



THE STATE OF OHIO, ex rel.  
Charles Obendorf  
Solely in his capacity as Charter Review  
Commission member  
c/o Law Director Syx  
Stow City Hall  
3760 Darrow Road  
Stow, Ohio 44224

and

THE STATE OF OHIO, ex rel.  
Alan Narvy  
Solely in his capacity as Charter Review  
Commission member  
c/o Law Director Syx  
Stow City Hall  
3760 Darrow Road  
Stow, Ohio 44224

and

THE STATE OF OHIO, ex rel.  
Wendy Supple  
Solely in her capacity as Charter Review  
Commission member  
c/o Law Director Syx  
Stow City Hall  
3760 Darrow Road  
Stow, Ohio 44224Stow City Hall

and

THE STATE OF OHIO, ex rel.  
John Moyer  
Solely in his capacity as Charter Review  
Commission member  
c/o Law Director Syx  
Stow City Hall  
3760 Darrow Road  
Stow, Ohio 44224

and )  
THE STATE OF OHIO, ex rel. )  
Jennifer Snyder )  
Solely in her capacity as Charter Review )  
Commission member )  
c/o Law Director Syx )  
Stow City Hall )  
3760 Darrow Road )  
Stow, Ohio 44224 )

and )  
THE STATE OF OHIO, ex rel. CITY OF )  
STOW )  
c/o Law Director Syx )  
Stow City Hall )  
3760 Darrow Road )  
Stow, Ohio 44224 )

Relators, )

v. )  
CITY OF STOW CITY COUNCIL )  
c/o Clerk of Council )  
Stow City Hall )  
3760 Darrow Road )  
Stow, Ohio 44224 )

and )  
SINDI HARRISON )  
Solely in her capacity as City Council )  
person )  
c/o Clerk of Council )  
Stow City Hall )  
3760 Darrow Road )  
Stow, Ohio 44224 )

and )  
JEREMY MCINTIRE )  
Solely in his capacity as City Council )

person )  
c/o Clerk of Council )  
Stow City Hall )  
3760 Darrow Road )  
Stow, Ohio 44224 )  
Stow, Ohio 44224 )

and )

DENNIS ALTIERI )  
Solely in his capacity as City Council )  
person )  
c/o Clerk of Council )  
Stow City Hall )  
3760 Darrow Road )  
Stow, Ohio 44224 )

and )

MARIO FIOCCA )  
Solely in his capacity as City Council )  
person )  
c/o Clerk of Council )  
Stow City Hall )  
3760 Darrow Road )  
Stow, Ohio 44224 )

and )

STEVE HAILER )  
Solely in his capacity as City Council )  
person )  
c/o Clerk of Council )  
Stow City Hall )  
3760 Darrow Road )  
Stow, Ohio 44224 )

and )

CYLE FELDMAN )  
Solely in his capacity as City Council )  
person )  
c/o Clerk of Council )

Stow City Hall )  
3760 Darrow Road )  
Stow, Ohio 44224 )  
)  
and )  
)  
CHRISTINA SHAW )  
Solely in her capacity as City Council )  
person )  
c/o Clerk of Council )  
Stow City Hall )  
3760 Darrow Road )  
Stow, Ohio 44224 )  
)  
and )  
)  
SUMMIT COUNTY BOARD OF )  
ELECTIONS )  
470 Grant Street )  
Akron, Ohio 44311 )  
)  
Respondents. )

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**VERIFIED COMPLAINT FOR WRIT OF MANDAMUS IN AN EXPEDITED  
ELECTIONS CASE PURSUANT TO S.CT. PRAC. R. 12.08, INCLUDING A REQUEST  
FOR ALTERNATIVE AND PEREMPTORY WRITS**

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Jaime M. Syx (0090028)  
Law Director, City of Stow  
Callie J. Channell (0089024)  
Deputy Law Director, City of Stow  
Stow City Hall  
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Stow, Ohio 44224  
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*Counsel for Relators*

Relators, by and through their Law Director, in support of their claims for the issuance of a writ of mandamus, state as follows:

**NATURE OF THE ACTION AND JURISDICTION**

1. This is an action in mandamus due to Respondent, City of Stow City Council's ("Council") failure to fulfill its clear legal duties under the Stow City Charter ("Charter"), Section 20.03, to hold an administrative vote on the proposed Charter amendments, from the Charter Review Commission, in their original form and to submit all such proposed Charter Review Commission Amendments to the electors, forthwith.
2. "Where a municipal legislative authority has the opportunity to adopt an ordinance to place a proposed charter amendment on a regularly scheduled election ballot in an even-numbered year but refuses to do so for unlawful reasons, a writ of mandamus will issue to compel its submission to the electors on that ballot instead of at a later special election." *State ex rel. Commt. for the Charter Amendment, City Trash Collection v. Westlake*, 97 Ohio St.3d 100, 2002-Ohio-5302, 776 N.E.2d 1041, ¶ 42. *See also* Ohio Constitution, Article XVIII, Section 9.
3. Pursuant to Charter Article XX, "Charter Review Commission," Section 20.03, "Submission to Electors:" "Upon two-thirds approval, Council shall submit to the electors all such proposed amendments to this Charter in accordance, in each instance, with the provisions of the Constitution of Ohio."
4. "Absent any provision in city charter regarding the interpretative issues involved, the court may apply the general laws regarding statutory interpretation." *Westlake, supra* at ¶ 28.

