

IN THE SUPREME COURT OF OHIO

STATE OF OHIO, <i>EX REL.</i>	:	Supreme Court Case No. 2016-1164
KATHARINE S. JONES, ET AL.,	:	
	:	Original Action in Mandamus
<i>Relators,</i>	:	
v.	:	
	:	
JON HUSTED,	:	
OHIO SECRETARY OF STATE, ET AL.,	:	
	:	
<i>Respondents.</i>	:	

BRIEF OF THE OHIO CHAMBER OF COMMERCE,
AFFILIATED CONSTRUCTION TRADES OHIO FOUNDATION, AND
THE AMERICAN PETROLEUM INSTITUTE,
AMICI CURIAE IN SUPPORT OF RESPONDENT JON HUSTED, SECRETARY OF STATE

L. BRADFIELD HUGHES (0070997)
(COUNSEL OF RECORD)
KATHLEEN M. TRAFFORD (0021753)
PORTER WRIGHT MORRIS & ARTHUR LLP
41 South High Street
Columbus, Ohio 43215-6194
Tel: (614) 227-2053
Fax: (614) 227-2100
bhughes@porterwright.com
ktrafford@porterwright.com

*Counsel for Amici Curiae
The Ohio Chamber of Commerce, Affiliated
Construction Trades Ohio Foundation, and
The American Petroleum Institute*

DONALD J. MCTIGUE (0022849)
MCTIGUE & COLOMBO, L.L.C.
545 E. Town Street
Columbus, Ohio 43215
Tel: (614) 263-7000
Fax: (614) 263-7078
dmctigue@electionlawgroup.com

*Counsel for Amici Curiae Affiliated
Construction Trades Ohio Foundation and
The American Petroleum Institute*

JAMES KINSMAN (0090038)
(COUNSEL OF RECORD)
P.O. Box 24313
Cincinnati, Ohio 45224
Tel: (513) 549-3369
james@jkinsmanlaw.com

TERRY J. LODGE (0029271)
316 N. Michigan Street, Suite 520
Toledo, Ohio 43604-5627
Tel: (419) 205-7084
lodgelaw@yahoo.com

Counsel for Relators

MIKE DEWINE
Attorney General of Ohio

NICOLE M. KOPPITCH (0082129)
(COUNSEL OF RECORD)
STEVEN T. VOIGT (0092879)
Assistant Attorneys General
Constitutional Offices Section
30 East Broad Street, 16th Floor
Columbus, OH 43215
Tel: (614) 466-2872
Fax: (614) 728-7592
Nicole.koppitch@ohioattorneygeneral.gov
Steven.voigt@ohioattorneygeneral.gov

*Counsel for Respondent Jon Husted,
Ohio Secretary of State*

CURT C. HARTMAN (0064242)
THE LAW FIRM OF CURT C. HARTMAN
7394 Ridgepoint Drive, Suite 8
Cincinnati, OH 45230
Tel: (513) 379-2923
hartmanlawfirm@fuse.net

*Counsel for Michael K. Baach, Northern
Medina County Chamber Alliance, Greater
Medina Chamber of Commerce, Medina
County Economic Development Corporation,
and Wadsworth Area Chamber of Commerce,
Amici Curiae in Support of Respondents*

WILLIAM L. THORNE (0024194)
(COUNSEL OF RECORD)
BRIAN M. RICHTER (0040409)
LEE R. POTTS (0093120)
Assistant Prosecuting Attorneys
72 Public Square
Medina, Ohio 44256
Tel: (330) 723-9539
Fax: (330) 764-8400
bthorne@medinaco.org
brichter@medinaco.org
lpotts@medinaco.org

*Counsel for Respondents Medina County
Board of Elections and its Members*

TABLE OF CONTENTS

TABLE OF AUTHORITIES.....	iv
INTERESTS OF <i>AMICI CURIAE</i>	1
STATEMENT OF THE FACTS.....	5
LAW AND ARGUMENT	5
A. Relators cannot establish a clear legal right to an extraordinary writ of mandamus because they bypassed adequate remedies at law.	5
B. Relators have failed to allege that they acted with the requisite diligence.....	9
C. Relators cannot establish a clear legal right to an extraordinary writ of mandamus because Respondents properly concluded, consistent with this Court’s decision last year in <i>Walker</i> , that the proposed Medina County charter petition does not satisfy the threshold requirements that define a charter initiative.	10
1. In contravention of Article X, Section 3 of the Ohio Constitution, the proposed Medina County charter petition fails to address and provide for all powers which counties and county officials possess under general law.....	11
2. In contravention of Article X, Section 3 of the Ohio Constitution, the proposed Medina County charter petition seeks to impose substantive laws beyond the initiative power reserved to the people of Medina County.....	14
D. Granting the extraordinary writ sought by Relators would encourage other groups to file facially invalid county charter petitions.	18
CONCLUSION	20
CERTIFICATE OF SERVICE	22
APPENDIX	A-1
Respondent Secretary of State’s August 2, 2016 Correspondence to Director Lawler and Deputy Director Coffey, Medina County Board of Elections	A-1

TABLE OF AUTHORITIES

Cases:

<i>Dorrian v. Scioto Conservancy Dist.</i> , 27 Ohio St.2d 102, 271 N.E.2d 834 (1971)	11
<i>Mothers Against Drilling in Our Neighborhood v. State</i> , 8th Dist. Cuyahoga No. 103430, 2016-Ohio-817	16, 17
<i>Ohio Civil Rights Comm. v. Countrywide Home Loans, Inc.</i> , 99 Ohio St.3d 533, 2003-Ohio-4358.....	11
<i>State ex rel. Husted v. Brunner</i> , 123 Ohio St.3d 288, 2009-Ohio-5327.....	10
<i>State ex rel. Kilby v. Summit Cty. Bd. of Elections</i> , 133 Ohio St.3d 184, 2012-Ohio-4310	10
<i>State ex rel. Linnabary v. Husted</i> , 138 Ohio St.3d 535, 2014-Ohio-1417.....	5
<i>State ex rel. Manos v. Delaware County Bd. of Elections</i> , 83 Ohio St. 3d 562 (1998).....	9
<i>State ex rel. O'Connor v. Davis</i> , 139 Ohio App.3d 701 (Summit App. 2000).....	16
<i>State ex rel. Sibarco Corp. v. City of Berea</i> , 7 Ohio St.2d 85, 218 N.E.2d 428 (1966).....	8
<i>State ex rel. Walker et al. v. Husted</i> , 144 Ohio St.3d 361, 2015-Ohio-3749	3, 4, 7
<i>State ex rel. Waters v. Spaeth</i> , 131 Ohio St.3d 55, 2012-Ohio-69	9
<i>State v. Golphin</i> , 81 Ohio St.3d 543, 1998-Ohio-336.....	11

