

**BEFORE THE SECRETARY OF STATE
FOR THE STATE OF OHIO**

IN RE: PROTESTS FILED AS TO THE : ADVISORY 2017-06
ATHENS AND MEDINA COUNTY : Issued: August 3, 2017
CHARTER PETITIONS : :

**BRIEF OF AMICI CURIAE
OHIO OIL AND GAS ASSOCIATION, THE MEDINA COUNTY ECONOMIC
DEVELOPMENT CORPORATION, AND NATIONAL ASSOCIATION OF
ROYALTY OWNERS IN OPPOSITION TO THE ATHENS AND MEDINA COUNTY
CHARTER PETITIONS**

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INTRODUCTION TO AMICI CURIAE

The 2017 petitions proposed by Athens and Medina counties are the most recent attempt by the Pennsylvania-based Community Environmental Legal Defense Fund (“CELDF”) to introduce its “Community Bill of Rights” initiative to Ohio. As is well known by the secretary, CELDF’s mission is to reboot American democracy¹ and assert “democratic control directly over corporations.”² With multi-million dollar support, CELDF and its Ohio organizers have set out, once again, “to alter, reform or abolish the current government” of Ohio.³

The Amici Curiae

The Ohio Oil and Gas Association (“OOGA”) is a trade organization, whose members participate in oil and gas activities throughout the State of Ohio. OOGA’s 3,100 members engage in all aspects of the exploration, production, and development of oil and natural gas resources within the State of Ohio. OOGA exists to protect, promote, foster, and advance the common interest of its members and those engaged in all aspects of the oil and natural gas industry.

¹ Community Environmental Legal Defense Fund, *Press Release: Ohio Citizens Protest Against Secretary of State for Denying Their Constitutional Right to Vote*, <http://celdf.org/2015/08/press-release-ohio-citizens-protest-against-secretary-of-state-for-denying-their-constitutional-right-to-vote/> (accessed Aug. 7, 2017); Jackie Stewart, *Lifting the Curtain on the Pennsylvania Group Behind Ohio’s “Local” Anti-Fracking Campaigns*, available at <http://energyindepth.org/national/lifting-the-curtain-on-the-pennsylvania-group-behind-ohios-local-anti-fracking-campaigns/> (accessed Aug. 7, 2017).

² Community Environmental Legal Defense Fund, *How We Work*, <http://celdf.org/how-we-work/> (accessed Aug. 7, 2017).

³ See Columbus Community Bill of Rights, Tish O’Dell, Sept. 10, 2014, available at https://www.youtube.com/watch?v=CEleUA_XzK0 (accessed Aug. 7, 2017). CELDF has sought to place its pre-packaged ordinances on the ballots in Colorado, New Mexico, and New York. Enactment of CELDF’s “bill of rights” has resulted in serious problems for at least one New Mexico county. Mora County adopted a CELDF proposal in 2013. Since then, Mora has been entangled in litigation in federal court, the end result of which was the “bill of rights” was revoked, and hundreds of thousands of dollars were spent in attorney’s fees. See *Swepi, LP v. Mora County*, D.N.M. No. CIV 14-0035, 2015 U.S. Dist. LEXIS 13496 (Jan. 19, 2015); Rob Nikolewski, *Rejected fracking ban may cost NM county ‘hundreds of thousands’ in legal fees*, available at <http://watchdog.org/195799/fracking-ban-new-mexico/> (accessed Aug. 7, 2017).

The Medina County Economic Development Corporation (“MCEDC”) is a public/private non-profit organization that serves the interests of the commercial and industrial sectors of Medina County. Established in 1986, MCEDC’s membership consists of a wide variety of companies, governmental entities, and educational institutions. MCEDC is charged with managing the economic development growth in Medina County and serves as administrator for the Medina County Port Authority.

The National Association of Royalty Owners (the “NARO”) is a member-based non-profit organization established in 1980 to promote the rights, responsibilities, and definition of citizens who own natural resources. NARO provides education and advocacy to mineral and royalty owners. NARO exists as the only national organization representing oil and gas royalty owners’ interests.

