IN THE SUPREME COURT OF OHIO

STATE OF OHIO EX REL. JOSH ABERNATHY	**: Case No. 2018-1824**
Relator,	**: Original Action in Prohibition**
-v-	
LUCAS COUNTY BOARD OF ELECTIONS	**: Expedited Election Matter Pursuant to S. Ct. Prac.R. 12.08**
Respondent.	

RELATOR'S MERIT BRIEF

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I. INTRODUCTION

This is an action in prohibition seeking to prevent Respondent Lucas County Board of Elections ("Respondent Board" or the "Board") from placing a proposed charter amendment to the Toledo City Charter, entitled the "Lake Erie Bill of Rights" (the "LEBOR Amendment"), on the February 26, 2019 special election ballot. The Court should be familiar with the proposed LEBOR Amendment as just a few months ago in *State ex rel. Twitchell v. Saferin*, Slip Opinion No. 2018-3829, the Court denied a writ of mandamus sought by the Intervenor Petitioners to place the same measure proposed by the same petition on the November 6, 2018 general election ballot.

II. STATEMENT OF FACTS

On August 6, 2018, Intervenor Petitioners (the "Petitioners") submitted to the Toledo City Council a petition (the "Petition") proposing an amendment to the Toledo City Charter, entitled the "Lake Erie Bill of Rights." Compl. ¶ 3; *Twitchell*, ¶ 2. As recently explained by the Court:

> The LEBOR would declare that Lake Erie and the Lake Erie watershed "possess the right to exist, flourish, and naturally evolve" and that the citizens of Toledo have a right to a clean and healthy environment, including the Lake Erie ecosystem. Section 2 would make it unlawful for a corporation or government to violate the rights secured by the LEBOR and declares that, within the city of Toledo, any corporate license or privilege that would violate these rights would be void. Section 3 would make it a crime to violate the provisions of the LEBOR, would allow the city of Toledo, or any resident, to "enforce the rights and prohibitions of this law through an action brought in the Lucas County Court of Common Pleas," and would recognize the right of the Lake Erie ecosystem itself to enforce its rights in an action prosecuted by the city or any resident of the city. Finally, Section 4 purports to nullify any state laws or agency rules that conflict with the provisions of the LEBOR.
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> *Twitchell*, ¶ 2.

Respondent Board subsequently verified and reported to the Clerk of the Toledo City Council (the "Clerk") that the Petition contained a sufficient number of signatures to qualify the

measure for the ballot. *See*, *Twitchell* at ¶ 3. Upon receiving Respondent Board's report, the Clerk requested the Board to place the LEBOR Amendment on the November 6, 2018 general election ballot. Compl. ¶ 4. However, on August 28, 2018, Respondent board voted 4-0 to not place the LEBOR Amendment on the ballot on the basis that it contained provisions that are beyond the authority of the city to enact. Compl. ¶ 5; *Twitchell*, ¶ 3. Specifically, Respondent Board based its decision on the fact that the LEBOR Amendment purports (1) to create new causes of action, and (2) to vest the common pleas court with jurisdiction to hear these news causes of action. Compl. ¶ 5; *Twitchell*, ¶ 3.

Following Respondent Board's unanimous decision to not place the LEBOR Amendment on the ballot, the Petitioners sought a writ of mandamus from this Court to compel the Board to place the LEBOR Amendment on the ballot. Compl. ¶ 6; *Twitchell*, ¶ 4. On September 21, 2018, the Court in *Twitchell* denied the requested writ of mandamus. Compl. ¶ 6; *Twitchell*, ¶ 1, 9. And on October 5, 2018, the Court denied the Petitioners' request for reconsideration of the denial of the requested writ of mandamus. Compl. ¶ 6; *10/05/2018 Case Announcements #2,* 2018-Ohio-4040.

On December 4, 2018, acting on the LEBOR petition originally filed with the City on August 6, 2018, the Toledo City Council passed Ordinance 497-18 submitting the same LEBOR Amendment to Respondent Board for placement on the ballot at a February 26, 2019 special election. Compl. ¶ 7; *see also,* Ordinance 497-18, Exhibit 2, Relator's Evidence. On December 10, 2018, Relator submitted a written protest to Respondent Board pursuant to R.C. 3501.39, asserting that (1) the LEBOR Amendment is beyond the scope of the right granted by the Ohio Constitution to propose and place on the ballot municipal charter amendments, and (2) that this second attempt to place the LEBOR Amendment on the ballot was not permitted under established rules of

jurisprudence, including *res judicata*. Compl. ¶ 8. On December 18, 2018, Relator submitted to Respondent Board a Supplemental Memorandum of Law in Support of the Protest. *Id.*

On December 20, 2018, Respondent Board conducted a quasi-judicial hearing to consider the protest filed by Relator. Compl. ¶ 9-10; *see also*, Transcript of the Protest, Exhibit 1, Relator's Evidence). Respondent Board heard arguments and received evidence, including sworn testimony. *Id.* At the conclusion of the presentation of arguments and evidence, Respondent Board went into executive session. *Id.* When Respondent Board returned to the public meeting, Respondent Board's Chair announced that the protest was denied. *Id.* Another member of Respondent Board then made a motion to certify the LEBOR Amendment for placement on the February 26, 2019 special election ballot. *Id.* Respondent's actions were based on *dicta* in the four-Justice majority opinion in *State ex rel. Maxcy v. Saferin*, Slip Opinion No. 2018-Ohio-4035—issued 12 days after the Court's decision in *Twitchell.*

Six days after Respondent Board denied the protest, Relator filed the instant action. In so doing, Relator has acted with the utmost diligence, and there has been no unreasonable delay or lapse of time in asserting Relator's rights sought herein. Compl. ¶ 11. Further, there is no prejudice to Respondent Board. *Id.*

III. LAW AND ARGUMENT

A. Legal Standard.

Relator is seeking a writ of prohibition. A writ of prohibition will issue if (1) the Board exercised quasi-judicial power, (2) the exercise of that power was unlawful, and (3) the protestors have no adequate remedy in the ordinary course of the law. *State ex rel. McCann v. Del. Cty. Bd. of Elections*, Slip Opinion No. 2018-Ohio-3342, ¶ 12. Here, Respondent Board exercised quasi-judicial power when it denied the Protest after a hearing that included sworn testimony. *Id.* And

due to the proximity of the February 26, 2019 special election, Relator lacks an adequate remedy at law. *Id.*

The remaining issue is whether Respondent Board's decision to deny the Protest was contrary to law or unauthorized by law.[1] *Id.* For the following two independent reasons, Respondent Board acted contrary to law by denying the protest and voting to place the LEBOR Amendment: (1) The proposed LEBOR Amendment to the City of Toledo Charter does not comply with the threshold requirements for ballot access; and (2) the well-established rules of claim preclusion and waiver prevent the Petitioners from having their proposed amendment placed on the ballot.

B. <u>Proposition of Law No. 1</u>: The Proposed Lake Erie Bill of Rights Amendment to the City of Toledo Charter Does Not Comply with the Threshold Requirements for Ballot Access.

Respondent previously determined that the LEBOR Amendment did not qualify for placement on the ballot—a decision that was unsuccessfully contested by Intervenor Petitioners in *Twitchell*. Now, in this second consideration of the same measure, Respondent Board has voted to place the issue on the ballot, stating that it believes that the Court's September 25, 2018 majority opinion in *Maxcy* deprives the Board of any authority to consider whether the subject matter of the proposed amendment facially complies with the right of ballot access granted by the Ohio Constitution to propose municipal charter amendments. *See,* Answer, ¶ 2, 7, 8.

In *Maxcy*, the issue was whether to issue a writ of mandamus ordering the Lucas County Board of Elections to place a proposed amendment to the Toledo City Charter regarding the

[1] Although the Court in reviewing elections officials' decisions has applied an abuse of discretion standard with respect to questions of fact and law, Justice Fischer, in *Twitchell*, raised the question of whether the Court should adopt a non-deferential standard of review with respect to elections officials' conclusions of law. As set forth more fully in Section B5 of this brief, Relator urges the Court to clarify that elections officials' conclusions of law are to be reviewed de novo.

municipal jail on the November 6, 2018 general election ballot. *Maxcy*, ¶ 1-2. The majority opinion held that because the Toledo City Council had not passed an ordinance submitting the proposed charter amendment to the electors, as required by Art. XVIII, Section 9 of the Ohio Constitution, the Board had no duty to place the measure on the ballot. *Id.,* ¶ 20-24. That was the narrow holding of the case. However, in dicta, the four-Justice majority opinion also stated:

> We acknowledge that the board relied on our recent decision in [*State ex rel. Flak v. Betras*, 152 Ohio St.3d 244, 2017-Ohio-8109, 95 N.E.3d 329], which confused the law by stating that a county board of elections has authority to determine whether a charter amendment exceeds the scope of authority to enact by initiative . . . As we discuss below, boards of elections have no authority to review the substance of a proposed municipal-charter amendment; therefore, *Flak* should no longer be relied on as authority to the contrary.
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> *Id*., ¶ 13.

In placing the LEBOR Amendment on the February 26, 2019 special election ballot, Respondent Board relied upon this *dicta* in *Maxcy*.

A core issue in the instant action, then, is whether, following *Maxcy*—the dicta of which is in conflict with the Court's recent decisions in *Twitchell*, *Flak,* and *State ex rel. Bolzenius v. Preisse*, Slip Opinion No. 2018-Ohio-3708—boards of elections have the authority to make a determination as to whether the subject matter of a ballot measure is facially within the scope of the subject matter authorized by the ballot access law under which it is submitted. Contrary to the Board's position, the relevant legal provisions and case law provide that boards of elections can—and must—make such determinations and that these determinations are, in turn, subject to judicial review. Further, based on the subject-matter limitation in Article XVIII, Sections 3 and 7 of the Ohio Constitution on the right to frame, adopt, and amend a municipal charter, he Proposed Lake

Erie Bill of Rights Amendment to the City of Toledo Charter does not comply with the threshold requirements for ballot access.

1. Access to the ballot depends upon there being a legal right to access, and this determination must be made before the election.