Attorney General Opinions:

2007 Ohio Atty. Gen.Ops. No. 35, 2007 Ohio AG LEXIS 37 (Oct. 23, 2007).....	16
1989 Ohio Atty. Gen.Ops. No. 25, 1989 Ohio AG LEXIS 41 (May 15, 1989).....	16

Constitutional Provisions and Statutes:

Article X, Section 3, Ohio Constitution	<i>passim</i>
R.C. 307.94	<i>passim</i>
R.C. 307.95	<i>passim</i>
R.C. 309.06	12

R.C. 309.08	12
R.C. 309.09	12
R.C. 2731.05.....	8
R.C. 3501.11(X)	6, 9

Rules of Practice:

S.Ct.Prac.R. 12.08.....	8
-------------------------	---

Other Sources:

67 Ohio Jurisprudence 3d, Mandamus, Section 33 (2009)	7
Jackie Stewart, <i>Lifting the Curtain on the Pennsylvania Group behind Ohio's 'Local' Anti-Fracking Campaigns</i> , Energy In Depth (July 21, 2015)	19
Steinglass and Scarselli, <i>The Ohio State Constitution</i> , Oxford Commentaries on the State Constitutions of the United States (2011)	15

INTERESTS OF AMICI CURIAE

Amicus Curiae the Ohio Chamber of Commerce (“Ohio Chamber”), founded in 1893, is Ohio’s largest and most diverse statewide business advocacy organization. The Ohio Chamber works to promote and protect the interests of its nearly 8,000 business members and the thousands of Ohioans they employ, while building a more favorable Ohio business climate. As an independent and informed point of contact for government and business leaders, the Ohio Chamber is a respected participant in the public-policy and economic-development arenas. Through its member-driven standing committees and the Ohio Small Business Council, the Ohio Chamber formulates policy positions on issues as diverse as energy, environmental regulations, education funding, taxation, public finance, health care and workers’ compensation. The advocacy efforts of the Ohio Chamber are dedicated to the creation of a strong, pro-jobs environment – an Ohio business climate responsive to expansion and growth.

Amicus Curiae Affiliated Construction Trades Ohio Foundation (“ACT Ohio”) was created by the Ohio State Building & Construction Trades Council to facilitate economic and industrial development and promote industry best practices for Ohio’s public and private construction. ACT Ohio works on behalf of fourteen regional councils, one hundred and thirty-seven local affiliates, and over 92,000 of the most highly skilled, highly trained construction workers in this State. In excess of 14,000 contractors are signatory with ACT Ohio’s affiliates, and roughly 83% of Ohio’s 10,500 construction apprentices are registered in apprenticeship training programs jointly administered by ACT Ohio’s affiliates and their signatory contractor organizations. ACT Ohio is funded by

member contributions in an effort to protect and expand the State's construction industry and the many working families it supports.

Amicus Curiae American Petroleum Institute ("API"), doing business in Ohio through its Columbus offices as API-Ohio, is the primary national trade association of America's technology-driven oil and natural gas industry. The over 650 API members are involved in all segments of the industry, including the exploration, production, refining, shipping, and transportation of crude oil and natural gas. In Ohio alone, over 250,000 jobs are supported by the industry, which also provides more than \$12 billion in labor income and more than \$28 billion in value added to the State's economy. According to the Bureau of Labor Statistics, over 13,000 energy-related businesses call Ohio home. API-Ohio members have invested billions of dollars in Ohio's oil and natural gas industry. Together with its member companies, API-Ohio is committed to ensuring a strong, viable oil and natural gas industry capable of meeting the energy needs of our Nation and the State of Ohio in a safe and environmentally responsible manner.

These *amici curiae* share profound concerns about the various, far-reaching provisions and prohibitions contained within the proposed Medina County charter petition at issue in this original action. The proposed Medina County charter at issue here is similar to other fundamentally flawed "Community Bill of Rights" ("CBOR") charter petitions that were circulated last year by electors in Athens, Medina, and Fulton Counties and intended for placement on the November 3, 2015 general election (the "2015 CBOR Petitions"). Protests concerning the 2015 CBOR Petitions were filed and adjudicated by the Secretary of State, and *amici curiae* participated in those protests. On August 13, 2015, the Secretary

upheld the protests, invalidated the 2015 CBOR Petitions, and ordered that none of the 2015 proposals should appear on the ballot.

This Court agreed with the Secretary's decision and declined to issue any writ to undo it. In *State ex rel. Walker et al. v. Husted*, 144 Ohio St.3d 361, 2015-Ohio-3749 – an original action in which these *amici curiae* also submitted a brief in support of the Secretary – this Court confirmed that the Secretary appropriately invalidated the 2015 CBOR Petitions. In *Walker*, this Court confirmed the Secretary's key role as gatekeeper – “to insure that only those measures that actually constitute initiatives or referenda are placed on the ballot.” *Walker*, 2015-Ohio-3749, ¶ 13. This Court also confirmed that election officials have discretion “to determine whether a ballot measure satisfies statutory prerequisites to be a ballot measure.” *Id.*, ¶ 14. Although the Court cautioned that the Secretary may not “prejudge the legality or constitutionality of the substance of a petition,” *Walker*, at ¶ 17, the Court upheld the Secretary's alternative basis for invalidating the 2015 CBOR Petition; “namely, that the [proposed charter does] not satisfy the threshold requirements that define a charter initiative.” *Id.* at ¶ 22. This Court in *Walker* thus allowed the Secretary to: (1) consider the Ohio Constitution's express requirements for county charters (in that case, the requirements under Article X, Section 3 that every county charter “shall provide the form of government of the county” and “determine which of its officers shall be elected and the manner of their election”); and (2) conclude that those constitutional requirements were absent from the 2015 CBOR Petitions, rendering them invalid. *Id.* at ¶ 23-24.

This year, as Yogi Berra once remarked, “it's like déjà-vu, all over again.” Intent on disrupting the electoral process yet again, by seeking to place a Medina County charter

petition on the ballot that would never survive a post-election declaratory judgment action, the Medina County CBOR Petitioners have returned with a revised county charter petition that they believe – wrongly – addresses the fundamental shortcomings in the 2015 CBOR Petition that was invalidated in *Walker*.