Amici Curiae’s Interest in this Protest

The Amici Curiae and their members are interested parties to this protest action because the petitions to enact county charters purport to limit, prevent, and even strip their respective memberships of property and rights granted and protected by Ohio law, as well as limit, prevent, or prohibit lawful conduct and operations. Both Athens and Medina counties seek to **strip** Amici Curiae’s respective memberships of standing to challenge the constitutionality of the proposed county charters and **eliminate** any and all rights and powers granted by a state, federal, or international permit, license, privilege, charter, or other authority. (Petitions, at Article I “Rights Secured against Corporations”.) While they strongly believe that, if enacted, the petitions proposed by Athens and Medina counties would be unenforceable pursuant to the Ohio Supreme Court’s ruling in *State ex rel. Morrison v. Beck Energy*, 143 Ohio St.3d 271, 2015-Ohio-485, 37

N.E.3d 128 (2015), Amici Curiae recognize that this is not the time or the place to address the unconstitutional nature of those provisions.

To resolve this protest action, the secretary need only apply the rulings in *State ex rel. Coover v. Husted* and *State ex rel. Walker v. Husted*, in which the Ohio Supreme Court upheld the Secretary of State's determinations that similar county charter petitions proposed in 2015 and 2016 were invalid because they did not comply with the statutory and constitutional requirements for forming a county charter government.

PRELIMINARY STATEMENT

While Athens and Medina have revised their CELDF charter petitions since the last time this office found them to be invalid,⁴ the outcome is the same: the petitions filed this year in Athens County and Medina County (collectively, the "Petitions") are invalid. The Petitions exceed the scope of the people's referendum or initiative power. The people of Athens and Medina counties do not have the authority to amend the Ohio Constitution to exempt themselves from the constraints of preemption by state law imposed by Article XVIII, Section 3, simply by passing a county charter. While the people of the state of Ohio, collectively, have the right to enact, abolish, and/or amend provisions of the Ohio Constitution, the people of one or two counties, alone, do not have the power to do so through a county charter. Because each Petition attempts to amend the Ohio Constitution to exempt their respective county from certain provisions of the Ohio Constitution, each Petition is invalid.

Further, the Petitions are invalid under the analysis set forth by the Supreme Court of Ohio in *State ex rel. Coover v. Husted*, 148 Ohio St.3d 332, 2016-Ohio-5794 and *State ex rel.*

⁴ In 2016, this office considered and invalidated three CELDF petitions filed in Athens County, Meigs County, and Portage County. While, in 2015, this office considered and invalidated three CELDF petitions filed in Athens County, Fulton County, and Medina County.

Walker v. Husted, 144 Ohio St.3d 361, 2015-Ohio-3746. This year’s Petitions, like last year’s and the petitions the year before that, fail to satisfy the threshold requirements to enact a charter initiative. The Secretary of State has the authority and discretion to invalidate a proposed charter petition that fails to set forth a form of government recognized by Ohio law. Because the Petitions have the same deficiencies identified by the secretary and the *Coover* Court last year, the secretary should invalidate each Petition again this year.

For these reasons, the secretary should keep the Petitions off the November ballot.

ARGUMENT

I. **THE SECRETARY OF STATE IS DUTY-BOUND TO KEEP INVALID PETITIONS FROM APPEARING ON THE BALLOT.**

As the secretary is well aware, his office is charged with determining, for each protest filed:

the sufficiency or insufficiency of the signatures and the validity or invalidity of the petition, including whether the petition conforms to the requirements set forth in Section 3 of Article X and Section 3 of Article XVIII of the Ohio Constitution, including the exercise of only those powers that have vested in, and the performance of all duties imposed upon counties and county offices by law, and whether the petition satisfies the statutory prerequisites to place the issue on the ballot.

R.C. 307.95(C). The secretary serves as the “**gatekeeper**” and is duty-bound “**to ensure that only those measures that actually constitute initiatives or referenda are placed on the ballot.**” (Emphasis added.) *State ex rel. Walker v. Husted*, 144 Ohio St.3d 361, 2015-Ohio-3749, 43 N.E.3d 419, ¶ 12 (holding that the secretary, at a minimum, has the same authority as that of the board of elections). *See also State ex rel. Vickers v. Summit County Council*, 97 Ohio St.3d 204, 208, 777 N.E.2d 830 (2002) (unless statutory requirements have been met, there is no duty to submit a proposed charter amendment to the electorate).

