

JUN 10 2026

IN THE COURT OF APPEALS OF OHIO
FOURTH APPELLATE DISTRICT
ATHENS COUNTY

Candy S. Russell, CLERK
COURT OF APPEALS

State of Ohio, ex rel.
Jonathan R. Flowers, et al.,

Relators,

v.

City of Nelsonville, Ohio, et al.,

Respondents.

Case No. 26CA3

**DECISION AND
JUDGMENT ENTRY**

APPEARANCES:

Garry E. Hunter, Garry E. Hunter Law Offices, Inc., LPA, Athens, Ohio for Relators.

Jonathan E. Robe, Robe Law Office, Athens, Ohio for Respondents.

{¶1} Relators filed a quo warranto action asserting that they are the elected representatives of the City of Nelsonville under the new statutory city government based on the November 2025 election. A year earlier, voters approved a new statutory form of city government in the November 2024 election, by passing “Issue 23,” abolishing the city charter effective January 1, 2026. Relators allege that they were elected to fill those new statutory city offices. Respondents, who were city officials under the charter form of government believe that an emergency city ordinance they passed (Ordinance 54-25) in August 2025 nullified the November 2024 election results abolishing the charter and therefore the prior charter form of government still exists and they are the proper elected officials under the charter.

{¶2} Relators filed a motion for summary judgment in which they argue that they are entitled to judgment as a matter of law because they are entitled to their respective

offices and the respondents are unlawful holdovers. Relators contend that the respondents were members of the charter council whose terms expired on December 31, 2025. However, rather than leave office at the end of their terms, respondents blocked the relators from taking office on January 12, 2026 by holding a council meeting and refusing to allow relators to use the city chamber and city offices. Relators filed their quo warranto action February 5, 2026, less than three weeks after being blocked from office.

{¶3} Respondents oppose the motion. They argue that they repealed Issue 23 (which had abolished the charter) when they enacted Ordinance 54-25 to keep the charter form of government in effect. Respondents claim that they are the duly elected officials of the charter offices because they passed the ordinance to preserve the charter form of government and maintain their offices. Additionally, respondents contend that relators are barred by waiver, estoppel, and laches.

{¶4} The table below lists the parties and their positions:

RELATORS (Statute):

RESPONDENTS (Charter):

Jonathan Flowers – mayor	Cameron Peck/Danette Miller/Devon Tolliver – mayor/city manager/acting city manager
Daniel Sherman – president of council	Cameron Peck – president of council
Andrea Thompson-Hashman – auditor	Nick Smith – alleged auditor, denies it
Members at large: Barbara “Lynn” Bishop Wesley Henderson Jessica Hollenbaugh Glenn Smith Carol Powell	Members at large: Cameron Peck Gregory Clement Nancy Sonick Amy Hollenbaugh Charlotte Beach
Members at large <i>but not relators</i> : <i>Nicole Joseph Saul</i> <i>McCray Powell</i>	Members at large and respondents: Nicole Joseph Saul McCray Powell

I. Factual and Procedural History¹

{¶5} Nelsonville is a city in Athens County. In 1994, the city's voters adopted a city charter effective January 1, 1995.

{¶6} In the November 2024 general election, Nelsonville's voters approved a citizen-led ballot issue, Issue 23, to abolish the city charter and return the city to a statutory form of government effective January 1, 2026. Nelsonville's city council initially refused to pass an ordinance placing Issue 23 on the November 2024 ballot, but citizens involved in the ballot initiative sought and obtained a writ of mandamus from the Athens County Court of Common Pleas ordering the city council to do so. We affirmed the granting of the writ. See *Smith v. Clement*, 2024-Ohio-5220, ¶ 45 (4th Dist.).

{¶7} The body of the petition, which the ballot language copied nearly verbatim, stated as follows:

Shall the Charter of the City of Nelsonville, Ohio, submitted to the Electors of the City of Nelsonville on November 8, 1994, which became effective January 1, 1995, and its subsequent amendments, be abolished and return to the same form of government as it had prior to and up to January 1, 1995, to be effective on Jan 1, 2026?

Upon approval of this initiative submitted to the electors of the City of Nelsonville at the general elections on November 5, 2024, the election of all city offices which were required by the form of government of Nelsonville Ohio prior to January 1, 1995, shall be elected during the municipal elections of 2025. Those elected shall take office on January 1, 2026.