The Medina County charter proposal, just as it did in 2015, would give “ecosystems” (among others) various vague and undefined rights, such as “the right to exist, flourish, and naturally evolve, free from activities prohibited by this Charter.” (See Medina County Petition [Relators’ Verified Compl., Exh. A., Art. I.] Although incorporated entities are granted certain powers by generally applicable State laws, Section 1.11 of the Medina County proposal instead purports to grant the people the right “to modify the rights, powers, privileges, immunities, or duties of corporations that act within the County when those corporate rights, powers, privileges, immunities, or duties conflict with the rights of people or nature.” (*Id.*, Art. I, § 1.11.) And the Medina County proposal, as it did before, would also prohibit the “siting or operation of equipment to support extraction of oil or gas, including pipelines, compressors, or other infrastructure” within the county (*Id.*, Art. II, § 2.1.2). For obvious reasons, these and many other provisions in the proposed Medina County charter are profoundly troubling to *amici curiae* and their membership.

What the Medina County proposal does not do are certain things that the Ohio Constitution requires must be done by such petitions. As the Secretary concluded in his August 2 tiebreaking correspondence to the Medina County Board of Elections, for example, the proposed charter fails on its face to provide for the performance of “all duties” imposed upon county officers by law, as the Ohio Constitution requires. See Article X,

Section 3, Ohio Constitution; *see also* the Secretary's Aug. 2, 2016 Correspondence to Director Lawler and Deputy Director Coffey, Medina County Board of Elections (Appx. A-1).

For the following reasons, *amici curiae* the Ohio Chamber, ACT Ohio, and API respectfully ask this Court to reject Relators' request for an extraordinary writ of mandamus, which fails both procedurally and on the merits. Procedurally, Relators' original action is improper in light of their failure to exhaust adequate, alternative legal remedies available by statute to challenge the Board's failure to certify the proposed charter for the ballot, based on the Secretary's tiebreaking decision. Relators also fail to allege that they acted with the diligence required in election matters such as this one. Substantively, an extraordinary writ should not issue to disturb the Secretary's correct determination that the Petition "do[es] not satisfy the threshold requirements that define a charter initiative" – a determination that the Secretary was well within his discretion to make under this Court's decision just last year in *Walker*.

STATEMENT OF THE FACTS

Amici Curiae adopt the Statement of Facts set forth by the Secretary.

LAW AND ARGUMENT

A. Relators cannot establish a clear legal right to an extraordinary writ of mandamus because they bypassed adequate remedies at law.

As this Court recently confirmed in denying another writ sought against the Secretary, Relators shoulder a heavy burden to demonstrate entitlement to extraordinary relief in mandamus. *State ex rel. Linnabary v. Husted*, 138 Ohio St.3d 535, 2014-Ohio-1417, ¶ 13. Specifically, Relators must "establish a clear legal right to the requested relief, a clear legal duty on the part of Secretary Husted to provide it, and the lack of an adequate remedy in the ordinary course of the law." *Id.* (Emphasis added).

Here, Relators had adequate remedies in the ordinary course of law to challenge Respondents' exclusion of the proposed Medina County charter from the ballot. In their Verified Complaint and Merit Brief, Relators fail to address alternative and adequate remedies that the General Assembly has established by statute, when (as here) county boards of election decline to certify proposed charter petitions.

The action challenged here by Relators is the Board of Elections' determination not to certify the proposed county charter petition for the ballot. Two members of the Board voted in favor of a motion to certify the proposal, and two Board members voted against that motion. (See David Bowling's July 14, 2016 Correspondence to the Secretary, attached as Exh. B to Relators' Verified Compl.) In light of the tie vote, the Board submitted the question to the Secretary for a tie-breaking decision pursuant to R.C. 3501.11(X), and the Secretary's August 2, 2016 Correspondence to the Board broke the tie "against the motion to certify," meaning that the Board's motion failed. In this way, the Secretary acted pursuant to R.C. 3501.11(X) as a fifth Board member. Because the Board, in light of the Secretary's tie-breaking vote, declined to certify the proposed charter petition for the ballot, the petitioners could have (and should have) challenged the Board's invalidity determination pursuant to R.C. 307.94 and R.C. 307.95. The former statute provides:

If the petition is certified by the board of elections to be invalid *** the petitioners' committee may protest such findings *** as provided in section 307.95 of the Revised Code *** or request that the board of elections proceed to establish the validity or invalidity of the petition *** in an action before the court of common pleas in the county. Such action must be brought within three days after the request has been made, and the case shall be heard forthwith by a judge or such court whose decision shall be certified to the board of elections and to the board of county commissioners in sufficient time to permit the board of county commissioners to perform its duty to certify the petition, if it is determined by the court to be valid *** [.]

R.C. 307.94.

It is black-letter law that “[w]herever a statute provides a specific remedy fully adequate to correct the grievances complained of, the writ of mandamus will not lie.” 67 Ohio Jurisprudence 3d, Mandamus, Section 33 (2009) (internal citations omitted). Here, the General Assembly has enacted statutes providing specific remedies fully adequate to correct Relators’ grievances, yet Relators failed to pursue those remedies. Relators provide no explanation, either in their Verified Complaint or in their Merit Brief, for why they failed to invoke the statutory remedies that the General Assembly has established in the event that a county board of elections, as here, invalidates a proposed county charter petition.

As R.C. 307.94 expressly provides, Relators could have protested the Board’s decision pursuant to R.C. 307.95. At that juncture, in the context of a protest filed with the Secretary, Relators would have had the opportunity to present the same arguments to the Secretary that they present here to this Court, challenging the basis for his August 2, 2016 tiebreaking decision on the grounds detailed in Relators’ Merit Brief. Relators are surely aware of the statutory opportunity to protest the Board’s invalidity determination. Just last year, after all, the prior (also defective) Medina County charter petition was challenged in the context of a protest under R.C. 307.95, before the Secretary’s determination on that protest was challenged in the *Walker* writ action.

Or, as R.C. 307.94 also expressly provides, Relators could have asked the Board to establish the validity or invalidity of the petition “in an action before the court of common pleas in the county.” With this alternative remedy, the General Assembly has made plain its policy determination that, upon the Board’s invalidity determination, issues concerning the

validity or invalidity of proposed petitions should be resolved in a local judicial forum – the court of common pleas – not in an extraordinary writ action brought in this Court.

