

IN THE SUPREME COURT OF OHIO

STATE *ex rel.* THE CITY OF
NELSONVILLE, OHIO, et al.

Relators,

v.

THE ATHENS COUNTY BOARD
OF ELECTIONS, et al.

Respondents.

Case No. 2025-1061

Original Action in
Mandamus and Prohibition

Expedited Election Matter
Under S.Ct.Prac.R.12.08

MERIT BRIEF OF RELATORS, THE CITY OF NELSONVILLE, OHIO AND
THE NELSONVILLE CITY COUNCIL

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INTRODUCTION

Perhaps it is best to start with the proverbial elephant in the room. In November 2024, the citizens of Nelsonville voted on, and enacted, Issue 23—a citizen initiative to abolish Nelsonville’s City Charter. And now, we are all here before this Court, less than a year later, because Nelsonville’s City Council recently enacted Ordinance 54-25, an emergency measure that repeals Issue 23. Nelsonville acknowledges its late in the calendar enactment of this ordinance causes numerous inconveniences. Despite that, Nelsonville respectfully submits that the enactment was lawful, and the inconvenience was necessary to avoid worse outcomes here.

And some might even characterize City Council’s actions here as a noble last effort of dedicated civil servants designed to preserve vital city services—enacted *only after* efforts to give effect to Issue 23 were exhausted. Still others might call it tyranny. ***But importantly, this Court has no place in that political discussion.*** Indeed, ninety years ago this Court established that a city council has the power under its home rule authority to ignore the *vox populi* when it is enacted via an initiated ordinance, as was the case here. *See e.g., State ex rel. Singer v. Cartledge*, 129 Ohio St. 279, 282 (1935).

Now, this is not a frequently litigated issue because, as *Singer* cautions, although a city has this power under its home rule authority, the electorate retains the ultimate recourse of defeating any offending councilpersons at reoccurring municipal elections. *Id.* at 285. Accordingly, judgment on the prudence of this Ordinance is reserved for a different venue: the ballot box.

Before this Court is the legality of the Ordinance, and its effect on the upcoming general election. Nelsonville, understanding the relief requested is complicated, submits that the law at issue here is clear. As litigated in the Fourth District last year, Issue 23 was a citizen-initiated ordinance governed by Article X of the City Charter. And *Singer* expressly provides that a city retains the home rule power to overturn such an initiative—even prior to its enactment date. This Court’s subsequent jurisprudence on home rule authority only reinforces this point.

And after establishing the constitutionality of Ordinance 54-25, as the law demands here, Nelsonville is plainly entitled to relief to give that enactment its lawful effect as it pertains to the upcoming elections, as outlined fully below.

Nelsonville suggests that the best way to eat this elephant is one bite at a time, starting from the beginning.¹

STATEMENT OF FACTS

I. Nelsonville Is, and Was, a Charter City Operating Under a Duly Enacted Municipal Charter at all Times Relevant to this Matter.

Currently, Nelsonville is governed by the Nelsonville City Charter (the “Charter”), adopted pursuant to Article XVIII, Section 8 of the Ohio Constitution. *See generally* Nelsonville City Charter (Nelsonville App’x 002–016).² The Charter was adopted by the voters in November 1994 and went into effect on January 1, 1995. *Id.*

¹ Regardless of any outcome, Nelsonville sincerely appreciates the Court hearing this matter on the merits, and the finality that any ruling here might bring.

² A copy of the Charter, relevant ordinances, and court filings are attached in the Appendix of this brief. For convenience, Nelsonville has Bates stamped the Appendix and provided page numbers for those citations.

The Charter remains the operative governing document of Nelsonville, establishing its home rule authority and outlining the structure of governance to this day. *Id.*

The Charter provides for a city council. *See* Nelsonville City Charter, Article IV (Nelsonville App’x 002–004). The Charter vests the legislative powers of Nelsonville to the Nelsonville City Council. *Id.* at §§ 4.01, 4.08 (Nelsonville App’x 002–003). Pursuant to the Charter, past elections, and appointment actions of Nelsonville City Council, the current members of City Council are Mr. Gregg Clement (President), Mr. Cory Taylor (Vice President), Mr. Jonathan Flowers, Mr. Wesley Henderson, Mr. Opha Lawson, and Ms. Nic Joseph Saul. (Robe Aff. ¶ 5).

Notably, regardless of the outcome of this matter, all the currently sitting City Council members’ terms expire on November 30, 2025. (*See id.* at ¶ 35); Nelsonville City Charter § 4.03 (Nelsonville App’x 003).

II. Issue 23 to Abolish the Nelsonville City Charter was Enacted as a Charter Initiative Pursuant to the City Charter.

A. Nelsonville Is Presented with an Initiative Petition Seeking to Abolish the City Charter, Pursuant to Article X of the Charter.

On May 28, 2024, the Nelsonville Clerk of Council received a citizen initiative petition (the “Initiative Petition”)—*pursuant to Article X of the Charter*—to abolish the Charter. (Robe Aff. ¶ 6; *see also* Petition for Mandamus at Ex. 1, *Smith v. Clement*, No. 24CI0180 (Athens C.P.) (Nelsonville App’x 050–052)). Nelsonville took the position that it could not consider the Initiative Petition as presented because Article X of the Charter could not be used to abolish the Charter, only amend it. (Robe Aff. ¶ 7). Instead, Nelsonville maintained that abolishing a city charter must follow the procedures set forth in Article XVIII of the Ohio Constitution. (*Id.*).

On July 8, 2024, Nelsonville communicated to the voters commencing the initiative petition—through their legal counsel—and informed them of Nelsonville’s interpretation of this issue, that City Council would not certify the petition pursuant to Article X of the Charter, and directing them to the procedures outlined in Article XVIII, Section 9 of the Ohio Constitution to achieve their objective of placing that issue on the ballot. (Robe Aff. ¶ 8, Ex. A).

B. Two Voters Sue Nelsonville Seeking to Have the Initiative Petition Placed on the Ballot Pursuant to Article X of Nelsonville’s City Charter.

On July 18, 2024, Greg Smith (as a resident of Nelsonville) and Vicki McDonald (as a member of the petition committee), through counsel,³ sued Nelsonville in the Court of Common Pleas for Athens County. (See Petition for Mandamus, *Smith v. Clement*, No. 24CI0180 (Athens C.P.) (Nelsonville App’x 041–060)). Shortly thereafter, the complaint was amended to include the Athens County Board of Elections and it sought to: (1) compel Nelsonville City Council to certify the Initiative Petition to the Athens County Board of Elections; and (2) require the Athens County Board of Election to place the Initiative Petition on the ballot for the November 2024 general election. (See Am. Petition for Mandamus, *Smith v. Clement*, No. 24CI0180 (Athens C.P.) (Nelsonville App’x 062–083)).