In fulfilling that responsibility, the Supreme Court of Ohio has recognized time and again that the secretary is authorized “**to go beyond the face of the petition in determining validity.**” (Emphasis added.) *Walker* at ¶ 15 (quoting *State ex rel. Schultz v. Cuyahoga Cty. Bd. of Elections*, 50 Ohio App.2d 1, 5, 361 N.E.2d 477 (8th Dist.1976)); accord *State ex rel. Coover v. Husted*, 148 Ohio St.3d 332, 2016-Ohio-5794, 70 N.E.3d 587; *State ex rel. City of Brecksville v. Husted*, 133 Ohio St.3d 301, 2012-Ohio-4530, 978 N.E.2d 157; *State ex rel. Kilby v. Summit Cty. Bd. of Elections*, 133 Ohio St.3d 184, 2012-Ohio-4310, 977 N.E.2d 590; *State ex rel. Citizen Action v. Hamilton County Bd. of Elections*, 115 Ohio St.3d 437, 2007-Ohio-5379, 875 N.E.2d 902; *State ex rel. DeBrosse v. Cool*, 87 Ohio St.3d 1, 716 N.E.2d 1114 (1999); *State ex rel. Carter v. Celebrezze*, 63 Ohio St.2d 326, 410 N.E.2d 1249 (1980).

- ***Does the Initiative Meet the Threshold Requirements?***

When determining validity, the secretary is vested with the authority to “**determine** whether a charter initiative meets **the threshold requirements for inclusion on the ballot.**” *Coover* at ¶ 11 (citing *State ex rel. Choices for South-Western City Schools v. Anthony*, 108 Ohio St.3d 1, 2005-Ohio-5362, 840 N.E.2d 582) (recognizing that election officials, including the secretary, are authorized “to determine whether a proposal exceeds the scope of the authority under which it is placed on the ballot”). See also *Walker* at ¶ 14 (citing *State ex rel. Choices for South-Western City Schools v. Anthony*, 108 Ohio St.3d 1, 2005-Ohio-5362, 840 N.E.2d 582, ¶ 39, 50-55) (recognizing that the secretary has the “discretion to determine whether a ballot measure satisfies the statutory prerequisites to be a ballot measure”).

- ***Does the Ballot Measure Fall within the People’s Initiative Power?***

One such threshold requirement is “whether a ballot measure falls within the scope of the constitutional power of referendum (or initiative)”— *i.e.* whether the people have the

constitutional authority to do what they are attempting to accomplish. *Walker* at ¶ 15. *See also Coover* at ¶ 11 (recognizing that election officials, including the secretary, are authorized “to determine whether a proposal exceeds the scope of the authority under which it is placed on the ballot”). While the protests take issue with the General Assembly’s recent codification of this authority in R.C. 3501.38 and R.C. 3501.39, (*see* Protests, at Objection #3 to BOE Ruling), the Ohio Supreme Court has continuously stated that the Secretary of State has the authority to determine that a petition is invalid if it exceeds the scope of the people’s initiative and referendum authority. *See Coover* at ¶ 11 (recognizing that election officials, including the secretary, are authorized “to determine whether a proposal exceeds the scope of the authority under which it is placed on the ballot”); *Walker* at ¶ 15; *State ex rel. Upper Arlington v. Franklin Cty. Bd. of Elections*, 119 Ohio St.3d 478, 2008-Ohio-5093, 895 N.E.2d 177 (holding that the board of elections abused its discretion by placing a petition on the ballot that exceeded the electorate’s initiative power); *State ex rel. Rhodes v. Lake Cty. Bd. of Elections*, 12 Ohio St.2d 4, 230 N.E.2d 347 (1967) (holding that an initiative petition to control the President of the United States’ decisions in the conduct of war exceeded the people’s initiative by relating to a question the municipality was not authorized by law to control through legislative action).

- ***If the Initiative Exceeds the Authority Granted, the Secretary Has a Duty to Keep It Off the Ballot.***

Moreover, the Ohio Supreme Court has gone so far as to hold an action taken by the people in excess of their initiative or referendum power is a legal nullity and it is the secretary’s “**affirmative duty, to keep such items off the ballot.**” (Emphasis added.) *Walker* at ¶ 13. Consequently, not only may the secretary consider whether the Petitions exceed the scope of the people’s initiative and referendum authority, but he must do so to avoid allowing a legal nullity to appear on the ballot.