Instead of giving the Secretary the opportunity to review their contentions in the context of a protest, as the General Assembly contemplated in R.C. 307.94 and 307.95, and instead of asking the Board to establish the validity of the petition in common pleas court, as R.C. 307.94 also permits, Relators bypassed these alternative legal remedies to seek an extraordinary writ here.¹ Relators' failure to establish the lack of an adequate, alternative remedy dooms their request for an extraordinary writ, under this Court's long-established precedent, as well as the provisions in the Ohio Revised Code pertaining to mandamus. *E.g.*, R.C. 2731.05 ("The writ of mandamus must not be issued when there is plain and adequate remedy in the ordinary course of the law."); *State ex rel. Sibarco Corp. v. City of Berea*, 7 Ohio St.2d 85, 90, 218 N.E.2d 428 (1966) ("The principle of law set out in [R.C. 2731.05] is a restatement of the common law and predecessor statutes since Ohio became a state. This principle adds stability, certainty and clarity in the exercise of original jurisdiction by the Supreme Court and the Courts of Appeals. It removes doubt from the mind of the trial lawyer in his choice of a forum in which to bring his action, where mandamus may or may not be his remedy.") Because adequate remedies in the ordinary

¹ In doing so, as described in the Secretary's Motion to Reclassify filed August 15, 2016, Relators jumped the gun by captioning their Complaint as an expedited elections matter – an error which apparently caused the Court's Clerk to issue summonses upon Respondents reflecting an expedited schedule for responsive pleadings. Under this Court's Rules of Practice, expedited treatment only applies "if the action is filed within ninety days prior to the election." S.Ct.Prac.R. 12.08(A)(1) (Emphasis added). This action was filed more than ninety days before the election. As such, Respondents' opportunities to file well-founded motions to dismiss or for judgment on the pleadings, which they would have had under a non-expedited schedule, need not have been curtailed pursuant to Rule 12.08(A)(3). On August 17, 2016, the Court granted the Secretary's Motion to Reclassify but elected to maintain the expedited briefing schedule applicable to expedited election matters.

course of law existed for Relators to pursue under R.C. 307.94 and 307.95, and because Relators have not explained why those remedies are insufficient, no writ should issue here.

In reply, Relators may try to argue that the Secretary's tie-breaking decision under R.C. 3501.11(X) was his decision, not the Board's, and that the tie-breaking statute makes that decision final, thus subject to correction only via an original action. But this Court should not be swayed by such contentions. The tie-breaking statute, R.C. 3501.11(X), must be read *in pari materia* with the remedies that the General Assembly has carefully and comprehensively established in R.C. 307.94 and 307.95 to establish the validity or invalidity of proposed charter petitions. *See State ex rel. Waters v. Spaeth*, 131 Ohio St.3d 55, 2012-Ohio-69 (reading elections statutes *in pari materia* to effectuate the General Assembly's intent). There is no indication that, by granting the Secretary the ability to break tie votes for any disagreement that may arise between Board members on any issue under the Board's purview, the General Assembly intended to abrogate or displace the specific and comprehensive statutory remedies that the General Assembly enacted in R.C. 307.94 and 307.95 to establish the validity or invalidity of proposed charter petitions such as the one at issue here.

B. Relators have failed to allege that they acted with the requisite diligence.

As this Court has long recognized, extreme diligence and promptness are required in election-related matters, such that if a party seeking extraordinary relief in an election-related matter fails to exercise the requisite diligence, laches may bar the action. *See State ex rel. Manos v. Delaware County Bd. of Elections*, 83 Ohio St. 3d 562, 564 (1998) ("relators have the burden of establishing that they acted with the requisite diligence in extraordinary writ cases involving elections.") Here, though, Relators have failed to allege

in their Verified Complaint that they acted with the requisite diligence. This omission should be fatal to their claims. Nor do Relators explain in their Merit Brief why they waited a full week after the Secretary's tie-breaking vote to bring this mandamus action.

C. Relators cannot establish a clear legal right to an extraordinary writ of mandamus because Respondents properly concluded, consistent with this Court's decision last year in *Walker*, that the proposed Medina County charter petition does not satisfy the threshold requirements that define a charter initiative.

Relators' own cited cases confirm the highly deferential, abuse-of-discretion standard of review that applies in writ actions challenging determinations by the Secretary or the county boards of elections. *E.g.*, *State ex rel. Kilby v. Summit Cty. Bd. of Elections*, 133 Ohio St.3d 184, 2012-Ohio-4310, ¶ 8 (noting that "[i]n extraordinary actions challenging the decisions of the Secretary of State and boards of elections, the standard is whether they engaged in fraud, corruption, or abuse of discretion, or acted in clear disregard of applicable legal provisions.") (quoting *State ex rel. Husted v. Brunner*, 123 Ohio St.3d 288, 2009-Ohio-5327, ¶ 9) (other internal citations omitted).

Here, it is apparent that there has been no fraud, corruption, abuse of discretion, or clear disregard of applicable legal provisions. On the contrary, this Court's recent decision in *Walker* expressly endows the Secretary with discretion to invalidate proposed county charter petitions that fail to satisfy the threshold requirements that define a county charter initiative, *Walker* at ¶ 24, and the proposed Medina County Petition falls clearly within that category of fundamentally flawed petitions. The Secretary's August 2, 2016 tie-breaking decision reflects the Secretary's careful consideration of relevant constitutional restrictions on proposed county charters, as well as this Court's precedent in *Walker*, supporting his well-reasoned conclusion.

- 1. In contravention of Article X, Section 3 of the Ohio Constitution, the proposed Medina County charter petition fails to address and provide for all powers which counties and county officials possess under general law.**

A threshold requirement for any and all proposed county charters, pursuant to the express language of Article X, Section 3 of the Constitution, is that they “shall provide for the exercise of all powers vested in, and the performance of all duties imposed upon counties and county officers by law.” (Emphasis added). The term “shall” in this provision of the Constitution is properly construed as mandatory, not merely directory. *Ohio Civil Rights Comm. v. Countrywide Home Loans, Inc.*, 99 Ohio St.3d 533, 2003-Ohio-4358, ¶ 4 (citing, inter alia, *Dorrian v. Scioto Conservancy Dist.*, 27 Ohio St.2d 102, 271 N.E.2d 834 (1971), paragraph one of the syllabus, and *State v. Golphin*, 81 Ohio St.3d 543, 545-546, 1998-Ohio-336.) Thus, regardless of the form of county government being proposed, any proposed county charter may not allow for diminution or abrogation of the legal powers and duties currently imposed upon counties and county officers by law; the current powers and duties of counties and all county officers must be addressed and provided for in the proposed county charter.

