

IN THE SUPREME COURT OF OHIO

State of Ohio, *ex rel* ) Case No. \_\_\_\_\_  
Katharine S. Jones )  
2606 Hidden Spring Lane )  
Wadsworth, OH 44281 )

and )

Elizabeth A. Jarrell )  
9989 Acme Road )  
Rittman, OH 44270 )

and )

Lynn Kemp )  
5730 Wolff Road )  
Medina, OH 44256 )

and )

Georgia Kimble )  
2974 Kennedy Road )  
Medina, OH 44256 )

and )

Emilie Ann Judy )  
7504 Standing Oak Drive )  
Medina, OH 44256, )

*Relators,* )

-vs- )

Jon Husted )  
Secretary of the State of Ohio )  
180 East Broad Street, 16th Floor )  
Columbus, Ohio 43215 )

and )

Pamela B. Miller, John V. Welker, Jr. )  
Sharon A. Ray, and Larry G. Cray, Members )

**VERIFIED COMPLAINT FOR  
WRIT OF MANDAMUS  
(Expedited Election Case Pursuant  
To S.C.R.P. 12.08)**

Medina County Board of Elections )  
3800 Stonegate Drive, Suite C )  
Medina, OH 44256 )

*Respondents.* )

)

Relators Katharine S. Jones, Elizabeth A. Jarrell, Lynn Kemp, Georgia Kimble, and Emilie Ann Judy (“Relators”), proceeding by and through counsel, set forth their Verified Complaint as follows:

**PRELIMINARY STATEMENT**

1. Petitioners seek a writ of mandamus to compel the Respondents, the duly-elected Secretary of State of Ohio, Jon Husted (“SOS”) and Pamela B. Miller, John V. Welker, Sharon A. Ray, and Larry G. Cray (“Members”), members of the Medina County Board of Elections (“BOE”) (collectively “Respondents”), to comply with the requirements of O.R.C. § 307.95 and pertinent constitutional, statutory and common law, to-wit, to certify a certain “Proposed Charter for Medina County, Ohio” (“proposed charter”) contained within a certain “Petition for Submission of Proposed County Charter” (“Petition”) to the Medina County ballot for the November 8, 2016 general election. A blank copy of the Petition is attached hereto as Exhibit A and is incorporated fully herein as though rewritten,

**JURISDICTION**

2. Jurisdiction generally lies with this Court pursuant to O.R.C. Chapter 2731, which governs mandamus proceedings in the courts, and specifically lays jurisdiction in Ohio’s Supreme Court by O.R.C. § 2731.02.

3. The claims in this matter arise from the denial of Relators’ legal rights by Respondents which occurred when Respondents refused to perform their limited discretionary legal duty to

certify the Petition to the Medina County ballot for the November 8, 2016 general election. The Secretary of State broke the tie vote of 2-2 from the Medina County Board of Elections by voting to refuse to certify the Petition to the Medina Board of County Commissioners for placement on the November 8, 2016 election ballot.

### **THE PARTIES**

4. Relators Katharine S. Jones, Elizabeth A. Jarrell, Lynn Kemp, Georgia Kimble, and Emilie Ann Judy are registered voters of Medina County and are members of the Medina County committee of petitioners who came together for the purpose of gathering elector signatures to a formal petition to propose the adoption of a constitutional charter in Medina County. Relators bring this suit on behalf of electors who may be inclined to vote for the Medina County Petition. They helped circulate the Medina County Petition according to the constraints and requirements of the Constitution of Ohio, Article X, §§ 3 and 4, and Ohio Revised Code §§ 307.94, 307.95, 307.96, 3501.38, and 3513.261. The Petition, if approved by voters, would establish a charter form of government in Medina County, which is not presently a charter county.

5. Respondent Jon Husted is Ohio Secretary of State who, as chief elections officer, is legally responsible under various provisions of the Ohio Constitution and Ohio Revised Code for the conduct of elections in Ohio. The Secretary of State is being sued in his official capacity. Secretary of State Husted is capable of being sued and of having his decisions challenged by adverse parties and determined by Ohio law courts.

6. Respondents Pamela B. Miller, John V. Welker, Sharon A. Ray, and Larry G. Cray are Medina County Board of Elections members, and they are being sued in their official capacity. As board of election members they are capable of being sued and having their decisions challenged by adverse parties and determined by Ohio law courts.