Ballot access for candidates and ballot measures alike depends upon there being a legal right to access the ballot. There is no open-ended right to place any proposal, measure, or candidacy on the ballot. Instead, ballot access requires compliance with legal prerequisites that are both technical, such as petition form and a minimum number of required signatures, and substantive, such as office-holder qualifications or ballot measure subject-matter limitations. Moreover, it follows that the determination as to whether a candidate or ballot measure satisfies these prerequisites must be made by some entity or individual(s) before the election. Otherwise, the laws would be useless, and any candidate or ballot measure could appear on the ballot regardless of whether they meet the technical and substantive legal prerequisites to do so. As the U.S. Supreme Court has observed, "there must be a substantial regulation of elections if they are to be fair and honest and if some sort of order, rather than chaos, is to accompany the democratic processes." *Storer v. Brown*, 415 U.S. 724, 730 (1974).

2. The county boards of elections have the statutory authority to determine whether a local ballot measure satisfies the legal prerequisites for placement on the ballot.

In light of the need to determine whether candidates and ballot measures qualify for placement on the ballot, the General Assembly has authorized the county boards of elections to make these determinations before the relevant election. This statutory authority is found, in part, in R.C. 3501.11(K), which provides that boards of elections shall:

> (1) Review, examine, and certify the sufficiency and validity of petitions and nomination papers, and, after certification, return to

> the secretary of state all petitions and nomination papers that the secretary of state forwarded to the board;[2]
>
> (2) Examine each initiative petition . . . received by the board to determine whether the petition falls within the scope of authority to enact via initiative and whether the petition satisfies the statutory prerequisites to place the issue on the ballot, as described in division (M) of section 3501.38 of the Revised Code. The petition shall be invalid if any portion of the petition is not within the initiative power.[3]

Art. XVIII, Section 7 of the Ohio Constitution grants the right to frame, adopt and amend a municipal charter and prescribes the substantive limitation on the right. It provides that:

> Any municipality may frame and adopt or amend a charter for its government and may, subject to the provisions of section 3 of this article, exercise thereunder all powers of local self-government. (Emphasis added)

Art. XVIII, Section 3, in turn, provides that:

> Municipalities shall have authority to exercise all powers of local self-government and to adopt and enforce within their limits such local police, sanitary and other similar regulations, as are not in conflict with general laws. (Emphases added).

While Art. XVIII, Sections 3 and 7, set forth the substantive prerequisite of the right, Art. XVIII, Sections 8 and 9 set forth the procedural prerequisites. Taken together, these sections create a right of ballot access that may be exercised within the confines set forth.

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[2] Prior to the present version of R.C. 3501.11(K)(1) enacted by the 131st General Assembly with H.B. 463, the same language existed as R.C. 3501.11(K), and the Court had interpreted it as authority for the boards "to determine whether a ballot measure falls within the scope of the constitutional power of referendum or initiative." *Bolzenius,* ¶ 8 quoting *State ex rel. Youngstown v. Mahoning Cty. Bd. of Elections*, 144 Ohio St.3d 239, 2015-Ohio-3761, 41 N.E.3d 1229, ¶ 9. H.B. 463 therefore merely codified this Court's interpretations of the previous R.C. 3501.11(K).

[3] In *Maxcy*, different viewpoints are expressed by members of the Court regarding whether a charter amendment proposed by citizen petition is an initiative petition. Relator believes, as discussed in Section B4 of this brief, that regardless of the initiative label, a petition proposing a municipal charter amendment is still limited by the scope of the right granted in Art. XVIII.

That the authority to determine whether candidates and ballot measures qualify for placement on the ballot lies with the boards of elections is appropriate given that they "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). In this vein, and with respect to ballot measures, the Court has recognized that the boards act as "gatekeepers" to "determine whether a ballot measure satisfies statutory prerequisites to be a ballot measure." *State ex rel. Walker v. Husted*, 144 Ohio St.3d 361, 2015-Ohio-3759, 43 N.E.3d 419, ¶ 13-14 (2015). This "gatekeeper" function of the boards is part of an important general duty to determine whether laws granting ballot access have been satisfied.

With respect to candidates, boards of elections routinely review whether candidates meet the substantive requirements to be candidates for public offices. Candidates for judicial offices, for instance, must have been engaged in the practice of law for six years prior to seeking judicial office. R.C. 2301.01. County sheriffs must hold a high school diploma and possess law enforcement training and experience. R.C. 311.01(B). Prosecuting attorneys must be licensed to practice law. R.C. 309.02. County engineers must be registered and licensed as an engineer and surveyor. R.C. 315.02. County coroners must have been licensed physicians for at least two years immediately preceding their election. R.C. 313.02. Boards of elections also routinely review whether length-of-residency requirements that apply to candidates for various offices have been met. *See, e.g.,* R.C.731.02 (one-year residency requirement for city council members). Boards also review whether candidates reside where they are registered to vote. These matters all require substantive review and interpretations of law. There are also "subject matter" limitations on candidate petitions: an individual can file a petition and gain ballot access for an office for which the law does provide an election, such as animal control director.

Just as each board of elections must determine that candidates have satisfied the applicable substantive ballot access requirements, the boards must also determine that ballot measures have satisfied ballot access requirements before they are permitted to appear on the ballot. For example, as this Court has held, the right of municipal initiative to propose ordinances is limited to proposing measures that are legislative and may not be used to propose administrative measures. *State ex rel. Comm. for the Referendum of Ordinance No. 3844-02 v. Norris*, 99 Ohio St.3d 336, 2003-Ohio-3887, 792 N.E.2d 186; *State ex rel. Sensible Norwood v. Hamilton County Bd. of Elections*, 148 Ohio St.3d 176, 2016-Ohio-5919, 69 N.E.3d 696. To determine whether a ballot measure is legislative or administrative, a board of elections (or a reviewing court) must inquire into "whether the action taken is one enacting a law, ordinance or regulation, or executing or administering a law, ordinance or regulation already in existence." *Donnelly v. Fairview Park*, 13 Ohio St.2d 1, 233 N.E.2d 500 (1968), paragraph two of the syllabus. The answer to this question demands a substantive inquiry into the subject matter of the proposed measure.

In *Sensible Norwood,* this Court upheld the decision of a board of elections to invalidate a municipal ordinance petition on the grounds that it was administrative, rather than legislative, in nature. *Sensible Norwood*, ¶ 20. The ballot measure at issue was a proposed ordinance relating to marijuana criminalization and municipal enforcement of portions of the Revised Code relating to marijuana. The board of elections invalidated the petition in part because it found that these enforcement provisions were administrative. The petition committee sought a writ of mandamus from this Court and argued that the provisions at issue were purely enforcement measures for the other changes to marijuana law enacted in the proposed ordinance. *Id*. at ¶ 2-5. The Court conducted an analysis of the substantive provisions of the proposed ordinance and determined that the board of elections was correct. In its decision, after discussing the language of the relevant

provisions, the Court held that "the language reaches far beyond the enforcement of the proposed ordinance and attempts to prohibit the enforcement of existing state and federal controlled-substance laws. These provisions are clearly administrative." *Id*. at ¶ 13-19.

As another example, petitions proposing a county charter must be found to satisfy the requirement to provide the form of government of the county in order to appear on the ballot. Article X, Section 3, Ohio Constitution; *see also, Walker*. As this Court has explained, this involves a highly substantive review of the measure's subject matter. The board of elections has a duty to reject a county charter petition if the references to the powers and duties of county officials are "overly general." *State ex rel. McGinn v. Walker*, 151 Ohio St.3d 199, 2017-Ohio-7714, 87 N.E.3d 204, ¶ 15. This requires election officials to analyze the words in the proposed charter, compare them to the duties of county officials, and determine whether the proposed charter is sufficiently specific in describing the required official duties. This is a substantive review that must be conducted in order to determine whether the charter petition satisfies the constitutional prerequisites to appear on the ballot.

Taxing authorities may submit for placement on the ballot sales, income and property tax measures, but in doing so must comply with the subject matter limitations set forth in the laws granting ballot access, and boards of elections are charged with reviewing the substantive language to ensure that it is within the right granted. For example, county sales tax levy proposals require a substantive review. These measures are initiated by resolutions of boards of county commissioners, which are then transmitted to boards of elections to be placed on the election ballot to be approved or rejected by county electors. R.C. 5739.026. In order to satisfy the statutory requirements to appear on the ballot, the resolution from the commissioners must "state the purposes for which [the tax] is to be levied," R.C. 5739.026(D)(1), which is limited by statute to

certain specified uses. Therefore, the board of elections must conduct a substantive examination of the subject matter to determine that the resolution states a purpose of the tax, and that this purpose aligns with one of the statutorily limited purposes of a county sales tax. This is a review of the substance of the resolution which must be conducted before the resolution may appear on the ballot.

There are also substantive requirements that township zoning referendum petitions must satisfy in order to qualify for the ballot. Each part-petition must contain the "number and the full and correct title, if any" of the zoning resolution, the "name by which the [zoning] amendment is known," and a "brief summary of its contents." R.C. 519.12(H). If these requirements are not met, then the petition is invalid, and the referendum may not appear on the ballot. The responsible board of elections, therefore, has a duty to conduct a substantive review of both the petition and the attached zoning resolution to determine that the substantive elements of the petition satisfy the statutory pre-requisites to appear on the ballot, in particular the summary of the content of the zoning resolution.

As these cases and legal provisions illustrate, boards of elections are authorized to conduct pre-election substantive reviews of ballot measures and prospective candidates. If the boards did not possess this authority, then it is unclear what other entity could make such a determination, and the default would be to flood the courts with pre-election challenges to prospective candidates and ballot measures.

3. Determining whether the subject matter of a ballot measure is authorized for placement on the ballot is not the same as determining whether the measure, if adopted by the voters, would be lawful or constitutional.

Importantly, the pre-election reviews of ballot measures set forth by Ohio law are not determinations of whether a ballot measure, if adopted, would be lawful or constitutional. Rather,

these reviews are solely about whether a ballot measures qualifies to be submitted to the electors in the first instance. In other words, it is about whether the holding of the election is authorized by law. And for this reason, it is of further importance to make these determinations before the election because a ruling after an election regarding whether the election was authorized in the first place would be a moot point.

