IN THE SUPREME COURT OF OHIO

State of Ohio, *ex rel.* Sandra M. Bolzenius, *et al.*,	)	**Case No. 2018-1221**
Relators,	)	**Expedited Elections Case Pursuant to S.Ct.Prac.R. 12.08**
v.	)	
Franklin County Board of Elections, *et al.*,	)	
Respondents.	)	

BRIEF OF AFFILIATED CONSTRUCTION TRADES OHIO FOUNDATION, THE OHIO CHAMBER OF COMMERCE, COLUMBUS REALTORS, THE OHIO OIL AND GAS ASSOCIATION, THE OHIO CHEMISTRY TECHNOLOGY COUNCIL, AND THE AMERICAN PETROLEUM INSTITUTE, *AMICI CURIAE* IN SUPPORT OF RESPONDENTS

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INTRODUCTION

Once again, as it has done on numerous occasions in recent election cycles, this Court is called upon to determine whether a County Board of Elections properly rejected a so-called "Community Bill of Rights" (hereinafter "CBOR Ordinance") proposed for placement on the ballot. And once again, a Pennsylvania-based organization[1] seeks to clutter the ballot in our State with an initiative that is patently beyond the constitutional right of initiative. The needless resulting diversion of electoral and judicial resources is regrettable at a time when this Court has other pressing obligations to address before the approaching election, and many other decisions to release before the end of the current term.

Amici curiae are compelled to participate, as several have done in other recent cases, because their many individual and corporate members cannot operate their businesses efficiently, predictably, and economically in a State where any proposal to

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[1] Relators' initiative is the brainchild of the Community Environmental Legal Defense Fund ("CELDF"), which assisted Columbus residents in drafting the initiative. *See* CELDF Press Release (Aug. 24, 2018), available at: https://celdf.org/2018/08/press-release-franklin-county-board-of-elections-denies-residents-the-right-to-vote/ (last visited Aug. 29, 2018). *See also* Jackie Stewart, *Lifting the Curtain on the Pennsylvania Group behind Ohio's 'Local' Anti-Fracking Campaigns*, Energy in Depth (July 21, 2015), available at: https://www.energyindepth.org/lifting-the-curtain-on-the-pennsylvania-group-behind-ohios-local-anti-fracking-campaigns/ (last visited Sept. 7, 2018.)

A federal judge in Pennsylvania recently sanctioned other CELDF attorneys and referred them to disciplinary counsel for frivolously defending another Community Bill of Rights. *Pennsylvania Gen. Energy Co., LLC v. Grant Twp.*, No. 14-209ERIE, 2018 U.S. Dist. LEXIS 2069 (W.D.Pa. Jan. 5, 2018).

fundamentally upend existing law in a municipality can reach the ballot, even under circumstances when the petition circulators have violated critical requirements of the enabling charter and do not have the legal right to legislate. The Franklin County Board of Elections acted properly here, in a manner consistent with this Court's recent precedent, when it denied ballot access to the CBOR Ordinance. For the following reasons, and for those expressed by the Respondents and Intervening Respondents, *amici curiae* respectfully urge this Court to deny the requested writ.

INTERESTS OF *AMICI CURIAE*

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 94,000 of the most highly skilled, highly trained construction workers in this State. Over 14,000 contractors are signatories 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 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 Columbus REALTORS is central Ohio's largest professional association, representing more than 8,000 real estate professionals engaged in residential sales and leasing, commercial sales and leasing, property management, appraisal, consultation, real estate syndication, land development and more.

Amicus curiae The Ohio Oil and Gas Association (the "OOGA") is a trade organization whose members participate in oil and gas activities throughout the State of Ohio. The OOGA's more than 2,000 members engage in all aspects of the exploration, production, and development of oil and natural gas resources within the State of Ohio.

The OOGA exists to protect, promote, foster, and advance the common interest of its members and those engaged in all aspects of the oil and natural gas industry.

