

ORIGINAL

IN THE SUPREME COURT OF OHIO

STATE OF OHIO, <i>ex rel.</i>	:	
MEIGS COUNTY HOME RULE COMMITTEE,	:	Case No. 2015-1719
et al.	:	
Appellant		
vs.	:	Court of Appeals No. 15CA9
COUNTY OF MEIGS	:	
BOARD OF COMMISSIONERS, et al.	:	MOTION TO STRIKE AND DISMISS
	:	
Appellee		

MOTION TO STRIKE AND MOTION TO DISMISS BY APPELLEE

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 FEB 16 2016
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 SUPREME COURT OF OHIO

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 SUPREME COURT OF OHIO

MEMORANDUM

Motion to Strike pursuant to S.Ct.Prac.R. 3.11(E):

Appellees are asking this Court to strike Appellant's Merit Brief filed on December 14, 2015 pursuant to S.Ct.Prac.R. 3.11(E). Appellant failed to provide service to Appellees, despite the certificate on the brief saying otherwise. Appellants were not served notice until February 1, 2016, in the evening by email, well past the deadlines to file a response. It's reflected by an Amended Certificate filed with the Court.

According to S.Ct.Prac.R. 3.11(E) and S.Ct.Prac.R. 3.02(B), Appellees only recourse is through a Motion to Strike since the deadline has expired to file a reply brief, which is prejudicial to Appellees.

Therefore, Appellees ask his Court to Strike Appellant's Merit Brief and Dismiss the case. In the alternative, Appellees ask for a new Order allowing for a response to be filed should the other motions in this brief be denied.

Motion to Dismiss pursuant to the issue being moot:

Appellees also ask this Court to dismiss on the basis that the issue is moot. While this case was in limbo during appeal between the Fourth District and here, this Court ruled on a similar case where it upheld the Secretary of State's decision rejecting similar Charter Petitions. State ex rel. Walker v. Husted, 144 Ohio St.3d 361, 2015-Ohio-3749. The charter petition in this case is almost identical to the one in the Walker case. In fact, the same problems that existed in Walker, exist in this case too. This precedent was not available to the Meigs County Board of

Elections(hereafter "Meigs BOE") at the time it reviewed the petition. Now that the precedent is set, there is no reason to allow this petition to be added to the ballot by a writ of mandamus.

While the legal arguments are different between this case and in Walker, the main subject matter is still there – charter petitions. Since that subject matter is the same, this Court shouldn't allow this petition to be placed onto the ballot when this Court previously upheld keeping it off of the ballot due to defects in it's validity. The Meigs BOE did not have this precedent to go by at the time of their original ruling. It would be a great miscarriage of justice to allow a now-invalid charter petition to be placed on a ballot for innocent voters to be misguided.

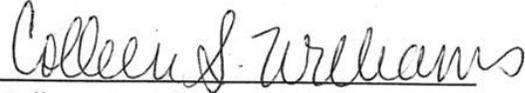
Hypothetically, if this same charter petition was refiled in Meigs County for the next election, the Meigs BOE would be obligated to deny certification based on the Secretary of State's Decision/Opinion and this Court affirming that decision. The Appellant is asking this Court to order an election on an issue that has been held invalid and no other county in Ohio will have this charter on the ballot.

CONCLUSION

Based on the foregoing, the Appellees ask this Court to strike Appellant's Merit Brief for violation of the rules on service and dismiss the case as a remedy. Alternatively, Appellees ask this Court to dismiss the case for the reason that this Court recently held a near identical charter-petition to be invalid and the issue is moot. Lastly, if the Court chooses not to dismiss the case

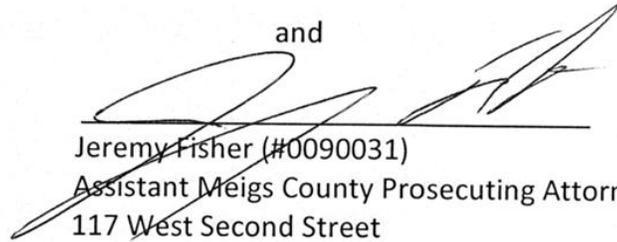
for the previous reasons, Appellees ask this Court to reset a briefing schedule in which Appellees can file a reply brief.

Respectfully Submitted,



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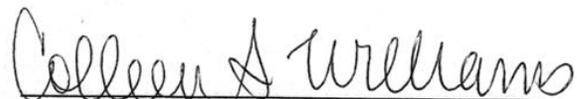
and



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CERTIFICATE OF SERVICE

I hereby certify that I served a copy of the foregoing Answer of the Board of Meigs County Commissioners upon Terry Jonathan Lodge, attorney for the Petitioners, by sending a copy by regular U.S. Mail, postage paid, to his office at 316 North Michigan Street, Toledo, OH 43604 and upon James Kinsman, attorney for the Petitioners, by sending a copy by regular U.S. Mail, postage paid, to his office at 1650 Glen Parker Avenue, Cincinnati, OH 45223 on this 12th day of February, 2016. Notice was further sent via email to each attorney at lodgelaw@yahoo.com and james@jkinsman.com



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