Following a preliminary injunction hearing, the trial court issued two orders, including a permanent and preliminary injunction against the Nelsonville City Council. (See Preliminary Injunction and Permanenent [sic] Injunction Order, *Smith*

³ Mr. Smith and Ms. McDonald were represented by Attorney Daniel Klos, who represents Intervening Respondent Hashman here. (See Robe Aff. ¶ 8).

v. Clement, No. 24CI0180 (Athens C.P.) (Nelsonville App'x 085–090)). Nelsonville filed a notice of appeal, and the trial court issued an order staying its prior orders. (See Stay Order Pending Appeal, *Smith v. Clement*, No. 24CI0180 (Athens C.P.) (Nelsonville App'x 117–118)). Ultimately, the Fourth District dismissed the appeal for lack of a final appealable order on August 26, 2024, and remanded the matter for further proceedings. (See Judgment Entry, *Smith v. Clement*, No. 24CA17 (4th Dist.) (Nelsonville App'x 142–153)).

On September 13, 2024—following the Fourth District's remand and also after the August 7, 2024 statutory deadline to certify ballot initiatives to the Secretary of State—the trial court issued an order granting a preliminary injunction and peremptory writ of mandamus requiring Nelsonville to certify the Initiative Petition pursuant to Article X of its Charter and for the Athens County Board of Elections to certify the initiative petition and place it on the November 2024 ballot. (See Preliminary Injunction Two and Preemptive [sic] Writ of Mandamus Entry & Order, *Smith v. Clement*, No. 24CI0180 (Athens C.P.) (Nelsonville App'x 120–133)).

C. Nelsonville and the Athens County Board of Elections Appeal the Trial Court's Decision to the Fourth District Court of Appeals.

On the same day the trial court issued its Orders, Nelsonville promptly filed a notice of appeal, and the trial court entered a second stay order pending that appeal. (See Entry & Order of Stay Pending Appeal II, *Smith v. Clement*, No. 24CI0180 (Athens C.P.) (Nelsonville App'x 135–140)). However, on September 18, 2024, the Fourth District lifted the stay. (Judgment Entry, *Smith v. Clement*, No. 24CA28 (4th Dist.) (Nelsonville App'x 155–158)). So, in compliance with the trial court's order, and

while the appeal was pending, the Nelsonville City Council enacted an ordinance certifying the Initiative Petition to the Athens County Board of Elections pursuant to Article X of the Charter. *See* Nelsonville Ord. 83-24 (Nelsonville App’x 018–021); (Robe Aff. ¶ 10). Then, on September 26, 2024, the Athens County Board of Elections adopted Resolution 2024-1, which certified the Initiative Petition to the Ohio Secretary of State. (Robe Aff. ¶ 11, Ex. B).

After expedited briefing and oral argument, the Fourth District issued a decision on October 31, 2024, modifying the trial court order, and affirming the order as modified. *State ex rel. Smith v. Clement*, 2024-Ohio-5220, ¶ 31 (4th Dist.) (Nelsonville App’x 175). Specifically, the Fourth District unequivocally held that “the initiative to abolish the city charter of Nelsonville [Issue 23] is governed by Article X of its charter.” *Id.* The Fourth District further found procedural faults with the trial court’s ruling, deeming them harmless error. *Id.*

Nelsonville City Council filed a jurisdictional appeal to this Court following the Fourth District’s decision. On February 18, 2025, this Court declined review. *See 02/18/2025 Case Announcements*, 2025-Ohio-481.

III. Issue 23 Appears on the General Election Ballot, Passes, and Nelsonville Proceeds to Govern Throughout 2025 While Planning for the Transition.

A. Issue 23 Is Adopted by the Voters.

The Initiative Petition appeared on the ballot as Issue 23. (*See* Robe Aff. ¶ 12). And on November 5, 2024, the citizens of Nelsonville voted and passed Issue 23. (*Id.* at ¶ 12, Ex. C). But Issue 23 was a barebones enactment that did two things, and only two things according to its own text. First, it called for the end of the charter form of

government effective January 1, 2026, in favor of the statutory form of government in effect before January 1, 1995. Second, it called for any elected offices under the pre-1995 form of government to be elected during “the municipal elections of 2025.” (*Id.* at ¶ 20; *see also id.* at Ex. C).

And that is it. Issue 23 did not provide any transition plan to enact its effect. (*Id.* at ¶ 21).⁴ Additionally, Issue 23 did not restrict—in any manner whatsoever—the current government’s authority under the Charter prior to January 1, 2026. (*See id.*).

B. Nelsonville Attempts to Give Effect to Issue 23 and Encounters Several Serious Issues.

Despite the lack of any transition guidance, the Nelsonville City Council attempted several intermediary steps to give effect to the electorate’s enactment of Issue 23. First, Nelsonville created the Advisory Commission on the Implementation of Issue 23 (the “Advisory Commission”). Nelsonville Ord. 98-24 (Nelsonville App’x 023–025). The Advisory Commission is an independent commission that was tasked with gathering information to identify issues and present suggestions and solutions so Nelsonville could transition to the statutory form of government in accord with Issue 23. *Id.*; (Robe Aff. ¶¶ 13–14).

And the Advisory Commission identified several issues with the transition from the Charter to the statutory form of government, as called for by Issue 23. First,

⁴ Notably, Judge McCarthy, the original trial court judge in the Issue 23 litigation, expressed this concern in his first stay order: “the Court has concerns if the initiative’s timetable for a possible transition is long enough to be considered reasonable.” (*See Stay Order Pending Appeal, Smith v. Clement*, No. 24CI0180 (Athens C.P.) (Nelsonville App’x 118)).

there was no transitional authority for Nelsonville to establish wards for the statutory council positions, nor was there any authority for Nelsonville to set salaries for elective offices under the statutory form of government. (*See Robe Aff.* ¶ 15). Without a mechanism to establish wards, the Athens County Board of Elections determined that individuals running for the statutory city council would run “at large.” (*Id.* at ¶ 23).