5. In applying the ordinary and common usage of the words in Section 20.03 of the Charter, Council cannot possibly comply with their legal duty to submit “all such proposed amendments” to the electors, if Council does not first vote to approve the Charter Review Commission Amendments in the same character and quality, as proposed by the Charter Review Commission.
6. Council had an administrative duty to submit the Charter Review Commission Amendments to the electors. See *State ex rel. Rosch v. Cuyahoga Cty. Bd. of Elections*, 42 Ohio St. 2d 364, 328 N.E.2d 793 (1975).
7. This Court has defined administrative duties as to not extend past matters of form. See *State ex rel. Kittel v. Bigelow*, 138 Ohio St. 497, 503, 37 N.E.2d (1941).
8. Council failed to act in an administrative capacity when reviewing the Charter Review Commission Amendments and modifying the language in all of the proposed Charter Review Commission Amendments.
9. Council failed to follow the Charter when it did not hold an administrative vote on original Charter Review Commission Amendments.
10. Council failed to follow the Charter when it did not submit any of the proposed Charter Review Commission Amendments to the electorate.
11. Accordingly, Relators seek an order from this Court that Respondent Council, together and in their individual capacity as Council members, at the next regularly scheduled Council meeting, review the Charter Review Commission Amendments, in their proposed form, hold a vote on same, pursuant to Council’s administrative duty, and, upon a two-thirds approval of the sufficiency of the text and form, order Council to submit all

approved Charter Review Commission Amendments, forthwith, to the Board of Elections to be placed on the November 3, 2020 election ballot.

12. In the alternative, if Council declines to hold such a vote, Relators seek an order from this Court that the Summit County Board of Elections (“Board of Elections”) shall waive the September 4, 2020 deadline to submit charter amendments and accept the proposed Charter Review Commission Amendments in their original form, from the Relator, Law Director Jaime M. Syx (“Law Director Syx”), on behalf of the Charter Review Commission, for placement on the November 3, 2020 general election ballot.
13. Relators, bring this action pursuant to the Law Director Syx’s duty under R.C. Section 733.58, “in case an officer or board of a municipal corporation fails to perform any duty expressly enjoined by law or ordinance, the village solicitor or city director of law shall apply to a court of competent jurisdiction for a writ of mandamus to compel the performance of the duty.”
14. This Court has original subject matter jurisdiction over this action and over Respondents pursuant to Article IV, Section 2(B)(1) of the Ohio Constitution and R.C. Section 2731.02.
15. This is an expedited election proceeding governed by the provisions of S.Ct. Prac.R. 12.08.
16. Relators affirmatively assert that they have acted with the utmost diligence in bringing the instant action, that there has been no unreasonable delay or lapse of time in asserting their rights herein and, further, there is no prejudice to Respondents. See, e.g. *State ex rel. Polo v. Cuyahoga Cty. Bd. Of Elections*, 74 Ohio St.3d 143, 145, 656 N.E.2d 1277 (1995).



17. Because of the close proximity of the November 3, 2020 general election, Relators lack an adequate remedy in the ordinary course of law. See *State ex rel. Greene v. Montgomery Cty. Bd. Of Elections*, 121 Ohio St.3d 631, 2009-Ohio-1716, 907 N.E.2d 300, ¶ 10.
18. Because the Charter prohibits Council from voting on election matters at special meetings, Relators lack an adequate remedy at law. Council's next regular meeting is scheduled for September 10, 2020, six days past the Board of Elections' deadline to accept charter amendment ballot items. See Charter, Section 4.09.
19. In the event that this is a matter of first impression for the Court, Relators ask the Court to consider public policy and the law, and preserve the right of the public to vote. Cities governed by a charter, the provisions of which establish a charter review commission for purposes of proposing charter amendments, should be allowed to enforce their charter provisions in favor of the best interest of the public to vote on such proposed amendments, unaltered by city council, when the charter also provides that city council may propose their own charter amendments at any time throughout their term.

#### **PARTIES**

20. Relator, Jaime M. Syx, is acting in her capacity as, and is currently serving as, the duly appointed Law Director for the City of Stow, Ohio.
21. Relator, the 2020 Charter Review Commission ("Commission"), is made up of seven individuals, serving voluntarily, without compensation, who are all residents and tax paying citizens for the City of Stow. Pursuant to Section 20.01 of the Charter, the Commission members are appointed by the Mayor and confirmed by Council.

22. Relator, Commission is made up of John Baranek, Deborah Matz, Charles Obendorf, Alan Narvy, Wendy Supple, John Moyer and Jennifer Snyder make up the individual Charter Review Commission members (“Commission Members”).
23. Relator, City of Stow (“City”), is a chartered municipality located in Summit County, State of Ohio, with its principal place of business at 3760 Darrow Road, Stow, Ohio 44224, and is run, in part, by its duly elected Mayor, John Pribonic, who has judicial, executive and administrative powers.
24. Respondent, Council, is the duly elected legislative body of the City of Stow, composed of seven members elected from four wards and three Council-At-Large positions, pursuant the City Charter.
25. Respondent, Sindi Harrison, has been at all times since January 2, 2020, the duly elected President of Council, (“Harrison”).
26. Respondent, Jeremy McIntire, is and has been at all times since January 2, 2020, the duly elected Vice President of Council, (“McIntire”).
27. Respondents, Dennis Altieri (“Altieri”), Mario Fiocca (“Fiocca”), Steve Hailer (“Hailer”), Cyle Feldman (“Feldman”) and Christina Shaw (“Shaw”), have been at all times since January 2, 2020, duly elected council members.
28. Respondent, Board of Elections, is named in this action pursuant to its duty to oversee elections that are called and held in the County of Summit, State of Ohio. The remedy sought herein would require the Board of Elections to act after its September 4, 2020 deadline for the submission of ballot items for the upcoming election.

## MEMORANDUM IN SUPPORT OF CLAIMS

The language of the Charter provides, upon approval by two-thirds of Council, Council shall submit to the electors all such proposed Charter Review Commission Amendments

29. The Ohio Constitution provides that any municipality may frame and adopt or amend a charter for its government. Ohio Constitution, Article XVIII, Section 7. The Charter was approved by the voters on November 4, 1958. A certified copy of the Charter is attached hereto as Exhibit 1, which is incorporated herein by reference as “Charter.”
30. This Court held that procedures may be added to the constitutional charter amendment process if the additions do not conflict with the Ohio Constitution. *State, ex rel. Bedford v. Cuyahoga Cty. Bd. of Elections*, 62 Ohio St. 3d 17, 22, 577 N.E.2d 645, 648–49 (1991).
31. Stow’s Charter amendments can be created in three ways: by council, by petition of the electorate, and by the charter review commission.
32. Council has the power to create, modify, reject or submit its own charter amendments to the electors at any time during its term pursuant to Article XIX, Section 19.01 of the Charter.
33. Article XIX, titled “Amendments to the Charter” at Section 19.01, titled “Submission to the Electors,” provides, “Council may, by affirmative vote of five or more of its members, submit to the electors any amendment to this Charter; upon petitions signed by the electors numbering 10 percent of the total vote cast in the last preceding general municipal election.”
34. At the time the Commission was constituted and up until May of 2020, the Charter imposed the following duty upon Council as it related to submitting Charter Review Commission Amendments to the electors. Pursuant to Article XX “Charter Review

Commission” at former Section 20.03, titled “Submission to Electors”: “Council **shall** submit to the electors **all such proposed amendments** to this Charter in accordance, in each instance, with the provisions of the Constitution of Ohio.” (Emphasis added.)