{¶8} As part of the transition, elections for statutory offices were held in the November 2025 general election. Specifically, elections were held for mayor, city auditor, city treasurer, city law director, seven city council members, and council president. The board of elections engaged in preparations for the elections since early 2025. The

¹ Much of the early procedural history is taken from *State ex rel. City of Nelsonville v. Athens County Bd. of Elections*, 2025-Ohio-4363, ¶ 3-11.

statutory races are partisan, and February 5, 2025 was the deadline for filing declarations of candidacy for partisan candidates. The board of elections certified several partisan candidates shortly thereafter. The deadline for independent candidates to file nominating petitions was May 5, 2025 and the board certified several independent candidates on July 15, 2025.

{¶9} Also during early 2025, while the board of elections was engaging in its work, Nelsonville city council had concerns related to the transition. As a result, city council passed an ordinance placing a proposed city-charter amendment on the May 2025 ballot. If adopted, the amendment would have modified, but not repealed, the city charter. If passed, the amendment would have had the practical effect of negating Issue 23. The voters rejected the proposed amendment.

{¶10} After the May 2025 proposed charter amendment failed at the ballot box, on August 11, 2025 the city council passed Ordinance 54-25 that purports to repeal Issue 23 and its abolition of the city charter. The ordinance passed as an emergency measure and immediately took effect. Specifically, Ordinance 54-25 provides:

1. Issue 23, passed by the voters on November 5, 2024, which purports to abolish the Nelsonville City Charter and transition the City to a statutory form of government, is hereby repealed and declared null and void as of the effective date of this Ordinance.

2. Nelsonville City Charter remains in full force and effect, and all existing ordinances, resolutions, and governmental structures established under the charter shall continue uninterrupted until lawfully amended or repealed in accordance with the Ohio Constitution and Nelsonville City Charter.

...

4. The City Council Clerk is directed to certify a copy of this Ordinance and transmit it to the Athens County Board of Elections.

{¶11} Nelsonville believed that the enactment of the ordinance mooted the need for the slate of statutory elections set to appear on the November 2025 ballot. On August

13, 2025, Nelsonville's clerk of council transmitted a certified copy of Ordinance 54-25 to the board of elections. That same day, the board of elections met and took no action regarding the pending statutory races.

{¶12} Immediately on August 13, 2025, Nelsonville filed a complaint for a writ of mandamus or, in the alternative, a writ of prohibition in the Supreme Court of Ohio against the board of elections for an order to remove the slate of statutory positions set to appear on the November 2025 ballot for elected positions within the city of Nelsonville. The Court denied Nelsonville the writs finding that they had not shown a clear legal right to the requested relief. “Here, Nelsonville does not point to a statute or legal precedent requiring, or even authorizing, a board of election to remove races from the ballot when some of those candidates for those races were certified to the ballot over six months earlier.” See *State ex rel. City of Nelsonville v. Athens County Bd. of Elections*, 2025-Ohio-4363, ¶ 35. Thus, the November 2025 elections were held and those statutory offices remained on the ballot.

{¶13} On November 4, 2025, the relators were voted into office into their respective statutory offices for the city of Nelsonville for terms beginning January 1, 2026. Jonathan Flowers was elected mayor; Daniel Sherman was elected president of city council; Andrea Thompson-Hashman was elected city auditor; Brian Elkins was elected city treasurer; Barbara Bishop, Wesley Henderson, Jessica Hollenbaugh, Glenn Smith, and Carol Powell, were each elected members of city council at large. Two other individuals who are not relators, Nicole Joseph Saul and McCray Powell, were elected members of city council at large for terms beginning January 1, 2026 and for the term of December 1, 2025 to December 31, 2025.

{¶14} Based on their answers and affidavits, seven of the respondents admit that they are asserting the right to hold the seven council member at large seats under the charter. Five of them, Cameron Peck, Gregory Clement, Nancy Sonick, Amy Hollenbaugh, and Charlotte Beach were not elected to office by the November 4, 2025 election. Two of them (the two mentioned in the preceding paragraph), Nicole Joseph Saul and McCray Powell, were elected to office by the November 4, 2025 election. Respondent Danette Miller states in her affidavit that she is serving as city manager, which she contends is a position she was appointed to in January 12, 2026. City Manager does not appear as an elected position, but instead is, under the charter, an appointed position made by council under section 4.08(10). Respondent Cameron Peck serves both as a member at large and as the president of city council – the same position that Daniel Sherman asserts he is entitled to serve. Respondent Devon Tolliver admitted that he served as the acting city manager under the charter section 5.03 (police chief to act as acting city manager during the city manager's absence) from December 10, 2025, when city manager Fred Holmes resigned, to January 12, 2026, when Danette Miller was appointed.