Even more troubling, was an approaching “December Problem” and lack of transitional authority for the Nelsonville Police and Fire Departments. (*Id.* at ¶ 15). Under the Charter, Nelsonville City Council terms run from “the first Monday of December next following their election . . .” Nelsonville City Charter § 4.01 (Nelsonville App’x 002–003). But the elected positions under the statutory form of government would not go into effect until January 1, 2026, leading to a month without an authorized city council. (*See Robe Aff.* ¶ 12; *see also id.* at Ex. C). Further, without transitional authority for Nelsonville’s Police and Fire Department, the statutory government city council would need to affirmatively re-authorize these departments, which could lead to a gap in these necessary emergency services. *See R.C. 715.05* (providing in relevant part, that a municipality “may organize and maintain police and fire departments”); *see also State ex rel. Ohio Civ. Serv. Emps. Asso. v. Coshocton*, 5 Ohio App.3d 5, 6 (5th Dist. 1982) (interpreting R.C. 715.05 as permissive).

IV. To Rectify the Transition Concerns with Issue 23, Nelsonville Presents Issue 4 to the Voters, but the Initiative Does Not Pass.

Given the above, the transition from the Charter to the statutory form of government was proving to present more challenges than seemed surmountable, even

just a few months after the November 2024 election. Since Issue 23 was passed as an initiative pursuant to Article X of the Charter, Nelsonville retained power under that same Article to repeal it. *See* Nelsonville City Charter §10.06(A) (Nelsonville App’x 013).

But understanding that voters passed Issue 23, Nelsonville sought an intermediary measure before opting for Council action to address these concerns. Specifically, the City submitted these issues back to the voters during the May 2025 primary election. Thus, in an effort to give effect to the will of the voters, while also eliminating the serious issues surrounding the transition, the Acting Nelsonville City Manager prepared a proposed amendment to the Charter to submit to the voters, pursuant to Article XVIII, Section 9 of the Ohio Constitution. (Robe Aff. ¶¶ 16–17, Ex. E); Nelsonville Ord. 05-25 (Nelsonville App’x 028–033). The proposed amendment mirrored the effect of Issue 23, replacing the appointed City Manager office under the Charter, with an elected Mayor—as is in the statutory form of government. (Robe Aff. ¶¶ 16, 18, Ex. E). And it proposed to further restructure City Council to mirror the statutory form of government. (*Id.*).

Nelsonville City Council enacted Ordinance 05-25, certifying the submission of the proposed amendment to the Athens County Board of Elections. Nelsonville Ord. 05-25 (Nelsonville App’x 028–033); (Robe Aff. ¶ 16, Ex. C). And on May 6, 2025, Issue 4 appeared on the ballot, but that ballot measure narrowly failed. (Robe Aff. ¶ 19, Ex. F). Thus, the transition issues remained unaddressed.

V. Nelsonville City Council Uses Its Home Rule Authority to Enact Ordinance 54-25, Repealing Issue 23.

On August 11, 2025, having grown increasingly concerned about the lack of transition plan and other mounting issues related to the upcoming transition—and following the Fourth District’s holding that Article X of the Charter applied to Issue 23—the Nelsonville City Council enacted Ordinance 54-25, which repealed Issue 23. Nelsonville Ord. 54-25 (Nelsonville App’x 037–039); (Robe Aff. ¶ 32).

Ordinance 54-25 rendered Issue 23 null and void and stated that the “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 the Nelsonville City Charter.” Nelsonville Ord. 54-25 (Nelsonville App’x 038–039).⁵ Additionally, the Ordinance instructed the Clerk of Council to transmit a certified copy of the Ordinance to the Athens County Board of Elections. *Id.* (Nelsonville App’x 039).

VI. The Athens County Board of Elections Refuses to Apply the Effect of Ordinance 54-25, Creating Chaos and Uncertainty Over the Current Status of Elections on the General Election Ballot.

Prior to Ordinance 54-25, naturally, the Athens County Board of Elections was proceeding to place races for statutory positions on the November 2025 ballot. But in abolishing Issue 23, those positions ceased to exist. *See* Nelsonville Ord. 54-25

⁵ Two members of Nelsonville City Council who voted in favor of Ordinance 54-25—Mr. Wesley Henderson and Ms. Nic Joseph Saul—are certified candidates for council under the now-invalid statutory form of government but are not, at this time, candidates under the Charter—as those positions have not been added to the ballot.

(Nelsonville App'x 037–039). Post-abolishment of Issue 23, the November 2025 ballot should contain the races for elected seats authorized under the Charter. *Id.*; *see also* Nelsonville City Charter §§ 4.01, 4.03, 6.06.01, 6.06.05, 6.06.07 (Nelsonville App'x 002–003, 007–008).

On August 13, 2025, the Clerk of Council certified and delivered a copy of Ordinance 54-25 to the Athens County Board of Elections. (Robe Aff. ¶ 33, Ex. M). That same day, the Athens County Board of Election held a regular meeting to certify petitions. (*Id.* at ¶ 34; Joint Stip. ¶ 2, Ex. A). At that meeting, the Athens County Board of Elections declined to decertify or take any other action on the elections under Issue 23. (Robe Aff. ¶ 35; Joint Stip. ¶ 2, Ex. A).

After the repeal of Issue 23, additional write-in candidates filed declarations of intent with the Athens County Board of Elections. (*See* Joint Stip. ¶ 3). Write-in candidates had until August 25, 2025, at 4:00 pm to file. (*Id.* at ¶ 1(k)). By that deadline, the Athens County Board of Elections had received write-in declarations for candidates seeking seats under ***both*** the statutory form of government and the Charter. (*Id.* at ¶ 3, Ex. B). Further, the deadline to file protests against write-in candidates was August 29, 2025. (*Id.* at ¶ 1(l)). Accordingly, Nelsonville filed a protest with the Athens County Board of Elections against the write-in candidacies of Fred Holmes, Nancy Sonick, Brian Elkins, Nicholas Smith, and Carol Sue Powell, as these

candidates are seeking election to offices that no longer exist after Ordinance 54-25 repealed Issue 23. (Spyker Aff. ¶ 4, Ex. A).⁶

As it stands, the statutory government elections remain on the ballot, and the Charter elections have not been added on. (Robe Aff. ¶ 35). But it is worth noting that several of the now invalid races under the statutory form of government have analogous offices that would be up for election this fall under the Charter:

