

**IN THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT**

Case No. 20-3557

**SUSAN BEIERSDORFER, DARIO HUNTER, GREG HOWARD, SALLY JO WILEY, SARA QUOIA
BRYANT, KATHARINE S. JONES, GERALD DOLCINI, GWEN FISCHER, DAMEN RAE,
WILLIAM LYONS, GREGORY PACE, MARKIE MILLER, AND BRYAN TWITCHELL,**

Plaintiffs-Appellants,

- v. -

**FRANK LA ROSE, IN HIS OFFICIAL CAPACITY AS SECRETARY OF STATE OF THE STATE OF
OHIO; PAMELA B. MILLER, LARRY G. CRAY, JOHN V. WELKER, JR., SHARON A. RAY, IN
THEIR OFFICIAL CAPACITIES AS MEMBERS OF THE MEDINA COUNTY BOARD OF
ELECTIONS; HELEN WALKER, KATE MCGUCKIN, KEN RYAN, AUNDREA
CARPENTER-COLVIN, IN THEIR OFFICIAL CAPACITIES AS MEMBERS OF THE ATHENS
COUNTY BOARD OF ELECTIONS; DAVID BETRAS, MARK E. MUNROE, ROBERT
WASKO, TRACEY S. WINBUSH, IN THEIR OFFICIAL CAPACITIES AS MEMBERS OF THE
MAHONING COUNTY BOARD OF ELECTIONS; ELAYNE J. CROSS, DORIA
DANIELS, PATRICIA NELSON, DENISE L. SMITH, IN THEIR OFFICIAL CAPACITIES AS
MEMBERS OF THE PORTAGE COUNTY BOARD OF ELECTIONS; DAVID W. FOX, JAMES
V. STEWART, CHARLES E. WILLIAMS, PAULA J. WOOD, IN THEIR OFFICIAL CAPACITIES AS
MEMBERS OF THE MEIGS COUNTY BOARD OF ELECTIONS; DOUGLAS J. PRIESSE, BRAD
K. SINNOTT, KIMBERLY E. MARINELLO, MICHAEL E. SEXTON, IN THEIR OFFICIAL
CAPACITIES AS MEMBERS OF THE FRANKLIN COUNTY BOARD OF ELECTIONS; AND
RICHARD F. SCHOEN, BRENDA HILL JOSHUA HUGHES, DAVID KARMOL, IN THEIR
OFFICIAL CAPACITIES AS MEMBERS OF THE LUCAS COUNTY BOARD OF ELECTIONS,**

Defendants-Appellees.

**ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO, NO. 4:19-CV-00260
(HON. BENITA Y. PEARSON)**

**BRIEF *AMICUS CURIAE* OF MOVE TO AMEND COALITION
IN SUPPORT OF PLAINTIFFS-APPELLANTS**

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Pro se

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

Disclosure of Corporate Affiliations and Financial Interest

Sixth Circuit

Case Number: 20-3557 Case Name: S. Beiersdorfer, et al. v. Frank LaRose

Name of counsel: Greg Coleridge, Pro se

Pursuant to 6th Cir. R. 26.1, All Appellants
Name of Party

makes the following disclosure:

1. Is said party a subsidiary or affiliate of a publicly owned corporation? If Yes, list below the identity of the parent corporation or affiliate and the relationship between it and the named party:

No

2. Is there a publicly owned corporation, not a party to the appeal, that has a financial interest in the outcome? If yes, list the identity of such corporation and the nature of the financial interest:

No

CERTIFICATE OF SERVICE

I certify that on October 6, 2020 the foregoing document was served on all parties or their counsel of record through the CM/ECF system if they are registered users or, if they are not, by placing a true and correct copy in the United States mail, postage prepaid, to their address of record.

s/ Greg Coleridge

Greg Coleridge

Pro se

This statement is filed twice: when the appeal is initially opened and later, in the principal briefs, immediately preceding the table of contents. See 6th Cir. R. 26.1 on page 2 of this form.

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INTEREST OF AMICI CURIAE

Move to Amend is a national 501 c-4 coalition of over 480,000 individuals and 200 organizations seeking to create real democracy through constitutional reform. We educate and organize to pass the *We the People Amendment* pending in the U.S. Congress (H.J.R 48).

Our interest in this case is rooted in our dedication to authentic democracy in all its forms. Public trust in the integrity and responsiveness of government to addressing societal needs continues to decline due to several factors. One of those is the perception, if not reality, that elected office holders are more beholden to wealthy campaign contributors and corporate entities than the general public. Another, relatedly, is that the super rich and corporate entities have hijacked constitutional amendments through the Court invention of corporate constitutional rights – most notably the right to speak, right not to speak, search and seizure rights, taking rights, and equal protection and due process rights. Court–granted protection of corporate entities under the Contracts Clause and wielding of the Commerce Clause by corporate entities at the state and local levels have equally

preempted the ability of citizens and their elected representatives to protect the health, safety and welfare of people and communities. Additionally, the Court decision to equate political money in elections as equivalent to First Amendment-protected free speech has drowned out the political voices of people without money. This is creating an increasing political / constitutional crisis.