To be clear: this discretion does not include the “power to determine that an issue should not be placed on the ballot because if passed it would be unconstitutional or otherwise illegal.” *Walker* at ¶ 15 (quoting *State ex rel. Schultz v. Cuyahoga Cty. Bd. of Elections*, 50 Ohio App.2d 1, 5-6, 361 N.E.2d 477 (8th Dist.1976)). That determination is distinct from the permissible inquiry of whether a particular ballot measure exceeds the people’s initiative and referendum power. *See Walker* at ¶ 15. However, the secretary need not ask whether the Petitions would be unconstitutional, if enacted, to conclude that the Petitions are invalid.

II. THE PETITIONS FALL OUTSIDE THE SCOPE OF THE PEOPLE’S INITIATIVE AND REFERENDUM POWER AND ARE INVALID.

A. Because the Petitions Exceed the People’s Initiative and Referendum Power, They Are Legal Nullities.

As explained below, the Petitions exceed the people of Athens and Medina County’s initiative and referendum authority. The Petitions seek to place a legal nullity on the ballot in November. Because the Petitions seek to accomplish something without authority, it is appropriate—indeed, it is the secretary’s duty—to keep the Petitions off the ballot. *See Walker* at ¶ 13.

B. Initiative and Referendum Power Are Not Effective to Amend the Ohio Constitution to Exempt One’s Community from Provisions of the Ohio Constitution.

• *The People’s Initiative and Referendum Power Is Limited*

The people of Athens and Medina counties do not possess unfettered initiative and referendum power. *See State ex rel. Ebersole v. Del. County Bd. of Elections*, 140 Ohio St.3d 487, 2014-Ohio-4077, 20 N.E.3d 678 (interpreting municipal initiative power). Rather, the people’s initiative and referendum authority is limited by the Ohio Constitution and extends only to those “matters which such county may now or hereafter be authorized to control by legislative

action.” Article X, Section 3, Ohio Constitution. Matters controllable by legislative action include local police, sanitary, and other similar regulations, “as are not in conflict with general laws.” See Article XVIII, Section 3, Ohio Constitution (the “Home Rule Amendment”). That is, the Ohio Constitution establishes that a local law that is in conflict with a general law of the State of Ohio is not enforceable; such a law is not a proper exercise of local legislative power. In fact, R.C. 307.95(C) specifically calls on the secretary to consider “whether the petition conforms to the requirements set forth in ... Section 3 of Article XVIII of the Ohio Constitution.”

- *A Charter Petition In One or Two Counties Is Not the Proper Mechanism to Amend the Ohio Constitution*

The Petitions seek to establish “a County government that provides for . . . the power to articulate and protect fundamental rights free from preemption by other levels of government” and “elevat[ing] the consent of the governed above administrative dictates and preemptions.”

(Petitions, at Preamble.) Moreover, the Petitions declare that:

- “The rights of the people shall not be limited, infringed, or abridged by any law, judicial ruling, preemption, regulation, process, permit, license, Charter, or delegation of privilege or authority.” (Athens Petition at Section 1.17; Medina Petition at Section 1.2.)
- The county is “not subject to constraints on local lawmaking imposed by state and federal governments [including] preemption of local lawmaking by state and federal laws or international treaties[.]” (Petitions, at Section 4.3.)
- “Neither the County Board of Elections, County Commissioners, Secretary of State, nor other governmental body shall review a ballot measure to determine whether it is constitutional or within the scope of the County’s or the people’s authority.” (Petitions, at Section 4.4(3).)

These provisions are nothing short of an effort to re-write the Section 3 of Article XVIII of the Ohio Constitution as relates to Medina and Athens counties. But, the constitutional right of initiative or referendum does **not** include the legislative authority to amend the Ohio Constitution to exempt one or two counties from provisions of the Ohio Constitution.

To be sure, it is possible for the citizens of the State of Ohio to amend the Ohio Constitution to liberate themselves from, for example, the constraints of preemption by state law found in Article XVIII, Section 3 of the Ohio Constitution (as the Petitions ineffectively attempt to do). But, to amend the Ohio Constitution, the proper procedures must be followed. Article II, Section 1a of the Ohio Constitution outlines the procedure for amending the Ohio Constitution through statewide initiative.