The Court has recognized that issues related to the right to be on the ballot must be decided before the election. Contest of elections procedures pursuant to R.C. 3515.09 et seq. cannot be a substitute for pre-election review of ballot measures. As this Court has long held, "[e]lection contests may not be used as a vehicle for asserting an untimely protest." *Portis v. Summit County Bd. of Elections*, 67 Ohio St.3d 590, 592, 621 N.E.2d 1202 (1993). This long-standing precedent is based in part on protecting the legitimacy of the democratic process: "citizens must be confident that their vote, cast for a candidate or an issue, will not be disturbed except under extreme circumstances." *In re Election Contest of December 14, 1999*, 91 Ohio St.3d 302, 304-305, 744 N.E.2d 745 (2001). Therefore, any known defects pertaining to a ballot measure which are evident prior to an election must be raised prior to an election. *Maschari v. Tone*, 103 Ohio St.3d 411, 2004-Ohio-5342, 816 N.E.2d 579, ¶ 33; *see also*, *In re Contested Election of Nov. 2, 1993*, 72 Ohio St.3d 411, 650 N.E.2d 859 (1995). Moreover, contest of elections procedures impose a considerably greater burden on litigants and the judiciary than pre-election board of elections protest procedures and expedited election matters before this Court.

4. The pre-election review of municipal charter amendments is no different than the pre-election review of other ballot measures.

The qualification of a municipal charter amendment proposed by petition is no different than any other ballot issue proposed by petition or otherwise submitted for placement on the ballot. Whether it be a proposed state law, zoning referendum, tax levy, municipal ordinance, municipal

charter amendment by petition, or municipal charter amendment by the municipal legislative body, the question is the same: Is the subject matter of the ballot measure within the scope of the right to submit the measure? For any of these ballot measures, this determination is made by reviewing the language of the relevant ballot access law. For municipal charters, specifically, the relevant ballot access law is Article XVIII of the Ohio Constitution, which expressly limits the framing, adoption, and amendment of municipal charters to the limited scope of authority granted in Article XVIII, Section 3—the powers of municipal local self-government.[4] The substantive prerequisite is just as important as the signature and other threshold prerequisites. There is no basis for distinguishing them. Unless all prerequisites are met, then there is no lawful right to be on the ballot. Otherwise, groups of individual and government bodies could claim a right to place any candidate or measure on the ballot by fulfilling only procedural requirements.

5. Determining whether a ballot measure qualifies for placement on the ballot is not a violation of separation of powers so long as there is a right to judicial review of the determination.

The determination of whether the subject matter of a ballot measure qualifies for submission to the electors does not violate the separation-of-powers doctrine so long as there is a

[4] In *Maxcy* and *Twitchell*, there has been a disagreement among the members of the Court as to whether a proposed charter amendment initiated by the voters pursuant to Article XVIII of the Ohio Constitution is an "initiative" as the term is used in Article II, Section 1f of the Ohio Constitution. *See, Twitchell*, ¶ 14 (O'Connor, C.J., concurring)*, Twitchell,* ¶ 24-34 (Kennedy, J., concurring in judgment only); *Maxcy*, ¶ 9-15; *Maxcy,* ¶ 29-50 (Fischer, J., dissenting). Article II, Section 1f is about exercising municipal legislative power through the initiative process, and Article XVIII concerns municipal charters, including the process by which voters can amend a charter by petition. Regardless of whether they are the same "initiative" power, the fact remains that the constitutional provisions contain subject-matter limitations on their respective "initiatives." For Article II, Section 1f—the right to propose an ordinance—the limitation is "all questions which such municipalities may now or hereafter be authorized by law to control by legislative action." And for Article XVIII—the right to propose a charter amendment—the limitation is "all powers of local self-government." Article XVIII, Sections 3 and 7, Ohio Constitution. Thus, the relevant issue for petitions submitted pursuant to either provision is whether they comply with the applicable constitutional limitation.

right to judicial review of the determination. Indeed, the courts are ultimately responsible for stating what is and what is not authorized by law. And as the cases discussed above make clear, the courts have been active in reviewing the decisions made by boards of elections, thereby protecting the rights of the parties and the public.

Despite this rich history of judicial review, there is a question as to the appropriate standard of review that should be applied to boards of elections' legal conclusions. *See, Twitchell*, ¶ 45-49 (Fischer, J., dissenting). Although the Court has often applied an abuse of discretion standard in reviewing both factual findings and legal conclusions by boards of elections, this standard is arguably inconsistent with the principle that the courts are the ultimate authority in determining what the law is. *See, Twitchell*, ¶ 45-49 (Fischer, J., dissenting) citing *In re J.V.*, 134 Ohio St.3d 1, 2012-Ohio-4961, 979 N.E.2d 1203, ¶ 3.

In this case and going forward, the Court should apply a de novo standard of review with respect to boards of elections' legal conclusions. This non-deferential standard would be consistent with the historic role of the courts under the separation-of-powers doctrine to declare what the law is—a responsibility that the courts should not cede to the executive branch. This would not mean, however, that the boards are forbidden in the first instance from making conclusions of law over matters within their jurisdiction. For instance, in Justice Fischer's dissenting opinion in *Twitchell*, he explained that the Court has applied the de novo standard of review in other cases reviewing legal determinations made by executive agencies, like the Board of Tax Appeals, and that the Court has "implicitly accepted" that the executive's initial determination of a purely legal question "does

not violate the separation-of-powers doctrine." *Twitchell*, ¶ 48 (Fischer, J., dissenting). Thus, the Court should review boards of elections' legal conclusions de novo.[5]

6. The LEBOR Amendment's provisions are facially outside the scope of powers of local self-government.

As briefed in *Twitchell*, substantial portions of the LEBOR Amendment are clearly outside the power of *any* municipality. The bulk of the LEBOR Amendment is devoted to creating new private causes of action, which the Court has repeatedly held to be beyond the scope of municipal power. *Twitchell*, ¶ 3, 6, 8; *Bolzenius*, ¶ 13 ("Like the proposal in *Flak*, the proposed ordinance here would create a new a cause of action—something we have held municipalities lack the power to do."); *Flak*, ¶ 15 (holding that "a municipality is not authorized to create new causes of action."); *Groch v. Gen. Motors Corp.*, 117 Ohio St.3d 192, 2008-Ohio-546, 883 N.E.2d 377, ¶ 150 ("state law . . . determines what injuries are recognized and what remedies are available.") (emphasis added). Indeed, the LEBOR Amendment gives the "Lake Erie Ecosystem" the right to "exist, flourish, and naturally evolve" (Section 1(a) of the LEBOR Amendment, attached to Relator's Exhibit 3), and it gives the "people of the City of Toledo" the "right to a clean and healthy environment" which would include "the right to a clean and healthy Lake Erie and Lake Erie Ecosystem" (Section 1(b) of the LEBOR Amendment). It then provides that violations of these rights constitute offenses. *See*, Sections 2(a), 3(a), (3)(c), 5 of the LEBOR Amendment. It provides further that any such alleged offenses can be prosecuted by the private citizens of the City of Toledo, including actions brought on behalf of the "Lake Erie Ecosystem," in the Lucas County

[5] Adopting this approach may also resolve the issues addressed in a recent decision by the United States District Court for the Southern District of Ohio in *Schmitt v. Husted*, S.D. Ohio No. 2:18-cv-966 (Sept. 19, 2018), in which the court has preliminarily found judicial review that defers to legal conclusions by boards of election does not provide a sufficient right to judicial review, and therefore likely does not comport with due process.

Court of Common Pleas. *See*, Sections 3(b), 3(d) of the LEBOR Amendment. Finally, it provides specific penalties for such offenses. *See*, Sections 2(b), 3(a)-(d), 4(a) of the Proposed Amendment. Thus, given that the bulk of the LEBOR Amendment is devoted to creating new private causes of action, under *Twitchell, Bolzenius*, *Flak*, and *Groch,* the LEBOR Amendment is beyond the scope of municipal power.

Related to creating the new private causes of action, the LEBOR Amendment contains several other provisions asserting jurisdiction over geographic areas, corporate and governmental entities, and activities that are clearly outside the power of any municipality. In several instances, the LEBOR Amendment purports to grant jurisdiction over the entirety of Lake Erie—a body of water shared by two countries, four states, one Canadian province, and numerous domestic and foreign political subdivisions—to the City of Toledo and its residents. *See*, Sections 1(b), 2(a), 3(b), 3(d) of the LEBOR Amendment. In another instance, the LEBOR Amendment would "deem invalid" any permit, license, privilege, charter, or other authorization issued by "any" state or federal entity to a corporation that would violate the LEBOR Amendment. Section 2(b) of the LEBOR Amendment. In another instance, the LEBOR Amendment would remove the rights of corporations that violate its provisions (Section 4(a)), even though state law is the fundamental source of corporate law. *See*, Article XIII, Section 2, Ohio Constitution ("Corporations may be formed under general laws") (emphasis added); *Belden v. Union Cent. Life Ins. Co.*, 143 Ohio St. 329, 55 N.E.2d 629 (1944), paragraph 2 of syllabus ("Section 2, Article XIII of the Constitution grants full and complete authority to the General Assembly to provide, by general laws, for the formation of corporations and changes in the organization or structure of existing corporations.") (emphasis added); R.C. Chapters 1701-1703.

Also related to creating the new private causes of action, the LEBOR Amendment would expand the jurisdiction of and create standing for actions in the Lucas County Court of Common Pleas. *See*, Sections 4(b), 4(d) of the LEBOR Amendment. This is clearly beyond the power of municipalities as the courts of common pleas are creatures of state law. *See*, Title 23 of the Ohio Revised Code.

Given the extent to which the LEBOR Amendment creates and delineates these new, private causes of action, the proposal is unquestionably outside the scope of municipal power under the Court's recent decisions in *Twitchell*, *Bolzenius*, *Flak,* and *Groch*, and beyond the ballot access provisions of the Ohio Constitution.

C. Proposition of Law No. 2: The Petitioners Are Not Entitled to Have Their Proposed Amendment Placed on the Ballot Under Well-Established Rules of Claim Preclusion and Waiver.