Here, as the Secretary properly concluded when rendering his tie-breaking decision, many of the powers or duties of the county officers set forth in the proposed Medina County petition are severely diminished or restricted from the powers and duties currently imposed upon those officers by general law. For example, the proposed charter does not provide for the exercise of all powers or duties of the prosecuting attorney, as currently provided for by law. In the proposed Medina County charter, the prosecuting attorney is generally described as “be[ing] the [sic] responsible for legal guidance and prosecuting authority of the County.” See Medina County Petition, Section 4.5. And as for the specific

powers and duties afforded to the prosecuting attorney, the proposed charter declares that he or she “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.” *Id.* at Section 4.5.3. But none of the following powers and duties of the prosecuting attorney, as currently imposed by law, are allowed or provided for under the proposed Medina County Petition:

- R.C. 309.08(A): “The prosecuting attorney may inquire into the commission of crimes within the county.”
- R.C. 309.09(A): “The prosecuting attorney shall be the legal adviser of the board of county commissioners, board of elections, all other county officers and boards, and all tax-supported public libraries, and any of them may require written opinions or instructions from the prosecuting attorney in matters connected with their official duties.”
- R.C. 309.09(A): “The prosecuting attorney shall prosecute and defend all suits and actions that any such officer, board, or tax-supported public library directs or to which it is a party *** [.]”
- R.C. 309.09(B)(1): “The prosecuting attorney shall be the legal adviser for all township officers, boards, and commissions, unless *** the township has adopted a limited home rule government pursuant to Chapter 504 of the Revised Code and has not entered into a contract to have the prosecuting attorney serve as the township law director *** [.]”
- R.C. 309.09(B)(2): “The prosecuting attorney shall prosecute and defend in the actions and proceedings [concerning adult entertainment regulation adopted by a township] without charge to the township for which the services are performed.”
- R.C. 309.06(A): “The prosecuting attorney may appoint any assistants, clerks, and stenographers who are necessary for the proper performance of the duties of his office and fix their compensation *** [.]”

These are just some of the powers and duties that the General Assembly has expressly conferred upon county prosecutors pursuant to the general law. And these are powers and duties to which Article X, Section 3 of the Constitution refers when it states that proposed

county charters “shall” provide for the exercise of “all powers vested in, and the performance of all duties imposed upon counties and county officers by law.” The proposed Medina County Petition thus fails to meet this threshold requirement.

This is an example of just one office – the county prosecutor’s office – where the proposed Medina County charter severely diminishes the rights and responsibilities that are prescribed under current law. Other examples are set forth in the Secretary’s August 2, 2016 correspondence to the Board (Appx. A-3 – A-4), and littered throughout the various offices outlined in Article IV of the proposed Medina County charter, thereby leaving a significant vacuum of required powers, duties, and responsibilities of county offices and officeholders. For this reason, too, the proposed Medina County Petition fails to satisfy the threshold requirements for a valid county charter petition. As such, Relators can demonstrate no fraud, corruption, or abuse of discretion on Respondents’ part in declining to certify the proposal for the ballot; nor can Relators demonstrate, as they must in order to justify a writ, that Respondents acted in clear disregard of applicable legal provisions. Relators’ request for an extraordinary writ should be denied.

In their Merit Brief, Relators assert that Respondents’ “contention that the entire universe of elected officeholder duties must be delineated within the county charter in order for there to be a ‘form of government’ discernible to the voters defies logic, Ohio law, and insults the intelligence of the voting public.” (Merit Br. at 16.) Far from defying Ohio law, the requirement that the Secretary applied here is written into the text of the Ohio Constitution, where it states that “every” charter “shall” provide for the exercise of “all” powers vested in, and the performance of “all” duties imposed upon county officers by law. Article X, Section 3, Ohio Constitution. The requirement is there for good reason, as

Relators are seeking to replace the existing statutory form of government with a charter that the voting public should be able to look to in order to fully understand what functions and duties the county officeholders are expected to perform under that new governing arrangement. Because counties (unlike municipal corporations) exercise State power, and the State has historically acted and continues to act through counties, it is critical and essential for proposed county charters to provide for the exercise of “all powers vested in, and the performance of all duties imposed upon counties and county officers by law.”

Relators also complain that, “[i]n attempting to argue that there still is insufficient information contained within the proposal, the SOS and MCBOE must wander deep into the realm of making legal and constitutional decisions, which they are forbidden from doing.” (Merit Br. at 23.) This assertion, too, is specious. In *Walker*, after all, this Court blessed the Secretary’s constitutional decision that the 2015 CBOR Petitions (including the prior iteration of the Medina County petition) failed to satisfy other threshold requirements from Article X, Section 3 of the Ohio Constitution that every county charter must satisfy. *Walker*, 2015-Ohio-3749, ¶ 22-24. What the Secretary did here is no different, and his tie-breaking determination emanated from the very same Article and Section of the Ohio Constitution that he applied in *Walker*, with this Court’s imprimatur.

2. In contravention of Article X, Section 3 of the Ohio Constitution, the proposed Medina County charter petition seeks to impose substantive laws beyond the initiative power reserved to the people of Medina County.

There is a second, equally compelling reason for this Court not to disturb Respondents’ invalidation of the proposed Medina County charter at issue here. Like the fundamental defect noted by the Secretary and described above concerning the Petitioners’ failure to address and provide for all powers which county officials possess under general

law, this second defect also flows from the requirements and limitations of Article X, Section 3 of the Ohio Constitution, the provision invoked at the very top of the first page of the proposed Medina County charter. Section 3 of Article X, originally adopted in 1933 and amended in 1957, is the key section of that Article, which requires counties to adopt a charter before they can exercise home-rule powers. But the passage of the county home-rule amendment to the Ohio Constitution in 1933 did not mean that the citizens of individual counties adopting home-rule charters could, at the same time, impose (via initiative) new, substantive laws that are clearly beyond the scope of county authority. On the contrary, Article X, Section 3 reserves the right of initiative “to the people of each county” not on any conceivable law that may be proposed by initiative, but only “on all matters **which such county may now or hereafter be authorized to control by legislative action.**” (Emphasis added).