{¶15} There are several offices where it appears from the pleadings, affidavits, and exhibits that there are no “double-occupied” offices. Andrea Thompson-Hashman was elected auditor for the statutory council and asserts that Nick Smith is the holdover charter auditor. Nick Smith denies that he is serving in the office of auditor. Jonathan Flowers was elected mayor for the statutory council, but none of the respondents appears to claim entitlement to that office. Instead, the city charter section 4.08 has council members appoint a mayor, who also acts as president of council. Here, Cameron Peck acts as president of council and thus would also appear to serve as mayor. Finally, Brian

Elkins was elected treasurer under the statutory government, but he is not named as a relator and there appears to be nobody claiming a right to be the treasurer under the charter.

RELATORS (Statute):

RESPONDENTS (Charter):

Jonathan Flowers - mayor	Cameron Peck/Danette Miller/Devon Tolliver – mayor/city manager/acting city manager
Daniel Sherman – president of council	Cameron Peck – president of council
Andrea Thompson-Hashman - auditor	Nick Smith – alleged auditor, denies it
Members at large: Barbara “Lynn” Bishop Wesley Henderson Jessica Hollenbaugh Glenn Smith Carol Powell	Members at large: Cameron Peck Gregory Clement Nancy Sonick Amy Hollenbaugh Charlotte Beach
Members at large <i>but not relators</i> : <i>Nicole Joseph Saul</i> <i>McCray Powell</i>	Members at large and respondents: Nicole Joseph Saul McCray Powell

{¶16} Relators filed a memorandum of law in support of their quo warranto action in which they argued that Ordinance 54-25 is an unconstitutional attempt to nullify the electorate’s right to have their votes counted toward the candidate of their choice in the November 2025 election and nullify their vote in the November 2024 election to abolish the city charter. It is an unlawful attempt to legislate the repeal of a vote of the citizens of Nelsonville to change its form of government from a charter to a statutory form of government which is provided in the Ohio Constitution, Article XVIII, Section 8. In addition to the constitutional challenge, relators argue that Ordinance 54-25 suffers from procedural flaws that make it invalid. Procedural failures include: (1) the failure to introduce the ordinance in writing; (2) the failure to publish by posting it in accordance with the charter; (3) the failure to limit the ordinance to only one subject; (4) the failure to

present it to the electors for a vote; and (5) the failure to pass the ordinance with the proper number of council votes.

{¶17} In their answer, Respondents contend to be lawfully serving in office under the charter because they were able to repeal the voter's abolition of the charter through Ordinance 54-25. They also asserted that relators' quo warranto action was barred by laches because the relators should have known by January 2, 2026 that respondents were going to act as holdovers under Ordinance 54-25, but did not file their quo warranto action until February 5, 2026. They also allege that relators are barred by estoppel because the relators made statements that they were elected under the charter and were acting under the charter and are "now changing their tune" and claiming that the charter was never brought back into existence by Ordinance 54-25.

{¶18} Relators filed a summary judgment motion in which they argue that they are entitled to judgment on their quo warranto claims because they were duly elected in the November 2025 election for terms commencing January 1, 2026, were certified and sworn in, and were prevented from taking office by respondents on January 12, 2026. Relators argue respondents are unlawful holdovers and relators' action was timely filed because it was filed less than three weeks after they were denied office. Relators also argue that their claim is not barred by laches or estoppel.

{¶19} Respondents filed a memorandum opposing summary judgment and arguing that Ordinance 54-25 abolished the statutory offices that were to take effect January 1, 2026. They argue that the ordinance was constitutional and that it was procedurally proper. Respondents address some, but not all, of the relators' identified procedural failures by arguing that (1) the requirement that the ordinance be in writing "doesn't require a physically printed version" and (2) the failure to publish by posting it in

accordance with the charter does not impact its effectiveness because it became effective when passed. Respondents do not address the remaining three procedural flaws: (3) the failure to limit the ordinance to only one subject; (4) the failure to present it to the electors for a vote; and (5) the failure to pass the ordinance with the proper number of council votes. Instead, respondents claim that there was a legitimate emergency because council members believed returning to a statutory government “would yield even more chaos.”