Statutory Form of Government	Government Under the Charter
<u>Mayor</u> • Mr. Jonathan Flowers • Mr. Fred Holmes • Ms. Nancy Sonick	N/A
<u>City Auditor</u> • Ms. Andrea Thompson Hashman • Mr. Nicholas Smith	<u>City Auditor</u> • Not up for election, current term expires in 2027
<u>City Treasurer</u> • Mr. Brian Elkins	<u>City Treasurer</u> • Up for election
<u>City Law Director</u> • No Candidates	N/A
<u>Council President</u> • Mr. Daniel Sherman	N/A
<u>7 City Council Seats</u> • Ms. Lynn Bishop • Mr. Wesley Henderson • Ms. Jessica Hollenbaugh • Mr. McCray Powell • Ms. Nic Joseph Saul • Mr. Glenn Smith • Ms. Carol Sue Powell	<u>7 City Council Seats</u> • Four seats, for four-year terms are up for election • Three seats, for two-year terms are up for election • Mr. Cameron Peck (December Term) • Mr. Cory Taylor (December Term) • Ms. Nic Joseph Saul (Full Term) • Mr. McCray Powell (Full Term)

⁶ In lead up the to November general election, Nelsonville did not file protests against partisan and independent candidates seeking election to office under the statutory government, because Issue 23 was still in effect and there was nothing to protest. Once Nelsonville enacted Ordinance 54-25 on August 11, 2025, the protest deadlines for partisan and independent candidates had already passed. *See* Nelsonville Ord. 54-25 (Nelsonville App’x 037–039); (Joint Stip. ¶ 1(c), (e), (h)).

(Robe Aff. ¶¶ 25–31, 36; Joint Stipulation ¶ 3, Ex. B). The key differences are that under the Charter, there are no offices for Mayor, City Law Director, or an elected Council President. *See generally* Nelsonville City Charter (Nelsonville App’x 002–016). The same number of City Council seats are eligible for election under the Charter this year as would be under the statutory form of government. (Robe Aff. ¶¶ 20, 29, 36).

LEGAL STANDARD

Count One of Nelsonville’s Original Action seeks relief in mandamus. (Compl. ¶¶ 60–66). Count Two is an alternative claim, seeking relief on the same operative facts, but in prohibition. (*Id.* at ¶¶ 67–71).⁷ The standards at issue are well settled.

To be entitled to a writ of mandamus, Relators must establish (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 law. *State ex rel. City of Maumee v. Lucas Cty. Bd. of Elections.*, 2025-Ohio-2516, ¶ 33.

To be entitled to a writ of prohibition, relators must establish (1) respondents exercised or are exercising quasi-judicial power, (2) the exercise of that power was or is unlawful, and (3) relators lack an adequate remedy in the course of law. *State ex rel. Peterson v. Licking Cnty. Bd. of Elections*, 2024-Ohio-646, ¶ 18.

⁷ Counts Three and Four sought peremptory writs. (*Id.* at ¶¶ 72–77). These counts are now moot since the Court has ordered evidence and briefing. *See State ex rel. Shabazz v. Russo*, 2025-Ohio-855, ¶ 1 (Kennedy, C.J., dissenting).

LAW AND ARGUMENT

I. Ordinance 54-25 Is a Lawful Exercise of Nelsonville’s Home Rule Authority.

This cause is before the Court because on August 11, 2025—*85 days prior to the 2025 November general election*—Nelsonville passed Ordinance 54-25. The Ordinance at issue abolished Issue 23—a voter adopted citizen charter initiative that had been set to revert Nelsonville back to a statutory form of government effective January 1, 2026. Further, Ordinance 54-25 calls for a change to the slate of elected offices set to appear on this year’s general election ballot for Nelsonville.

At the outset, Nelsonville acknowledges any entitlement it has to relief here turns on the constitutionality of Ordinance 54-25. Thus, that is a natural place to begin. Indeed, Intervening Respondent Ashley Hashman—a candidate for an elected office abolished by Ordinance 54-25—makes a direct facial challenge to the constitutionality of Ordinance 54-25. (Hashman Mot. to Intervene 3; Hashman Ans. 3d Aff. Def.). Notably, the party Nelsonville seeks relief from Respondent Athens County Board of Elections, does not seemingly make the same challenge. (*See* Resp. Ans. ¶¶ 51–52).

Nelsonville did not take this action lightly. Ordinance 54-25 is in full compliance with the Fourth District case law governing this specific issue, and nearly 100 years of precedent of this Court explaining Nelsonville’s home rule authority. As discussed fully below, Ordinance 54-25 was a lawful execution of Nelsonville’s home rule authority.

A. Ordinance 54-25 Is Entitled to a Presumption of Constitutionality. And Any Challenge to the Constitutionality must Be Proven Beyond a Reasonable Doubt.

Initially, this Court has frequently observed that that it must “presume the constitutionality of lawfully enacted legislation.” *Arnold v. City of Cleveland*, 67 Ohio St.3d 35, 38 (1993). And it must be noted that Ms. Hashman bears the burden of proving Ordinance 54-25 is unconstitutional—and the burden is high here, requiring proof beyond a reasonable doubt. *See Hilton v. Toledo*, 62 Ohio St.2d 394, 396 (1980) (“[I]t is incumbent upon the party alleging unconstitutionality to bear the burden of proof, and to establish his assertion beyond a reasonable doubt.”).

The high burden imposed here makes sense. Because as this Court has observed, the “ability to invalidate legislation is a power to be exercised only with great caution and in the clearest of cases.” *Yajnik v. Akron Dep’t of Health, Hous. Div.*, 2004-Ohio-357, ¶ 16 (Moyer, C.J.).

Here, Ms. Hashman cannot meet her high burden because Ordinance 54-25 was a lawful exercise of Nelsonville’s home rule authority.

B. Nelsonville Is, and Remains at all Relevant Times, a Charter City with Broad Home Rule Authority Under the Ohio Constitution.

It makes sense to start any discussion of the constitutionality of Ordinance 54-25 with the enacting authority for that ordinance. Here, the Nelsonville Charter. Nelsonville has been governed by its Charter since January 1, 1995. *See Nelsonville City Charter* § 12.01 (Nelsonville App’x 015). Through that Charter, the City claimed, “all powers to which a city is entitled under the Constitution and laws of the State of Ohio, either expressly or by implication...” *Nelsonville City Charter* § 3.01

(Nelsonville App'x 002); *see also State ex rel. Bedford v. Bd. of Elections*, 62 Ohio St.3d 17, 21 (1991) (holding that a substantially similar charter provision was sufficient to retain broad powers on behalf of a city).