35. In December 2019, prior council held three meetings in which it proposed and voted to submit to the electors, at the 2020 primary election, an amended version of Section 20.03 via the passage of Ordinance No. 2019-167. Certified copies of prior council’s meeting minutes from December 12, 2019, December 19, 2019 and December 30, 2019 are attached here to as Exhibits 2, 3 and 4, which are incorporated herein by reference as “Prior Council Meeting Minutes.” A certified copy of Ordinance 2019-167 is attached hereto as Exhibit 5, which is incorporated herein by reference as “Ordinance 2019-167.”
36. Pursuant to the 2020 primary results, the Stow electors voted in favor of amending the language of former Charter Section 20.03, to clarify the number of votes needed to submit Charter Review Commission Amendments to the electors. A certified copy of the May 19, 2020, elections results, including the ballot language, is attached hereto as Exhibit 6, which is incorporated herein by reference as “Election Results.”
37. As of May 19, 2020, amended Section 20.03 now reads, “**Upon approval by two-thirds of Council**, Council shall submit to the electors all such proposed amendments to this Charter in accordance, in each instance, with the provisions of the Constitution of Ohio.” (Emphasis added.) *See* Election Results. This amendment is hereinafter referred to as “Section 20.03.”
38. Prior to May 2020, former Charter Section 20.03 did not indicate the number of affirmative votes needed to pass charter review commission amendments on to the electors; now, it does.

The Charter Review Commission's duties under the Charter

39. As it relates to the Charter Review Commission, the Charter language provides that the “Mayor shall, with confirmation by Council, appoint a commission of seven qualified electors of the Municipality ... to serve until their duties as provided in Section 20.02 are completed.” Charter, Section 20.01.
40. The Mayor duly appointed, with unanimous confirmation of Council, a commission of seven qualified electors of the municipality to serve on the 2020 Charter Review Commission. *See* Affidavit of Mayor John Pribonic, attached hereto as Exhibit 7, which is incorporated herein by reference as “Mayor Pribonic Affidavit.” Mayor Pribonic Affidavit at ¶ 4.
41. The Charter language further provides that, “The Charter Review Commission shall, in meetings open to the public, review the municipal Charter, and, no later than August 1 of the same year, recommend to Council such amendments, if any, to this Charter as in *its judgment* are conducive to the public interest.” (Emphasis added.) Charter, Section 20.02.
42. The Commission met eight times, in Commission meetings open to the public, prior to the August 1, 2020 deadline. *See* Affidavit of Commission Chairman, John Baranek, attached hereto as Exhibit 8, which is incorporated herein by reference as “Commission Affidavit.” Commission Affidavit at ¶ 5.
43. The Commission meetings were held via Zoom and livestreamed on YouTube. *Id.* at ¶ 6.
44. At the Commission meetings the Commission duly reviewed the Charter and discussed the Charter with the administration. *Id.* at ¶ 8.
45. Commission Chairman, John Baranek requested Council to provide input to the Commission. *Id.* at ¶ 7.

46. Councilman Feldman appeared and provided input to the Commission at one meeting. *Id.* at ¶ 9.
47. Council President Harrison appeared and provided input to the Commission at one meeting. *Id.* at ¶ 10.
48. No other council members appeared at any other Commission meetings. *Id.* at ¶ 11.
49. The Commission duly prepared nine Charter Review Commission Amendments that, in their judgment, were and still are conducive to the public interest. *Id.* at ¶ 12.
50. The Law Department assisted the Commission by putting the Charter Review Commission Amendments into legislative form. *Id.* at ¶ 13. *See also* Affidavit of Relator Law Director Syx, attached hereto as Exhibit 9, which is incorporated herein by reference as “Law Director Syx Affidavit.” Law Director Syx Affidavit at ¶ 8.
51. On July 15, 2020, sixteen days prior to the August 1<sup>st</sup> deadline, the Commission fulfilled its duties and presented Council with the Charter Review Commission Amendments. .” Commission Affidavit at ¶ 14. The Commission Amendments were submitted to Council in legislative form, as attachments to an email from the Relator Law Director to Respondent Council President Harrison. A copy of the email is attached hereto as Exhibit 9-1 to Law Director Syx Affidavit, and is incorporated herein by reference as “July 15, 2020 Email.”
52. Harrison assigned all of the nine pieces of legislation containing the Charter Review Commission Amendments to the COW agenda for the July 23, 2020 COW meeting.
53. Council Clerk assigned the nine pieces of legislation containing the Charter Review Commission Amendments the following ordinance numbers: 2020-98, 2020-99, 2020-100, 2020-101, 2020-102, 2020-103, 2020-104, 2020-105, 2020-106. A certified copy of

all of the Ordinances containing Charter Review Commission Amendments are attached hereto as Exhibits 10, 11, 12, 13, 14, 15, 16, 17, and 18, which are incorporated herein and referenced as “Commission Amendments.”