II. Legal Analysis

{¶20} “To be entitled to the writ of quo warranto, the relator must establish that the office is being unlawfully held and exercised by respondent and that relator is entitled to the office.” *State ex rel. Zeigler v. Zumbar*, 2011-Ohio-2939, ¶ 23. “The remedy afforded by quo warranto is a judgment of ouster, and a judgment of ouster can be pronounced in no other proceeding.” *Ohio Hosp. Assn. v. Community Mut. Ins. Co.*, 31 Ohio St.3d 215, 218, (1987). “[I]f the pertinent facts are uncontroverted and it appears beyond doubt that relator is entitled to the requested extraordinary relief in quo warranto, a peremptory writ will be granted. *State ex rel. Johnson v. Richardson*, 2012-Ohio-57, ¶ 14. Summary judgment can be rendered only when “reasonable minds can come to but one conclusion and that conclusion is adverse to the party against whom the motion for summary judgment is made, that party being entitled to have the evidence or stipulation construed most strongly in the party's favor.” Civ.R. 56(C).

The burden of showing that no genuine issue of material fact exists falls upon the party who files for summary judgment. Once the movant supports his or her motion with appropriate evidentiary materials, the nonmoving party “may not rest upon mere allegations or denials of the party's pleadings, but the party's response, by affidavit or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial.”

(Citations omitted.) *Byrd v. Smith*, 2006-Ohio-3455, ¶ 10.

A. Respondents' Affirmative Defenses

{¶21} Relators moved for summary judgment on their quo warranto claims and in their motion, they addressed certain respondents' affirmative defenses (i.e., laches, and estoppel). Relators set forth facts in support and argue that there are no genuine issues of material fact as to those affirmative defenses and therefore the defenses do not stand as a bar to their relief.

{¶22} Respondents address respondents' affirmative defenses by arguing that "those issues are properly dealt with when the *Respondents* file their own motion for summary judgment." (Emphasis sic.) Respondents explain that they will be filing a separate motion for judgment on the pleadings which will resolve the issue of law – "namely that Ordinance 54-25 lawfully repealed Issue 23." Respondents conclude that if the case "develops beyond such stage, then this court will be in a position to decide the issues of laches and estoppel at that stage."

{¶23} However, we are in the position to decide the issue of respondents' affirmative defense now. According to the law established by the Supreme Court of Ohio, the relators had no obligation to address respondents' affirmative defenses in their motion for summary judgment. "The language of Civ. R. 56 and our case law do not support the proposition that a party moving for summary judgment has the burden to prove its case and disprove the opposing party's case as well." *Todd Dev. Co., Inc. v. Morgan*, 2008-Ohio-87, ¶ 13. Instead, in response to relators' summary judgment motion, respondents had to "submit evidence showing a genuine issue of material fact with respect to their affirmative defenses." *Id.* at ¶ 18. "A moving party does not need to offer evidence on every defense raised by the nonmoving party. To impose such a requirement would delay the filing of summary judgment motions and increase the expense of litigation." *Id.* at ¶

21. Where a non-moving party fails to raise a genuine issue of material fact in response to a summary judgment motion, the trial court properly grants summary judgment on those defenses. *Id.* at ¶ 24.

{¶24} Respondents have not submitted any evidence in support of their affirmative defenses, incorrectly arguing that they had no obligation to do so. As a result, we find that relators are entitled to a summary judgment in their favor as to respondents' affirmative defenses. Neither laches, estoppel, nor any of the other affirmative defenses asserted by respondents in their answer bar the relators' quo warranto claims.

B. The Proper Parties

{¶25} Next we must parse out who is ousting whom in this action. Because the relators are purported office holders under a statutory form of government and respondents are purported office holders under a charter form of government, the offices do not line up one-for-one. The pleadings and other filings in this case do not make it readily apparent which office holder is attempting to oust another. Instead, they largely assert rights collectively as one group against the other group.

1. City Manager

{¶26} As our table shows, there is an unelected, appointed "city manager" Danette Miller named as a respondent. Danette Miller is not an "elected official" so one question is whether a city manager, a position that is appointed by city council, is a "public officer" and therefore a proper party in a quo warranto action. "Quo warranto is the exclusive remedy to litigate the right of a person to hold a *public office*." (Emphasis added.) *State ex rel. Deiter v. McGuire*, 2008-Ohio-4536, ¶ 20. In *State ex rel. Branch v. Pitts*, 2018-Ohio-1184, ¶ 33 (8th Dist.), the court found that a party could not maintain a quo warranto action against the position of "clerk of council" because it was not an elected position, nor