Amicus curiae Ohio Chemistry Technology Council ("OCTC") represents the second largest manufacturing industry in Ohio, whose members directly employ more than 43,000 people and indirectly contribute more than 130,000 jobs to the economy. For every chemistry industry job in Ohio, nearly three additional jobs are created within the State, along with nearly 60,000 jobs generated in the plastics and rubber products industry. OCTC's members employ Ohio citizens at an average wage nearly 40% higher than the average manufacturing wage and these jobs generate more than $3 billion in earnings, and more than $1 billion in federal, state, and local taxes. OCTC and its members have a strong interest in making Ohio a commerce-friendly state where municipal ordinances are enacted and applied fairly and lawfully to ensure the predictability essential to economic growth.

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 625 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 Ohio in a safe and environmentally responsible manner.

These *amici curiae* share profound concerns about the CBOR Ordinance at issue here, and about the manner in which the Ordinance was drafted and presented to electors, contrary to express procedural requirements in the City of Columbus Charter. Section 2.1 of the Ordinance, for example, purports to endow "natural communities and ecosystems in the City of Columbus" with rights enforceable in courts. Section 3 purports to invalidate duly issued federal and state permits within the City's municipal boundaries, imposes strict liability upon corporations for "all rights violations" within the City, and would bar a range of lawful activities engaged in by *amici curiae*'s many members. Section 4 establishes criminal liability for violations of "any provision" of the CBOR Ordinance, and purports to create new causes of action maintainable by the City or any resident, including an action "in the name of the ecosystem or natural community *** [.]" Section 5 turns municipal home rule upside down, declaring that "all laws adopted by the [General Assembly] and rules adopted by any State agency, shall be the law of the City of Columbus only to the extent that they do not violate the rights or prohibitions of this Community Bill of Rights." Section 5 also purports to

prevent corporations (including *amici curiae*'s members) from bringing a post-election legal challenge to the CBOR Ordinance that is based on federal or state-law preemption. Section 7 would eliminate City Council's ability to make any future amendments to or repeals of the ordinance, and Section 11 would repeal "[a]ll provisions of prior ordinances, laws, or charter amendments" ever previously adopted by the City that are "inconsistent with this Bill of Rights."

These and other objectionable provisions in the CBOR Ordinance, if permitted to be enacted by electors of the City of Columbus in the November election, would have immediate and substantial effects on *amici curiae* and their respective memberships. For the following reasons, and for those explained in the merit brief of intervening protestors Loretta Settelmeyer and Robert Wall, no writ should issue to undo the BOE's appropriate and unanimous rejection of the proposal.

ARGUMENT

Proposition of Law No. 1: Relators cannot plausibly assert that the Columbus Charter "prevails" over or "precludes application" of state law, while at the same time ignoring fundamental procedural requirements contained in that very Charter, which bar placement of their own proposed ordinance on the ballot.

In their Complaint, Relators contend that in the Charter of the City of Columbus, "the City codified the principle of ministerial review of initiative petitions, and has thus explicitly prohibited substantive review." (Compl., ¶ 28.) Relators contend, further, that this provision of the City Charter "conflicts with a statutory enactment of the General Assembly" (*Id.* at ¶ 37), that "the charter will prevail" (*Id.* at ¶ 38), and that "the

City of Columbus Charter provision which establishes sufficiency of initiative petitions supersedes and precludes the applicability of [R.C. 3501.38(M)(1)(a)]." (*Id.* at ¶ 39.) Relators repeat these contentions in their Merit Brief. (Relators' Br. at 13-14.)

For reasons described in more detail below in connection with Relators' Third Cause of Action, Relators are simply mistaken to assert that the Charter prohibits substantive review. By its terms, it does the opposite. Relators' reliance upon the Charter as prevailing over or superseding conflicting state law also represents a surprising change in tune, for as the August 17, 2018 correspondence appended to Relators' Complaint attests, Relators previously argued that the Charter is unconstitutional on multiple grounds. (*See* Compl., Exh. C. at 2-3.) Apparently, Relators have now abandoned their constitutional challenges to the Charter, and have decided instead to hang their hats on the Charter as superseding the duly enacted state law permitting BOE review of proposed initiative petitions, R.C. 3501.38.