Council’s legal duties under the Charter

54. The people of the City of Stow, pursuant to the Ohio Constitution, have adopted the Charter.
55. The people of the City of Stow have empowered Council with only the authority provided in the Charter.
56. Council’s mandatory duty as it relates to Commission Amendments is, “[u]pon two-thirds approval, Council shall submit to the electors all such proposed amendments to this Charter in accordance, in each instance, with the provisions of the Constitution of Ohio.” Charter, Section 20.03.
57. Pursuant to the Charter, the people of the City of Stow have given Council the mandatory duty to submit proposed charter amendments from the Charter Review Commission to the electors.
58. In strictly applying the constructions of the words of Section 20.03, Council cannot possibly comply with its mandatory legal duties under the Charter to submit “all such proposed amendments” if Council does not first vote, in an administrative capacity, on the Commission Amendments in the same character and quality, as provided by the Commission.
59. Pursuant to the Charter, Council can only vote on election-related legislation during a regular Council meeting. *See* Charter, Section 4.09.

60. Section 20.03 incorporates provisions set forth in the Constitution of Ohio as it relates to charter amendments. *See* Charter, Section 20.03

Council's legal duties under the Charter are supported by the Ohio Constitution and Case Law

61. The mandatory duty to submit a proposed charter amendment to the electors is council's, and council's alone.

62. Section 20.03 of the Charter provides that Council *shall* submit to the electors "all such proposed amendments" to this Charter *in accordance, in each instance, with the provisions of the Constitution of Ohio.*" (Emphasis added.) In addition to unambiguously setting forth a mandatory duty, this section plainly incorporates the provisions of the Ohio Constitution that would apply if the Commission Amendments had originated as initiative petitions; namely, Article XVII, Sections 8 and 9.

63. Therefore, by the Charter's incorporation of Article XVIII, Sections 8 and 9 of the Ohio Constitution, Council is required by those sections to "*forthwith*" submit the Commission Amendments to the electors.

64. "The very plain wording of Section 9, Article XVIII, places the duty to submit a proposed amendment to the electors upon the council *and the council alone*. It provides further that the submission shall be governed by the requirement of Section 8, Article XVIII that *the council shall provide by ordinance* for the submission to the electors." *State ex rel. Blackwell v. Bachrach*, 166 Ohio St. 301, 306, 143 N.E.2d 127, 131 (1957).

65. In a legal opinion dated July 22, 2020, Relator Law Director Syx, advised Council of this Court's decision in *Rosch*, holding that where a section of a city charter mandates that charter review commission recommendations be placed on the ballot in the form submitted by the commission, that section preempts all other sections of the charter and



the procedural requirements related to passing that ordinance, even as an emergency, do not apply. Law Director Syx Affidavit at ¶ 11. See also, *Rosch, supra*.

66. Relator Law Director Syx, provided Council with a legal memorandum from former Law Director Brian Reali dated July 28, 2010, when the 2010 Council was voting on 2010 Commission Amendments. That opinion also advised the 2010 Council of their duties pursuant to the ruling in *Rosch. Id.* at ¶12.
67. Relator Law Director Syx, provided Council with an email from former Law Director Brendan Mackin dated December 10, 2019, when prior council was writing Ordinance 2019-167 to amend former Section 20.03; that email also advised prior council of their duties as it relates to commission amendments, and referred prior council to this Court’s decision in *Rosch. Id.* at ¶ 13.
68. Relator Law Director Syx, advised Council that the decision in *Rosch* defined Council’s duties as administrative. *Id.* at ¶ 14.
69. Relator Law Director Syx, advised Council that this Court has defined “administrative” as not to extend beyond matters of form. *Id.* at ¶ 15. See also *Bigelow, supra*.
70. Relator Law Director Syx further advised Council that the test of whether a ballot item should go to the voters is that the “[t]ext of a ballot statement must fairly and accurately present the question or issue to be decided in order to assure a free, intelligent, and informed vote by the average citizen affected.” See Law Director Syx Affidavit at ¶ 16. See also Ohio Constitution, Article XVI, Section 1; Ohio Rev. Code Ann. § 3505.06(E). *State ex rel. Schuck v. City of Columbus*, 152 Ohio St. 3d 590, 2018-Ohio-1428, 99 N.E.3d 383.

71. As evidenced by the Law Director Syx Affidavit, Council was advised that they do not have the authority to determine what substantive errors, if any, warrant the withdrawal of an entire ballot issue from the electorate; such action is a judicial function. Law Director Syx Affidavit at ¶ 17. See also *State ex rel. Polcyn v. Burkhart*, 33 Ohio St.2d 7, 292 N.E.2d 883 (1973). Section 9, Article XVIII of the Ohio Constitution does not contemplate that legislative authorities be clothed with that prerogative. *Polcyn, supra*.
72. Council received all nine Commission Amendments in legislative form on July 15, 2020. See Law Director Syx Affidavit at ¶ 9.
73. Council has an administrative duty to act administratively when voting on Commission Amendments as provided in their legislative form; once approved, the Clerk then has a duty to certify the legislation and submit the Commission Amendments to the Board of Elections prior to the September 4, 2020 deadline.
74. The Board of Elections does not have a duty to place the Commission Amendments on the ballot until Council fulfills its duty, first.
75. Council did not comply with its legal duties under the Charter, Constitution or case law when it did not, at a regular council meeting, hold an administrative vote on such proposed Commission Amendments and, upon two-thirds' approval, submit all such proposed Commission Amendments to the electors.
76. Pursuant to the Charter, the electors have a right to vote on Commission Amendments.
77. Pursuant to the Charter and Ohio Constitution, the duty to submit Commission Amendments to the electors is Council's, and Council's alone.
78. Pursuant to R.C. Section 733.58, the Law Director has a right to ask this Court to compel Council to perform its duty in compliance with the Charter.