In denying the protest and voting to place the LEBOR Amendment on the February 26, 2019 special election ballot, Respondent acted contrary to law or without lawful authority because the Petitioners submitting the proposal waived any right to ballot to placement on the ballot by failing to bring the proper action for placement on the November 6, 2018 general election ballot and/or under the doctrine of claim preclusion. Respondent was bound by this court's *Twitchell* decision. Respondent Board was therefore barred from considering the re-assertion of the right to place LEBOR Amendment on the ballot, as this claim had already been adjudicated in *Twitchell*.

As explained by the Court, the doctrine of claim preclusion:

> prevents subsequent actions, by the same parties or their privies, based upon any claim arising out of a transaction that was the subject matter of a previous action." [citing *O'Nesti v. DeBartolo Realty Corp*., 113 Ohio St.3d 59, 2007-Ohio-1102, 862 N.E.2d 803]. The previous action is conclusive for all claims that were or that could have been litigated in the first action.

State ex rel. Schachter v. Ohio Pub. Emples. Ret. Bd., 121 Ohio St.3d 526, 2009-Ohio-1704, 905 N.E.2d 1210, ¶ 27 (Emphasis added).

Further, the doctrine is:

> founded on the conclusiveness accorded to judgments and is based on the principles that parties ought not to be permitted to litigate the same issues more than once, that litigation must not be interminable, that the judgment ought to be the end of the litigation, and that circuity of actions should yield to the repose of litigation.

63 Ohio Jurisprudence Judgments 3d § 368 (West 2018) (internal citations omitted). In other words, claim preclusion is "necessary to promote the finality of judgments and to prevent the multiplicity of litigation." *Id.*

Claim preclusion applies to quasi-judicial administrative proceedings, such as those conducted by boards of elections. *State ex rel. Tremmel v. Erie County Bd. of Elections*, 123 Ohio St.3d 452, 2009-Ohio-5773, 917 N.E.2d 792, ¶ 16. In *Tremmel*, a board of elections held a hearing pursuant to a challenge to an individual's status as a qualified elector of Kelley's Island on the basis of non-residency. The board ruled that the individual was not a qualified elector. The individual did not contest the board's decision. *Id.* at ¶ 5. Sometime after this proceeding the individual submitted a voter registration application. The board held a hearing, in which it found that the individual had not demonstrated that his residence circumstances had changed and was not a qualified elector of Kelley's Island. The individual sought a writ of mandamus from this Court. *Id*. at ¶ 6. The Court ruled that, under the doctrine of claim preclusion, because the individual had not demonstrated any change in circumstances since the previous adjudication of his residency, that the board did not abuse its discretion in finding that he was not a qualified elector. The same principle of claim preclusion should apply here.

Under the doctrine of waiver, all parties to an adjudication must raise all arguments in their favor at the first possible juncture. Any argument which is not raised at the appropriate stage of the adjudication is considered to have been waived by that particular party, and the court or adjudicator will not consider such arguments.

For example, in *State ex rel. Emhoff v. Medina Cty. Bd. of Elections*, this Court applied the doctrine of waiver to bar a litigant from presenting a particular argument. The Court held that waiver barred the argument because it had not been raised "at the earliest opportunity." 153 Ohio St.3d 313, 2018-Ohio-1660, 106 N.E.3d 21, ¶ 18; *see also*, *State ex rel. Holwadel v. Hamilton Cnty. Bd. of Elections*, 144 Ohio St.3d 579, 2015-Ohio-5306, 45 N.E.3d 994, ¶ 47 ("Issues that are not raised administratively cannot be raised in a mandamus action."), *State ex rel. Cincinnati for Pension Reform v. Hamilton County Bd. of Elections*, 137 Ohio St.3d 45, 2013-Ohio-4489, 997 N.E.2d 509, ¶ 56 ("the failure to raise an issue as part of the candidacy protest constitutes a waiver of that issue.").

For the above reasons, Petitioners are not entitled to a second opportunity to have Respondent place the same charter amendment proposed by the same petition on the ballot. And Respondent acted contrary to law or without legal authority in placing the issue on the ballot. The right to place the LEBOR Amendment on the ballot has already been asserted, adjudicated, and rejected by this Court. Intervenor Petitioners had not previously argued in the *Twitchell* litigation that the City of Toledo was required to enact an ordinance to transmit the LEBOR Amendment to Respondent. Intervenor Petitioners did not even seek to join the City of Toledo as a respondent in that case. No relevant circumstance has changed that entitles the Petitioners to reassert a right before Respondent for placement on the ballot.

IV. CONCLUSION

For the reasons set forth herein, Respondent's action in placing the proposed Lake Erie Bill of Rights Amendment to the City of Toledo Municipal Charter on the February 26, 2019 special election ballot is unauthorized by law and the requested writ of prohibition should be granted.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the Merit Brief and Appendix of Cited Statutes were served via email on December 31, 2018 upon the following:

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IN THE SUPREME COURT OF OHIO

STATE OF OHIO EX REL. JOSH ABERNATHY	**: Case No. 2018-1824**
Relator,	**: Original Action in Prohibition**
-v-	
LUCAS COUNTY BOARD OF ELECTIONS	**: Expedited Election Matter Pursuant to S. Ct. Prac.R. 12.08**
Respondent.	

RELATOR'S APPENDIX OF CITED CONSTITUTIONAL AND LEGAL PROVISIONS

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CONSTITUTIONAL PROVISIONS

Art. II, Section 1f, Ohio Constitution

The initiative and referendum powers are hereby reserved to the people of each municipality on all questions which such municipalities may now or hereafter be authorized by law to control by legislative action; such powers shall be exercised in the manner now or hereafter provided by law.

Art. X, Section 3, Ohio Constitution

The people of any county may frame and adopt or amend a charter as provided in this article but the right of the initiative and referendum is reserved to the people of each county on all matters which such county may now or hereafter be authorized to control by legislative action. 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 such charter may provide for the concurrent or exclusive exercise by the county, in all or in part of its area, of all or of any designated powers vested by the constitution or laws of Ohio in municipalities; it may provide for the organization of the county as a municipal corporation; and in any such case it may provide for the succession by the county to the rights, properties, and obligations of municipalities and townships therein incident to the municipal power so vested in the county, and for the division of the county into districts for purposes of administration or of taxation or of both. Any charter or amendment which alters the form and offices of county government or which provides for the exercise by the county of power vested in municipalities by the constitution or laws of Ohio, or both, shall become effective if approved by a majority of the electors voting thereon. In case of conflict between the exercise of powers granted by such charter and the exercise of powers by municipalities or townships, granted by the constitution or general law, whether or not such powers are being exercised at the time of the adoption of the charter, the exercise of power by the municipality or township shall prevail. A charter or amendment providing for the exclusive exercise of municipal powers by the county or providing for the succession by the county to any property or obligation of any municipality or township without the consent of the legislative authority of such municipality or township shall become effective only when it shall have been approved by a majority of those voting thereon (1) in the county, (2) in the largest municipality, (3) in the county outside of such municipality, and (4) in counties having a population, based upon the latest preceding federal decennial census of 500,000 or less, in each of a majority of the combined total of municipalities and townships in the county (not included within any township any part of its area lying within a municipality).

Art. XIII, Section 2, Ohio Constitution

Corporations may be formed under general laws; but all such laws may, from time to time, be altered or repealed. Corporations may be classified and there may be conferred upon proper boards, commissions or officers, such supervisory and regulatory powers over their organization, business and issue and sale of stocks and securities and over the business and sale of the stocks and securities of foreign corporations and joint stock companies in this state, as may be prescribed by law. Laws may be passed regulating the sale and conveyance of other personal property, whether owned by a corporation, joint stock company or individual.

Art. XVIII, Section 3, Ohio Constitution

Municipalities shall have authority to exercise all powers of local self-government and to adopt and enforce within their limits such local police, sanitary and other similar regulations, as are not in conflict with general laws.

Art. XVIII, Section 7, Ohio Constitution

Any municipality may frame and adopt or amend a charter for its government and may, subject to the provisions of section 3 of this article, exercise thereunder all powers of local self-government.

Art. XVIII, Section 8, Ohio Constitution

The legislative authority of any city or village may by a two-thirds vote of its members, and upon petition of ten per centum of the electors shall forthwith, provide by ordinance for the submission to the electors, of the question, "Shall a commission be chosen to frame a charter." The ordinance providing for the submission of such question shall require that it be submitted to the electors at the next regular municipal election if one shall occur not less than sixty nor more than one hundred and twenty days after its passage; otherwise it shall provide for the submission of the question at a special election to be called and held within the time aforesaid. The ballot containing such question shall bear no party designation, and provision shall be made thereon for the election from the municipality at large of fifteen electors who shall constitute a commission to frame a charter; provided that a majority of the electors voting on such question shall have voted in the affirmative. Any charter so framed shall be submitted to the electors of the municipality at an election to be held at a time fixed by the charter commission and within one year from the date of its election, provision for which shall be made by the legislative authority of the municipality in so far as not prescribed by general law. Not less than thirty days prior to such election the clerk of the municipality shall mail a copy of the proposed charter to each elector whose name appears upon the poll or registration books of the last regular or general election held therein. If such proposed charter is approved by a majority of the electors voting thereon it shall become the charter of such municipality at the time fixed therein.

Art. XVIII, Section 9, Ohio Constitution

Amendments to any charter framed and adopted as herein provided may be submitted to the electors of a municipality by a two-thirds vote of the legislative authority thereof, and, upon petitions signed by ten per centum of the electors of the municipality setting forth any such proposed amendment, shall be submitted by such legislative authority. The submission of proposed amendments to the electors shall be governed by the requirements of section 8 as to the submission of the question of choosing a charter commission; and copies of proposed amendments may be mailed to the electors as hereinbefore provided for copies of a proposed charter, or pursuant to laws passed by the general assembly, notice of proposed amendments may be given by newspaper advertising. If any such amendment is approved by a majority of the electors voting thereon, it shall become a part of the charter of the municipality. A copy of said charter or any amendment thereto shall be certified to the secretary of state, within thirty days after adoption by a referendum vote.

