

Nos. 20-3557

In the United States Court of Appeals for the Sixth Circuit

BEIERSDORFER, *et al.*,

Plaintiffs-Appellants,

v.

LAROSE, *et al.*

Defendants-Appellees.

On Appeal from the United States District Court for the
Northern District of Ohio, No. 4:19-CV-00260

MOTION FOR LEAVE TO FILE *AMICUS CURIAE* BRIEF OF
CARROLL CONCERNED CITIZENS; CLEVELAND LEAD ADVOCATES FOR
SAFE HOUSING; CLEVELAND LEAD SAFE NETWORK; CLEVELAND SOLAR
COOPERATIVE; COLUMBUS INSTITUTE FOR CONTEMPORARY
JOURNALISM; CUYAHOGA COUNTY PROGRESSIVE CAUCUS; DEATH
PENALTY ACTION; ENVIRONMENTAL CAMPUS ORGANIZATION ECO;
FACT OHIO; FRESHWATER ACCOUNTABILITY PROJECT; MEDINA
COUNTY INDIVISIBLE; MEDINA COUNTY TOGETHER; NORTHEAST OHIO
BLACK HEALTH COALITION; OVEC-OHIO VALLEY ENVIRONMENTAL
COALITION; SPAN OHIO - SINGLE PAYER ACTION NETWORK OF OHIO;
STUDENTS FOR ENERGY JUSTICE; UNITARIAN UNIVERSALIST JUSTICE
OHIO; WEST SHORE FACT - FAITH COMMUNITIES TOGETHER FOR A
SUSTAINABLE FUTURE

IN SUPPORT OF PLAINTIFFS-APPELLANTS AND REVERSAL

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Motion for Leave to File Amicus Curiae Brief

Pursuant to FRAP R. 29(a), the following organizations hereby move this Court for leave to file a single *Amicus Curiae* brief that accompanies this Motion: Carroll Concerned Citizens; Cleveland Lead Advocates for Safe Housing; Cleveland Lead Safe Network; Cleveland Solar Cooperative; Columbus Institute for Contemporary Journalism; Cuyahoga County Progressive Caucus; Death Penalty Action; Environmental Campus Organization ECO; Fact Ohio; Freshwater Accountability Project; Medina County Indivisible; Medina County Together; Northeast Ohio Black Health Coalition; OVEC-Ohio Valley Environmental Coalition; SPAN Ohio - Single Payer Action Network Of Ohio; Students For Energy Justice; Unitarian Universalist Justice Ohio; and West Shore FaCT - Faith Communities Together for a Sustainable Future.

The potential *Amici Curiae* represent 18,750 people who belong to 20 organizations, that are experts in grass roots democracy. The protection of the fundamental right to bring peaceful change to their government through legislation created by the people brings them all together. The positive, peaceful change is through direct legislation, that includes initiatives, referendums, charter proposals and charter amendments.

The above organizations respectfully request leave to file an *Amicus Curiae* brief in support of the Plaintiffs-Appellants in this lawsuit.

Respectfully submitted,

/s/ Patricia A. Walker

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October 2, 2020

Brief

Pursuant to FRAP R. 29(a), the below organizations hereby move this Court for leave to file a single *Amicus Curiae* brief that accompanies this Motion. The potential Friends of the Court are experts in grassroots and voter democracy that support the claims of the Plaintiff-Appellants in this lawsuit. The potential Friends of the Court believe in direct democracy.

They have experience in the burdens placed on people-created ballot measures and grassroots democracy and believe that their voices, as expressed in an *Amici Curiae* brief, will add to the information available to this Court and will assist this Court.

The information on each of the organizations is as follows:

Carroll Concerned Citizens is an Ohio, citizens-based, non-profit corporation with 3 officers and a mailing list of 325 people. The goals of Carroll Concerned Citizens are to: (1) educate citizens about the long-term health, economic and environmental impacts of mineral extraction activities in Carroll County, Ohio and surrounding counties; (2) provide an outlet for citizens to voice concerns; (3) work with government offices on permit reviews and regulatory enforcement; and (4) support the use of legal means to uphold the rights of Ohio landowners. Carroll Concerned Citizens strongly believes in landowner/citizen rights to make choices both individually and locally.