July 23, 2020 Meetings

79. Council held its Committee of the Whole (“COW”) meeting and regularly scheduled Council meeting on July 23, 2020.
80. July 23, 2020 was Council’s first opportunity to comply with the “forthwith” portion of the Ohio Constitution, to vote on Commission Amendments.
81. The Commission was present for the COW meeting.
82. At the COW meeting, Commission Chair, John Baranek, (“Baranek”) requested that if Council was not going to vote on the Commission Amendments at the Council meeting that night, that Council at least give the Commission Amendments a first reading. Commission Affidavit at ¶ 22.
83. Council did not discuss the Commission Amendments with the Commission. A certified copy of the July 23, 2020 COW meeting minutes is attached hereto as Exhibit 19, which is incorporated herein by reference as “July 23, 2020 COW Meeting Minutes.” July 23, 2020 COW Meeting Minutes, throughout.
84. Council members did not discuss the Commission Amendments amongst themselves. *Id.*
85. Council did not give the Commission Amendments a first reading. *Id.*
86. Council did not move the Commission Amendments to the Council agenda to hold a vote at the July 23, 2020 regular Council meeting. *Id.*
87. Council did not vote on the Commission Amendments. *Id.*
88. Accordingly, Council did not comply with its legal duties under the Charter, Constitution or case law when it did not, at the July 23, 2020, regular council meeting, hold an administrative vote on such proposed Commission Amendments and, upon two-thirds’ approval of that vote, submit all such proposed Commission Amendments to the electors.

August 6, 2020 Meetings

89. Council held its COW meeting and regularly scheduled Council meeting on August 6, 2020.
90. This was Council's final opportunity to comply with the "forthwith" portion of the Ohio Constitution.
91. Council did not apply the test in *Schuck* to determine if the text of any of the Commission Amendments fairly and accurately presented the question or issue to be decided by the electors. A certified copy of the August 6, 2020 Council meeting minutes is attached hereto as Exhibit 21, which is incorporated herein by reference as "August 6, 2020 Council Meeting Minutes." August 6, 2020 Council Meeting Minutes, throughout.
92. Instead, at the August 6, 2020 COW meeting, against Law Director Syx's advice, Harrison and McIntire proposed modifications to all of the Commission Amendments. A certified copy of the August 6, 2020 COW meeting minutes is attached hereto as Exhibit 22, which is incorporated herein by reference as "August 6, 2020 COW Meeting Minutes." August 6, 2020 COW Meeting Minutes, throughout.
93. Harrison, McIntire, Fiocca and Altieri proceeded to modify all of the Commission Amendments in the "Now Therefore" section to read "with at least two-thirds of its members, elected or appointed thereto concurring," as opposed to the original language of "with members elected or appointed thereto concurring." *Id.* Shaw and Feldman consistently voted against these changes. *Id.*
94. The above wording was not the only modification made to the Commission Amendments. However, it was the only modification applied to all nine of them. *Id.*

95. Law Director Syx then advised Council, again, that it cannot amend the Commission Amendments. Law Director Syx Affidavit at ¶ 25.
96. Commission Amendment Ordinance No. 2020-98 proposed that the Charter may only be amended pursuant to Section 20.03. *See* Exhibit 10.
97. Harrison made a motion to change the “Now Therefore” section to include “with at least 2/3” of its members, elected or appointed thereto concurring.” McIntire seconded the motion. Harrison, McIntire, Fiocca, Altieri and Hailer voted “yes.” August 6, 2020 COW Meeting Minutes, throughout.
98. Commission Amendment Ordinance No. 2020-99 reflected changes to the Charter regarding the Vacancy of the Law Director. *See* Exhibit 11.
99. In addition to amending the “Now Therefore” section, of Commission Amendment Ordinance No. 2020-99, Harrison proposed that the Mayor’s appointment of the Law Director must be confirmed with “two-thirds approval of council.” August 6, 2020 COW Meeting Minutes, throughout.
100. Law Director Syx again advised that Council cannot change the Commission Amendments. Law Director Syx Affidavit at ¶ 28.
101. McIntire seconded Harrison’s motion to amend Commission Amendment Ordinance No. 2020-99 to give Council the power to only accept the Mayor’s appointment of Law Director if Council approves with a two-thirds vote. August 6, 2020 COW Meeting Minutes.
102. Law Director Syx advised Council that Council had its own procedure by which to submit charter amendments to the electors. In modifying the Commission’s

Amendments, Council was essentially creating their own Council charter amendments, against the procedures provided in the Charter. Law Director Syx Affidavit at ¶ 30.

103. Harrison advised that “it’s silly to present the voters with competing charter amendments.” August 6, 2020 COW Meeting Minutes.
104. Council persisted to give itself the authority to change the Commission Amendments to reflect only the language Council wanted the electors to decide. August 6, 2020 COW Meeting Minutes. August 6, 2020 COW Meeting Minutes 32.
105. Harrison, McIntire, Fiocca, Altieri and Hailer voted “yes,” to adding language to Commission Amendment 2020-99 that gives Council the power to only accept the Mayor’s appointment of Law Director if Council approves with a two-thirds vote. August 6, 2020 COW Meeting Minutes.
106. Harrison proposed adding a residency requirement to whoever is appointed and confirmed to fill the vacancy of the Law Director. McIntire agreed, stating that is how it works for every other elected official, and he didn’t understand why it should be different for someone who is appointed. August 6, 2020 COW Meeting Minutes. Law Director Syx Affidavit at ¶ 33 and 34.
107. Law Director Syx advised Council that Council already had an opportunity to address their concerns regarding the Commission Amendments with the Commission because the Commission was present at the July 9, 2020 and July 23, 2020 COW meetings, but Council did not address the Commission or the Commission’s Amendments during those times. She again advised that Council cannot change the Commission Amendments. *Id.* at ¶ 35