And a city “charter, of course, is no small thing. For a municipal government, it serves much the same role as a written constitution.” *Fisher v. Amberley Vill.*, 2015-Ohio-2384, ¶ 63 (1st Dist.) (DeWine, J., dissenting). Indeed, in 1912, Ohio passed the Home Rule Amendment to the state constitution, providing local municipalities with broad authority to exercise control over their local self-government. *See Ohio Const.*, art. XVIII, § 3.

To be sure, Ohio’s passage of the Home Rule Amendment “provided municipalities with ‘full and complete political power in ***all matters of local self-government.***” *Vill. of Newburgh Heights v. State*, 2022-Ohio-1642, ¶ 24, (quoting *Cincinnati Bell Tel. Co. v. City of Cincinnati*, 81 Ohio St.3d 599, 605 (1998)) (Kennedy, J.); *see also State ex rel. Int’l Ass’n of Fire Fighters v. Sakacs*, 2023-Ohio-2976, ¶ 24 (Fisher, J.) (“a charter city has all powers of local self-government except to the extent that those powers are taken from it or limited by other provisions of the Constitution or by statutory limitations on the powers of the municipality which the Constitution has authorized the General Assembly to impose.”).

Furthermore, when interpreting a municipal charter, this Court “construes municipal charters to give effect to all separate provisions and, whenever possible, to harmonize them with statutory provisions.” *State ex rel. Fritz v. Trumbull Cnty. Bd. of Elections*, 2021-Ohio-1828, ¶ 17 (per curiam) (collecting cases). Finally, it is

important to note that “neither the wisdom nor the desirability of these charter provisions is subject to judicial review.” *See State ex rel. Murray v. Scioto Cnty. Bd. of Elections*, 2010-Ohio-5846, ¶ 52 (cleaned up) (collecting cases).

C. Issue 23 Is Governed by, and thus Subject to, the Nelsonville City Charter.

It is anticipated that Ms. Hashman will argue that Issue 23 invalidates City Council’s ability to pass Ordinance 54-25. (*See* Hashman Mot. to Intervene 3–6). Not so. The Fourth District already conducted this analysis last year. And a review of the related Issue 23 litigation, and the measure’s minimal text, reveal that Issue 23 is a Charter initiative, governed by Article X of Nelsonville’s City Charter.

1. As a Matter of Law Issue 23 Was Enacted, and Is Governed, by Article X of the Nelsonville City Charter.

Last year saw significant litigation on whether the proper mechanism was used to submit Issue 23 for the November 2024 general election. *See generally Smith*, 2024-Ohio-5220. Throughout that litigation, Nelsonville argued that the initiative petition to get Issue 23 on the ballot failed because it did not follow procedures outlined by Article XVIII, Section 9 of the Ohio Constitution. *Id.* at ¶ 2. Meanwhile, the citizens advocating for Issue 23 argued that the process was governed by Article X of Nelsonville’s City Charter, and thus their initiative petition—*submitted through that Charter Process*—was valid.⁸ *See id.* at ¶ 4.

⁸ Ms. Hashman’s position here seemingly puts her at odds with nonparties Mr. Smith and Ms. McDonald, relators in the related Fourth District matter, who litigated extensively last year to assure that Issue 23 was governed by the Nelsonville City Charter. *See generally Smith*, 2024-Ohio-5220.

In analyzing this issue, the Fourth District conducted a detailed analysis of Nelsonville’s home rule authority. *See id.* at ¶¶ 26–31. First, the court found that neither “the city charter nor the Ohio Constitution specifically address the process for abolishing the city charter.” *Id.* at ¶ 26. This is an important finding because since the abolishment process is not a right reserved to the state under the Ohio constitution, then Nelsonville claimed “full and complete political power” in this matter of local self-government when it enacted the Charter. *See Cincinnati Bell Tel. Co.*, 81 Ohio St. 3d at 605.

And indeed, the Fourth found that “the initiative to abolish the city charter of Nelsonville [Issue 23] is governed by Article X of its charter.” *Smith* at ¶ 31.

a. Pursuant to Article X of Nelsonville’s Charter, Once Issue 23 Was Adopted by the Voters, It Continued to Be Governed by the Charter.

As outlined above, the Fourth District unequivocally ruled that Issue 23 was a charter initiative governed by Article X of the Charter. *Id.* And once the voters adopted Issue 23, it continued to be governed by Article X of the Charter. *See* Nelsonville City Charter § 10.06(A) (Nelsonville App’x 013). Specifically, the Charter provides that such initiatives is enacted by the voters, it “shall be treated in all respects in the same manner as ordinance or resolutions of the same kind adopted by Council.” *Id.*

Simply put, an ordinance adopted by City Council can be repealed by that same City Council. *See id.* at Article IV (Nelsonville App’x 002–004). And thus, the Fourth District and Nelsonville’s Charter demand that Issue 23, as enacted, be treated as

any other legislation of the same kind adopted by Council. *Id.* at § 10.06(A) (Nelsonville App’x 013); *Smith* at ¶ 31.

b. By Its Own Express Terms, Issue 23 Did not Place any Restrictions on Nelsonville’s Home Rule Authority.

This Court interprets “municipal ordinances and resolutions in the same manner as statutes.” *Willow Grove, Ltd. v. Olmsted Twp. Bd. of Zoning Appeals*, 2022-Ohio-4364, ¶ 18 (Bruner, J.). This means, that the pertinent question is not what the enacting authority intended to enact, but rather, “what is the meaning of that which it did enact.” *State ex rel. Dudley v. Yost*, 2024-Ohio-5166, ¶ 14 (per curiam). Where the words are plain and unambiguous, this Court stops there and gives effect to those words. *Jacobson v. Kaforey*, 2016-Ohio-8434, ¶ 8 (citing *Sears v. Weimer*, 143 Ohio St. 312 (1944), paragraph five of the syllabus).

But in interpreting a statute, this Court “may neither add words to nor delete words from the statutory language.” *Dudley* at ¶ 14 (citing *Columbia Gas Transm. Corp. v. Levin*, 2008-Ohio-511, ¶ 19). Further, in conducting an analysis, this Court must “give effect to all parts of a statutory scheme.” *Id.* (citing *United Tel. Co. of Ohio v. Limbach*, 71 Ohio St.3d 369, 372 (1994)).