Relators' flip-flopping aside, the Columbus City Charter quite properly imposes certain basic procedural limitations upon the power of initiative. The Charter states that petitions proposing ordinances "may only contain one proposal, which shall not address multiple or unrelated subject matters or questions of law." (Charter, § 42-2(d).) This Court has recently interpreted this provision of the Charter to include two separate prohibitions – a prohibition against an initiative containing *multiple* subjects, and a prohibition against an initiative containing *unrelated* subjects. *State ex rel. Beard v.*

Hardin, Slip Opinion No. 2018-Ohio-1286. The Charter also bars provisions constituting arguments and ancillary information. (Charter, § 42-2(f).) For the reasons aptly stated by Intervening Protestors Settelmeyer and Wall in their underlying Protest and Merit Brief, which *amici curiae* will not repeat here, Relators' CBOR Ordinance impermissibly contains both multiple and unrelated subjects, as well as improper arguments and ancillary information, and each of these faults presents this Court with independent, adequate grounds to deny the writ and confirm the BOE's rejection of the proposal.

Amici curiae do wish to stress the practical necessity and public benefit of these reasonable, procedural limitations on initiative petitions, such as the prohibitions on multiple, unrelated subjects and ancillary information that appear in the Columbus Charter. According to the Ohio Municipal League, there are now more than 260 cities and villages in the State operating pursuant to a charter form of government.[2] These include many of Ohio's largest and most populous cities, in addition to Columbus.

As the Court can well imagine, it is an enormous challenge for *amici curiae*'s thousands of member businesses to operate across numerous municipal jurisdictions in the State, subject to distinct ordinances that are constantly in flux due to legislative activity undertaken by each of those city and village councils. But when the legislative authority of a municipality undertakes to amend its code of ordinances, *amici curiae* can

[2] Ohio Municipal League, *Ohio Municipalities with Charters*, available at: http://www.omlohio.org/DocumentCenter/View/116/Cities-and-Villages-with-Charters-PDF?bidId= (last visited August 29, 2018).

at least be assured that the process will be reasonably cautious and deliberative. Legislative proceedings, after all, typically involve committee study, multiple hearings in a public forum, some public debate, the possibility of amendments to the originally proposed legislation, and passage by a legislative body comprised of elected representatives who are experienced and equipped for such matters. *Amici curiae* and their members, if they wish, can participate in that type of cautious and deliberative legislative process, offering suggestions for amendment and compromise that will result in more practical, legally enforceable legislative solutions and thus inure to the benefit of the general public.

Direct legislation via initiative, in contrast, lacks these inherent safeguards, and is often presented by anti-government groups such as the Relators here, whose causes have been (or likely would be) unsuccessful when presented to a legislative authority in the ordinary course. In light of these fundamental distinctions between the typical legislative process, on the one hand, and the initiative process, on the other, it was entirely reasonable for the drafters of the Columbus Charter to impose minimal procedural requirements on initiated ordinances, such as the prohibitions against multiple or unrelated subjects. Such requirements help ensure that the initiative process will result in a comprehensible, focused piece of legislation, and that the process is not reduced to a costly and inefficient free-for-all. Such requirements also help eliminate confusion and logrolling. The CBOR Ordinance rejected here, with its

numerous vague provisions on a wide array of subjects ranging from oil and natural gas extraction to community self-government to corporate rights and beyond, could be "Exhibit A" in support of the very procedural requirements that the people of Columbus saw fit to include in their Charter for initiated petitions – requirements that Relators simply ignored in their haste to upend the *status quo* outside of the normal legislative process.

Proposition of Law No. 2: The BOE's rejection of the Proposed Ordinance does not unconstitutionally abridge the City of Columbus's home-rule powers.

In support of their First Cause of Action, Relators complain that the BOE's rejection of the CBOR Ordinance "abridged the City of Columbus' home rule powers" under the Ohio Constitution. (Compl., ¶ 20.) But no writ should issue on this basis, either. Simply put, nothing that the BOE did here prevents the City of Columbus from continuing to exercise its powers of local self-government, or from enacting ordinances under the police power that do not conflict with generally applicable State laws.