STATUTES

R.C. 309.02

No person shall be eligible as a candidate for the office of prosecuting attorney, or shall be elected to such office, who is not an attorney at law licensed to practice law in this state. No prosecuting attorney shall be a member of the general assembly of this state or mayor of a municipal corporation.

R.C. 311.01

(A) A sheriff shall be elected quadrennially in each county. A sheriff shall hold office for a term of four years, beginning on the first Monday of January next after the sheriffs election.

(B) Except as otherwise provided in this section, no person is eligible to be a candidate for sheriff, and no person shall be elected or appointed to the office of sheriff, unless that person meets all of the following requirements:

(1) The person is a citizen of the United States.

(2) The person has been a resident of the county in which the person is a candidate for or is appointed to the office of sheriff for at least one year immediately prior to the qualification date.

(3) The person has the qualifications of an elector as specified in section 3503.01 of the Revised Code and has complied with all applicable election laws.

(4) The person has been awarded a high school diploma or a certificate of high school equivalence issued for achievement of specified minimum scores on a high school equivalency test approved by the department of education pursuant to division (B) of section 3301.80 of the Revised Code.

(5) The person has not been convicted of or pleaded guilty to a felony or any offense involving moral turpitude under the laws of this or any other state or the United States, and has not been convicted of or pleaded guilty to an offense that is a misdemeanor of the first degree under the laws of this state or an offense under the laws of any other state or the United States that carries a penalty that is substantially equivalent to the penalty for a misdemeanor of the first degree under the laws of this state.

(6) The person has been fingerprinted and has been the subject of a search of local, state, and national fingerprint files to disclose any criminal record. Such fingerprints shall be taken under the direction of the administrative judge of the court of common pleas who, prior to the applicable qualification date, shall notify the board of elections, board of county commissioners, or county central committee of the proper political party, as applicable, of the judge's findings.

(7) The person has prepared a complete history of the person's places of residence for a period of six years immediately preceding the qualification date and a complete history of the person's places of employment for a period of six years immediately preceding the qualification date, indicating the name and address of each employer and the period of time employed by that employer. The residence and employment histories shall be filed with the administrative judge of the court of common pleas of the county, who shall forward them with the findings under division (B)(6) of this section to the appropriate board of elections, board of county commissioners, or county central committee of the proper political party prior to the applicable qualification date.

(8) The person meets at least one of the following conditions:

(a) Holds a current valid peace officer certificate of training issued by the Ohio peace officer training commission or has been issued a certificate of training pursuant to section 5503.05 of the Revised Code;

(b) Has been employed full-time by a law enforcement agency performing duties related to the enforcement of statutes, ordinances, or codes for a minimum of thirteen consecutive pay periods within the four-year period prior to the qualification date. As used in this division, "full-time" means a minimum of eighty hours of work in a fourteen-day period.

(9) The person meets at least one of the following conditions:

(a) Has at least two consecutive years of supervisory experience as a peace officer at the rank of sergeant or above;

(b) Has completed a bachelor's degree in any field or has an associate degree in law enforcement or criminal justice from a college or university authorized to confer degrees by the Ohio board of regents or the comparable agency of another state in which the college or university is located.

(C) Persons who meet the requirements of division (B) of this section, except the requirement of division (B)(2) of this section, may take all actions otherwise necessary to comply with division (B) of this section. If, on the applicable qualification date, no person has met all the requirements of division (B) of this section, then persons who have complied with and meet the requirements of division (B) of this section, except the requirement of division (B)(2) of this section, shall be considered qualified candidates under division (B) of this section.

(D) Newly elected sheriffs shall attend a basic training course conducted by the Ohio peace officer training commission pursuant to division (A) of section 109.80 of the Revised Code. A newly elected sheriff shall complete not less than two weeks of this course before the first Monday in January next after the sheriffs election. While attending the basic training course, a newly elected sheriff may, with the approval of the board of county commissioners, receive compensation, paid for from funds established by the sheriffs county for this purpose, in the same manner and amounts as if carrying out the powers and duties of the office of sheriff.

Appointed sheriffs shall attend the first basic training course conducted by the Ohio peace officer training commission pursuant to division (A) of section 109.80 of the Revised Code within six months following the date of appointment or election to the office of sheriff. While attending the basic training course, appointed sheriffs shall receive regular compensation in the same manner and amounts as if carrying out their regular powers and duties.

Five days of instruction at the basic training course shall be considered equal to one week of work. The costs of conducting the basic training course and the costs of meals, lodging, and travel of appointed and newly elected sheriffs attending the course shall be paid from state funds appropriated to the commission for this purpose.

(E) In each calendar year, each sheriff shall attend and successfully complete at least sixteen hours of continuing education approved under division (B) of section 109.80 of the Revised Code. A sheriff who receives a waiver of the continuing education requirement from the commission under division (C) of section 109.80 of the Revised Code because of medical disability or for other good cause shall complete the requirement at the earliest time after the disability or cause terminates.

(F)

(1) Each person who is a candidate for election to or who is under consideration for appointment to the office of sheriff shall swear before the administrative judge of the court of common pleas as to the truth of any information the person provides to verify the person's qualifications for the office. A person who violates this requirement is guilty of falsification under section 2921.13 of the Revised Code.

(2) Each board of elections shall certify whether or not a candidate for the office of sheriff who has filed a declaration of candidacy, a statement of candidacy, or a declaration of intent to be a write-in candidate meets the qualifications specified in divisions (B) and (C) of this section.

(G) The office of a sheriff who is required to comply with division (D) or (E) of this section and who fails to successfully complete the courses pursuant to those divisions is hereby deemed to be vacant.

(H) As used in this section:

(1) "Qualification date" means the last day on which a candidate for the office of sheriff can file a declaration of candidacy, a statement of candidacy, or a declaration of intent to be a write-in candidate, as applicable, in the case of a primary election for the office of sheriff; the last day on which a person may be appointed to fill a vacancy in a party nomination for the office of sheriff under Chapter 3513. of the Revised Code, in the case of a vacancy in the office of sheriff; or a date thirty days after the day on which a vacancy in the office of sheriff occurs, in the case of an appointment to such a vacancy under section 305.02 of the Revised Code.

(2) "Newly elected sheriff means a person who did not hold the office of sheriff of a county on the date the person was elected sheriff of that county.

R.C. 313.02

(A)

(l) Except as provided in division (A)(2) of this section, no person shall be eligible to the office of coroner except a physician who has been licensed to practice as a physician in this state for a period of at least two years immediately preceding election or appointment as a coroner, and who is in good standing in the person's profession .

(2) No person shall be eligible to the office of coroner of a charter county except a physician who is licensed to practice as a physician in this state and who is in good standing in the person's profession.

(B)

(1) Beginning in calendar year 2000 and in each fourth year thereafter, each newly elected coroner, after the general election but prior to commencing the term of office to which elected, shall attend and successfully complete sixteen hours of continuing education at programs sponsored by the Ohio state coroners association. Within ninety days after appointment to the office of coroner under section 305.02 of the Revised Code, the newly appointed coroner shall attend and successfully complete sixteen hours of continuing education at programs sponsored by the association. Hours of continuing education completed under the requirement described in division (B)(1) of this section shall not be counted toward fulfilling the continuing education requirement described in division (B) (2) of this section.

As used in division (B)(1) of this section, "newly elected coroner" means a person who did not hold the office of coroner on the date the person was elected coroner.

(2) Except as otherwise provided in division (B)(2) of this section, beginning in calendar year 2001, each coroner, during the coroner's four-year term, shall attend and successfully complete thirty-two hours of continuing education at programs sponsored by the Ohio state coroners association. Except as otherwise provided in division (B)(2) of this section, each coroner shall attend and successfully complete twenty-four of these thirty-two hours at statewide meetings, and eight of these thirty-two hours at regional meetings, sponsored by the association. The association may approve attendance at continuing education programs it does not sponsor but, if attendance is approved, successful completion of hours at these programs shall be counted toward fulfilling only the twenty-four-hour requirement described in division (B)(2) of this section.

(3) Upon successful completion of a continuing education program required by division (B) (1) or (2) of this section, the person who successfully completes the program shall receive from the association or the sponsoring organization a certificate indicating that the person successfully completed the program.

R.C. 315.02

No person holding the office of clerk of the court of common pleas, sheriff, county treasurer, or county recorder is eligible to hold the office of county engineer. No person is eligible in any county as a candidate for such office or shall be elected or appointed thereto unless he is a registered professional engineer and a registered surveyor, licensed to practice in this state.

R.C. 519.12

(A)

(1) Amendments to the zoning resolution may be initiated by motion of the township zoning commission, by the passage of a resolution by the board of township trustees, or by the filing of an application by one or more of the owners or lessees of property within the area proposed to be changed or affected by the proposed amendment with the township zoning commission. The board of township trustees may require that the owner or lessee of property filing an application to amend the zoning resolution pay a fee to defray the cost of advertising, mailing, filing with the county recorder, and other expenses. If the board of township trustees requires such a fee, it shall be required generally, for each application. The board of township trustees, upon the passage of such a resolution, shall certify it to the township zoning commission.

(2) Upon the adoption of a motion by the township zoning commission, the certification of a resolution by the board of township trustees to the commission, or the filing of an application by property owners or lessees as described in division (A)(1) of this section with the commission, the commission shall set a date for a public hearing, which date shall not be less than twenty nor more than forty days from the date of the certification of such a resolution, the date of adoption of such a motion, or the date of the filing of such an application. Notice of the hearing shall be given by the commission by one publication in one or more newspapers of general circulation in the township at least ten days before the date of the hearing.

(B) If the proposed amendment intends to rezone or redistrict ten or fewer parcels of land, as listed on the county auditor's current tax list, written notice of the hearing shall be mailed by the township

zoning commission, by first class mail, at least ten days before the date of the public hearing to all owners of property within and contiguous to and directly across the street from the area proposed to be rezoned or redistricted to the addresses of those owners appearing on the county auditor's current tax list. The failure of delivery of that notice shall not invalidate any such amendment.