Here, Issue 23 plainly does two things: (1) it set a future date for the future abolishment of the Charter—January 1, 2026; and (2) it called for elections to be conducted during 2025 in anticipation of that future abolishment. (Robe Aff. Ex. C). More critical than what Issue 23 did is what it did not do. Nothing in Issue 23 can be read to limit Nelsonville’s home rule power during 2025, while the Charter is still in full force and before the reversion to a statutory form of government. (*Id.*).

2. Nothing in the Charter Limits Nelsonville’s Ability to Repeal an Ordinance Enacted by the Electorate.

As the legislative body, Nelsonville City Council has the authority to repeal ordinances. *State ex rel. Symons v. Rice*, 96 Ohio St. 574, 574 (1917) (“In the absence of a valid provision to the contrary, the council of a municipal corporation having authority to legislate upon any given subject may exercise that authority at will by enacting or repealing an ordinance in relation to such subject-matter.”).

And nothing in the Charter limits Nelsonville City Council’s ability to repeal an ordinance adopted by the electorate. *See State ex rel. Singer v. Cartledge*, 129 Ohio St. 279, 282–85 (1935); *see generally* Nelsonville City Charter (Nelsonville App’x 002–016). As such, Nelsonville acted well within its home rule authority in passing Ordinance 54-25.

Most critically, the Court has already addressed this issue. Indeed, in 1935, this Court answered the question of “[m]ay a city council alter or repeal an initiated ordinance adopted by the electors of a city?” *Singer* at 282. The *Singer* rule applies to Nelsonville, even though—as Relators readily acknowledge—*Singer* appears to limit its holding to non-charter cities. *Id.* at 282–83. But this is because each city charter is different, and in analyzing authority cited by the non-prevailing party, the Court observed that those cases were “controlled by peculiar provisions of city charters.” *Id.* at 283. That is not the case here, as Nelsonville’s Charter contains no provision limiting City Council’s authority in this manner.⁹ Nelsonville City Charter, Article

⁹ *Singer* provides a local example of such a charter provision, pointing to the City of Columbus’s charter at the time, which contained a provision limiting that city council from acting to repeal or otherwise amend a voter adopted ordinance for two years

IV (Nelsonville App’x 002–004). And because the Charter contains no such provision, the Singer statutory rule applied to Nelsonville. *See, e.g., Fritz*, 2021-Ohio-1828, at ¶ 17 (“In the absence of express language in a charter demonstrating a conflict with a statute, it is the duty of courts to harmonize the provisions of the charter and statutes relating to the same matter.”)

In *Singer*, this Court thoughtfully and thoroughly reviewed whether a city council could repeal a previously enacted voter-initiated law or ordinance. *See generally Singer*. In answering that a city council could enact legislation to repeal such voter-initiatives, this Court found that voter enacted legislation “has no greater sanctity than legislation adopted by a city council.” *Id.* at 284.

Importantly, the *Singer* Court was confronted with an argument that a city council’s powers in this area should be curtailed because a citizen “initiated ordinance has little value if the council, within a short time, thereafter, can alter or repeal it.” *Id.* at 285. In rejecting this argument, the *Singer* Court adeptly recognized that electors have at least two safeguards against this outcome.

First, a city charter **can** provide restrictions against such an exercise of a city council’s ability to repeal an initiated ordinance. Here, neither Nelsonville’s Charter, nor the text of Issue 23, provides for any such restrictions. Nelsonville City Charter, Article IV (Nelsonville App’x 002–004); (Robe Aff. Ex. C). *Second*, even absent a charter provision, *Singer* recognized the ultimate recourse of unpopular, yet lawful

after its enactment. *See Singer* at 285. Again, Nelsonville’s Charter contains no such restriction. Nelsonville City Charter, Article IV (Nelsonville App’x 002–004).

political action—the ballot box: “electors, at reoccurring municipal elections, have the power of defeating councilmen who fail to listen to the *vox populi* as expressed in their initiated legislation.” *Singer* at 285.

Next, *Singer* confronted the argument of whether a city council should be prohibited from forestalling the effect of a voter-initiated ordinance by adopting an emergency ordinance. *Id.* at 285–86. This is akin to the situation faced here, with Nelsonville’s enactment of Ordinance 54-25, taken as an emergency action prior to the implementation of Issue 23. Nelsonville Ord. 54-25 (Nelsonville App’x 037–039). But the *Singer* Court also rejected this argument, finding that “[i]ndubitably if council had the power to repeal, it could, by a vote of two-thirds or its members, adopt the emergency clause, in which event the repealing ordinance” would go into effect immediately. *Singer* at 286; *see also Holcomb v. State*, 126 Ohio St. 496, 497 (1933) (upholding a city council ordinance passed under emergency conditions on December 31, 1931, to repeal a prior ordinance setting the mayor’s salary, set to take effect the following day—January 1, 1932).

D. The Authority Cited by the Intervening Respondent Is Not Controlling and Unpersuasive.

Initially, Nelsonville notes that through her initial filings, Ms. Hashman relies on a single, unpublished, Fifth District case for her proposition that Ordinance 54-25 is unconstitutional. (Hashman Mot. to Intervene 4–6). First, to the extent considered, that authority is distinguishable as *Hittle* deals with the *constitutional initiative* process. *Hittle v. Muskingum Cnty. Bd. of Elections*, 1979 Ohio App. LEXIS 10706, *5 (5th Dist. Sept. 12, 1979). As discussed above, the prior Fourth District litigation

confirmed that the process employed here was pursuant to Article X of the Charter. *Smith*, 2024-Ohio-5220, at ¶ 31.

Thus, pursuant to the Fourth District’s issue specific holding here, and this Court’s nearly hundred-year-old precedent, Nelsonville was within its home rule authority to abolish Issue 23 pursuant to the same Charter provisions under which it was enacted.¹⁰

II. Nelsonville Is Legally Entitled to Relief.

Having established the constitutionality of Ordinance 54-25, under the Fourth District law controlling this specific issue, and this Court’s longstanding precedent, Nelsonville now turns to its claims and the requested relief. At the outset, Nelsonville humbly submits that the relief requested here—the removal of one slate of elections in favor of a different slate of elections—is not a small one. Especially this close to the election at issue. But Nelsonville is entitled to the relief sought, notwithstanding the complicated nature of that relief.