108. Harrison stated she did not think Council should put competing amendments on the ballot and that no one would disagree with her; if an elected official needs to be a resident then the appointee should be one too. August 6, 2020 COW Meeting Minutes. Law Director Syx Affidavit at ¶ 36.
109. Law Director Syx suggested to Council that they send the Commission Amendments, as is, to the electors so the electors could make that decision for themselves. August 6, 2020 COW Meeting Minutes. Law Director Syx Affidavit at ¶ 37.
110. Feldman clarified with Law Director Syx that Council should not change the language. August 6, 2020 COW Meeting Minutes. Law Director Syx Affidavit at ¶ 38.
111. Law Director Syx advised that these recommendations and amendments came from the Charter Review Commission. They are presented to Council as they are, Council does not have the authority to amend the Commission's recommendations. Council has the authority to vote on them as to the form and the text. August 6, 2020 COW Meeting Minutes. Law Director Syx Affidavit at ¶ 39.
112. Harrison made a motion to add the residency requirement to Commission Amendment 2020-99. McIntire seconded the motion. Harrison, McIntire, Fiocca, Altieri and Hailer voted "yes." Feldman and Shaw voted "no." August 6, 2020 COW Meeting Minutes. Law Director Syx Affidavit at ¶ 40.
113. Commission Amendment Ordinance No. 2020-100 reflected changes to the Charter regarding the Safety Services Communication Center. *See* Exhibit 12.
114. In addition to amending the "Now Therefore" section of Commission Amendment Ordinance No. 2020-100, McIntire made a motion to strike out sentences and to insert "be repealed" at the bottom of the question. Harrison seconded the motion. Harrison,

- McIntire, Fiocca, and Altieri voted “yes.” Shaw, Feldman and Hailer voted “no.” August 6, 2020 COW Meeting Minutes. Law Director Syx Affidavit at ¶ 41.
115. Harrison made a motion to correct information in the fourth “WHEREAS” section. McIntire clarified that Council was just changing something that was factually inaccurate. August 6, 2020 COW Meeting Minutes. Law Director Syx Affidavit at ¶ 42.
116. Law Director Syx advised that if the text is confusing and does not make sense, Council is to vote “no” on it, not amend it. August 6, 2020 COW Meeting Minutes. Law Director Syx Affidavit at ¶ 43.
117. McIntire requested that the Law Director clarify what form meant and to provide a reference. August 6, 2020 COW Meeting Minutes. Law Director Syx Affidavit at ¶ 44.
118. Law Director Syx directed McIntire to the legal memoranda she previously provided to Council. August 6, 2020 COW Meeting Minutes. Law Director Syx Affidavit at ¶ 45.
119. Harrison, McIntire, Fiocca, and Altieri voted “yes,” to approve Council’s proposed amendments to Commission Amendment 2020-100. Shaw, Feldman and Hailer voted “no.” August 6, 2020 COW Meeting Minutes. Law Director Syx Affidavit at ¶ 46.
120. Commission Amendment Ordinance No. 2020-101 reflected changes to the Charter regarding the Vacancy of the Finance Director. *See* Exhibit 13.
121. In addition to amending the “Now Therefore” section of Commission Amendment Ordinance No. 2020-101, Harrison proposed that the Mayor’s appointment of the Finance Director must be confirmed with “two-thirds approval of council.” McIntire seconded Harrison’s motion. August 6, 2020 COW Meeting Minutes. Law Director Syx Affidavit at ¶ 47.



122. Harrison, McIntire, Fiocca and Altieri voted “yes” to amend Commission Amendment Ordinance No. 2020-101 to give Council the power to only accept the Mayor’s appointment of Finance Director if Council approves with a two-thirds vote. Shaw, Hailer and Feldman voted “no.” August 6, 2020 COW Meeting Minutes. Law Director Syx Affidavit at ¶ 48.
123. Harrison proposed and made a motion to add a residency requirement to whoever is appointed and confirmed to fill the vacancy of the Finance Director. Altieri seconded the motion. Harrison, McIntire, Fiocca and Altieri voted “yes” to amend Commission Amendment Ordinance No. 20-101 to add the residency requirement. Shaw, Feldman and Hailer voted “no.” August 6, 2020 COW Meeting Minutes. Law Director Syx Affidavit at ¶ 49 and 50.
124. Commission Amendment Ordinance No. 2020-102 reflected changes to the Charter regarding the Term Limits for Elected Officials. *See Exhibit 14.*
125. McIntire made a motion to modify the “Now Therefore” section. Harrison seconded the motion. Harrison, McIntire, Fiocca and Altieri voted “yes.” Hailer, Shaw and Feldman voted “no.” August 6, 2020 COW Meeting Minutes. Law Director Syx Affidavit at ¶ 51.
126. Commission Amendment Ordinance No. 2020-103 reflected changes to the Charter regarding the Vacancy of the Mayor. *See Exhibit 15.*
127. In addition to amending the “Now Therefore” section of Commission Amendment Ordinance No. 2020-103, Harrison made a motion to modify the language to include that Council shall appoint a Mayor by a vote of at least two-thirds of its members. McIntire seconded that motion. Harrison, McIntire, Altieri, and Fiocca voted to adopt those

- changes. Shaw, Feldman and Hailer voted “no.” August 6, 2020 COW Meeting Minutes. Law Director Syx Affidavit at ¶ 52.
128. Commission Amendment Ordinance No. 2020-104 reflected changes to the Charter regarding the Composition and Term of Council. *See* Exhibit 16.
129. In addition to amending the “Now Therefore” section of Commission Amendment Ordinance No. 2020-104, Harrison proposed modifying the effective date on the Commission Amendment of November 2021 to November 2027, because the 2021 date would short-change current council at large members. McIntire, council-at-large, seconded the motion. Harrison, McIntire, Fiocca, Altieri voted “yes.” Feldman, Shaw and Hailer voted “no.” August 6, 2020 COW Meeting Minutes. Law Director Syx Affidavit at ¶ 53, 54 and 55.
130. Harrison proposed modifying the effective date on the Commission Amendment of November 2023 to November 2029 to maintain the staggering intent of the Commission. Fiocca, seconded the motion. Harrison, McIntire, Fiocca, Altieri voted “yes.” Feldman, Shaw and Hailer voted “no.” August 6, 2020 COW Meeting Minutes. Law Director Syx Affidavit at ¶ 56, 57 and 58.
131. Harrison made a motion to strike the entire middle paragraph, to add language back in that the Commission previously removed. Fiocca seconded the motion. Harrison, McIntire, Fiocca, Altieri voted “yes.” Feldman, Shaw and Hailer voted “no.” August 6, 2020 COW Meeting Minutes. Law Director Syx Affidavit at ¶ 59 and 60.
132. Commission Amendment Ordinance No. 2020-105 reflected changes to the Charter regarding the Regular Council Meetings. *See* Exhibit 17.