To amend the constitution through initiative, a petition containing the signatures of 10% of the statewide electors must be filed with the Secretary of State. Art. II, Section 1a of the Ohio Constitution. Not only were these Petitions not filed with the Secretary of State, but also they fail to contain the signatures of 10% of the statewide electorate. There are approximately 7,861,025 registered voters in the state of Ohio.⁵ Neither Athens's 1,473 valid signatures (< 1% of registered voters), nor Medina's 5,229 valid signatures (< 1% of registered voters) comes anywhere close to meeting the 10% threshold. Consequently, the Petitions are—on their face—an invalid attempt to amend the Ohio Constitution through local initiative.

The people of Athens and Medina counties have no more initiative and referendum authority to enact a constitutional amendment by enacting a local charter than they do to pass an administrative matter via a local initiative. *See Walker* at ¶ 13 (citing *Buckeye Community Hope Fund v. Cuyahoga Falls*, 82 Ohio St.3d 539, 697 N.E.2d 181 (1998)). Doing so is a legal nullity and, therefore, the secretary is duty-bound to keep the Petitions off of the ballot in November.

⁵ Ohio Secretary of State, *November 8, 2016 General Election Official Canvass available at <https://www.sos.state.oh.us/globalassets/elections/2016/gen/county.xlsx>* (accessed Aug. 10, 2017).

III. THE PETITIONS ARE INVALID BECAUSE THEY FAIL TO SATISFY THE PREREQUISITES TO FORMING A COUNTY CHARTER GOVERNMENT.

A. Because the Petitions Fail to Comply with the Requirements for Establishing a Charter Government under Art. X, Section 3, They Are Invalid.

The Petitions fail to satisfy the statutory prerequisites to be a valid ballot measure. While the people of Ohio have the authority to enact a charter form of county government, to do so, they are required to set forth the form of government, *Walker* at ¶ 24, by “provid[ing] for the exercise of all powers vested in, and the performance of all duties imposed upon counties and county officers by law.” Article X, Section 3, Ohio Constitution (outlining the prerequisites to formation and enactment of a county charter). The proposed charter must individually delineate each power and duty and must not “force[] one to ‘look to sources outside the proposed charters to determine the form of government they purport to establish.’” *Coover* at ¶ 17 quoting *Walker* at ¶ 23. A charter petition that fails to meet all of these requirements does not satisfy the legal prerequisites, and is invalid on its face.

As this office determined in 2015 with respect to the invalidated charters proposed that year for Athens and Medina counties, where a proposed charter does not provide for *any* meaningful change to the structure of county government, such a petition is invalid. Secretary of State’s Decision re: protests filed pursuant to R.C. 307.95 (August 13, 2015).

B. The Proposed Athens County Charter Fails to Define All Powers and Duties Imposed upon Counties and County Officers by Law or to Establish a County Executive.

- *Manner of Election and Duties of County Officers Are Undefined*

The proposed Athens County charter is invalid because it fails to “determine . . . the manner of [county officer] election[s]” and fails to “provide for the exercise of all powers vested

in, and duties imposed upon” the County and its officers, as required by law. Art. X, Sec. 3 of the Ohio Constitution.

For example, the proposed Athens County charter provides for each county official:

The [OFFICIAL] shall be elected, and the duties of their office and the compensation thereof, shall continue to be determined in the manner provided by *general law*, except as further specified by this Charter, or as shall be established by ordinance or referendum.

(Emphasis added) (Athens Petition, at Sections 3.4 (County Commissioner), 3.5 (Auditor), 3.6 (Treasurer), 3.7 (Prosecutor), 3.8 (Engineer), 3.9 (Recorder), 3.10 (Coroner), 3.11 (Sheriff), and 3.12 (Clerk of Courts).)