was it “a public position to which a portion of the legislative, executive, or judicial authority attach[ed].” *Id.* Instead, it was an appointed position that served as an employee of council to keep records and perform other daily business at council’s direction. However, courts have unanimously held that a city manager position, also an appointed position by council, is a public office whose holder can be ousted via a quo warranto action. *State ex rel. Gerhardt v. Krehbiel*, 38 Ohio St.2d 90, 98 (1974) (granting a writ of quo warranto to a city manager against another holding the office of city manager); *Beasley v. City of East Cleveland*, 20 Ohio App.3d 370, 373 (8th Dist. 1984) (“For the purpose of quo warranto proceedings, a city manager’s position is a public office.”); *State ex rel. Madden v. Sexton*, 2024-Ohio-5596, ¶ 16 (2d Dist.) (“There is no dispute among the parties that ‘Municipal Manager’ is a public office.”).

{¶27} Having established that city manager is a public office and subject to ouster by a writ of quo warranto, the second question is who is asserting a quo warranto claim against her? None of the relators claim to be holding the office of city manager. In contrast in *Gerhardt*, *Beasley* and *Madden*, *supra*, a person claiming to have a clear legal right to the office of city manager was asserting a claim against another city manager alleged to have been holding the office unlawfully. Here, the city manager position is appointed by council under the charter, whereas the relators each assert offices under the statutory government. Because the office of city manager is an appointed position and no relator is claiming a right to this public office, we do not believe a quo warranto action is the proper vehicle to oust the city manager under the circumstances of this case. If the lawful members of city council either (1) deem her position extinguished under the statutory form of government or (2) terminate her as city manager under the charter, and she refuses to

leave office, then legal action against her may be appropriate. Thus, we dismiss the quo warranto claim against Danette Miller.

{¶28} We also dismiss the quo warranto claim against Devon Tolliver. Tolliver denied that he was serving as city manager and that the only time he served as city manager was pursuant to Section 5.03 of the charter, by which the police chief is appointed acting city manager in the city manager's absence. Thus, we dismiss the claim against Devon Tolliver because he is not claiming a right to serve as acting city manager, and even if he were, as with Danette Miller, there is no relator attempting to oust him and claim the office of acting city manager.

2. Auditor

{¶29} Andrea Thompson-Hashman is the statutory auditor who brings a claim to oust Nick Smith, the alleged charter auditor. However, based on the parties' pleadings, Nick Smith flatly denies that he holds the office of auditor. Other respondents admit that they hold offices but deny that they do so unlawfully. Nick Smith does not. He denies holding the office. Our review of the parties' affidavits likewise uncovers no testimony establishing that Nick Smith is holding the office of auditor. Based on all the evidence in the record before us, we can find no basis for a quo warranto claim against Nick Smith.

{¶30} Andrea Thompson-Hashman has established by affidavit testimony and related election certification that she is the duly elected auditor by the November 2025 election. But her affidavit contains no assertions against Nick Smith and she has provided no evidence that Nick Smith or anyone else holds the auditor office unlawfully. Neither Nick Smith nor any of the other respondents presented evidence of a right to lawfully hold the "charter" auditor office. Thus, Andrea Thompson-Hashman has established the first prong of a quo warranto action – that she is entitled to the office of auditor, but she has

failed to establish the second prong – that the office is being unlawfully held by anyone else. The only relief we may order under R.C. 2733.14 is an order of ouster and because there is no other person occupying the auditor's office, we cannot order an ouster. For that reason, we dismiss the quo warrant claim by Andrea Thompson-Hashman against Nick Smith.

3. Council Members at Large

{¶31} Respondent council member at large Cameron Peck serves as charter mayor, charter president of council, and is a charter member at large. Therefore, statutory mayor Jonathan Flowers and statutory president of council Daniel Sherman both have quo warrant claims against Peck as the record establishes that Peck is holding multiple offices.

{¶32} In the November 2025 election, voters elected seven “statutory” members to positions of council members at large. Charter section 4.01 similarly identifies seven “charter” council members at large. Those seven statutory council members at large include five of the relators: (1) Barbara “Lynn” Bishop, (2) Wesley Henderson, (3) Jessica Hollenbaugh, (4) Glenn Smith, and (5) Carol Powell. However, two others made up those elected seven statutory council members at large: (1) Nicole Joseph Saul and (2) McCray Powell. The five relators do not specifically assert one-to-one claims against the seven “charter” council members at large, whom they identify as: (1) Cameron Peck, (2) Gregory Clement, (3) Nancy Sonick, (4) Amy Hollenbaugh, (5) Charlotte Beach, and the two newly elected statutory council members at large (6) Nicole Joseph Saul and (7) McCray Powell. Therefore, five statutory council members at large are seeking to oust seven council members, two of whom are also statutory council members elected in the same manner as the other five statutory council members in November 2025.