(C) If the proposed amendment intends to rezone or redistrict ten or fewer parcels of land as listed on the county auditor's current tax list, the published and mailed notices shall set forth the time, date, and place of the public hearing and include all of the following:

(1) The name of the township zoning commission that will be conducting the hearing;

(2) A statement indicating that the motion, resolution, or application is an amendment to the zoning resolution;

(3) A list of the addresses of all properties to be rezoned or redistricted by the proposed amendment and of the names of owners of those properties, as they appear on the county auditor's current tax list;

(4) The present zoning classification of property named in the proposed amendment and the proposed zoning classification of that property;

(5) The time and place where the motion, resolution, or application proposing to amend the zoning resolution will be available for examination for a period of at least ten days prior to the hearing;

(6) The name of the person responsible for giving notice of the hearing by publication, by mail, or by both publication and mail;

(7) A statement that, after the conclusion of the hearing, the matter will be submitted to the board of township trustees for its action;

(8) Any other information requested by the commission.

(D) If the proposed amendment alters the text of the zoning resolution, or rezones or redistricts more than ten parcels of land as listed on the county auditor's current tax list, the published notice shall set forth the time, date, and place of the public hearing and include all of the following:

(1) The name of the township zoning commission that will be conducting the hearing on the proposed amendment;

(2) A statement indicating that the motion, application, or resolution is an amendment to the zoning resolution;

(3) The time and place where the text and maps of the proposed amendment will be available for examination for a period of at least ten days prior to the hearing;

(4) The name of the person responsible for giving notice of the hearing by publication;

(5) A statement that, after the conclusion of the hearing, the matter will be submitted to the board of township trustees for its action;

(6) Any other information requested by the commission.

(E) Within five days after the adoption of the motion described in division (A) of this section, the certification of the resolution described in division (A) of this section, or the filing of the application described in division (A) of this section, the township zoning commission shall

transmit a copy of it together with text and map pertaining to it to the county or regional planning commission, if there is such a commission.

The county or regional planning commission shall recommend the approval or denial of the proposed amendment or the approval of some modification of it and shall submit its recommendation to the township zoning commission. The recommendation shall be considered at the public hearing held by the township zoning commission on the proposed amendment.

The township zoning commission, within thirty days after the hearing, shall recommend the approval or denial of the proposed amendment, or the approval of some modification of it, and submit that recommendation together with the motion, application, or resolution involved, the text and map pertaining to the proposed amendment, and the recommendation of the county or regional planning commission on it to the board of township trustees.

The board of township trustees, upon receipt of that recommendation, shall set a time for a public hearing on the proposed amendment, which date shall not be more than thirty days from the date of the receipt of that recommendation. Notice of the hearing shall be given by the board by one publication in one or more newspapers of general circulation in the township, at least ten days before the date of the hearing.

(F) If the proposed amendment intends to rezone or redistrict ten or fewer parcels of land as listed on the county auditor's current tax list, the published notice shall set forth the time, date, and place of the public hearing and include all of the following:

(1) The name of the board of township trustees that will be conducting the hearing;

(2) A statement indicating that the motion, application, or resolution is an amendment to the zoning resolution;

(3) A list of the addresses of all properties to be rezoned or redistricted by the proposed amendment and of the names of owners of those properties, as they appear on the county auditor's current tax list;

(4) The present zoning classification of property named in the proposed amendment and the proposed zoning classification of that property;

(5) The time and place where the motion, application, or resolution proposing to amend the zoning resolution will be available for examination for a period of at least ten days prior to the hearing;

(6) The name of the person responsible for giving notice of the hearing by publication, by mail, or by both publication and mail;

(7) Any other information requested by the board.

(G) If the proposed amendment alters the text of the zoning resolution, or rezones or redistricts more than ten parcels of land as listed on the county auditor's current tax list, the published notice shall set forth the time, date, and place of the public hearing and include all of the following:

(1) The name of the board of township trustees that will be conducting the hearing on the proposed amendment;

(2) A statement indicating that the motion, application, or resolution is an amendment to the zoning resolution;

(3) The time and place where the text and maps of the proposed amendment will be available for examination for a period of at least ten days prior to the hearing;

(4) The name of the person responsible for giving notice of the hearing by publication;

(5) Any other information requested by the board.

(H) Within twenty days after its public hearing, the board of township trustees shall either adopt or deny the recommendations of the township zoning commission or adopt some modification of them. If the board denies or modifies the commission's recommendations, a majority vote of the board shall be required.

The proposed amendment, if adopted by the board, shall become effective in thirty days after the date of its adoption, unless, within thirty days after the adoption, there is presented to the board of township trustees a petition, signed by a number of registered electors residing in the unincorporated area of the township or part of that unincorporated area included in the zoning plan equal to not less than eight per cent of the total vote cast for all candidates for governor in that area at the most recent general election at which a governor was elected, requesting the board of township trustees to submit the amendment to the electors of that area for approval or rejection at a special election to be held on the day of the next primary or general election that occurs at least ninety days after the petition is filed. Each part of this petition shall contain the number and the full and correct title, if any, of the zoning amendment resolution, motion, or application, furnishing the name by which the amendment is known and a brief summary of its contents. In addition to meeting the requirements of this section, each petition shall be governed by the rules specified in section 3501.38 of the Revised Code.

The form of a petition calling for a zoning referendum and the statement of the circulator shall be substantially as follows:

"PETITION FOR ZONING REFERENDUM

(if the proposal is identified by a particular name or number, or both, these should be inserted here) .....

A proposal to amend the zoning map of the unincorporated area of ..... Township, ... County, Ohio, adopted .....(date)..... (followed by brief summary of the proposal).

To the Board of Township Trustees of ..... Township, ... County, Ohio:

We, the undersigned, being electors residing in the unincorporated area of ..... Township, included within the ..... Township Zoning Plan, equal to not less than eight per cent of the total vote cast for all candidates for governor in the area at the preceding general election at which a governor was elected, request the Board of Township Trustees to submit this amendment of the zoning resolution to the electors of ..... Township residing within the unincorporated area of the township included in the ..... Township Zoning Resolution, for approval or rejection at a special election to be held on the day of the primary or general election to be held on .....(date)....., pursuant to section 519.12 of the Revised Code.

Street Address Date of Signature or R.F.D. Township Precinct County Signing .....

STATEMENT OF CIRCULATOR

I, ...(name of circulator)....., declare under penalty of election falsification that I am an elector of the state of Ohio and reside at the address appearing below my signature; that I am the circulator of the foregoing part petition containing .....(number)..... signatures; that I have witnessed the affixing of every signature; that all signers were to the best of my knowledge and belief qualified to sign; and that every signature is to the best of my knowledge and belief the signature of the person whose signature it purports to be or of an attorney in fact acting pursuant to section 3501.382 of the Revised Code.

.....

(Signature of circulator)

.....

(Address of circulator's permanent residence in this state)

.....

(City, village, or township, and zip code)

WHOEVER COMMITS ELECTION FALSIFICATION IS GUILTY OF A FELONY OF THE FIFTH DEGREE."

The petition shall be filed with the board of township trustees and shall be accompanied by an appropriate map of the area affected by the zoning proposal. Within two weeks after receiving a petition filed under this section, the board of township trustees shall certify the petition to the board of elections. A petition filed under this section shall be certified to the board of elections not less than ninety days prior to the election at which the question is to be voted upon.

The board of elections shall determine the sufficiency and validity of each petition certified to it by a board of township trustees under this section. If the board of elections determines that a petition is sufficient and valid, the question shall be voted upon at a special election to be held on the day of the next primary or general election that occurs at least ninety days after the date the petition is filed with the board of township trustees, regardless of whether any election will be held to nominate or elect candidates on that day.

No amendment for which such a referendum vote has been requested shall be put into effect unless a majority of the vote cast on the issue is in favor of the amendment. Upon certification by the board of elections that the amendment has been approved by the voters, it shall take immediate effect.

Within five working days after an amendment's effective date, the board of township trustees shall file the text and maps of the amendment in the office of the county recorder and with the county or regional planning commission, if one exists.

The failure to file any amendment, or any text and maps, or duplicates of any of these documents, with the office of the county recorder or the county or regional planning commission as required by this section does not invalidate the amendment and is not grounds for an appeal of any decision of the board of zoning appeals.

R.C. 731.02

Members of the legislative authority at large shall have resided in their respective cities, and members from wards shall have resided in their respective wards, for at least one year immediately

preceding their election. Each member of the legislative authority shall be an elector of the city, shall not hold any other public office, except that of notary public or member of the state militia, and shall not be interested in any contract with the city, and no such member may hold employment with said city. A member who ceases to possess any of such qualifications, or removes from the member's ward, if elected from a ward, or from the city, if elected from the city at large, shall forthwith forfeit the member's office.

The purpose of establishing a one-year residency requirement in this section is to recognize that the state has a substantial and compelling interest in encouraging qualified candidacies for election to the office of member of the legislative authority of a city by ensuring that a candidate for such office has every opportunity to become knowledgeable with and concerned about the problems and needs of the area the candidate seeks to represent. In enacting this requirement, the general assembly finds that the one-year period is reasonably related to this purpose, while leaving unimpaired a person's right to travel, to vote, and to be a candidate for public office.

R.C. 2301.01

There shall be a court of common pleas in each county held by one or more judges, each of whom has been admitted to practice as an attorney at law in this state and has, for a total of at least six years preceding the judge's appointment or commencement of the judge's term, engaged in the practice of law in this state or served as a judge of a court of record in any jurisdiction in the United States, or both, resides in the county, and is elected by the electors therein. Each judge shall be elected for six years at the general election immediately preceding the year in which the term, as provided in sections 2301.02 and 2301.03 of the Revised Code, commences, and the judge's successor shall be elected at the general election immediately preceding the expiration of that term.