On the contrary, Relators are the ones seeking to turn Ohio's longstanding home-rule concepts upside down and backwards. As this Court well knows, "a municipal ordinance must yield to a state statute if '(1) the ordinance is an exercise of the police power, rather than of local self-government, (2) the statue is a general law, and (3) the ordinance is in conflict with the statute.'" *Dayton v. State*, 151 Ohio St.3d 168, 2017-Ohio-6909, ¶ 13, quoting *Mendenhall v. Akron*, 117 Ohio St.3d 33, 2008-Ohio-270, 881 N.E.2d 255, ¶ 17.

Yet Relators seek to preclude *amici curiae*, their members, or any corporation, for that matter, from ever invoking this well-established test to challenge the CBOR Ordinance in a post-election suit. After all, the proposed CBOR Ordinance provides:

> These enforcement provisions regarding powers of private corporations shall be in force:
> (a) Corporations that violate or seek to violate the ordinance shall not be deemed to be "persons," nor possess any other legal rights, privileges, powers, or protections that would interfere with the rights or prohibitions enumerated by this ordinance. "Rights, privileges, powers, or protections" shall include the power to assert state or federal preemptive laws in an attempt to overturn this Community Bill of Rights, and the power to assert that the people of this municipality lack the authority to adopt this Community Bill of Rights.
> (b) To ensure that the people's rights are not preempted, all laws adopted by the legislature of the State of Ohio, and rules adopted by any State agency, shall be the law of the City of Columbus only to the extent that they do not violate the rights or prohibitions of this Community Bill of Rights.

(Charter, § 5; emphasis added.) Accordingly, although Relators accuse Respondents of abridging the City's home-rule powers, it is Relators who seek to deny all types of corporations their right to invoke the home-rule amendment to the Ohio Constitution in a legal challenge to the proposed CBOR Ordinance, to the extent the Ordinance's provisions conflict with generally applicable State laws.

Proposition of Law No. 3: The CBOR Ordinance is outside the scope of the City's authority to enact via initiative.

Relators' Second Cause of Action is based on a fundamental misunderstanding and mis-application of this Court's precedent regarding the extent to which a BOE can properly review a proposal before being placed on the ballot.

In support of their Second Cause of Action, Relators mistakenly allege that this Court has held that "pre-election substantive review is unconstitutional." (Compl., ¶ 28.) This allegation is supported by a citation to two opinions of this Court, neither of which garnered votes from four Justices. (*Id.*, citing the plurality opinion in *State ex rel. Espen v. Wood Cty. Bd. of Elections*, 2017-Ohio-8223 and *State ex rel. Khumprakob v. Mahoning Cty. Bd. of Elections*, 2018-Ohio-1602, ¶ 12 (Fischer, J., concurring in judgment only).) Relators continue this misleading citation of the Court's precedent by alleging that "this Court has already ruled [R.C. 3501.38(M)(1)(a)] unconstitutional," (Compl. ¶ 31), again citing Justice Fischer's concurring opinion in *Khumprakob*. In their Merit Brief, Relators continue to rely on *Espen* and *Khumprakob* in this misleading fashion. (Relators' Merit Br. at 12-13.)

The fact of the matter is that a majority of this Court has not held R.C. 3501.38(M)(1)(a) unconstitutional, and it should not do so, for the statute merely incorporates into the Revised Code this Court's prior precedent regarding the authority and duty of elections boards to determine whether a petition "satisf[ies] the threshold requirements that define a charter initiative," *State ex rel. Walker v. Husted*, 144 Ohio

St.3d 361, 2015-Ohio-3749, ¶ 33, and whether "a proposal exceeds the scope and authority under which it is placed on the ballot," *State ex rel. Coover v. Husted*, 148 Ohio St.3d 332, 2016-Ohio-5794, ¶ 11.