### **STATUTORY AND LEGAL FRAMEWORK**

7. According to O.R.C. § 307.94, 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.

8. O.R.C. § 3501.38 requires petitions to be signed by electors qualified to vote on the issue. Signatures must be made in ink; each signer must place on the petition the signer's name, date of signing, and location of voting residence. The petitions must have, on each paper, the circulators' indication of number of signatures and the circulators' statement that they witnessed the signatures of qualified signers. And the petition must be submitted with all part petitions at one time.

9. The Medina committee of petitioners turned in 259 valid part petitions bearing 5,501 valid signatures. A total of 4,814 valid signatures were required.

10. It is undisputed that these requirements were properly complied with by Relators and persons working in concert with them such that sufficient numbers of valid signatures were timely submitted on petition forms which complied with the requirements of statute.

#### **FACTUAL AVERMENTS**

11. Article X, § 3 of the Ohio Constitution and Ohio Rev. Code §§ 307.94 and 307.95 authorize electors to file a petition seeking to submit the question of adoption of a county charter to the electors of the county.

12. Relators, as the statutorily-required committee of electors in Medina County, initiated, circulated and filed a county charter proposal for the November 8, 2016 general election ballot.

13. The Medina petitions were filed with the county board of election on or about June 30, 2016. On July 11, 2016, the Board voted 2-2 on whether to certify the Petition to the Medina County Commissioners for placement on the ballot.

14. The tie vote required the Medina County BOE to solicit the SOS to break the tie according to the provisions of O.R.C. § 3501.11(X). On July 14<sup>th</sup>, 2016, the Medina County BOE submitted a report on the vote, along with position statements, to the SOS. A true and correct copy of the BOE decision is annexed hereto as Exhibit B, and the respective position statements of BOE members are attached as Exhibits C and D. All are incorporated by reference as though fully herein rewritten.

15. On August 02, 2016, the SOS voted to break the tie by barring the Petition from being placed on the ballot. A true and correct copy of the decision is annexed hereto as Exhibit E and is incorporated by reference as though fully herein rewritten.

16. In his decision, Respondent Secretary of State ruled as follows:

A closer review of the specific provisions regarding the duties of the county officers, however, reveals that the language of Section 3.1 rings hollow. In other words, the Proposed County Charter does not actually provide for the performance of all duties imposed upon County officers by general law. ...

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...The Medina County proposal purports to maintain the status quo on matters of county offices, officers, and their duties. However, by failing to provide for the performance of all duties of county officers, the proposed charter is invalid because it does not adequately "provide the form of government of the county" which the Ohio Constitution dictates as an essential condition (*i.e.*, a *sine qua non*) of a county charter government.

Moreover, as Assistant Medina County Prosecuting Attorney Bill Thorne clarified, the Proposed Charter "failed to create an alternative form of government." I see "no change in government," stated Asst. Prosecutor Thorne. I concur. Despite the wording of their Proposed Charter, the petitioners are not truly attempting to establish the structural change envisioned by Article X, §§ 3 and 4 of the Ohio Constitution and enacted in Cuyahoga and Summit Counties.

Accordingly, I find that the proposed county charter petition is invalid on the “alternative basis” that it “do[es] not satisfy the threshold requirements that define a charter initiative”, and therefore break the tie against the motion to certify the proposed county charter petition to the Medina County Board of County Commissioners.

Exhibit E, pgs. 2, 4.

17. Respondents Secretary of State and the Medina County Board of Elections abused their discretion when they considered whether the proposed charter language fulfilled constitutional and statutory requirements concerning the substance of the charter proposal.

18. Respondents Secretary of State and Medina County Board of Elections are forbidden by pertinent constitutional principles from unilaterally exercising the power to peremptorily invalidate the Petition because of their personal opinions about its content, constitutionality, and legality. Since the Petition conforms to the structural requirements of statute, proposes a form of county government, and has been proffered for the county ballots by more than the minimal requisite numbers of eligible electors, it must be subjected to a formal public vote at the November 8, 2016 general election. Respondents’ “invalidation” of the Petition is thus unconstitutional, arbitrary, illegal and n abuse of their legal discretion.

### CLAIMS

#### ***FIRST CAUSE OF ACTION (Charter Proposal Delineates Valid 'Form of Government')***

19. Relators incorporate by reference as though fully rewritten herein the contents of the foregoing paragraphs 1 through 18.

20. The majority vote against certifying the Petition, two members of the Medina County BOE and the SOS, maintain that the Petition does not “provide the form of government of the county” which the Ohio Constitution dictates as an essential condition . . . of a county charter government.” This rationale misapprehends the statutory requirements for a valid county charter,

and denigrates the underlying constitutional right of citizens, having presented a complete charter proposal, to be able to vote on that proposal according to Ohio law.