The proposed charter, however, is silent as to the manner and method for electing the Athens County Commissioners. The proposed Athens County charter fails to indicate whether the Athens County Commissioners are elected at-large, by district, or some combination of the two. (*Compare* Athens Petition, at Section 3.4 *with* Medina Petition, at Section 3.2 (“The County Commission shall be composed of three (3) *at large* members”) (emphasis added).) Elections are the quintessential first-step in establishing any democratic government and the proposed Athens County charter fails to define the manner in which its Commissioners are elected. For this reason alone, the Athens Charter Petition is invalid.

Moreover, the proposed Athens charter does not provide any details concerning the duties or compensation of the County Auditor (Section 3.5); Treasurer (Section 3.6); Prosecutor (Section 3.7); Engineer (Section 3.8); Recorder (Section 3.9); Coroner (Section 3.10); Sheriff (Section 3.11); or Clerk of Courts (Section 3.12). To understand the duties, responsibilities, and powers of these essential county positions, one is forced to look to the *general law* of the state to see what duties, responsibilities, and powers have been imposed upon these positions by the

General Assembly. Furthermore, as with the County Commissioners, the proposed Athens County charter fails to provide the manner in which these essential officers are elected.

Because the proposed Athens County charter does not comply with the requirements of Art. X, Section 3 of the Ohio Constitution, the Petition is invalid. *Walker* at ¶ 23 (holding that a charter petition is invalid if “[o]ne must look to sources outside the proposed charters to determine the form of government they purport to establish, and therefore they do not satisfy the legal prerequisites.”).

- ***No Recognized Form of County Government***

Additionally, the Athens Petition fails because it seeks to enact an unrecognized form of county government—“a constitutional County government.” (Athens Petition, at Preamble.) Article X, Section I of the Ohio Constitution vests the General Assembly with the sole and exclusive authority to define the forms of county government in Ohio: “The General Assembly shall provide by general law for the organization and government of counties . . . [and] ***may provide by general law alternative forms of county government.***” (Emphasis added.) The General Assembly has not provided, as an alternative form of county government, for a “constitutional County government.”

The only alternative form of county government the General Assembly has provided for, in its sole discretion, is found in Chapter 302 of the Ohio Revised Code, which requires the election or appointment of a county executive: “There **shall** be a county executive, who ***shall be the chief executive officer*** of the county. **He shall** be either an elective county executive as provided for in section 302.15 of the Revised Code, or an appointive county executive as provided for in section 302.16 of the Revised Code.” (Emphasis added) R.C. 302.14.

Because the proposed Athens County petition does not provide for the election or appointment of a chief executive officer, the Petition is an invalid attempt to create a recognized, alternative form of county government. Instead, the Petition proposes to create a committee of county officials who together serve as an “Executive Council.” (Athens Petition, at Section 3.3.) The Executive Council performs two limited functions: (1) approving or vetoing ordinances passed by the county commissioners; and (2) proposing to the County Commissioners ordinances, resolutions, charter amendments, or other recommendations for action. (*Id.* at 3.3.1.) But, the Ohio Revised Code requires a single executive to serve as a “chief executive officer” of the county who has responsibilities such as promoting the “coordination of all county functions” and the “prepar[ation] and recommend[ation of] the annual tax budget.” R.C. 302.18(E); 302.19(A). *See also* Charter of Cuyahoga County, Charter of Summit County.⁶ The Athens charter petition fails to provide for that office and, consequently, it is invalid on its face.

- ***Broad Catchall Language Is Not Sufficient To Cure The Deficiencies***

The Athens Petition cannot rely on broad, catch-all language to correct the omissions in its proposed charter. Broad, catch-all language is not sufficient to correct for a charter’s failure to enumerate “all powers vested in, and the performance of all duties imposed upon counties and county officers by law.” Art. X, Section 3 of the Ohio Constitution. The *Coover* Court specifically rejected the 2016 petitions of Athens, Meigs, and Portage counties that relied on the following broad, catch-all language:

⁶ The only two counties—Cuyahoga and Summit—to have adopted county charters both complied with the requirements of R.C. Chapter 302, and so too must Athens and Medina counties if they want to become charter counties. *See* R.C. 302.01 (R.C. Chapter 302, *et seq.* shall be controlling in those instances where a county chooses to adopt an alternative form of county government); *Greene v. Cuyahoga Cty.*, 195 Ohio App.3d 768, 2011-Ohio-5493, 961 N.E.2d 1171, ¶¶ 10-19 (8th Dist.) (denying constitutional challenge to Cuyahoga County Charter, which adopted home rule and complied with the requirements of R.C. Chapter 302, as an alternative form of county governance); *State ex rel. Strategic Capital Investors v. McCarthy*, 126 Ohio App.3d 237, 244, 710 N.E.2d 290 (9th Dist.1998), fn. 3 (noting that Summit County has adopted an alternative form of county government that included a county executive and county council pursuant to R.C. 302).