{¶33} We can find no legal basis for the five statutory council members at large to assert quo warranto claims against the two other statutory council members at large. Nicole Joseph Saul and McCray Powell appear, from the evidence and record before us, to be duly elected as two of the seven statutory council members at large. We can also find no legal basis for one council member at large to be entitled to oust more than one other council member at large. There are seven positions under the statute and there are seven positions under the charter. To the extent that Nicole Joseph Saul and McCary Powell were charter members at large prior to the November 2025 election, their elected positions resulting from the November 2025 election are now statutory members at large. Therefore, we dismiss the quo warranto claims asserted against Nicole Joseph Saul and McCary Powell.

4. Remaining Parties and Claims

{¶34} We have dismissed the claims against city manager Danette Miller, former acting city manager Devon Tolliver, purported auditor Nick Smith, and statutory council members at large Nicole Joseph Saul and McCary Powell. That leaves quo warranto claims asserted by (1) Johnathan Flower against Cameron Peck for the office of mayor, (2) Daniel Sherman against Cameron Peck for the office of president of council, and (3) the five statutory members at large (Bishop, Henderson, J. Hollenbaugh, Glenn Smith, and C. Powell) against the five charter members at large (Peck, Clement, Sonick, A. Hollenbaugh, and Beach).

C. The Quo Warranto Claims

{¶35} Relators assert that they are entitled to office and that the respondents are unlawfully holding office. Based on all the evidence submitted, we find that relators have established that they are the duly elected statutory officeholders for mayor, president of

city council, and council members at large and are entitled to hold those offices. The official election results from the November 2025 election, the subsequent certificates of elections issued by the board of elections, and the official oaths of office all establish beyond doubt that the relators are entitled to hold their respective public offices. However, the question of whether the charter office holders are unlawfully holding office depends on whether Ordinance 54-25 is procedurally and/or constitutionally invalid. Thus, the relators ask this court to declare that Ordinance 54-25 is invalid.

{¶36} We do not have jurisdiction to issue a declaration concerning the validity of Ordinance 54-25. “Courts of appeals lack original jurisdiction over claims for declaratory judgment.” *State ex rel. City of East Cleveland v. Dailey*, 2020-Ohio-3079, ¶ 4. Even though respondents do not challenge our jurisdiction over this aspect of the relators’ action, the issue implicates the court’s jurisdiction and can be raised sua sponte. *State ex rel. Hill v. LaRose*, 2026-Ohio-1601, ¶ 28 (court lacked original jurisdiction to declare statute unconstitutional and could raise the issue sua sponte). Because we lack original jurisdiction to issue declaratory judgments, we have no jurisdiction to declare Ordinance 54-25 unconstitutional or otherwise invalid. Because we lack jurisdiction to issue a declaratory judgment that Ordinance 54-25 is invalid and that is the only ground by which relators challenge respondents’ entitlement to office, the relators have not shown that the respondents hold the office unlawfully.

{¶37} We recognized that the governance of the City of Nelsonville has been in flux since the passage of Ordinance 54-25. We further recognized that the citizens have been forced to engage in legal proceedings against city council since their initial efforts to abolish the charter. See *Smith v. Clement*, 2024-Ohio-5220 (4th Dist.). However, we do not have original jurisdiction to declare Ordinance 54-25 invalid as relators ask. If a

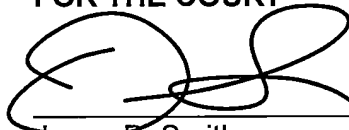
court with original jurisdiction were to issue a declaratory judgment declaring Ordinance 54-25 invalid (on either the procedural or constitutional grounds, or both) then relators would have the requisite authority to come before us and show that the respondents are unlawfully holding office. However, without a declaratory judgment from a court with original jurisdiction to do so, we find that relators have failed to meet their burden of proof that respondents are unlawfully holding office.

{¶38} Accordingly, the request for writ is **DENIED**.

The clerk is **ORDERED** to serve a copy of this order on all counsel of record and unrepresented parties at their last known addresses by ordinary mail. **IT IS SO ORDERED.**

Abele, J., & Wilkin, J.: Concur.

FOR THE COURT

A handwritten signature in black ink, consisting of a large, stylized 'J' followed by a series of loops and a horizontal stroke.

Jason P. Smith
Presiding Judge