21. About seven (7) single-spaced pages of the Petition enunciate many details of the form of the proposed county government, including the designated names of elected positions, the powers and qualifications for those officeholders, and other relevant information, including duties. The proposed charter includes these relevant excerpts concerning county offices:

**Section 3.1 Name, Boundaries and Powers** The County of Medina as its boundaries now are, or hereafter may be, shall be a body politic representative of and directly responsible to the residents of this county to be known by the name of “County of Medina” with all the powers, authorities, and responsibilities granted by this Charter and by general law, including but not limited to all or any powers vested in municipalities, subject to Section 1.6 of this charter, by the Ohio Constitution or by general law.

The County of Medina is responsible within its boundaries for the exercise of all powers vested in, and the performance of all duties imposed upon, counties and County officers by general law, provided that general law does not infringe the rights of the people of Medina County, including without limitation rights enumerated in this County Charter, or other inalienable rights. In addition, the County may exercise all powers specifically conferred by this Charter or incidental to powers specifically conferred by this Charter, including, but not limited to, the concurrent exercise of all or any powers vested in municipalities by the Ohio Constitution or by general law. The County may recognize or create greater protections for people and nature than provided by state, federal, or international law.

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

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

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**Section 4.1 Charter Authority** This Charter is enacted pursuant to the Ohio Constitution’s Home Rule provision of Article X Section 3, and hereby exercises the people’s right and power to form a County Charter government. (This Charter does not form an “alternative” form under the general law, Section 302).

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**Section 4.2.3 Powers and Duties of the County Commissioner** The County Commissioners shall have those powers and duties as responsible for the day-to-day running of the departments, offices and agencies of County government under his or her jurisdiction and control, in accordance with general law. If there is a conflict between this Charter and general laws, the duties of this Charter shall prevail. Such powers and duties include, but are not limited to, the following: . . .

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**Section 4.3.3 Powers and Duties of the County Auditor** The County Auditor shall have those powers and duties as responsible for the day-to-day accounting of transactions for the County government under his or her jurisdiction and control, *in accordance with general law.*

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**Section 4.4.3 Powers and Duties of the County Treasurer** The County Treasurer shall have those powers and duties as responsible for the day-to-day obtaining and securing county funds under his or her jurisdiction and control, *in accordance with general law.*

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**Section 4.5.3 Powers and Duties of the County Prosecuting Attorney** The County Prosecuting Attorney shall have those powers and duties as responsible for the prosecution of all complaints, suits and controversies in which the state is a party in the County, *in accordance with general law.*

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**Section 4.6.3 Powers and Duties of the County Engineer** The County Engineer shall have those powers and duties as responsible for the day-to-day questions of engineering or surveying of the departments, offices and agencies of County government under his or her jurisdiction and control, *in accordance with general law.*

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**Section 4.7.3 Powers and Duties of the County Recorder** The County Recorder shall have those powers and duties as responsible for the day-to-day county record keeping of County information under his or her jurisdiction and control, *in accordance with general law.*

\*\*\*\*\*

**Section 4.8.3 Powers and Duties of the County Coroner** The County Coroner shall have those powers and duties as responsible for the day-to-day running of the

medical, offices and agencies of County government under his or her jurisdiction and control, *in accordance with general law.*

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**Section 4.9 The County Sheriff** The County Sheriff shall be peace keeping authority of the County.

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**Section 4.9.3 Powers and Duties of the County Sheriff** The County Sheriff shall have those powers and duties as responsible for keeping the peace in the departments, offices and agencies of County government under his or her jurisdiction and control, *in accordance with general law.*

\*\*\*\*\*

**Section 4.10.3 Powers and Duties of the Clerk of Courts** The Clerk of Courts shall have those powers and duties as responsible for keeping the court records in the departments, offices and agencies of County government under his or her jurisdiction and control, *in accordance with general law.*

(Emphasis supplied).

22. The drafting device used by Relators was to incorporate public official duties and other details by reference from the Ohio Revised Code into the charter proposal. Incorporation by reference is a permissible drafting principle for a county charter proposal.

23. The “authority to determine whether a ballot measure falls within the scope of the constitutional power of referendum (or initiative) does *not* permit election officials to sit as arbiters of the legality or constitutionality of a ballot measure's substantive terms.” *State ex rel. Walker v. Husted*, 144 Ohio St.3d 361, 43 N.E.3d 419, 2015-Ohio-3749, ¶ 15 (2015).