133. In addition to amending the “Now Therefore” section of Commission Amendment Ordinance No. 2020-105, Harrison proposed two amendments that added language back in that the Commission had purposely removed. For the first amendment, McIntire agreed and made a motion; Fiocca seconded the motion. Harrison, McIntire, Fiocca, Altieri voted “yes.” Feldman, Shaw and Hailer voted “no.” Harrison made the second motion, Fiocca seconded the motion. Harrison, McIntire, Fiocca, Altieri voted “yes.” Feldman, Shaw and Hailer voted “no.” August 6, 2020 COW Meeting Minutes. Law Director Syx Affidavit at ¶ 61, 62, 63, 64, 65 and 66.
134. Commission Amendment Ordinance No. 2020-106 reflected changes to the Charter regarding Special Meetings of Council. *See* Exhibit 18.
135. Harrison made a motion to modify the “Now Therefore” section to include the “two-thirds” language. Harrison, McIntire, Fiocca, Altieri voted “yes.” Feldman, Shaw and Hailer voted “no.” August 6, 2020 COW Meeting Minutes. Law Director Syx Affidavit at ¶ 67.
136. No other changes were proposed to Commission Amendment Ordinance 2020-106. *Id.*
137. Council did not move the Commission Amendments to the Council agenda. *Id.*
138. Council moved all of the modified amendments to the Council agenda. August 6, 2020 COW Meeting Minutes. Law Director Syx Affidavit at ¶ 69. A certified copy of all of modified amendments ordinance numbers 2020-98, 2020-99, 2020-100, 2020-101, 2020-102, 2020-103, 2020-104, 2020-105, 2020-106 are attached hereto as Exhibits 21, 22, 23, 24, 25, 26, 27, 28, and 29, and are incorporated herein by reference as “Modified Amendments.” A certified copy of the votes to amend the Commission Amendments at the August 6, 2020 at COW meeting and the votes on the Modified Amendments at the

Council meeting is attached hereto as Exhibit 30, which is incorporated herein by reference as “August 6, 2020 Voting Results.”

Council provides the public with an explanation

139. Prior to voting on the Modified Amendments at the Council meeting, McIntire read a prepared statement lasting over six minutes’ time, in an attempt to explain why he made changes to the Commission Amendments. A certified copy of the August 6, 2020 Council Meeting Minutes is attached hereto as Exhibit 31, which is incorporated herein by reference as “ August 6, 2020 Council Meeting Minutes.” August 6, 2020 Council Meeting Minutes at pages 4 and 5.
140. McIntire explained that he did not see one [Commission Amendment] that was conducive to the public interest; that the Commission Amendments were very pro-elected official dating back to 1980; that one of them fixed a term limit issue that he did not ask to be fixed; he further claimed that one of the Commission Amendments competed with an issue- not a charter amendment- that was already going to the ballot and that “did not make sense,” and then he declared another Commission Amendment to be unconstitutional. *Id.*
141. The Charter does not provide Council with the authority to block electors from voting on Commission Amendments when Council does not think they are “conducive to the public interest.”
142. The Charter specifically provides the Charter Review Commission, not Council, with the authority to use “its judgment” to determine what Commission Amendments are “conducive to the public interest.” *See* Charter, Section 20.02.

143. The Ohio Constitution and this Court have not provided Council with the authority to block the electors from voting on Commission Amendments when, in Council's opinion, they are "pro-elected official," or when a council member has not asked for an amendment to "fix" an issue.
144. "It is not the role of the city council to substitute its judgment for that of the voters as to which matters should appear on the ballot." *State ex rel. Ebersole v. Powell*, 2014-Ohio-4283, ¶ 6, 141 Ohio St. 3d 17, 19, 21 N.E.3d 274, 276.
145. The Charter does not provide Council with the authority to block the electors from voting on a Commission Amendment when Council feels it "doesn't make sense" to put on the ballot, what it believes to be, a competing Commission Amendment to an issue that is already going to the ballot.
146. The Charter provides that even competing charter amendments are allowed to go to the electors at the same time. *See* Charter, Section 19.02. And again, "[i]t is not the role of the city council to substitute its judgment for that of the voters as to which matters should appear on the ballot." *Ebersole, supra*.
147. This Court does not provide Council with the authority to block the electors from voting on Commission Amendments because Council has determined them unconstitutional.
148. City Council cannot assess the constitutionality of a proposal, because that role is reserved for the courts. *See Id.*
149. Fiocca explained he would follow the Charter when voting, yet he voted in the same manner as McIntire. *See* August 6, 2020 Council Meeting Minutes.
150. Altieri provided no explanation for his voting decisions, yet he voted in the same manner as McIntire. *Id.*

151. Harrison advised that she would be voting in reliance on what is in our Charter; she voted in the same manner as McIntire. *Id.*
152. Feldman explained he would abstain from voting on all modified amendments because they were not the original Commission Amendments. *Id.*
153. Shaw explained she would abstain from voting on all modified amendments for the same reason as Feldman. *Id.*
154. Hailer would also abstain on eight of the nine votes for the same reason as Feldman and Shaw. *Id.*
155. At the Council meeting which immediately followed, Council, of its own volition and against the Charter, Ohio Constitution and case law, applied a six out of seven affirmative vote standard to the Modified Amendments; none were approved; nothing was sent to the electors. *See August 6, 2020 Voting Results.*

August 7, 2020

156. The Commission met on August 7, 2020 and voted, unanimously, to request a lawsuit be filed to make Council comply with their mandatory legal duties. Commission Affidavit at ¶ 27.

Council violated its duties

157. Council failed to fulfill its clear duties under Charter, Section 20.03 and the Ohio Constitution Article 18, Sections 8 and 9, to hold an administrative vote on the proposed Commission Amendments, in their original form, and to submit all such proposed Commission Amendments to the electors.
158. In applying the ordinary and common usage of the words in Section 20.03 of the Charter, Council cannot possibly comply with their legal duty to submit “all such proposed

amendments” to the electors, if Council does not first vote to approve the Commission Amendments in the same character and quality, as proposed by the Commission.