Cleveland Lead Advocates for Safe Housing (CLASH) is an all-volunteer coalition of non-profit organizations that is working to implement the Lead Safe Certificate ordinance in Cleveland, Ohio. CLASH includes 10 organizations, as well as, 15 individuals as members. The Lead Safe Certificate ordinance was enacted in response to CLASH's initiative petition effort. Beginning in March 2021 that ordinance requires landowners to have a lead clearance test performed on all pre-1978 rental housing.

Cleveland Lead Safe Network (CLSN) has 10 member organizations and some individual members. The Cleveland Lead Safe Network seeks to protect children from lead poisoning due to deteriorated lead paint and lead dust, and to empower families to find lead-safe homes. With its family focus, CLSN members

pledge to hold local government accountable for its responsibility to protect our children.

Cleveland Solar Cooperative (CSC) is a cooperative corporation with 29 members. Its goal is to achieve a just transition to a clean energy economy by enabling Cleveland, Ohio area residents to own and shape their energy future. Communities are harmed by decisions made without their consent or input, such as operating dirty coal plants. CSC believes it is central to the health of our environment and our citizens to protect their right to introduce legislation via ballot initiatives. Local and state election officials should not have the power to deny the right of people to initiate legislation.

Columbus Institute for Contemporary Journalism (CICJ) has 11 people on their board in coordination with 20 writers and 10 volunteers. The “Free Press”, part of CICJ, is an independent news organization that delivers complete, accurate, and timely coverage of social and political news to citizens of Greater Columbus, Ohio. CICJ is driven by principle and policy, not partisanship. Through their journalism, they provide relevant information to the public to support and strengthen our citizen-based democracy and to ensure the accountability and integrity of our public institutions. In the long-standing tradition of muckraking journalism, they uphold the axiom that the role of a free press is to “afflict the comfortable, and comfort the afflicted.” In addition to news coverage, they provide

editorial perspectives based on the democratic principles of openness, inclusion, and transparency. They serve as a watchdog, rather than a lapdog, for the power elite; as a guardian of the public interest; and as an advocate for peace and justice in a society where all people have the opportunity to achieve their full potential.

Cuyahoga County Progressive Caucus has 8,000 members who are supportive of a community's right to use the initiative process to enact legislation.

Death Penalty Action advocates on behalf of the many millions of Ohioans and others who oppose the death penalty. As an organization campaigning for better public policy, Death Penalty Action is particularly concerned when a valid mechanism to address public policy issues is arbitrarily denied to any group of citizens working to create positive change to the benefit of the citizenry. What is being denied to others may at some point be denied to people concerned about the issues dear to their organization.

Environmental Campus Organization ECO is a Kenyon College student group whose mission is to educate and support environmentally-friendly and fossil fuel reducing actions at Kenyon and in the community at large. Upholding democracy holds a significant role in protecting the right to choose the environment over self or corporate interests. They stand behind the Plaintiffs because they believe that it is their responsibility to fight for our freedoms when those freedoms are compromised.

FaCT Ohio has 299 members, who promote a speedy transition to green, sustainable communities in which citizens are empowered to establish a healthy and safe environment.

FreshWater Accountability Project with its 250 members educate people about freshwater supplies by providing an online archive of studies and community information. Through education and factual information, people may work towards meaningful change at the local, state and federal levels of government to ensure our water is protected; and thus, our future is preserved.

Medina County Indivisible is a safe space for its 270 members to organize and work for progressive issues and candidates in Ohio and nationally. They are an Indivisible group, who strives to encourage grassroots action by working with individuals and other groups in the community.

Medina County Together is an activist group focused on making Medina County and our country a better place to live. They welcome all comments and ideas. The 584 members are supportive of a community's right to use the initiative process to enact legislation without any arbitrary obstructions of justice from bodies such as the Board of Elections.

Northeast Ohio Black Health Coalition and its 50 members address disparities and inequities in education, housing, and health with an emphasis on the

impact of health disparities on African Americans. They work to empower, educate and advocate for under-served populations.

OVEC-Ohio Valley Environmental Coalition with 500 members, is based in Huntington, West Virginia. Its members are located in Ohio, West Virginia and surrounding states. Their mission is to organize and maintain a diverse grassroots organization dedicated to the improvement and preservation of the environment and communities through education, grassroots organizing and coalition building, leadership development, strategic litigation and media outreach. Safeguarding basic principles of democracy is central to their work.