This limitation on the initiative power that is reserved to county citizens in the Ohio Constitution is a significant and meaningful one. As commentators have explained, the 1933 amendments to Article X allowed counties to adopt charters “by which they can exercise power of local self-government analogous to the home rule powers conferred on municipalities under Article XVIII.” Steinglass and Scarselli, *The Ohio State Constitution*, Oxford Commentaries on the State Constitutions of the United States, at 287 (2011) (emphasis added). If county home-rule powers adopted under Article X shall be “analogous to” – and hence, not greater than – municipal home-rule powers, then it follows that Article X is not a panacea for disgruntled electors such as the Petitioners here to invoke the initiative power to enact county laws that would conflict with, legislate beyond, or avoid the ramifications of generally applicable state laws. Yet that is precisely the end-run that

these Protesters seek with respect to the proposed Medina County charter petition, and that is yet another reason why their Petition fails to meet the threshold requirements for a valid county charter proposal and should not be placed on the ballot.

As one appellate court has already held, for example, a charter county's laws "may not grant power or create a duty that conflicts with the general laws." *State ex rel. O'Connor v. Davis*, 139 Ohio App.3d 701, 708 (Summit App. 2000) (invalidating as unconstitutional an ordinance in a charter county that attempted to diminish the statutory duties of the county prosecuting attorney relating to the representation of the county executive). The Ohio Attorney General has reached the same conclusion. *E.g.*, 2007 Ohio Atty. Gen.Ops. No. 35, 2007 Ohio AG LEXIS 37 (Oct. 23, 2007) (a charter county's ordinance would conflict with state law, so the county was therefore "not empowered" to adopt it); *see also* 1989 Ohio Atty. Gen.Ops. No. 25, 1989 Ohio AG LEXIS 41 (May 15, 1989) (a charter county regulation was permissible only where the state building code expressly exempted the class of buildings that the county was attempting to regulate).

Ohio's Eighth District Court of Appeals recently applied these fundamental principles in *Mothers Against Drilling in Our Neighborhood v. State*, 8th Dist. Cuyahoga No. 103430, 2016-Ohio-817. That case concerned an amendment to the charter of the City of Broadview Heights ("Article XV") that voters adopted in November 2012. The Article XV amendment to the Broadview Heights charter made it illegal for any person or corporation to engage in new oil and gas drilling and the related maintenance of oil and gas wells, and it was proposed in response to the General Assembly's prior passage of House Bill 278, which granted the Ohio Department of Natural Resources ("ODNR") the sole and exclusive authority to regulate the permitting, locating, and spacing of oil and gas wells within the

State of Ohio. A group called Mothers Against Drilling in Our Neighborhoods (“MADION”), along with three individual Broadview Heights residents, filed suit seeking to enforce Article XV of the charter against Bass Energy and Ohio Valley Energy Systems Corp. (“OVE”), which had obtained drilling permits from ODNR. The trial court entered judgment in favor of Bass Energy and OVE, and the Eighth District affirmed. The Eighth District rejected the concept advanced by MADION that a Community Bill of Rights, based on the “people’s inalienable and fundamental right to local community self-government,” was somehow immune from preemption under traditional home-rule principles, saying:

After careful review of MADION’s arguments in their entirety, we find no merit to its position that the right to local community self-government entitles the people of Broadview Heights to enact laws that may not be preempted by state law. In addition to MADION’s inability to present any legal authority to support its arguments, MADION’s historical discourse ignores express provisions of the Ohio Constitution, including Article II, Section I, which states, “[t]he legislative power of the state shall be vested in a General Assembly ***[.]” **In delegating legislative authority to the General Assembly, the people of Ohio reserved for themselves only the limited municipal powers of initiative and referendum. There is nothing in the Ohio Constitution to suggest that the “people” of a municipal corporation possess the authority, independent and apart from the municipal corporation itself, to enact local ordinances that conflict with state law. Thus, the “people’s” ability to enact local law is limited to those rights afforded to the municipality and is subject to the restrictions of the home rule amendment under Article XVIII, Section 3 of the Ohio Constitution.**

MADION, 2016-Ohio-817, ¶ 26 (Emphasis added).

The proposed Medina County charter petition at issue here, much like the Article XV charter amendment at issue in Broadview Heights, invokes the “inherent right of local community self-government” as the asserted basis for “the power to articulate and protect fundamental rights free from preemption by other levels of government.” *See* Medina County Petition, Preamble, ¶ 3 (Emphasis added). The Medina County proposal goes

further, asserting 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.” *Id.*, Section 1.2. But as the *MADION* decision aptly explains, and as is apparent from the plain language of Article X, Section 3 of the Ohio Constitution, the reserved power of initiative does not give citizens any power to enlarge the scope of established county authority to avoid the pre-emptive effect of generally applicable state laws. Because the proposed Medina County charter petition, on its face, seeks to create new legal rights, tear down existing ones, and place county law above and beyond the pre-emptive power of federal and state law, the Court should deny the writ requested by Relators and declare the proposed Medina County charter petition at issue here invalid, insufficient, and far beyond the limited powers of initiative reserved to the people in Article X, Section 3.

D. Granting the extraordinary writ sought by Relators would encourage other groups to file facially invalid county charter petitions.

As *amici curiae* explained to this Court last year in the context of the *Walker* case, Relators’ proposed Medina County charter petition is but the most recent example of an emerging and troubling phenomenon in Ohio, in which small groups of activists try to foist vague and unenforceable “Community Bills of Rights” on their local governments in a misguided and legally baseless attempt to outlaw oil and gas and other industrial operations that are already permitted and comprehensively regulated by the State of Ohio.

As detailed by Jackie Stewart in her article last summer called “*Lifting the Curtain on the Pennsylvania Group behind Ohio’s ‘Local’ Anti-Fracking Campaigns*”² these CBOR charter petition initiatives do not truly originate in Ohio or in the specific county at issue here; they are the brainchild of a Pennsylvania-based environmental activist group called the Community Environmental Legal Defense Fund (“CELDF”) that has been shopping CBOR language all over the country, including in Colorado, Illinois, and New York – not just Ohio. As Stewart describes, in Youngstown, Ohio, CELDF authored and organized a ballot measure to ban fracking through a CBOR, which has been rejected by the voters on multiple occasions – with the taxpayers footing the bill each and every time the State’s costly election machinery is diverted to this baseless purpose. After describing the economic woes faced by localities that have adopted CELDF’s CBOR provisions in one form or another, Stewart notes:

As Reuters recently reported, CELDF is behind more than a dozen anti-fracking ordinances across the country. The organization has never won a case that went to court, and taxpayers are still footing the bill for CELDF’s attempts to use cities as launching pads for a “national movement” against corporations.