Oftentimes, the analysis under the mandamus standard and the prohibition standard overlap significantly. *See State ex rel. Vill. of Moscow v. Clermont Cnty. Bd. of Elections*, 2022-Ohio-3138, ¶ 25 (“In this case, the mandamus analysis is identical to the prohibition analysis.”). This case is no exception. Nelsonville’s clear legal right to relief, and the Athens County Board of Elections’ legal duties to ensure that the

¹⁰ Nelsonville acknowledges that Respondents have not yet filed their briefs and may raise additional grounds for a constitutional challenge. Nelsonville reserves the right to respond to such arguments in its Reply.

candidates and races on the ballot are valid are the same, be it through mandamus or prohibition.

A. Nelsonville Is Entitled to Mandamus Relief.

To establish entitlement to mandamus relief, Nelsonville must establish (1) it has a clear legal right to the relief sought; (2) there was a clear legal duty on the part of the Athens County Board of Elections to provide it; and (3) it lacks an adequate remedy in the ordinary course of law. *City of Maumee*, 2025-Ohio-2516 at ¶ 33.

1. Nelsonville Satisfies the Clear Legal Right and Lack of Adequate Remedy Requirements.

The first two elements are plainly met. On the first element, as outlined above, Ordinance 54-25 was a lawful exercise of Nelsonville's home rule authority. And this Court has repeatedly found that a municipality shows a clear legal right to mandamus relief when it seeks the enforcement of a lawful exercise of its home rule authority. *See e.g., Bedford*, 62 Ohio St.3d at 20. Skipping ahead, the third element is satisfied without controversy. Given the proximity of the election at issue, Nelsonville lacks an adequate remedy at law. *See State ex rel. Bobovnyik v. Mahoning Cnty. Bd. of Elections*, 2020-Ohio-4003, ¶ 12 (finding that relators lack an adequate remedy at law when an election is less than 90 days away because a board of elections must distribute uniformed overseas absentee ballots at least 46 days before the election).

2. Considering Nelsonville's Enactment of Ordinance 54-25, the Board Has a Clear Legal Duty to Act.

Now, turning to the second element, the Athens County Board of Elections *does have a clear duty here*. Initially, a local board of elections is required to hold elections

that a municipality has the power to authorize. *See Bedford* at 18; *see also Pennington v. Bivens*, 2021-Ohio-3134, ¶ 11 (Kennedy, J.) (“[i]n the event of a conflict with state law, the charter prevails on matters of local self government, including the administration of local elections.”).

But moreover, the Athens County Board of Elections had a clear duty to act and remove the invalid candidates and races and reinstitute the necessary elections under the Charter. Under the Ohio Revised Code, the Athens County Board of Elections shall “[r]eview, examine, and certify the sufficiency and validity of petitions and nomination papers, . . .” R.C. 3501.11(K). Further, the Board of Elections must reject petitions if 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.” R.C. 3501.39(A)(4). Under that section of the Ohio Revised Code, the Athens County Board of Elections can invalidate a candidate *sua sponte*. *Id.*; *see also State ex rel. Bender v. Franklin Cnty. Bd. of Elections*, 2019-Ohio-2854, ¶ 8.

All the candidates that are set to appear on the ballot for positions under the statutory form of government violate requirements established by law, because those positions no longer exist. *See Nelsonville Ord. 54-25* (Nelsonville App’x 037–039). And the Athens County Board of Elections is specifically authorized to review and examine the validity of candidates’ petitions and nomination papers. R.C. 3501.11(K).

So, by declining to take action after receiving notice of Ordinance 54-25, the Athens County Board of Elections failed in two clear legal duties by not conducting the elections authorized by Nelsonville, and by failing to remove the now

unauthorized elections. To the extent the Athens County Board of Elections cites state statutes as an inability to act, that reliance ignores that Nelsonville’s legislative enactment trumps any conflicting state statute on this local election issue. *Fritz*, 2021-Ohio-1828, at ¶ 17; *Int’l Ass’n of Fire Fighters*, 2023-Ohio-2976, at ¶ 24.

To be sure, Nelsonville can appreciate the Athens County Board of Elections’ hesitation here. Both sides here are in somewhat uncharted waters. But this would not be the first time this Court has ordered late-calendar election relief because of a change in the controlling law. See *Vill. of Moscow*, 2022-Ohio-3138, at ¶ 22 (“We do not fault the board for following *Pringle*, but we decide today that *Pringle* was wrongly decided, which compels the conclusion that the board acted in clear disregard of applicable legal provisions.”). The change in law here necessitating action was caused by a legislative act of Nelsonville, not a decision of this Court, but the point prevails.

And allowing the Athens County Board of Elections to leave the now-stale races and candidates on the ballot, while also not providing for the Charter positions candidates to be added, would lead to election results without any force or effect and, at the same time, lead to the electorate being denied the opportunity to vote on the Charter races that are actually now in effect.

3. Complete Relief Can Be Achieved Through Mandamus.

The relief requested here seeks the removal of elections from the ballot, and the addition of elections. Of course, this Court has repeatedly held that mandamus is the proper action to place issues or candidates that ought to be on the ballot, on it. See *State ex rel. Allen v. Warren Cnty. Bd. of Elections*, 2007-Ohio-4752, ¶ 21 (finding

mandamus appropriate to compel the board of elections to accept, certify, and place candidates on the ballot); *State ex rel. Davis v. Summit Cnty. Bd. of Elections*, 2013-Ohio-4616, ¶ 36 (granting writ of mandamus to add a candidate to the ballot for city council); *State ex rel. Demora v. Larose*, 2022-Ohio-2173, ¶ 3 (granting writ of mandamus to certify candidates on the ballot).

Additionally, this Court has also held that mandamus is a proper tool to remove elections from a ballot that should not appear on it. Indeed, in *State ex rel. Cornerstone Developers, Ltd. v. Greene Cnty. Bd. of Elections*, the Court granted relief in mandamus to order the Greene County Board of Elections to remove a tax levy from the ballot. 2016-Ohio-313, ¶ 27. Similarly, in *State ex rel. Fritz v. Trumbull Cnty. Bd. of Elections*, the Court granted a writ of mandamus ordering the board to remove a recall election from the special election ballot. 2021-Ohio-1828, at ¶ 21.

Accordingly, under this Court's precedent, full relief can be achieved here through the issuance of a writ of mandamus.