24. Relators are entitled to a finding and declaration that their proposed county charter properly addresses the names, nature and existence of county officeholders, those officeholders' qualifications, terms and conditions of holding office, and their duties, along with a writ of mandamus by the Court that the Respondents have improperly refused and neglected to certify the Petition to the Medina County ballot for November 8, 2016 based on Respondents' opinions

of the legality or constitutionality of the county charter proposal, and an order placing the proposal on the ballot.

***SECOND CAUSE OF ACTION***  
***(No Structural Change Required For Valid Charter Proposal)***

25. Relators incorporate by reference as though fully rewritten herein the contents of the foregoing paragraphs 1 through 24.

26. Respondent SOS stated in his letter which broke the Board of Elections' tie vote that “petitioners are not truly attempting to establish the structural change envisioned by Article X, §§ 3 and 4 of the Ohio Constitution and enacted in Cuyahoga and Summit Counties.”

27. The Cuyahoga and Summit County charters differ in some respects, and are similar in some respects, to the charter proposal which is the subject of the instant lawsuit. The so-called “structural change” which the SOS claims is “envisioned” by those two county charters is not an obligatory requirement of the instant county charter proposal.

28. Under Ohio law, a county charter proposal need not alter the existing form of government in order to be valid, so long as the form of government is sufficiently detailed within the Petition that a voter need not look outside the document to understand what is being proposed. No change from the existing form of government is necessary as a prerequisite for the citizens to be able to vote on the county charter proposal articulated in the Petition in this case.

29. The Respondents exceeded their legal authority and abused their discretion in requiring “structural change” in county government as a prerequisite for a valid county charter proposal. By engrafting the requirement of a “structural change” onto the “form of government” analysis, Respondents passed upon the legality and constitutionality of the charter provisions, in violation of the holding of *State ex rel. Walker v. Husted*, 144 Ohio St.3d 361, 43 N.E.3d 419, 2015-Ohio-3749 (2015).

30. Relators are entitled to a finding and declaration that their proposed county charter is sufficiently detailed within the Petition that a voter need not look outside the document to understand what is being proposed and that no change from the existing form of government is necessary as a prerequisite for the citizens to be able to vote on the county charter proposal articulated in the Petition in this case. Relators are entitled to a writ of mandamus by the Court that the Respondents have improperly refused and neglected to certify the Petition to the Medina County ballot for November 8, 2016 based on Respondents' opinions of the legality or constitutionality of the county charter proposal, and should be granted an order placing the proposal on the ballot.

**RELATORS ARE ENTITLED TO A WRIT OF MANDAMUS**

31. The writ of mandamus is an extraordinary remedy that arose historically to deal with situations like this, where there is no other avenue for justice. It is the Court's duty in such situations to review the actions of the Ohio Secretary of State and Medina County Board of Elections to place limits on the exercise of their discretion to ensure that discretion is not exercised arbitrarily, or abused. It is further the Court's duty, when a governmental official has refused to undertake a nondiscretionary act, to order such act to be undertaken.

32. Relators have been denied justice through the refusal of Respondents Secretary of State and the Board of Elections to certify the Petition to the Medina County Commissioners to place the Petition on the ballot for the November 8, 2016 general election.

33. Consequently, the Respondents Secretary of State's and Board of Elections' refusals to certify the Petition to a public vote was improper, unlawful, an abuse of discretion and arbitrary, and must be reversed by this Court.

34. The acts or omissions of Respondents Secretary of State and Medina County Board of Elections are *ultra vires* insofar as they ignore the requirements of statute. The statutory

requirements are, in turn, constrained by the Ohio Constitution. Respondents' acts and omissions comprise a continuing abuse of discretion that must be corrected by a specific mandate from the Court. The Court must intervene to vindicate the rights of all of the Relators and to protect their rights under the Ohio Constitution to vote on properly-presented county charter proposals in their county.

35. Relators are entitled to a writ of mandamus to compel the Respondents Secretary of State and Medina County Board of Elections to comply with O.R.C. §§ 307.94 and 307.95 and the requirements of the Ohio Constitution, and to certify the Petition to the ballot for the November 8, 2016 general election.

