolution pursuant to R.C. 307.94 causing the Meigs County Board of Elections to submit to the electors the question of whether the county should adopt a charter. We **DENY** relator's motion for summary judgment, **GRANT** respondent's motion for summary judgment, relator's motion to expedite proceedings is **GRANTED**, respondent's motion to stay proceedings is

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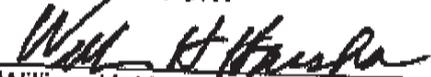
DENIED. DENY the writ and **DISMISS** the action.

{134} The clerk shall serve a copy of this order on all counsel of record and any unrepresented parties at their last known addresses by ordinary mail.

RELATOR'S SUMMARY JUDGMENT MOTION DENIED. RESPONDENT'S MOTION GRANTED. RELATOR'S MOTION TO EXPEDITE GRANTED. RESPONDENT'S MOTION TO STAY DENIED. WRIT DENIED. PETITION DISMISSED. COSTS TO RELATOR. IT IS SO ORDERED.

Hoover, P.J., & McFarland, A.J.: Concur.

FOR THE COURT



William H. Harsha, Judge

NOTICE

This document constitutes a final judgment entry and the time period for appeal commences from the date of filing with the clerk.

Pursuant to Civ.R. 58(B), the clerk is ORDERED to serve notice of the judgment and its date of entry upon the journal on all parties who are not in default for failure to appear. Within three (3) days after journalization of this entry, the clerk is required to serve notice of the judgment pursuant to Civ.R. 5(B), and shall note the service in the appearance docket and indicate the names and addresses of the parties it is serving, the method of service, and the costs associated with the service.

COURT OF APPEALS

APPENDIX EXH. 3: CT OF APPEALS RECONSIDERATION

IN THE COURT OF APPEALS OF OHIO
FOURTH APPELLATE DISTRICT
MEIGS COUNTY

2015 OCT 13 AM 10:12

FILED
DIANE LYNCH
CLERK OF COURTS
MEIGS COUNTY, OHIO

State of Ohio, ex rel.	:	
Meigs County Home Rule Committee,	:	
by its members, Paul K. Strauss,	:	
et al.,	:	
	:	
Relators,	:	Case No. 15CA9
	:	
v.	:	
	:	
County of Meigs	:	<u>ENTRY</u>
Board of Commissioners,	:	
Michael Bartrum, et al.,	:	
	:	
Respondents.	:	

APPEARANCES:

James Kinsman, Cincinnati, Ohio and Terry J. Lodge, Toledo, Ohio, for Relators.

Colleen Williams, Meigs County Prosecuting Attorney and Jeremy Fisher, Meigs County Assistant Prosecuting Attorney, Pomeroy, Ohio for Respondents.

HARSHA, J:

The Relator Meigs County Home Rule Committee filed a petition for writ of mandamus seeking to compel the Meigs County Board of Commissioners to certify a petition for an adoption of a county charter to the Meigs County Board of Elections pursuant to R.C. 307.94. We found that the Board of Elections timely certified that there were sufficient valid signatures in accordance with R.C. 307.94, but failed to certify until after the 120-day deadline whether the petition itself was valid. Because the Board of Commissioners had no clear legal duty to certify the petition to the Board of Elections until it received a timely certification *both* that the petition is valid and that there are sufficient valid signatures, we held that the Commissioners had no clear legal duty to

certify the petition to the Board of Elections and the Committee was not entitled to the extraordinary judicial remedy of mandamus. We dismissed the petition.

Now the Committee has filed a motion asking this court to reconsider our September 9, 2015 decision dismissing the mandamus action. For the reasons that follow, we **DENY** the motion.

App. R. 26(A) does not provide specific guidelines for appellate courts to use when determining whether a prior decision should be reconsidered. *State v. Wong*, 97 Ohio App.3d 244,246 (4th Dist. 1994). “The test generally applied is whether the motion for reconsideration calls to the attention of the court an obvious error in its decision or raises an issue for our consideration that was either not considered at all or was not fully considered by us when it should have been.” *Matthews v. Matthews*, 5 Ohio App.3d 140, 143 (10th Dist. 1981).

The Committee has not called to this court’s attention an error in our judgment, nor has it cited any case law or statutory provision that conflicts with our holding. Instead, the Committee argues that even though we held that the Board of Election’s July 2, 2015 letter failed to satisfy the requirements of R.C. 307.94 and thus did not trigger the Commissioners’ duty to certify the petition to the board of elections for submission to the voters, we must nevertheless analyze the subsequent untimely attempts of the Board of Elections to correct this substantial omission.

Specifically the Committee asks for clarification concerning the Board of Election’s untimely July 13, 2015 certification and asks us to determine whether the July 13 certification, even though made outside the statutory mandated 120-day deadline,

otherwise comports with the requirements of R.C. 307.94. However, our decision renders the effects of any subsequent certification moot. A petitioner seeking a mandamus action must prove by clear and convincing evidence that the respondent is under a clear legal duty to perform the acts. Here, we found that the Commissioner's duty to certify the petition to the board of elections was not triggered before the expiration of the 120-day deadline because the Board of Elections failed to certify the validity of the petition – a substantive omission, not a mere technical irregularity.