Far from giving a voice to communities, CELDF’s advocacy is a direct attack on all businesses, large and small; on all workers, union and non-union; on local government budgets; and, most prominently, local taxpayers.

Amici curiae, as associational representatives of the aggrieved businesses and workers Stewart describes, could not agree more. Granting the writ of mandamus sought here by Relators would not only undercut the discretion that the General Assembly expressly

² Energy In Depth (July 21, 2015), *available at* <http://energyindepth.org/national/lifting-the-curtain-on-the-pennsylvania-group-behind-ohios-local-anti-fracking-campaigns/> (last accessed August 16, 2016).

endowed on Ohio's "gatekeeping" elections officials (Respondents here), but also encourage an untold number of other groups to file legally baseless county charter petitions elsewhere in the State, seeking to accomplish at the level of *county* government what this Court and other state courts have already confirmed may not be accomplished by municipalities in a manner consistent with the Ohio Constitution.

Relators' attempt to endow counties with home-rule powers that would exceed municipalities' home-rule powers and undercut State policy, in addition to being logically incoherent, flies in the face of the historical role of counties in the State of Ohio – a history that even precedes Ohio's admission to the Union. The taxpayers of this State should not be forced to subsidize costly elections so that voters can cast meaningless ballots for or against legally unenforceable county charters, and that is precisely why the General Assembly and this Court have given the Secretary and Boards of Elections the power and duty to review and determine the "validity or invalidity" of proposed charter petitions before they are placed on the ballot.

CONCLUSION

While *amici curiae* share genuine and compelling interests in the particular Medina County charter petition at issue, it is worth noting that this matter is about far more than yet another attack on business and industry by a few disgruntled Medina County electors. Undoing the Secretary's tie-breaking decision here, and ordering placement of the Medina County CBOR Petition on the ballot, would establish a dangerously broad interpretation of Article X, Section 3, and open the door to the widespread misuse of that carefully worded, purposely narrow constitutional authorization. Granting the writ would encourage countless other petitioners to hijack the electoral process in order to enact sweeping

substantive laws, or to block implementation of state laws with which they may happen to disagree, under the guise of county government reforms. The law in Ohio is that counties are the agents of state government intended to carry out state policy at the local level. Broadening Article X, Section 3 to allow county residents to negate state laws under the ruse of altering the county form of government would cause a sea-change in the relationship between the State and its counties.

For the foregoing reasons, *amici curiae* the Ohio Chamber of Commerce, Affiliated Construction Trades Ohio Foundation, and the American Petroleum Institute respectfully ask the Court to deny the writ sought by Relators.

Respectfully submitted,

/s/ L. Bradfield Hughes
L. BRADFIELD HUGHES (0070997)
(COUNSEL OF RECORD)
KATHLEEN M. TRAFFORD (0021753)
PORTER WRIGHT MORRIS & ARTHUR LLP
41 South High Street
Columbus, Ohio 43215-6194
Tel: (614) 227-2053
Fax: (614) 227-2100
bhughes@porterwright.com
ktrafford@porterwright.com

Counsel for Amici Curiae
The Ohio Chamber of Commerce, Affiliated
Construction Trades Ohio Foundation, and
The American Petroleum Institute

DONALD J. MCTIGUE
MCTIGUE & COLOMBO, L.L.C.
545 E. Town Street
Columbus, Ohio 43215
Tel: (614) 263-7000
Fax: (614) 263-7078
dmctigue@electionlawgroup.com

*Counsel for Amici Curiae
Affiliated Construction Trades Ohio Foundation
and The American Petroleum Institute*

CERTIFICATE OF SERVICE

The undersigned counsel certifies that, pursuant to S.Ct.Prac.R. 3.11(C)(3), a copy of the foregoing Brief of *Amici Curiae* Affiliated Construction Trades Ohio Foundation, The Ohio Chamber of Commerce, and The American Petroleum Institute was served via electronic mail upon the following counsel this 18th day of August, 2016:

JAMES KINSMAN
james@jkinsmanlaw.com

NICOLE M. KOPPITCH
Nicole.koppitch@ohioattorneygeneral.gov

TERRY J. LODGE
lodgelaw@yahoo.com

STEVEN T. VOIGT
Steven.voigt@ohioattorneygeneral.gov

Counsel for Relators

*Counsel for Respondent Jon Husted,
Ohio Secretary of State*

WILLIAM L. THORNE
bthorne@medinaco.org

CURT C. HARTMAN
hartmanlawfirm@fuse.net

BRIAN M. RICHTER
brichter@medinaco.org

*Counsel for Michael K. Baach, Northern
Medina County Chamber Alliance, Greater
Medina Chamber of Commerce, Medina
County Economic Development Corporation,
and Wadsworth Area Chamber of Commerce,
amici curiae in support of Respondents*

LEE R. POTTS
lpotts@medinaco.org

*Counsel for Respondents Medina County
Board of Elections and its Members*

/s/ L. Bradfield Hughes
*Counsel for Amici Curiae
The Ohio Chamber of Commerce,
Affiliated Construction Trades Ohio Foundation,
and The American Petroleum Institute*

APPENDIX



Jon Husted
Ohio Secretary of State

180 East Broad Street, 16th Floor
Columbus, Ohio 43215
Tel: (877) 767-6446 Fax: (614) 644-0649
www.OhioSecretaryofState.gov

August 2, 2016

Director Carol A. Lawler
Deputy Director Marian E. Coffey
Medina County Board of Elections
3800 Stonegate Drive, Suite C
Medina, Ohio 44256

Re: County Charter Initiative Petition Tie Vote

Dear Director Lawler and Deputy Director Coffey:

At its meeting on July 11, 2016, the Medina County Board of Elections reviewed a proposed county charter initiative petition submitted by petitioners *Sustainable Medina County*.

After determining that the petition contained a sufficient number of valid signatures, Board Member Welker made a motion to vote on certifying the proposed county charter petition to the Medina County Board of County Commissioners. Board Member Welker and Chairperson Miller voted in favor of the motion. Board Members Ray and Cray voted against the motion.

Pursuant to R.C. 3501.11(X), the Board submitted the vote to me for a tie-breaking decision.

Board Members Ray and Cray cited the recent *State ex rel. Husted v. Walker*¹ decision and appear to have followed the advice of their legal counsel, an Assistant Prosecutor from the Medina County Prosecuting Attorney's office, who, according to Board minutes, advised the Board that the petition "did not adequately provide for the form of government."