Unfortunately, citizens under our system of government have no direct, separate and independent means of federal redress to oust elected officials between elections (or even at the next election due to incumbent advantage) or to create or reject laws or court decisions via citizen-driven petitions. It's only due to mass education and organizing of citizens in the past in support of citizen-initiated petitions which bypass the legislative branch that these direct democratic tools exist at all in two dozen states, including Ohio. It is essential due to their limited number and intention, therefore, that the citizen-initiated petition process at the state level be authentically direct, separate, and independent, if not expanded, but most importantly to be free from potential conflicts of interest deliberately caused by branches of government that are the subject of these citizen-driven initiatives in states, counties and municipalities. This is one step toward reversing our political / constitutional crisis.

Our interest in the case is also based on the direct use of the initiative petition as an educational and organizing strategy by Move to Amend supporters

across the country at the municipal, county and state levels calling on Congress to pass H.J.R. 48 in political jurisdictions that offer this means of direct democracy. Voters in hundreds of communities and several states have passed such citizen-driven initiatives, including ten in Ohio -- all of which include an additional provision of holding a city-sponsored public hearing.

Dedicated citizens committed to creating real democracy in an eleventh community, Cleveland, collected sufficient signatures on an initiative petition to qualify for the ballot, but their city council chose to simply improve the initiative language to create the ordinance. Dedicated citizens committed to creating real democracy collected sufficient signatures on an initiative petition during the end of 2019 and through the beginning of the pandemic in Painesville to qualify for the November, 2020 ballot. We expect other dedicated citizens committed to creating real democracy in other Ohio communities will pursue a similar strategy in the future.

Move to Amend has seven local affiliates in Ohio: Dayton Area Move to Amend, Cincinnati Move to Amend, Cleveland Move to Amend, Mentor Move to Amend, Cleveland East Move to Amend, Toledo Move to Amend and Central Ohio Move to Amend.

All relevant parties to this case consented to this amicus filing except

Portage County Board of Elections and its members¹ (see attached Exhibit A).

ARGUMENT

I. LEGITIMATE BALLOT INITIATIVE IS CONSISTENT WITH DEMOCRATIC PRINCIPLES OF OHIO CONSTITUTION AND ESSENTIAL FOR PUBLIC ACCOUNTABILITY

As one of the first states to be created following the original 13 colonies, Ohio was very much an experiment in creating a “Jeffersonian” democracy in opposition to corruption and aristocratic elitism and prioritization toward “plain folks.” Ohio’s constitution was perhaps the most democratic yet adopted with virtually all power in the legislature – the branch of government closest to the people. The governor had no veto power and the judiciary was a creature of the legislature with the General Assembly appointing state and county judges. Ohio’s new legislature, like in many other states, possessed the power to create and define corporations through charters and, later, general incorporation codes.

Widespread legislative corruption and the increasing power of corporations and the wealthy, including passage of the “Plunder Law,” resulted in Ohio voters

¹ Consent was requested of all Appellees for MTA to file as an amicus on September 5, 2020. All Appellees have consented except the Portage County Board of Elections, to which MTA sent a second email on September 14, 2020. No response was received from Portage County to either request.

approving by 73% a second constitutional convention in 1851. Numerous provisions were passed, including Article XIII, consisting of seven sections placing limits on the exercise of corporate power and increasing public accountability.

More direct citizen participation in government in response to rising corporate monopolies and trusts and their corresponding legislative corruption were among multiple public demands addressed in the 1912 Constitutional Convention, passed by 91% of voters. It was in this atmosphere that the initiative and referendum were adopted as methods to directly bypass the legislature in the creation or revocation of laws. Municipal home rule, to allow for certain communities to create limited forms of direct self-governance, was also adopted.

It is through this historical lens that Ohio's Constitution must be read and interpreted. Most relevantly, this includes "...the people reserve to themselves the power to propose to the general assembly laws and amendments to the constitution, and to adopt or reject the same at the polls on a referendum vote as hereinafter provided," Ohio Const., Art. II, § 1, "The first aforesaid power reserved by the people is designated the initiative," Ohio Const., Art. II, § 1(a), and "No law proposed by initiative petition and approved by the electors shall be subject to the veto of the governor." Ohio Const., Art. II, § 1(b)

What is true at the "post-enactment" (*i.e.* a governor can't veto at the "back end" of an initiative) should be true at the "pre-enactment" / front-end phase of an

initiative. A constitutional firewall between the people and elected officials was created for a reason – to shield the public from having their constitutional right of direct democracy abused by local boards of elections and the Ohio Secretary of State who act as prosecutors, judges and juries over the subject matter and the content of ballot initiatives rather than simply administrators of the existing initiative parameters.