The CBOR Ordinance at issue here contains provisions similar to those found in *Walker* and *Coover* to fail the threshold requirements for a charter amendment initiative and to exceed the scope of the authority to enact via initiative. The CBOR Ordinance, for example, creates multiple new causes of action – precisely the type of provision that this Court in *Khumkrakob* recently confirmed is outside a municipality's legislative authority. *Khumkrakob*, 2018-Ohio-1602, ¶ 6.

For the reasons that *amici curiae* explain at length in the *amicus* brief filed today in *State ex rel. Twitchell v. Lucas County Board of Elections*, Ohio Supreme Court Case No. 2018-1238, which *amici curiae* adopt and incorporate as if fully set forth herein, Relators are not entitled to a writ to compel placement of the CBOR Ordinance on the ballot. They do not have an unqualified legal right to place upon the ballot by initiative any proposed charter amendment of their choosing, regardless of subject matter. Pre-election review to determine whether ballot-access requirements have been satisfied is constitutionally permissible whether it is conducted by a board of elections or by a court, and as this Court has previously held, boards of election "are the local authorities best equipped to gauge compliance with election laws." *State ex rel. Sinay v. Sodders*, 80 Ohio St.3d 224, 231, 685 N.E.2d 754 (1997). Ohio law and this Court's precedent, as

detailed in the *Twitchell* brief of *amici curiae*, demand that ballot-access litigation be heard and decided before the election, and for this Court to hold otherwise would be to severely compromise the integrity of Ohio's election system.

Proposition of Law No. 4: The Columbus Charter standard for determining the sufficiency of initiative petitions does not preclude Respondents' application of R.C. 3501.38(M)(1)(a), because the Charter *itself* expressly contemplates substantive review of initiative petitions "to assure compliance with *** general laws of the state *** [.]"

No writ should issue with respect to Relators' Third Cause of Action, which is premised upon Relators' erroneous contentions that the Columbus Charter "forbids city officials from considering the substance of an initiated proposal" (Compl., ¶ 35) and "reduces the Franklin County BOE's role in scrutinizing initiative petitions *** to a strictly ministerial one." (*Id.*, ¶ 36.) Both of these contentions are simply wrong.

Far from "forbidding" city officials from considering the substance of an initiated proposal, § 42-11 of the Charter in fact *expressly contemplates* that a city officer may indeed "consider the subject matter of a petition when determining the legal sufficiency thereof *** *to assure compliance with applicable provisions of this charter, general laws of the state, or ordinance of council*." (Charter, § 42-11; emphasis added.) This type of consideration, expressly contemplated in the Charter, is a far cry from the purely ministerial function that Relators wrongly insist that the Charter allows. And because the Charter specifically permits city officers to consider compliance with "general laws of the state" when assessing the legal sufficiency of an initiated proposal, it makes no sense whatsoever for Relators to argue that the Charter "supersedes and precludes the

applicability" of a duly enacted state law such as R.C. 3501.38, as Relators allege in their Third Cause of Action. (Compl., ¶ 39.)

Moreover, in arguing that the City Charter "reduces the [BOE]'s role in scrutinizing initiative petitions *** to a strictly ministerial one," Relators confuse the officials who are, in fact, bound by the cited Charter provision. By its terms, Section 42-11 of the Charter only applies to the consideration of a proposal undertaken by a "city officer." Relators do not allege that any of the Respondents here are the "city officers" bound by this Charter provision, and *amici curiae* suspect that Respondents would be surprised by such a designation, in light of their service on a county – not municipal – Board pursuant to a state statute. Put another way, Respondents are "election officers" as defined in R.C. 3501.01(U)(5). They are county board members whose duties are established under State – not municipal – law, in R.C. 3501.11. Respondents clearly are not "city officers" of the type whose conduct and duties are prescribed in Section 42-11 of the Columbus Charter. In fulfilling their role as envisioned and established by the General Assembly in Title 35 of the Revised Code, Respondents act within their legislatively permitted sphere when reviewing proposals as the General Assembly directs in R.C. 3501.38(M)(1)(a).

Proposition of Law No. 5: Respondents' refusal to certify the CBOR Ordinance did not unconstitutionally infringe upon Relators' First Amendment Rights.