The County . . . 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

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.

Coover at ¶¶ 15-16.

Just like the invalid 2016 Athens County petition, the 2017 Athens County Petition contains the same, broad, catch-all language invalidated in *Coover*. (*See* Athens Petition, at Art. II, Section 2.1.) For the same reasons this language was insufficient in 2016, so too it must be in 2017. Consequently, the proposed Athens County charter’s use of the same, broad, catch-all language does not save the Athens Petition’s failure to define all of the powers vested in and the duties imposed upon Athens County and its officers.

C. The Proposed Medina County Charter Simply Maintains the Status Quo.

The Medina County Petition’s proposed charter has made no effort to change or alter Medina County’s current form of government despite declaring the need “to alter the current statutory County government and create a constitutional County government” (Medina Petition at Preamble.) Although it creatively disguises its effort to maintain the status quo, the Medina Petition does nothing to create a new form of county government. Instead, it simply re-packages the statutorily proscribed form of county government that is currently in place in Medina County. The Medina charter petition maintains the same offices and officers—*i.e.*, three county commissioners, an auditor, a treasurer, a prosecuting attorney, etc. Each of those offices and officers has the duties articulated by the Ohio Revised Code. It proposes no new elections and it creates no new offices or officers.

And, the proposed Medina County charter makes no effort to provide for the election or appointment of a county executive. As explained above, the only recognized alternative to the statutorily proscribed form of county government mandates the election or appointment of a county executive. *See* Ohio Rev. Code 302.14. The proposed charter fails to provide for this position and, therefore, is an invalid ballot initiative.

Just as the 2015 Medina County Petition and proposed charter was invalid when it did not alter the status quo, so to must the 2017 Medina County Petition and proposed charter be found invalid. . *See* Secretary of State's Decision re: protests filed pursuant to R.C. 307.95 (August 13, 2015).

CONCLUSION

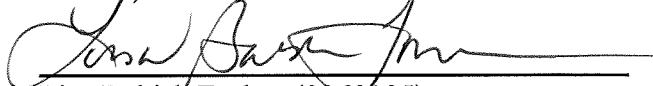
The Petitions are invalid. First, the Petitions exceed the people's initiative and referendum power. The people of Athens and Medina County have no initiative or referendum authority or power to amend the Ohio Constitution to exempt their respective county from the constraints of preemption by state law imposed by Article XVIII, Section 3, Ohio Constitution. As the Ohio Supreme Court articulated in *Walker*, the secretary has an affirmative duty to prevent such ballot measures from ever reaching the electorate. Consequently, the secretary should reject the Petitions as invalid and prevent the Petitions from reaching the ballot in November.

Second, like the submissions of defective county charter petitions last year and the year before, the Petitions this year fail to satisfy the basic requirements of Art. X, Section 3 of the Ohio Constitution and are, therefore, invalid. Moreover, this year's Petitions seek to establish an unrecognized, alternative form of county government. Consequently, the secretary's reasoning

last year for invalidating the Athens, Meigs, and Portage County petitions and his reasoning two years ago for invalidating the Athens, Fulton, and Medina County petitions is equally applicable to the Petitions this year: the Petitions' "language is insufficient to provide for the exercise of all powers vested in, and the performance of all duties imposed upon, counties and county officers" as required by Art. X, Section 3 of the Ohio Constitution. *Coover* at ¶ 17. Therefore, the secretary should reject the Petitions, and the question of whether the county charters should be adopted should not appear on the respective county ballots.

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CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing *Brief of Amici Curiae Ohio Oil and Gas Association, Medina County Economic Development Corporation, and the National Association of Royalty Owners in Opposition to the Athens and Medina County Charter Petitions*, filed with the Secretary of State's Office this 10th day of August 2017, was served via e-mail upon:

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and via U.S. Mail upon the following:

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