R.C. 3501.11

Each board of elections shall exercise by a majority vote all powers granted to the board by Title XXXV of the Revised Code, shall perform all the duties imposed by law, and shall do all of the following:

(A) Establish, define, provide, rearrange, and combine election precincts;

(B) Fix and provide the places for registration and for holding primaries and elections;

(C) Provide for the purchase, preservation, and maintenance of booths, ballot boxes, books, maps, flags, blanks, cards of instructions, and other forms, papers, and equipment used in registration, nominations, and elections;

(D) Appoint and remove its director, deputy director, and employees and all registrars, precinct election officials, and other officers of elections, fill vacancies, and designate the ward or district and precinct in which each shall serve;

(E) Make and issue rules and instructions, not inconsistent with law or the rules, directives, or advisories issued by the secretary of state, as it considers necessary for the guidance of election officers and voters;

(F) Advertise and contract for the printing of all ballots and other supplies used in registrations and elections;

(G) Provide for the issuance of all notices, advertisements, and publications concerning elections, except as otherwise provided in division (G) of section 3501.17 and divisions (F) and (G) of section 3505.062 of the Revised Code;

(H) Provide for the delivery of ballots, pollbooks, and other required papers and material to the polling places;

(I) Cause the polling places to be suitably provided with voting machines, marking devices, automatic tabulating equipment, stalls, and other required supplies. In fulfilling this duty, each board of a county that uses voting machines, marking devices, or automatic tabulating equipment shall conduct a full vote of the board during a public session of the board on the allocation and distribution of voting machines, marking devices, and automatic tabulating equipment for each precinct in the county.

(J) Investigate irregularities, nonperformance of duties, or violations of Title XXXV of the Revised Code by election officers and other persons; administer oaths, issue subpoenas, summon witnesses, and compel the production of books, papers, records, and other evidence in connection with any such investigation; and report the facts to the prosecuting attorney or the secretary of state;

(K)

(1) Review, examine, and certify the sufficiency and validity of petitions and nomination papers, and, after certification, return to the secretary of state all petitions and nomination papers that the secretary of state forwarded to the board;

(2) Examine each initiative petition, or a petition filed under section 307.94 or 307.95 of the Revised Code, received by the board to determine whether the petition falls within the scope of authority to enact via initiative and whether the petition satisfies the statutory prerequisites to place the issue on the ballot, as described in division (M) of section 3501.38 of the Revised Code. The petition shall be invalid if any portion of the petition is not within the initiative power.

(L) Receive the returns of elections, canvass the returns, make abstracts of them, and transmit those abstracts to the proper authorities;

(M) Issue certificates of election on forms to be prescribed by the secretary of state;

(N) Make an annual report to the secretary of state, on the form prescribed by the secretary of state, containing a statement of the number of voters registered, elections held, votes cast, appropriations received, expenditures made, and other data required by the secretary of state;

(O) Prepare and submit to the proper appropriating officer a budget estimating the cost of elections for the ensuing fiscal year;

(P) Perform other duties as prescribed by law or the rules, directives, or advisories of the secretary of state;

(Q) Investigate and determine the residence qualifications of electors;

(R) Administer oaths in matters pertaining to the administration of the election laws;

(S) Prepare and submit to the secretary of state, whenever the secretary of state requires, a report containing the names and residence addresses of all incumbent county, municipal, township, and board of education officials serving in their respective counties;

(T) Establish and maintain a voter registration database of all qualified electors in the county who offer to register;

(U) Maintain voter registration records, make reports concerning voter registration as required by the secretary of state, and remove ineligible electors from voter registration lists in accordance with law and directives of the secretary of state;

(V) Give approval to ballot language for any local question or issue and transmit the language to the secretary of state for the secretary of state's final approval;

(W) Prepare and cause the following notice to be displayed in a prominent location in every polling place:

NOTICE

Ohio law prohibits any person from voting or attempting to vote more than once at the same election.

Violators are guilty of a felony of the fourth degree and shall be imprisoned and additionally may be fined in accordance with law.

(X) In all cases of a tie vote or a disagreement in the board, if no decision can be arrived at, the director or chairperson shall submit the matter in controversy, not later than fourteen days after the tie vote or the disagreement, to the secretary of state, who shall summarily decide the question, and the secretary of state's decision shall be final.

(Y) Assist each designated agency, deputy registrar of motor vehicles, public high school and vocational school, public library, and office of a county treasurer in the implementation of a program for registering voters at all voter registration locations as prescribed by the secretary of state. Under this program, each board of elections shall direct to the appropriate board of elections any voter registration applications for persons residing outside the county where the board is located within five days after receiving the applications.

(Z) On any day on which an elector may vote in person at the office of the board or at another site designated by the board, consider the board or other designated site a polling place for that day. All requirements or prohibitions of law that apply to a polling place shall apply to the office of the board or other designated site on that day.

(AA) Perform any duties with respect to voter registration and voting by uniformed services and overseas voters that are delegated to the board by law or by the rules, directives, or advisories of the secretary of state.

R.C. 3501.39

(A) The secretary of state or a board of elections shall accept any petition described in section 3501.38 of the Revised Code unless one of the following occurs:

(1) A written protest against the petition or candidacy, naming specific objections, is filed, a hearing is held, and a determination is made by the election officials with whom the protest is filed that the petition is invalid, in accordance with any section of the Revised Code providing a protest procedure.

(2) A written protest against the petition or candidacy, naming specific objections, is filed, a hearing is held, and a determination is made by the election officials with whom the protest is filed that the petition violates any requirement established by law.

(3) In the case of an initiative petition received by the board of elections, the petition falls outside the scope of authority to enact via initiative or does not satisfy the statutory prerequisites to place the issue on the ballot, as described in division (M) of section 3501.38 of the Revised Code. The petition shall be invalid if any portion of the petition is not within the initiative power.

(4) The candidate's candidacy or the petition violates the requirements of this chapter, Chapter 3513. of the Revised Code, or any other requirements established by law.

(B) Except as otherwise provided in division (C) of this section or section 3513.052 of the Revised Code, a board of elections shall not invalidate any declaration of candidacy or nominating petition under division (A)(4) of this section after the sixtieth day prior to the election at which the candidate seeks nomination to office, if the candidate filed a declaration of candidacy, or election to office, if the candidate filed a nominating petition.

(C)

(1) If a petition is filed for the nomination or election of a candidate in a charter municipal corporation with a filing deadline that occurs after the ninetieth day before the day of the election, a board of elections may invalidate the petition within fifteen days after the date of that filing deadline.

(2) If a petition for the nomination or election of a candidate is invalidated under division (C) (1) of this section, that person's name shall not appear on the ballots for any office for which the person's petition has been invalidated. If the ballots have already been prepared, the board of elections shall remove the name of that person from the ballots to the extent practicable in the time remaining before the election. If the name is not removed from the ballots before the day of the election, the votes for that person are void and shall not be counted.

R.C. 3515.09

A contest of election shall be commenced by the filing of a petition with the clerk of the appropriate court signed by at least twenty-five voters who voted at the last election for or against a candidate for the office or for or against the issue being contested, or by the defeated candidate for said nomination or election, within fifteen days after the results of any such nomination or election have been ascertained and announced by the proper authority, or if there is a recount, within ten days after the results of the recount of such nomination or election have been ascertained and announced by the proper authority. Such petition shall be verified by the oath of at least two such petitioners, or by the oath of the defeated candidate filing the petition, and shall set forth the grounds for such contest.

Said petition shall be accompanied by a bond with surety to be approved by the clerk of the appropriate court in a sum sufficient, as determined by him, to pay all the costs of the contest. The contestor and the person whose right to the nomination or election to such office is being contested, to be known as the contestee, shall be liable to the officers and witnesses for the costs made by them respectively; but if the results of the nomination or election are confirmed or the petition is dismissed or the prosecution fails, judgment shall be rendered against the contestor for the costs;

and if the judgment is against the contestee or if the results of the nomination or election are set aside, the county shall pay the costs as other election expenses are paid.

R.C. 5739.026

(A) A board of county commissioners may levy a tax on every retail sale in the county, except sales of watercraft and outboard motors required to be titled pursuant to Chapter 1548. of the Revised Code and sales of motor vehicles, at a rate of not more than one-half of one per cent and may increase the rate of an existing tax to not more than one-half of one per cent to pay the expenses of administering the tax and, except as provided in division (A)(6) of this section, for any one or more of the following purposes provided that the aggregate levy for all such purposes does not exceed one-half of one per cent:

(1) To provide additional revenues for the payment of bonds or notes issued in anticipation of bonds issued by a convention facilities authority established by the board of county commissioners under Chapter 351. of the Revised Code and to provide additional operating revenues for the convention facilities authority;

(2) To provide additional revenues for a transit authority operating in the county;

(3) To provide additional revenue for the county's general fund;

(4) To provide additional revenue for permanent improvements to be distributed by the community improvements board in accordance with section 307.283 and to pay principal, interest, and premium on bonds issued under section 307.284 of the Revised Code;

(5) To provide additional revenue for the acquisition, construction, equipping, or repair of any specific permanent improvement or any class or group of permanent improvements, which improvement or class or group of improvements shall be enumerated in the resolution required by division (D) of this section, and to pay principal, interest, premium, and other costs associated with the issuance of bonds or notes in anticipation of bonds issued pursuant to Chapter 133. of the Revised Code for the acquisition, construction, equipping, or repair of the specific permanent improvement or class or group of permanent improvements;

(6) To provide revenue for the implementation and operation of a 9-1-1 system in the county. If the tax is levied or the rate increased exclusively for such purpose, the tax shall not be levied or the rate increased for more than five years. At the end of the last year the tax is levied or the rate increased, any balance remaining in the special fund established for such purpose shall remain in that fund and be used exclusively for such purpose until the fund is completely expended, and, notwithstanding section 5705.16 of the Revised Code, the board of county commissioners shall not petition for the transfer of money from such special fund, and the tax commissioner shall not approve such a petition.

If the tax is levied or the rate increased for such purpose for more than five years, the board of county commissioners also shall levy the tax or increase the rate of the tax for one or more of the purposes described in divisions (A)(1) to (5) of this section and shall prescribe the method for allocating the revenues from the tax each year in the manner required by division (C) of this section.

(7) To provide additional revenue for the operation or maintenance of a detention facility, as that term is defined under division (F) of section 2921.01 of the Revised Code;

(8) To provide revenue to finance the construction or renovation of a sports facility, but only if the tax is levied for that purpose in the manner prescribed by section 5739.028 of the Revised Code.