SPAN Ohio - Single Payer Action Network of Ohio, an organization of 4,000 members, believes health care is a human right. Health care is more than just medical care. It encompasses the environment and the effects of the environment on our health. Therefore, a community's right to self-determine their own standards is critical to the health and safety of the community.

Students for Energy Justice (SEJ) is a 20 member Oberlin College student group. The students are committed to creating a future with a livable environment and grassroots democracy for all. To further that goal, people should be able to protect their own well-being and freedom of speech through initiative action without arbitrary obstructions of justice from governmental bodies, such as Boards of Election.

Unitarian Universalist Justice Ohio comprises 38 congregations with about 4,000 Unitarian Universalists in Ohio. Their mission is to offer education, advocacy and action consistent with Unitarian Universalist liberal religious principles and to witness with and on behalf of marginalized groups and individuals. Voting rights and the ability to be heard in the democratic process through ballot initiatives is part of their core principles. Their fifth principle reads that as Unitarian Universalists, they affirm and promote: The right of conscience and the use of the democratic process within our congregations and in society at large.

West Shore FaCT - Faith Communities Together for a Sustainable Future has 12 core members and over 340 supporting contacts and partners. They promote clean air, clean water, healthy soil and a quick, safe transition to renewable energy sources and sustainable living. Their vision is to empower communities to determine their own path toward healthy environments. They believe that voters have the constitutional right to directly and democratically create legislation. Any law that infringes upon this right is oppressive and threatens democracy.

It is respectfully requested that this motion for leave be granted by this Court to allow the above organizations to submit their *Amicus Curiae* brief in support of Plaintiffs in this case.

Respectfully submitted,

/s/ Patricia A. Walker

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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 2, 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 2nd day of October, 2020.

/s/ Patricia A. Walker

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Corporate Disclosure Statement

All the Amici Curiae included in this brief are not publicly traded companies nor are they subsidiaries or affiliates of any publicly owned corporation. There is no publicly owned corporation, that is not a party to the appeal, that has a financial interest in the outcome.

Only two of the Amici Curiae are corporations: Carroll Concerned Citizens and Cleveland Solar Cooperative. Neither one is a subsidiary or affiliate of a publicly owned corporation. There is no publicly owned corporation, that is not a party to the appeal, that has a financial interest in the outcome.

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Interest of Amici Curiae

This brief is filed on behalf of the *Amici Curiae*,¹ 18,750 people who belong to 20 organizations. The organizations represent rural, suburban and urban Ohio and surrounding states. They are experts in grass roots democracy. The protection of the fundamental right to bring peaceful change to their government through legislation created by the people brings them all together. The positive, peaceful change is through direct legislation, that includes initiatives, referendums, charter proposals and charter amendments.

Further, the Friends of the Court advocate for direct legislation without unlawful government intervention. In other words, direct legislation without the unlawful interference of a governmental entity that might prevent the people from voting on the proposed legislation. It is for that reason that the following organizations respectfully request this Court to find for the Plaintiffs in this case.

Carroll Concerned Citizens is an Ohio, citizens-based, non-profit corporation with 3 officers and a mailing list of 325 people. The goals of Carroll

¹ The *Amici Curiae* have simultaneously moved this Court for leave to file their brief. No counsel for a party authored this brief in whole or in part. No person or entity other than Walker & Jocke Co., LPA financially contributed to the brief's preparation or submission. Walker & Jocke would like to acknowledge the contribution to this brief by Michael Donizetti, a 2020 graduate of the Ohio State University Moritz College of Law.

Concerned Citizens are to: (1) educate citizens about the long-term health, economic and environmental impacts of mineral extraction activities in Carroll County, Ohio and surrounding counties; (2) provide an outlet for citizens to voice concerns; (3) work with government offices on permit reviews and regulatory enforcement; and (4) support the use of legal means to uphold the rights of Ohio landowners. Carroll Concerned Citizens strongly believes in landowner/citizen rights to make choices both individually and locally.

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elite; as a guardian of the public interest; and as an advocate for peace and justice in a society where all people have the opportunity to achieve their full potential.

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impact of health disparities on African Americans. They work to empower, educate and advocate for under-served populations.

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The Friends of the Court believe in direct democracy and wholeheartedly agree with U.S. Representative John Lewis, "Never, ever be afraid to make some noise and get in good trouble, necessary trouble." @repjohnlewis, Twitter (June 27,

2018, 11:15 am), <https://twitter.com/repjohnlewis/status/1011991303599607808>.