These statutes, O.R.C. § 307.95, O.R.C. § 307.95(C), O.R.C. § 3501.11(K)(1) and (2), O.R.C. § 3501.38(M)(1), and O.R.C. § 3501.39(A)(3), all represent a constitutional breach of the direct democratic firewall that was intended to empower the public to directly challenge, in many cases, corrupt policies and office holders. Governing rules that promote trust and integrity, including the public tool of ballot initiatives, to hold public officials accountable and to resist corporate and money power have never been more important – especially in light of the current historic example of the First Energy scandal at the state level that has implicated the former Speaker of the Ohio House of Representatives in criminal bribery activity. This is all the more reason to affirm the constitutionality of a legitimate ballot initiative without legislative or Board of Elections pre-enactment as one of many steps needed to re-establish trust and integrity in the Ohio government.

II. INITIATIVE REJECTIONS FOR NEW COUNTY CHARTERS FOR

LACK OF DETAILED DUTIES IGNORES EXISTING COUNTY CHARTERS

Specific language in multiple rejected county charter initiatives specified that the County was responsible for the exercise of all powers vested in, and the performance of all duties imposed upon, counties and County officers by general law.

The initiatives were rejected supposedly because they failed to specify, “all powers vested in, and the performance of all duties imposed upon, counties and county officers,” *State ex rel. Coover v. Husted*, 148 Ohio St.3d 332, 2016-Ohio-5794, forcing one to “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.” *State ex. rel. Walker et al Husted*, 144 Ohio St.3d 419, 2015-Ohio-3749.

Beyond these perplexing decisions is the fact that the charters of the only two existing charters in Ohio, in Cuyahoga and Summit counties, contain identical language to that of the denied county charter initiatives.

The incompleteness of all defined powers in the Charter of Cuyahoga County Ohio² is clearly stated at the beginning. “All such powers shall be exercised and enforced in the manner prescribed by this Charter, or, when not

²

[http://council.cuyahogacounty.us/pdf_council/en-US/Legislation/Charter/2019/Amendments%20to%20County%20Charter%20\(11-5-2019%20Election\).pdf](http://council.cuyahogacounty.us/pdf_council/en-US/Legislation/Charter/2019/Amendments%20to%20County%20Charter%20(11-5-2019%20Election).pdf)

prescribed herein, in such manner as may be provided by ordinance or resolution of the Council. When not prescribed by the Charter or amendments hereto or by ordinance or resolution, such powers shall be exercised in the manner prescribed by general law.” (Article I, § 1.01)

Descriptions of the duties of several elected and appointed offices in the Cuyahoga Charter reference “general law” in the place of identifying specific duties. These include County Executive (Article II, § 2.01), Prosecuting Attorney (Article IV, § 4.01), Fiscal Officer (Article V, § 5.02), Medical Examiner (Article V, § 5.03), Clerk of Courts (Article V, § 5.04), Director of Public Works (Article V, § 5.05), County Treasurer (Article V, § 5.07), and Sheriff (Article XVI, § 16.01).

The same is true in the Charter of Summit County, Ohio.³ “All powers shall be exercised and enforced in the manner prescribed by this Charter, or, when not prescribed herein, in such manner as may be provided by ordinance or resolution of the County Council, and, when not prescribed by the Charter or amendments thereto or by ordinance or resolution, then such powers shall be exercised in the manner prescribed by general law.” (Article I, § 1.01) The same also exists for several elected or appointed county officers whose duties are to be determined as provided by general law.

³

<https://council.summitoh.net/images/stories/Charter/SummitCountyCharter.pdf>

The repeated reference to “general law” as a source for defining specific duties of multiple offices in both the Cuyahoga and Summit County charters invalidates the claim that the rejected county charter initiatives failed to in detail define the duties of specific offices referenced in their initiatives.

CONCLUSION

The Court should support our arguments in support of Plaintiffs' arguments for this appellate decision. Public accountability of elected officials demands a legitimately democratic ballot initiative process consistent with our Ohio's Constitution and consistent with the two existing county charters in the state.

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Sixth Circuit by using the appellate CM/ECF system on October 6, 2020.

I certify that all parties in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

Executed this Sixth day of October, 2020.

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Pro se

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EXHIBIT A
Consent of Parties to Amicus Filing

Zach Saunders
zach@athenscountyprosecutor.org
Sat, Sep 5, 7:01 PM

to me

Greg,
No objection from Athens County and Meigs County.
Sincerely,
Zachary L. Saunders

◇

Kevin Pituch
KPituch@co.lucas.oh.us
Sun, Sep 6, 9:54 AM

to me

Fine by me.

◇

Renata Staff
Renata.Staff@ohioattorneygeneral.gov
Mon, Sep 7, 8:17 AM

to Benjamin, me

Greg,
We consent to your request to file an amicus brief.
Thank you,
Renata

◇

Michael Lyons
mlyons@medinaco.org
Tue, Sep 8, 8:31 AM
to me

I have no objection.
Michael K. Lyons

◇

Hackett, Sharon
shackett@mahoningcountyoh.gov
Tue, Sep 8, 8:33 AM
to me

Hi Greg,
I have no objection.
Thanks,
Sharon

◇

Lecklider, Tim A.
tlecklider@franklincountyohio.gov
Wed, Sep 9, 3:37 PM
to Nick, me

Mr. Coleridge,

We consent to your request to file an amicus brief in the appeal of the Beiersdorfer v. LaRose matter.

Tim Lecklider