Relators' Proposition of Law No. 2 focuses on a First Amendment challenge that Relators only mentioned in passing in their Complaint, in connection with their First

Cause of Action. (Compl., ¶ 23.) Relying on *Meyer v. Grant*, 486 U.S. 414, 421, 108 S.Ct. 886, 100 L.Ed.2d 425 (1988), Relators contend that Respondents cannot keep their proposal from the ballot without unduly restricting Relators' ability to engage in core political speech. For the following reasons, however, Relators' First Amendment challenge fails.

It is well-established that content-neutral restrictions on the right to legislate by initiative petitions are constitutional and enforceable. *See Comm. to Impose Term Limits on the Ohio Supreme Court v. Ohio Ballot Bd.*, 6th Cir. No. 17-3888, 2018 U.S. App. LEXIS 6905, *6-7 (March 20, 2018) (holding that content-neutral state requirements that initiative petition contain only a single subject and authorizing elections boards to separate multiple subjects into separate petitions did not violate First Amendment rights); *State ex rel. Ethics First-You Decide Ohio PAC v. Dewine*, 147 Ohio St.3d 373, 2016-Ohio-3144, 66 N.E.3d 369, ¶ 22-23 (same). *See also Taxpayers United for Assessment Cuts*, 994 F.2d 291, 297 (6th Cir. 1993) ("Because the right to initiate legislation is a wholly state-created right, we believe that the state may constitutionally place nondiscriminatory, content-neutral limitations on the plaintiffs' ability to initiate legislation.")

The test applied to determine if a state statute is content-based is the same under federal law and Ohio law.

> "Government regulation of speech is content based if a law applies to particular speech because of the topic discussed or the idea or message

> expressed." *Reed v. Town of Gilbert*, 135 S. Ct. 2218, 2227, 192 L. Ed. 2d 236 (2015). Statutes that are not content based on their face may still be considered content based if they "cannot be justified without reference to the content of the regulated speech" or "were adopted by the government because of disagreement with the message the speech conveys." *Id*. (internal quotation marks, citation, and alteration omitted).

Comm. to Impose Term Limits on the Ohio Supreme Court v. Ohio Ballot Bd., 2018 U.S. App. LEXIS 6905, *6; *State ex rel. Ethics First-You Decide Ohio PAC*, at ¶ 23 ("Government regulation of speech is content based if a law applies to particular speech because of the topic discussed or the idea or message expressed.") (internal citation omitted).

R.C. 3501.38(M)(1)(a) easily passes constitutional muster under this test. The statute applies to an elections board review of all initiative petitions without regard to topic. The statute is justified by the State's legitimate interest in assuring that the initiative process is used only for the purpose prescribed in the Ohio Constitution and to allow the electorate to legislate only on matters that are the proper subject of action by initiative. The statute was not adopted by the General Assembly because of its disagreement with any particulate message at all; it is uniformly applied and non-discriminatory. Relators have no evidence to the contrary to support their First Amendment claims.

Relators rely primarily upon the U.S. Supreme Court's decision in *Meyer* for the proposition that a state infringes on the people's core political rights when it "limits the size of the audience they can reach" or "limit[s] their ability to make the matter the focus of [jurisdictionwide] discussion." (Relators' Merit Br. at 18, quoting *Meyer*, 486

U.S. at 423.) Relators utterly fail to explain how the BOE's rejection of their charter petition does either of these prohibited things.

The problematic state law invalidated in *Meyer* made it a felony to pay for circulation of initiative petitions, making it effectively impossible for proponents of amendments to obtain the required number of signatures within the allotted time period for doing so. *Id.* The Ohio law of which Relators complain here does nothing of the sort. R.C. 3501.38(M)(1)(a) does nothing at all to limit Relators' ability to circulate their proposed charter petitions or otherwise muzzle Relators' messages or opinions; it merely confirms the BOEs' authority to make precisely the sort of invalidity determinations concerning proposed county charters recognized as appropriate in this Court's recent precedent.