The Friends of the Court are experts in grassroots and voter democracy that support the claims of the Plaintiff-Appellants in this lawsuit.

I. Summary of the Argument

The *Amici Curiae* support the Plaintiffs who challenge current Ohio election law that unconstitutionally limits Ohioan's rights to enact county charter proposals, to amend county charters, object to legislation by referendum petition, and to enact city ordinance ballot initiatives, all of which fall under the category of "ballot measures". Plaintiffs' and others have labored to create ballot measures; obtain the hundreds, thousands or tens of thousands of signatures needed to put those measures on the ballot; and have complied with tedious election law requirements only to find that they are abruptly stopped short of submitting their ballot measure to the people.

The right of local, community self-government should not be violated by governmental entities that perform content-based, substantive, pre-enactment review of ballot measures that prevent the people from voting on the people-created ballot measures. The violation of the Plaintiffs' and others' constitutional rights have long gone without effective redress.

In 2017 the Ohio Supreme Court in a plurality decision recognized that the content-based, substantive, pre-enactment review of an initiative measure by the election officials violated constitutional rights. *State ex rel. Espen v. Wood Cty. Board of Elections*, 154 Ohio St. 3d 1, 4, 110 N.E.3d 1222, 1226. As it was a plurality decision, the Ohio Supreme Court refused to apply the *Espen* prohibition

to other content-based, substantive, pre-enactment reviews of ballot measures by the governmental election officials. *State ex rel. Twitchell v. Saferin*, 155 Ohio St.3d 52, 2018 St.3d 52, 2018-Ohio-382 ¶ 7. Even though there is no compelling reason to allow this type of pre-enactment review to take place, this lawsuit is necessary due to the refusal of the Ohio courts to apply the *Espen* prohibition to all pre-enactment reviews of ballot measures.

The Friends of the Court argue for the extension of the law as articulated in Count 7 of Plaintiffs' Complaint. RE 1, Page ID # 58-59. Direct democracy, the right to local, community self-government, is a fundamental right that is retained by the people. The tradition of direct democracy flows through the early European settlers of America to today. The content-based, substantive, pre-enactment review of proposed ballot measures by election officials and the judiciary violates the fundamental right of local, community self-government, one of the unenumerated rights recognized by the Ninth Amendment to the U.S. Constitution.

II. History of Direct Legislation

The Friends of the Court assert that direct legislation or direct democracy has been shown by history to be a fundamental right. The early European settlers in this country found their right to local, community self-government to be essential.

The Magna Carta in 1215 had already set forth rights of the citizens that even the King had to respect. The people were to be consulted in their own affairs. Henry W. Bragdon & Samuel P. McCutchen, *History of a Free People* 14 (The Macmillan Company 1961). That tradition was evident in the New World.

English settlers in Virginia elected their own legislature to manage local affairs in 1619. *Id.* A year later the Pilgrims signed the Mayflower Compact before landing at Plymouth. *Id.* In the Mayflower Compact the Pilgrims agreed to follow laws that they created, not just the laws of the English Parliament.

Following in the tradition of self-government, in 1639 Hartford, Windsor and Wethersfield drew up the Fundamental Orders of Connecticut, a written constitution. *Id.* Self-government, while still under the English crown, was alive and well.

Town meetings in New England continued the self-government tradition in what would become the United States. *Id.* at 25. Early European settlers² participated in creating their own laws.

The direct democracy of ballot measures grew out of the idea that the people had a right to create and enact their own laws. They did not have to rely only on a distant legislature or Parliament. The right of direct democracy can be found in the Declaration of Independence. The Preamble of the Declaration of Independence states,

Governments are instituted among men, deriving their just powers from the consent of the governed, that whenever any form of Government becomes destruction of those ends, it is the right of the people to alter or abolish it.

Obviously, the beginning of the U.S. Constitution announces the importance of people creating not only laws, but also a government. The "We the People" phrase is well known.

In 1898, South Dakota was the first state to insert self-government rights in its laws. Jefferson B. Fordham & J. Russell Leach, *The Initiative and Referendum in Ohio*, 11 Ohio St. L.J. 495 (1950). Ohio later followed.

² Unfortunately, the right of local, community-based, self-government was usually limited to land-owning males. However, it showed that the people had a hand in creating their own laws. The people had local, community self-government in addition to the structured legislature.