As used in division (A)(8) of this section:

(a) "Sports facility" means a facility intended to house major league professional athletic teams.

(b) "Constructing" or "construction" includes providing fixtures, furnishings, and equipment.

(9) To provide additional revenue for the acquisition of agricultural easements, as defined in section 5301.67 of the Revised Code; to pay principal, interest, and premium on bonds issued under section 133.60 of the Revised Code; and for the supervision and enforcement of agricultural easements held by the county;

(10) To provide revenue for the provision of ambulance, paramedic, or other emergency medical services;

(11) To provide revenue for the operation of a lake facilities authority and the remediation of an impacted watershed by a lake facilities authority, as provided in Chapter 353. of the Revised Code;

(12) To provide additional revenue for a regional transportation improvement project under section 5595.06 of the Revised Code.

Pursuant to section 755.171 of the Revised Code, a board of county commissioners may pledge and contribute revenue from a tax levied for the purpose of division (A)(5) of this section to the payment of debt charges on bonds issued under section 755.17 of the Revised Code.

The rate of tax shall be a multiple of one-fourth or one-tenth of one per cent, unless a portion of the rate of an existing tax levied under section 5739.023 of the Revised Code has been reduced, and the rate of tax levied under this section has been increased, pursuant to section 5739.028 of the Revised Code, in which case the aggregate of the rates of tax levied under this section and section 5739.023 of the Revised Code shall be a multiple of one-fourth or one-tenth of one per cent.

The tax shall be levied and the rate increased pursuant to a resolution adopted by a majority of the members of the board. The board shall deliver a certified copy of the resolution to the tax commissioner, not later than the sixty-fifth day prior to the date on which the tax is to become effective, which shall be the first day of a calendar quarter.

Prior to the adoption of any resolution to levy the tax or to increase the rate of tax exclusively for the purpose set forth in division (A)(3) of this section, the board of county commissioners shall conduct two public hearings on the resolution, the second hearing to be no fewer than three nor more than ten days after the first. Notice of the date, time, and place of the hearings shall be given by publication in a newspaper of general circulation in the county, or as provided in section 7.16 of the Revised Code, once a week on the same day of the week for two consecutive weeks. The second publication shall be no fewer than ten nor more than thirty days prior to the first hearing. Except as provided in division (E) of this section, the resolution shall be subject to a referendum as provided in sections 305.31 to 305.41 of the Revised Code. If the resolution is adopted as an emergency measure necessary for the immediate preservation of the public peace, health, or safety, it must receive an affirmative vote of all of the members of the board of county commissioners and shall state the reasons for the necessity.

If the tax is for more than one of the purposes set forth in divisions (A)(1) to (7), (9), (10), and (12) of this section, or is exclusively for one of the purposes set forth in division (A)(1), (2), (4), (5), (6), (7), (9), (10), or (12) of this section, the resolution shall not go into effect unless it is approved by a majority of the electors voting on the question of the tax.

(B) The board of county commissioners shall adopt a resolution under section 351.02 of the Revised Code creating the convention facilities authority, or under section 307.283 of the Revised Code creating the community improvements board, before adopting a resolution levying a tax for the purpose of a convention facilities authority under division (A)(1) of this section or for the purpose of a community improvements board under division (A)(4) of this section.

(C)

(1) If the tax is to be used for more than one of the purposes set forth in divisions (A)(1) to (7), (9), (10), and (12) of this section, the board of county commissioners shall establish the method that will be used to determine the amount or proportion of the tax revenue received by the county during each year that will be distributed for each of those purposes, including, if applicable, provisions governing the reallocation of a convention facilities authority's allocation if the authority is dissolved while the tax is in effect. The allocation method may provide that different proportions or amounts of the tax shall be distributed among the purposes in different years, but it shall clearly describe the method that will be used for each year. Except as otherwise provided in division (C)(2) of this section, the allocation method established by the board is not subject to amendment during the life of the tax.

(2) Subsequent to holding a public hearing on the proposed amendment, the board of county commissioners may amend the allocation method established under division (C)(1) of this section for any year, if the amendment is approved by the governing board of each entity whose allocation for the year would be reduced by the proposed amendment. In the case of a tax that is levied for a continuing period of time, the board may not so amend the allocation method for any year before the sixth year that the tax is in effect.

(a) If the additional revenues provided to the convention facilities authority are pledged by the authority for the payment of convention facilities authority revenue bonds for as long as such bonds are outstanding, no reduction of the authority's allocation of the tax shall be made for any year except to the extent that the reduced authority allocation, when combined with the authority's other revenues pledged for that purpose, is sufficient to meet the debt service requirements for that year on such bonds.

(b) If the additional revenues provided to the county are pledged by the county for the payment of bonds or notes described in division (A)(4) or (5) of this section, for as long as such bonds or notes are outstanding, no reduction of the county's or the community improvements board's allocation of the tax shall be made for any year, except to the extent that the reduced county or community improvements board allocation is sufficient to meet the debt service requirements for that year on such bonds or notes.

(c) If the additional revenues provided to the transit authority are pledged by the authority for the payment of revenue bonds issued under section 306.37 of the Revised Code, for as long as such bonds are outstanding, no reduction of the authority's allocation of tax shall be made for any year, except to the extent that the authority's reduced allocation, when combined with the authority's

other revenues pledged for that purpose, is sufficient to meet the debt service requirements for that year on such bonds.

(d) If the additional revenues provided to the county are pledged by the county for the payment of bonds or notes issued under section 133.60 of the Revised Code, for so long as the bonds or notes are outstanding, no reduction of the county's allocation of the tax shall be made for any year, except to the extent that the reduced county allocation is sufficient to meet the debt service requirements for that year on the bonds or notes.

(D)

(1) The resolution levying the tax or increasing the rate of tax shall state the rate of the tax or the rate of the increase; the purpose or purposes for which it is to be levied; the number of years for which it is to be levied or that it is for a continuing period of time; the allocation method required by division (C) of this section; and if required to be submitted to the electors of the county under division (A) of this section, the date of the election at which the proposal shall be submitted to the electors of the county, which shall be not less than ninety days after the certification of a copy of the resolution to the board of elections and, if the tax is to be levied exclusively for the purpose set forth in division (A)(3) of this section, shall not occur in August of any year. Upon certification of the resolution to the board of elections, the board of county commissioners shall notify the tax commissioner in writing of the levy question to be submitted to the electors. If approved by a majority of the electors, the tax shall become effective on the first day of a calendar quarter next following the sixty-fifth day following the date the board of county commissioners and tax commissioner receive from the board of elections the certification of the results of the election, except as provided in division (E) of this section.

(2)

(a) A resolution specifying that the tax is to be used exclusively for the purpose set forth in division (A)(3) of this section that is not adopted as an emergency measure may direct the board of elections to submit the question of levying the tax or increasing the rate of the tax to the electors of the county at a special election held on the date specified by the board of county commissioners in the resolution, provided that the election occurs not less than ninety days after the resolution is certified to the board of elections and the election is not held in August of any year. Upon certification of the resolution to the board of elections, the board of county commissioners shall notify the tax commissioner in writing of the levy question to be submitted to the electors. No resolution adopted under division (D)(2)(a) of this section shall go into effect unless approved by a majority of those voting upon it and, except as provided in division (E) of this section, not until the first day of a calendar quarter following the expiration of sixty-five days from the date the tax commissioner receives notice from the board of elections of the affirmative vote.

(b) A resolution specifying that the tax is to be used exclusively for the purpose set forth in division (A)(3) of this section that is adopted as an emergency measure shall become effective as provided in division (A) of this section, but may direct the board of elections to submit the question of repealing the tax or increase in the rate of the tax to the electors of the county at the next general election in the county occurring not less than ninety days after the resolution is certified to the board of elections. Upon certification of the resolution to the board of elections, the board of county commissioners shall notify the tax commissioner in writing of the levy question to be submitted to the electors. The ballot question shall be the same as that prescribed in section 5739.022 of the Revised Code. The board of elections shall notify the board of county commissioners and the tax

commissioner of the result of the election immediately after the result has been declared. If a majority of the qualified electors voting on the question of repealing the tax or increase in the rate of the tax vote for repeal of the tax or repeal of the increase, the board of county commissioners, on the first day of a calendar quarter following the expiration of sixty-five days after the date the board and tax commissioner received notice of the result of the election, shall, in the case of a repeal of the tax, cease to levy the tax, or, in the case of a repeal of an increase in the rate of the tax, cease to levy the increased rate and levy the tax at the rate at which it was imposed immediately prior to the increase in rate.

(c) A board of county commissioners, by resolution, may reduce the rate of a tax levied exclusively for the purpose set forth in division (A)(3) of this section to a lower rate authorized by this section. Any such reduction shall be made effective on the first day of the calendar quarter next following the sixty-fifth day after the tax commissioner receives a certified copy of the resolution from the board.

(E) If a vendor makes a sale in this state by printed catalog and the consumer computed the tax on the sale based on local rates published in the catalog, any tax levied or repealed or rate changed under this section shall not apply to such a sale until the first day of a calendar quarter following the expiration of one hundred twenty days from the date of notice by the tax commissioner pursuant to division (G) of this section.

(F) The tax levied pursuant to this section shall be in addition to the tax levied by section 5739.02 of the Revised Code and any tax levied pursuant to section 5739.021 or 5739.023 of the Revised Code.

A county that levies a tax pursuant to this section shall levy a tax at the same rate pursuant to section 5741.023 of the Revised Code.

The additional tax levied by the county shall be collected pursuant to section 5739.025 of the Revised Code.

Any tax levied pursuant to this section is subject to the exemptions provided in section 5739.02 of the Revised Code and in addition shall not be applicable to sales not within the taxing power of a county under the Constitution of the United States or the Ohio Constitution.

(G) Upon receipt from a board of county commissioners of a certified copy of a resolution required by division (A) of this section, or from the board of elections a notice of the results of an election required by division (D)(1), (2)(a), (b), or (c) of this section, the tax commissioner shall provide notice of a tax rate change in a manner that is reasonably accessible to all affected vendors. The commissioner shall provide this notice at least sixty days prior to the effective date of the rate change. The commissioner, by rule, may establish the method by which notice will be provided.