#### **REQUEST FOR EXPEDITED REVIEW**

36. Due to the proximity to the election, the Relators are requesting an expedited review of this matter, pursuant to S.C.R.P 12.08, as this lawsuit is being filed ninety (90) days before the November 8, 2016 election. Relators have no plain or adequate remedy at law to correct the unlawful, unreasonable or arbitrary acts and abuses of discretion committed by the Respondents. Expedited review is necessary for a timely decision to allow inclusion of the county charter proposal on the ballot for the November 8, 2016 election.

**WHEREFORE**, Relators pray the Court issue a peremptory writ of mandamus, or alternatively, an alternate writ, pursuant to R.C. Chapter 2731, which requires Respondents Secretary of State and Medina County Board of Elections to comply with the requirements of O.R.C. §§ 307.94 and 307.95 and the Ohio Constitution by immediately certifying the Petition to, for placement on, the November 8, 2016 ballot for a public vote. Relators further request such other and further relief at law or in equity as the Court may deem necessary and proper in the premises to place the measure on the ballot. Relators further request to be awarded their costs of suit along with reasonable attorneys' fees.

Respectfully submitted,

/s/ James Kinsman

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/s/ Terry J. Lodge

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lodgelaw@yahoo.com

Co-counsel for Relators

**VERIFICATION**

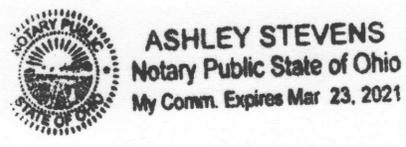
I, Elizabeth A. Jarrell, am a Relator in this lawsuit. I have reviewed the allegations in the Verified Complaint and swear that they are made upon my personal knowledge. I further swear that I am competent to testify as to all matters stated in this affidavit.

*Elizabeth A. Jarrell*  
Elizabeth A. Jarrell

State of Ohio                    )  
  )  
County of Medina            ) ss:

Sworn to before me and subscribed in my presence this 3<sup>rd</sup> day of August, 2016.

*Ashley Stevens*  
Notary Public



VERIFICATION

I, Katharine S. Jones, am a Relator in this lawsuit. I have reviewed the allegations in the Verified Complaint and swear that they are made upon my personal knowledge. I further swear that I am competent to testify as to all matters stated in this affidavit.

*Katharine S. Jones*  
Katharine S. Jones

State of Ohio )  
County of Medina ) ss:

Sworn to before me and subscribed in my presence this 3rd day of August, 2016.

*Robin Vagus Horner*  
Notary Public



ROBIN VOGUS HORNER  
Notary Public, State of Ohio  
My Commission Expires  
March 22, 2020

**VERIFICATION**

I, Emilie Ann Judy, am a Relator in this lawsuit. I have reviewed the allegations in the Verified Complaint and swear that they are made upon my personal knowledge. I further swear that I am competent to testify as to all matters stated in this affidavit.

*Emilie Ann Judy*  
~~Emily Ann Judy~~  
Emilie

State of Ohio                    )  
  )  
County of Medina            ) ss:

Sworn to before me and subscribed in my presence this 3<sup>rd</sup> day of August, 2016.

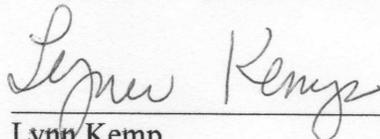
*[Signature]*  
\_\_\_\_\_  
Notary Public



**ASHLEY STEVENS**  
Notary Public State of Ohio  
My Comm. Expires Mar 23, 2021

**VERIFICATION**

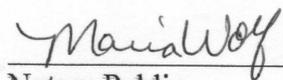
I, Lynn Kemp, am a Relator in this lawsuit. I have reviewed the allegations in the Verified Complaint and swear that they are made upon my personal knowledge. I further swear that I am competent to testify as to all matters stated in this affidavit.

  
\_\_\_\_\_  
Lynn Kemp

State of Ohio                    )  
  )  
County of Medina            ) ss:

Sworn to before me and subscribed in my presence this 3<sup>rd</sup> th day of August, 2016.



  
\_\_\_\_\_  
Notary Public

**VERIFICATION**

I, Georgia Kimble, am a Relator in this lawsuit. I have reviewed the allegations in the Verified Complaint and swear that they are made upon my personal knowledge. I further swear that I am competent to testify as to all matters stated in this affidavit.

Georgia Kimble  
Georgia Kimble

State of Ohio                    )  
  )  
County of Medina            ) ss:

Sworn to before me and subscribed in my presence this 3rd day of August, 2016.

Kerry L. Hugney  
Notary Public



**KERRY L. HUGNEY**  
Notary Public - State of Ohio  
My Commission Expires 3/24/2018