President Theodore Roosevelt expressed the need for more than a structured legislature to make laws when he said in 1912, "We believe that unless representative government does absolutely represent the people, it is not representative government of all." *Initiative*, Ohio History Central, <https://ohiohistorycentral.org/w/Initiative> (last visited Oct. 1, 2020). He urged the people to take up the cause of self-government when the legislative is not responsive to the people. In that regard, the power of initiative has been defined as the power to propose such ordinances that the legislative is unwilling to pass. 1 John E. Gotherman & Harold W. Babbit, Ohio Municipal Law ¶ 7.29(A) (1992).

The Reverend Herbert Bigelow of Cincinnati's Vine Street Congregational Church³ spearheaded the Direct Legislation League in Ohio. *Herbert S. Bigelow*, Ohio History Central, <https://ohiohistorycentral.org/w/Initiative> (last visited Oct. 1, 2020). The Direct Legislation League supported people-created ballot measures.

The Reverend Bigelow initially lost his pastorship due to this passion for direct democracy. However, he won his congregation back and was able to ultimately succeed with placing the initiative power in the Ohio Constitution. *Id.*

³ It is an interesting tie in to the Pilgrims as the Congregational Church grew out of the tradition of the Pilgrims. *The Early Church, Excerpted from "A History of the United Church of Christ"* by Margaret Rowland Post, United Church of Christ, https://www.ucc.org/about-us_short-course_the-early-church (last visited Oct. 1, 2020).

The struggles the Reverend Bigelow faced are echoed in the work of many of the Friends of the Court. Their members have stood on public sidewalks, street corners; at festivals, fairgrounds, libraries and outside post offices; in heat, rain and snow to educate and advocate, often for ballot measures. They have sacrificed their precious free time to obtain one signature at a time while having burdens put before them by governmental officials. The exercise of rights that are retained by the people requires dedication and many thousands of hours of hard work.

Due in part to the efforts of the Reverend Bigelow, Ohio considered the direct democracy rights in a 1912 Constitutional Convention. The constitutional amendments allowing ballot measures were passed on September 3, 1912.⁴ *History of Initiative & Referendum in Ohio*, Ballotpedia, https://ballotpedia.org/History_of_Initiative_%26_Referendum_in_Ohio (last visited Oct. 1, 2020).

In 1913, Ohio considered its first constitutional amendment. From 1913 to 2014 there have been 151 constitutional amendments. 102 have been approved by voters and 49 have been rejected. *Id.*

⁴ Article II of the Ohio Constitution contains § 1a, the right to propose initiatives and referendums to amend the Ohio Constitution; § 1b, the right to propose initiatives and referendums to enact state laws, § 1c, the right to challenge laws enacted by the Ohio General Assembly, and § 1f, the right to propose municipal initiatives and referendums. All of the aforementioned provisions in Article II were enacted in 1912.

Once the right of direct democracy has been sanctioned in a state's constitution, no state has abolished that right. *The Initiative and Referendum in Ohio*, at 497. The right to have local, community-based, self-government is an established American tradition.

III. Argument

The Complaint in this lawsuit includes a cause of action based on the unenumerated rights preserved to the people by the Ninth Amendment to the U.S. Constitution. Complaint, RE 1, Page ID # 58-59. However, the trial court rejected the principle that rights flow from the Ninth Amendment. Order, RE 87, Page ID # 1074.

The Ninth Amendment, part of the Bill of Rights, states,

The enumeration in the Constitution of certain rights shall not be construed to deny or disparage others retained by the people.⁵

The Ohio Constitution continues the same theme with an amendment in 1851:

Powers reserved to the people. §20 This enumeration of rights shall not be construed to impair or deny others retained by the people; and all powers, not herein delegated, remain with the people.

Most courts have agreed with the trial court that the Ninth Amendment is not powerful. They state that the Ninth Amendment is only a statement of constitutional construction. *E.g., Gibson v. Matthews*, 926 F.2d 532, 537 (6th Cir. 1991). However, “it cannot be presumed that any clause in the Constitution is without effect.” *Marbury v. Madison*, 1 Cranch 137, 174 (1803).

⁵ The Tenth Amendment echoes the same principle that the people retain rights. It states, "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."

The Friends of the Court argue for the extension of the law to find the power in the Ninth Amendment. Direct democracy, the right to local, community self-government, is a right that was retained by the people and is a fundamental right. The tradition of direct democracy flows through the tradition of the early European settlers. The content-based, substantive, pre-enactment review of proposed ballot measures by election officials and the judiciary violates the fundamental right of local, community, self-government.