The Board of Elections failed to certify one of two key statutory elements when it certified the validity of the signatures but failed in its July 2, 2015 letter to certify the validity of the petition. The failure to certify the validity of the petition is more than “a technicality” and thus, the petition was not “in all other respects valid,” differentiating this case from the one the Committee cites in support of its motion for reconsideration. See, *State ex rel. Stern v. Quattrone*, 68 Ohio St.2d 9, 426 N.E.2d 1389 (1980)(where the petition was initially certified within the applicable time period but suffered from some mere technical irregularity as to form, an untimely correction of the technicality did not prevent the placement of the ordinance on the ballot and a writ was granted). The Commissioners had no legal duty to perform the act of certification by resolution. A subsequent untimely certification by the Board of Elections does not affect that determination and for us to determine the legal sufficiency of any subsequent untimely certification is to render an advisory opinion on a moot issue. *In re Arnott*, 2010-Ohio-5392, 942 N.E.2d 1124, ¶ 28 (“a court does not render advisory opinions”). The principle of “judicial restraint” mandates that Ohio courts should not exercise jurisdiction

over questions of law that have been rendered moot. *Miner v. Witt*, 82 Ohio St. 237, 92 N.E. 21, at the syllabus (1910); *State v. Moore*, 4th Dist. Adams App. No. 13CA987, 2015-Ohio-2090, ¶ 6 (4th Dist.).

An application for reconsideration is not designed for use in instances where a party disagrees with a judgment of an appellate court or seeks advisory opinions on legal issues made moot by the decision. Instead, it is intended to provide a party with an opportunity to prevent a miscarriage of justice where an appellate court makes an obvious error or renders a decision that is unsupported by the law. As we previously indicated, we properly dismissed the Committee's mandamus petition.

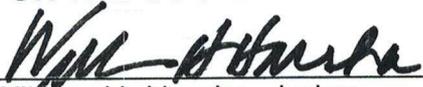
This court has fully considered the issues raised by the Committee and, because it has not called to our attention an error in our judgment, we **DENY** the motion for reconsideration.

The clerk shall serve a copy of this order on all counsel of record at their last known addresses.

MOTION DENIED. IT IS SO ORDERED.

Hoover, P.J. and McFarland, A.J.: Concur.

FOR THE COURT



William H. Harsha, Judge

§ 307.94. Petitioning for election on adoption of county charter.

Ohio Statutes

Title 3. COUNTIES

Chapter 307. BOARD OF COUNTY COMMISSIONERS - POWERS

Current with legislation signed by the Governor as of 11/15/2015

§ 307.94. Petitioning for election on adoption of county charter

Electors of a county, equal in number to ten per cent of the number who voted for governor in the county at the most recent gubernatorial election, may file, not later than one hundred ten days before the date of a general election, a petition with the board of county commissioners asking that the question of the adoption of a county charter in the form attached to the petition be submitted to the electors of the county. The petition shall be available for public inspection at the offices of the county commissioners during regular business hours until four p.m. of the one hundred eleventh day before the election, at which time the board shall, by resolution, certify the petition to the board of elections of the county for submission to the electors of the county, unless the signatures are insufficient or the petitions otherwise invalid, at the next general election.

Such electors may, in the alternative not later than the one hundred thirtieth day before the date of a general election, file such a petition with the board of elections of the county. In such case the board of elections shall immediately proceed to determine whether the petition and the signatures on the petition meet the requirements of law and to count the number of valid signatures and to note opposite each invalid signature the reason for the invalidity. The board of elections shall complete its examination of the petition and the signatures and shall submit a report to the board of county commissioners not later than the one hundred twentieth day before the date of the general election certifying whether the petition is valid or invalid and, if invalid, the reasons for invalidity, whether there are sufficient valid signatures, and the number of valid and invalid signatures. The petition and a copy of the report to the board of county commissioners shall be available for public inspection at the board of elections. If the petition is certified by the board of elections to be valid and to have sufficient valid signatures, the board of county commissioners shall forthwith and not later than four p.m. on the one hundred eleventh day before the general election, by resolution, certify the petition to the board of elections for submission to the electors of the county at the next general election. If the petition is certified by the board of elections to be invalid or to have insufficient valid signatures, or both, the petitioners' committee may protest such findings or solicit additional signatures as provided in section 307.95 of the Revised Code, or both, or request that the board of elections proceed to establish the validity or invalidity of the petition and the sufficiency or insufficiency of the signatures in an action before the court of common pleas

in the county. Such action must be brought within three days after the request has been made, and the case shall be heard forthwith by a judge or such court whose decision shall be certified to the board of elections and to the board of county commissioners in sufficient time to permit the board of county commissioners to perform its duty to certify the petition, if it is determined by the court to be valid and contain sufficient valid signatures, to the board of elections not later than four p.m. on the one hundred eleventh day prior to the general election for submission to the electors at such general election.

A county charter to be submitted to the voters by petition shall be considered to be attached to the petition if it is printed as a part of the petition. A county charter petition may consist of any number of separate petition papers. Each part shall have attached a copy of the charter to be submitted to the electors, and each part shall otherwise meet all the requirements of law for a county charter petition. Section 3501.38 of the Revised Code applies to county charter petitions.

The petitioners shall designate in the petition the names and addresses of a committee of not fewer than three nor more than five persons who will represent them in all matters relating to the petition. Notice of all matters or proceedings pertaining to such petitions may be served on the committee, or any of them, either personally or by certified mail, or by leaving it at the usual place of residence of each of them.

Cite as R.C. § 307.94

History. Amended by 128th General Assembly File No.29, HB 48, §1, eff. 7/2/2010.

Effective Date: 08-22-1995