159. Council failed to act in an administrative capacity when reviewing the Commission Amendments and modified the language in all of the proposed Commission Amendments.
160. Council failed to follow the Charter as it did not hold an administrative vote on original Commission Amendments.
161. Accordingly, Relators seek an order from this Court that Respondent Council, together or in their individual capacity as Council members, at the next regularly scheduled Council meeting, review the Commission Amendments, in their proposed form, pursuant to Council’s administrative duty and upon a two-thirds approval of the text and form being sufficient, order Council to submit all approved Commission Amendments, forthwith, to the Board of Elections to be placed on the November 3, 2020 election ballot.

**COUNT ONE: COMPLAINT AND PETITION FOR MANDAMUS**

162. Each and every allegation contained above is incorporated as if fully rewritten herein.
163. To be entitled to a writ of mandamus, a party must establish, by clear and convincing evidence, (1) a clear legal right to the requested relief, (2) a clear legal duty on the part of the respondent to provide it, and (3) the lack of an adequate remedy in the ordinary course of the law. *State ex rel. Waters v. Spaeth*, 131 Ohio St.3d 55, 2012-Ohio-69, 960 N.E.2d 452, ¶ 6,13.
164. Pursuant to R.C. 733.58, the Law Director has a right to apply to a court of competent jurisdiction for a writ of mandamus when an officer fails to perform any duty expressly enjoined by law or ordinance.

165. Here, Law Director Syx applies for a writ of mandamus because elected officials of the municipality; namely, Council, and the individual members of Council, acting solely in their capacity as Council members, failed to perform a portion of the provisions set forth in the Charter, the Ohio Constitution, and in violation of this Court's precedent.
166. Further, Law Director Syx, on behalf of the electorate, has a clear legal right to the relief requested because upon the Commission first fulfilling its duties under the Charter, Council must fulfill its duties to allow the electors an opportunity to vote on matters that alter their governing document.
167. Relators request that the Court compel Council, at its next regularly scheduled meeting, to hold an administrative vote, solely on the matter of whether the text of the language proposed in the Commission Amendments fairly and accurately presents the questions or issues to be decided, so Council can submit the approved Commission Amendments to the electors, in their original form, in time for the November 3, 2020 general election.
168. The vote held by Council at the August 6, 2020 regular Council meeting did not satisfy the requirements of the Charter.
169. The vote held by Council at the August 6, 2020 regular Council meeting did not satisfy the requirements of the Charter as supported by the Constitution, and case law.
170. Because of the close proximity of the November 3, 2020 general election, Relators lack an adequate remedy in the ordinary course of law.
171. Because the Charter prohibits Council from voting on election matters at special meetings, Relators lack an adequate remedy at law; Council's vote must occur at a regular Council meeting.



172. Council has the ability and duty to provide the relief sought by holding an administrative vote at the first possible regular Council meeting, upon order of this Court, and issuing a certified Commission Amendments in accordance with the results of said vote.
173. The next regular Council meetings are scheduled for September 10, 2020; September 24, 2020; October 8, 2020, and so on.
174. The relief requested necessitates an order from this Court commanding the Board of Elections to accept a late submission, after September 4, 2020, of certified Commission Amendments for the November 3, 2020 general election.
175. The Board of Elections is a necessary party to this action inasmuch as any writ to be issued by this Court would necessarily impact the operations of the Board of Elections and affect its ability to take timely action to place the Commission Amendments on the November 3, 2020 ballot.
176. Although not directly actionable under R.C. 733.58, the Board of Elections has a clear legal duty, upon order of this Court, to place the Commission Amendments on the November 3, 2020 ballot.

**COUNT TWO: ALTERNATIVE PETITION FOR MANDAMUS**

177. Each and every allegation contained above is incorporated as if fully rewritten herein.
178. In the event the Court does not compel Council to hold the vote for the relief sought, or, in the event Council declines to vote, despite an order of this Court to hold such a vote, Relators seek a writ to command the Board of Elections to accept the Commission Amendments, in their original form, from the Relator, City of Stow, on behalf of the Charter Review Commission, and review them for placement on the November 3, 2020 general election ballot.

179. The relief requested necessitates an order from this Court commanding the Board of Elections to accept a late submission, after September 4, 2020, of ballot items for the November 3, 2020 general election.
180. The Board of Elections is a necessary party to this action inasmuch as any writ to be issued by this Court would necessarily impact the operations of the Board of Elections and affect its ability to take timely action to place the Commission Amendments on the November 3, 2020 ballot.

**PRAYER FOR RELIEF**

WHEREFORE, Relators respectfully pray the Court to grant the following relief:

- A. As to Count One, issue a Peremptory Writ, Alternative Writ, Writ of Mandamus or other Order to compel Respondents, Council, to hold an administrative vote on all nine Commission Amendments, in their original form, at the next regular Council meeting immediately following this Court's order to do so, and issue an ordinance in accordance with the results of the vote, and certify the same to the Respondent, Summit County Board of Elections for their review for placement on the November 3, 2020 general election ballot, forthwith. Said writ to include a command that the Board of Elections must waive its September 4, 2020 deadline by which ballot items must be certified and submitted.
- B. As to Count Two, issue a Peremptory Writ, Alternative Writ or Writ of Mandamus to command the Respondent, Board of Elections to waive the September 4, 2020 deadline and accept the Commission Amendments, in their original form, from the Relator, City of Stow, on behalf of the Charter Review

Commission, without Council approval and without the Clerk's certification and review them for placement on the November 3, 2020 general election ballot.

- C. Assess the costs of this action against Respondents;
- D. Award Relators their attorneys' fees, if any, and expenses; "Citizens group and its members were entitled to award of attorney fees in mandamus action that saved city and its residents the expense of special election following regularly scheduled general election, where city council did not have any reasonable basis for failing to place charter amendment issue on general election ballot, and committee and members gave security for costs." *Westlake, supra. See also R.C. § 733.59*; and
- E. Award such other relief as may be appropriate.

Respectfully submitted,

/s Jaime M. Syx  
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