To explain their votes to certify the petition, Board Member Welker and Chairperson Miller argue that "it is somewhat unclear as to whether the language of the proposed charter meets the requirements for going forward," and express their preference to let the petition "proceed and to let the courts decide on its legality at a later date."

In the *Walker* case, the Supreme Court ruled that the Secretary of State may not invalidate a proposed charter petition based upon an assessment of the legality or constitutionality of the measure.² On the other hand, the Court recognized "an alternative basis for invalidating [] charter petitions, namely, that the charters do not satisfy the threshold requirements that define a charter initiative."³

The Ohio Constitution establishes the framework of what is known in Ohio as "home rule authority." Ohio Const. Art. X, § 3 reads, in pertinent part:

¹ 144 Ohio St.3d 361, 2015-Ohio-3749.

² *Id.*

³ *Id.*

The people of any county may frame and adopt or amend a charter as provided in this article... Every such charter shall provide the form of government of the county and shall determine which of its officers shall be elected and the manner of their election. It shall provide for the exercise of all powers vested in, and the performance of all duties imposed upon counties and county officers by law... Any charter or amendment which alters the form and offices of county government ... shall become effective if approved by a majority of the electors.

The language of Art. X, § 3 authorizes a county, through properly adopted charter provisions, to restructure its government with respect to both the form of county government and its offices. Regardless of how a charter county chooses to restructure its government, however, the charter must provide for the exercise of all powers and the performance of all duties imposed by statute on counties and county officers.⁴

According to an Ohio Attorney General opinion, the intent of this provision makes clear that even counties operating under a charter continue to be administrative arms of the state for purposes of carrying out certain functions as political subdivisions of the state.⁵ Thus, while a county could by charter change its form of government, expand the powers which it may exercise, and be less inhibited by some statutory provisions in the manner of the exercise of those powers, those duties required by general law of counties and county officers would still have to be carried out.⁶

The language of the proposed Medina County Charter makes it clear that the petitioners are trying to form a charter county government, as follows:

We hereby declare that we deem it necessary to alter the current statutory County government and create a constitutional County government.⁷

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).⁸

Regarding the duties of county officers under the "new" charter county government, Section 3.1 of the Proposed Medina County Charter even provides as follows:

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...

⁴ 1994 Op. Att'y Gen. No. 94-095 citing 1985 Op. Att'y Gen. No. 85-039; accord 1989 Op. Att'y Gen. No. 89-106. *See also*, Stephen Cianca, Home Rule in Ohio Counties: Legal and Constitutional Perspectives, 19 U. Dayton L. Rev. 533, 538-39 (1994).

⁵ 1985 Op. Att'y Gen. No. 85-039 citing 1970-77 Ohio Constitution Revision Commission in its Final Report at 292.

⁶ *Id.*

⁷ Preamble, Proposed Medina County Charter.

⁸ Section 4.1, Proposed Medina County Charter.

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.

For example, Section 4.2.3 of the Proposed County Charter reads that “[t]he 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.”

This language inadequately provides for the full range of duties that a County Auditor must perform—even under a charter form of government. A County Auditor in Ohio has far greater duties pursuant to the Ohio Revised Code⁹ than merely being “responsible for the day-to-day accounting of transactions for the County government” as enumerated in the Medina County proposed charter.

As just one example, aside from keeping the official record of all county government receipts and disbursements, the County Auditor in Ohio must assure that every parcel of land, and buildings and improvements, are fairly and uniformly appraised and then assessed for tax purposes.¹⁰

The proposed Charter similarly states that 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.”¹¹

Again, the Proposed Charter fails to provide for the “performance of *all duties* imposed upon ... county officers by law” as the Ohio Constitution requires (emphasis added).¹²

Ohio law¹³ generally establishes the County Treasurer as the county's banker,¹⁴ however the County Treasurer has additional duties, including investing county funds, redeeming county

⁹ See, R.C. Chapter 319.

¹⁰ County Commissioners Association of Ohio (CCAO) Handbook, Chapter 1: Basic Structure of County Government. The CCAO Handbook also describes the following County Auditor duties, as follows:

1. To distribute funds to various political subdivisions. This includes distributions of motor vehicle license taxes, gasoline taxes, estate taxes, fines, personal property taxes, and state local government fund monies to counties, townships, municipalities, libraries and certain park districts.
2. To serve as an agent for the state Tax Commissioner for administering Ohio's tangible personal property tax law.
3. To administer Ohio's manufactured home law by assessing manufactured homes, preparing a tax duplicate, and distributing manufactured home taxes in the same manner as real property taxes.
4. To serve as an agent for the state Tax Commissioner to process estate tax returns of decedents who had residence in the county, including the inventory of safe deposit boxes. The auditor then distributes monies collected from the estate tax to the state and township or municipality of the decedent.
5. To serve as the sealer of weights and measures by inspecting such devices as scales and gas pumps to protect the consuming public.
6. To issue various licenses including licenses for dogs and kennels, vendor's licenses, and cigarette licenses.

¹¹ Section 4.4.3, Proposed Medina County Charter.

¹² O. Const. Art. 10, § 3.

¹³ See, R.C. Chapter 321.

¹⁴ County Commissioners Association of Ohio (CCAO) Handbook, Chapter 1: Basic Structure of County Government.

warrants issued by the auditor, billing and collecting taxes on real and personal property, manufactured homes, estate taxes, and vendors and cigarette licenses, serving on the county investment advisory committee, and collecting delinquent taxes.¹⁵

Without citing all of the provisions in detail here, it suffices to say that the Proposed Charter similarly fails to provide for the full range of duties in the “new” charter county government for several other county officers.

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.¹⁶

Moreover, as Assistant Medina County Prosecuting Attorney Bill Thorne clarified, the Proposed Charter “failed to create an alternative form of government.”¹⁷ I see “no change in government,” stated Asst. Prosecutor Thorne.¹⁸ 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”,¹⁹ and therefore break the tie against the motion to certify the proposed county charter petition to the Medina County Board of County Commissioners.

Sincerely,



Jon Husted

cc: Members of the Medina County Board of Elections

¹⁵ *Id.*

¹⁶ O. Const. Art. 10, § 3.

¹⁷ Minutes of the July 11, 2016 Medina County Board of Elections meeting.

¹⁸ *Id.*

¹⁹ *State ex rel. Husted v. Walker.*