Here, there were no state-imposed restrictions precluding Relators from supporting their initiative, circulating it to electors in the City of Columbus, and making their case loudly and clearly for the changes they advocate. And *Meyer* does not preclude election officials from keeping fundamentally inappropriate material from the ballot, so long as petition circulators can exercise their First Amendment rights in the public square. *Accord*, *Marijuana Policy Project v. United States*, 304 F.3d 82 (D.C. Cir. 2002).

As the D.C. Circuit explained in *Marijuana Policy Project*, after the District of Columbia Board of Elections refused to certify a medical marijuana initiative for the

ballot, "although the First Amendment protects public debate about legislation, it confers no right to legislate on a particular subject." *Id.*, 304 F.3d at 85. The Board of Elections in *Marijuana Policy Project* cited the so-called Barr Amendment as the basis for its refusal to certify the medical marijuana initiative at issue. *Id.* at 84. The Barr Amendment was a rider to the District of Columbia appropriations act, which precluded the District from enacting any law reducing penalties associated with possession, use, or distribution of marijuana. *Id.* Although the circulators in *Marijuana Policy Project*, like the Relators here, relied on the Supreme Court's *Meyer* decision to seek to overturn and curtail the gatekeeping function of the Board of Elections, the D.C. Circuit found *Meyer* inapplicable:

> The MPP draws our attention to a line of cases holding that certain limitations connected with ballot initiatives impermissibly restrict private political speech. *E.g.*, *** *Meyer v. Grant*, 486 U.S. 414, 100 L. Ed. 2d 425, 108 S. Ct. 1886 (1988) (overturning prohibition on professional petition circulators). In none of these cases, however, did anyone question whether the ballot initiative at issue addressed a proper subject. The cases thus cast no light on the issue before us – whether a legislature can withdraw a subject from the initiative process altogether.

Id. at 86. The D.C. Circuit concluded that the Barr Amendment – a statute limiting the District of Columbia's legislative authority, including authority exercised via the initiative process – restricts no First Amendment right. *Id.* at 87. The same should be said here with respect to R.C. 3501.38(M)(1)(a), and Relators' reliance on *Meyer* and its progeny should be rejected.

Proposition of Law No. 6: Relators waived their one-subject challenge to H.B. 463, which should fail on the merits if the Court decides to consider it.

Finally, in their Third Proposition of Law, Relators challenge House Bill 463 (2016) under the one-subject rule of the Ohio Constitution. The Court should not reach this issue. Relators alleged three causes of action in their Verified Complaint, and not one of them was a single-subject challenge to H.B. 463. (*See generally* Compl.) Based on the Complaint, Respondents lacked proper notice of this constitutional challenge, and it would be unfair for the Court to reach its merits, particularly in this expedited context. If the Court decides to reach the merits of Relators' one-subject challenge, however, the Court should reject it.

The one-subject rule first became part of the Ohio Constitution in 1851. Five years later, this Court issued its first opinion on the rule, *Pim v. Nicholson*, 6 Ohio St. 176 (1856). In *Pim*, mindful of the vexing separation-of-powers issues that would arise if *courts* (instead of the General Assembly) enforced the one-subject rule—a rule, after all, addressing the internal procedures of a coordinate branch of government—this Court concluded that the rule was merely directory, not mandatory. In the mid-1980s, however, in the *State ex rel. Dix v. Celeste* decision cited by Relators, this Court deviated from *Pim*'s longstanding interpretation of the one-subject rule—what the *Dix* court conceded was a "long line of unbroken cases"—and opened the door, only slightly, to the prospect of some judicial enforcement of the single-subject rule. 11 Ohio St.3d 141, 464 N.E.2d 153 (1984). Even in doing so, however, this Court stressed just how limited

the judiciary's enforcement role must be, in light of the concerns identified in its prior case law. Specifically, while allowing for the *possibility* of judicial enforcement (in *Dix* itself, this Court rejected the one-subject challenge), the Court held that only a "manifestly gross and fraudulent violation of this rule will cause an enactment to be invalidated." *Id.* at 145. The *Dix* court recognized that "there are rational and practical reasons for the combination of topics on certain subjects" and that the General Assembly may permissibly pursue such combinations "not *** for purposes of logrolling but for the purposes of bringing greater order and cohesion to the law or of coordinating an improvement of the law's substance." *Id.*