Signer of the Declaration of Independence and U.S. Constitution and one of the first U.S. Supreme Court Justices, James Wilson acknowledged that there is a right of immediate representation. 1 James Wilson, *Collected Works of James Wilson*, 297 (Kermit L. Hall & Mark David Hall eds., Liberty Fund, Inc. 2007). He recognized that direct democracy or the right of local, community self-government, the first prong of the right of immediate representation is important. However, as direct democracy is impractical for every legislative need, James Wilson remarked that,

When I am called upon to appoint other persons to make laws for me, I do it because such an appointment is of absolute necessity; for the citizens of Pennsylvania can neither assemble nor deliberate in one place."⁶

⁶ James Wilson continued his explanation that the right of immediate representation also meant the election of U.S. Senators by the people and not state legislatures. *Id.* James Wilson lost the argument as Article I, Section 3 of the U.S. Constitution provided for the election of U.S. Senators by state legislatures. That changed with the Seventeenth Amendment to the Constitution in 1913.

Id. at 295-296.

Even though a right of immediate representation, an analogous right to the right of local, community self-government, has not been recognized as a fundamental right by the courts, the fact that it is not explicitly stated in the U.S. Constitution does not mean that it does not exist. Justice Arthur Goldberg said in a concurring opinion in *Griswold v. Connecticut*,⁷

The Ninth Amendment simply shows the intent of the Constitution's authors that other fundamental personal rights should not be denied such protection or disparaged in any other way simply because they are not specifically listed in the first eight constitutional amendments.

381 U.S. 479, 489 (1965).

The courts must look at traditions to determine whether a principle is so rooted to be fundamental. *Snyder v. Massachusetts*, 291 U.S. 97, 105 (1934). The Friends of the Court have shown that the right of local, community self-government is an American tradition that goes back to the early European settlers. It is so rooted in our traditions as to be a fundamental right.

In *Griswold*, Chief Justice Warren and Justices Goldberg and Brennan extended the right of privacy through the Ninth Amendment to find a state statute forbidding the use of contraceptives in violation of the U.S. Constitution without using the Due Process Clause of the Fourteenth Amendment, however, this Court

⁷ Chief Justice Earl Warren and Justice William J. Brennan, Jr. joined in the concurring opinion of Justice Goldberg.

may find that the right to direct democracy flows through the Due Process Clause of the Fourteenth Amendment. *Griswold*, 381 U.S. at 492.

Governmental burdens, such as the content-based, substantive pre-enactment review of proposed ballot measures by election officials and the judiciary, should not be allowed to impede the people's fundamental rights. The people have a fundamental right, whether it is called the right to immediate representation, the right of direct democracy or the right of local, community self-government. That right should not be violated by governmental entities with content-based, substantive review before the ballot measures are voted on by the people.

Under any standard of scrutiny, it would be difficult for the election officials to justify the violation of the right to direct democracy by the content-based, substantive, pre-enactment reviews of ballot measures. The Ohio Supreme Court has found that even charter amendment measures proposed by the people that are unconstitutional should be submitted to the voters. *State ex rel. Youngstown v. Mahoning Cty. Bd. of Elections*, 144 Ohio St.3d 239 (2015). The Ohio Supreme Court stated,

The boards of elections do not have authority to sit as arbiters of the legality or constitutionality of a ballot measure's substantive terms. An unconstitutional amendment may be a proper item for referendum or initiative. Such an amendment becomes void and unenforceable only when declared unconstitutional by a court of competent jurisdiction.

State ex rel. Youngstown v. Mahoning Cty. Bd. of Elections, 144 Ohio St.3d 239 (2015). That decision involved a charter amendment. The holding of that case has not been extended to apply to other types of ballot measures nor has it been followed consistently. Otherwise, this lawsuit would be unnecessary.

The Friends of the Court respectfully urge this Court to concur with the *Youngstown* court and find that content-based, substantive, pre-enactment reviews of ballot measures are unconstitutional.

IV. Conclusion

The content-based, substantive, pre-enactment review of ballot measures is unconstitutional. The Friends of the Court support the Plaintiffs' arguments for a reversal of the trial court's decision.

Respectfully submitted,

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October 2, 2020

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 2, 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 2nd day of October, 2020.

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