In a recent application of the one-subject rule, this Court confirmed its deferential approach to the rule, confirming that "[t]o accord appropriate deference to the General Assembly's law-making function, we must liberally construe the term 'subject' for purposes of the rule." *State ex rel. Ohio Civil Serv. Emps. Assn. v. State*, 146 Ohio St.3d 315, 2016-Ohio-478, ¶ 16 ("*OCSEA*") In *OCSEA* the Court rejected a one-subject challenge to prison-privatization legislation buried within a massive biennial budget appropriations bill. The Court confirmed that "[o]nly when there is no practical, rational, or legitimate reason for combining provisions in one act will [the Court] find a one-subject rule violation." *Id.* at ¶ 17. The requirement that the judicial branch play only a limited role in enforcing the single-subject rule is also manifested in terms of the remedy that a court provides when it finds a violation. Specifically, when a court

determines that an act has more than one subject, it then "determine[s] which subject is primary and which is an unrelated add-on." *Id.* at ¶ 22. The court will then preserve the primary subject matter by severing the unrelated portions. *Id.*

Here, there has been no manifestly gross or fraudulent violation of the one-subject rule. The General Assembly had practical, rational, and legitimate reasons for combining H.B. 463's provisions (including the provisions of which Relators complain, pertaining to the scope of review by BOEs) into a single Act. As passed by the House, H.B. 463 was a foreclosure measure intended to reduce blight by cutting down the time it takes for abandoned and vacant homes to change hands. The House Bill accomplished this goal by addressing certain powers and duties of local officials involved in the foreclosure process—including numerous county officials such as the county sheriffs, county courts that would be conducting judicial sales, and counties that could enter into shared services agreements relating to a new sheriff-sale website enabled by the legislation. *Id.* *See also* Sub. H.B. No. 463, 131st General Assembly (As Passed by the House). Given that the House version of the legislation affected numerous powers and duties of various county officials, it was entirely practical, rational, and legitimate for the Senate to later propose that the same Bill also include amendments to Title 35, regarding the powers and duties of *other* county officials; that is, county boards of election. The House apparently did not interpret the Senate's

election-related amendments to the House Bill as improper "logrolling" or as any violation of the one-subject rule; instead, the House concurred in the Senate's amendments to H.B. 463 by a vote of 72-21.[3]

Acceptance of Relators' one-subject challenge would put an unreasonable and unnecessary straightjacket on the General Assembly's ability to pass comprehensive legislation affecting the powers and duties of county officials, and this Court's longstanding precedent on the single-subject rule dooms Relators' challenge. The Court's recent *OCSEA* opinion confirmed that the General Assembly could properly address the discrete topic of prison privatization within a massive, biennial appropriations bill impacting hundreds of other discrete topics and sections of the Revised Code. By the same token, the General Assembly can permissibly address the powers and duties of numerous county officials in a far shorter and more focused piece of legislation such as H.B. 463, without running afoul of the Ohio Constitution.

CONCLUSION

Amici curiae have a genuine and compelling interest in the CBOR Ordinance at issue in this case. Granting the writ sought here would encourage countless other petitioners to ignore binding municipal charter provisions and 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 municipal

[3] *See* Bill History, HB 463, *available at*: https://www.legislature.ohio.gov/legislation/legislation-documents?id=GA131-HB-463 (last accessed March 30, 2018).

government reforms. *Amici curiae* Affiliated Construction Trades Ohio Foundation, the Ohio Chamber of Commerce, Columbus REALTORS, the Ohio Oil and Gas Association, the Ohio Chemistry Technology Council, and the American Petroleum Institute respectfully urge the Court to deny the requested writ.

Respectfully submitted,

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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, Columbus REALTORS, the Ohio Oil and Gas Association, the Ohio Chemistry Technology Council, and The American Petroleum Institute was served via electronic mail upon the following counsel this 7th day of September, 2018:

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