B. Alternatively, Nelsonville Is Entitled to Prohibition Relief.

The Court has stated that “[p]rohibition will lie to bar the placement of an issue on the ballot, so long as the election has not yet been held.” *Vill. of Moscow*, 2022-Ohio-3138, at ¶ 13 (citing *Tatman v. Fairfield Cnty. Bd. of Elections*, 2004-Ohio-3701, ¶ 14). To obtain a writ of prohibition, Nelsonville must show that: (1) the Athens County Board of Elections exercised quasi-judicial power; (2) the exercise of that power was unlawful; and (3) Nelsonville has no adequate remedy in the ordinary course of law. *Id.* (citing *State ex rel. McCord v. Delaware Cnty. Bd. of Elections*, 2005-Ohio-4758, ¶ 27).

When reviewing the decisions of the Athens County Board of Elections, the standard is whether the board engaged in fraud, corruption, abuse of discretion, or acted in clear disregard of applicable legal provisions. *State ex rel. Holwadel v. Hamilton Cnty. Bd. of Elections*, 2015-Ohio-5306, ¶ 29.¹¹

Here, the Athens County Board of Elections acted quasi-judicially in refusing to take any action on Ordinance 54-25. Promptly after enacting the Ordinance, Nelsonville provided the Athens County Board of Elections with a copy of it on August 13, 2025. (Robe Aff. ¶ 33, Ex. M). The Athens County Board of Elections met for their board meeting that same day. (*Id.* at ¶ 34; Joint Stip. ¶ 2). Despite being informed of the Ordinance, and the effect it would have on the races set for the November general election, the Athens County Board of Elections did not take any action. (Robe Aff. ¶ 35; Joint Stip. ¶ 2, Ex. A). This failure was unlawful in light of the clear effect of Nelsonville’s lawful enactment of Ordinance 54-25.

CONCLUSION

One of the central purposes of election laws is to “minimize voter confusion.” *See Lubin v. Panish*, 415 U.S. 709, 713 (1974); *see also Foster v. Cuyahoga Cnty. Bd. of Elections*, 53 Ohio App.2d 213, 222 (8th Dist. 1977) (“Election laws which set forth limitations on candidacy — the effect of which is to reduce the number of candidates — seem primarily designed to aid the electorate, ‘to minimize voter confusion.’”). But without relief, confusion in Nelsonville will be at an all-time high.

¹¹ Nelsonville does not contend that the Athens County Board of Elections engaged in fraud or corruption. Instead, the Board disregarded its obligations under the relevant legal provisions.

Without hyperbole—if the November general election proceeds with the candidates and races as they currently stand, Nelsonville will not have a functioning government. The citizens will not have voted for candidates for the correct offices, and there will almost certainly be a flurry of disputes and quo warranto litigation, likely before this Court, over *who* is actually in charge.

The people of Nelsonville deserve clarity—and a final decision of this issue that has been occupying the City *for over a year now*—once and for all.

Respectfully Submitted,

/s/ Thomas N. Spyker

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CERTIFICATE OF SERVICE

On Tuesday, September 2, 2025, a true and accurate copy of the foregoing was served on all parties of record via the Court's E-filing system and by email.

Respectfully Submitted,

/s/ Thomas N. Spyker

Thomas N. Spyker (0098075)

Mrinali Sethi (0101295)

APPENDIX

Nelsonville Governing Documents and Ordinances

1. Nelsonville City Charter
2. Nelsonville Ordinance 83-24
3. Nelsonville Ordinance 98-24
4. Nelsonville Ordinance 05-25
5. Nelsonville Ordinance 54-25

Smith v. Clement, No. 24CI0180 (Athens C.P.)

6. Petition for Mandamus
7. Amended Petition for Mandamus
8. July 30, 2024 Preliminary Injunction and Permanenet [sic] Injunction Order
9. July 30, 2024 Order of Allowance of an Alternative Writ and Order to Show Cause
10. August 1, 2024 Stay Order Pending Appeal
11. September 13, 2024 Preliminary Injunction Two and Preemptive [sic] Writ of Mandamus Entry & Order
12. September 16, 2024 Entry & Order of Stay Pending Appeal II

Smith v. Clement, No. 24CA17 (4th Dist.)

13. August 26, 2024 Judgment Entry

Smith v. Clement, No. 24CA28 (4th Dist.)

14. September 18, 2024 Judgment Entry
15. October 31, 2024 Decision and Judgment Entry

Ohio Constitution

16. Article XVIII, § 3

Appendix 1

Nelsonville City Charter

NELSONVILLE CITY CHARTER

PREAMBLE

ARTICLE I -	Name, Succession and Boundaries
ARTICLE II -	Form of Government
ARTICLE III -	Powers
ARTICLE IV -	The Council
ARTICLE V -	City Manager
ARTICLE VI -	Administrative Departments
ARTICLE VII -	Boards and Commissions
ARTICLE VIII -	Finance, Taxation and Debt
ARTICLE IX -	Nominations and Elections
ARTICLE X -	Initiative, Referendum and Recall
ARTICLE XI -	General Provisions
ARTICLE XII -	Transitional Provisions

PREAMBLE

We, the people of the City of Nelsonville, Ohio, in order to obtain and secure the benefits of home rule powers under the Constitution of the State of Ohio, do hereby adopt this Charter for the government of the City of Nelsonville.

Through this Charter with divine guidance we express our beliefs and convey our trusts, so that its concepts shall long endure without regard to age, race, color, sex, marital status, handicap, religion, ancestry, or national origin.

ARTICLE I - NAME, SUCCESSION AND BOUNDARIES

§1.01. Name, succession and boundaries

The City shall be known as the "City of Nelsonville", shall continue under this Charter to be a body politic and corporate, and as such shall have perpetual succession. The City shall have the same boundaries existing at the time of adoption of this Charter, with the power and authority to change its boundaries and annex territory thereto in the manner authorized by the laws of the State of Ohio.

ARTICLE II - FORM OF GOVERNMENT

§2.01. Form of government.

The government provided by this Charter shall be known as the Council-Manager form.

ARTICLE III - POWERS

§3.01. Powers.

§3.02. Construction

§3.03. Intergovernmental relations.

§3.01. Powers.

The City shall have all powers to which a city is entitled under the Constitution and laws of the State of Ohio, either expressly or by implication, as fully and completely though specifically enumerated in this Charter. The

enumeration of specific powers in this Charter or the reference in this Charter to specific powers granted by the Constitution or laws of the State of Ohio shall not be construed to be exclusive, and the City may determine to exercise any power in the manner provided under this Charter or in the manner provided under the Constitution or laws of the State of Ohio. Unless otherwise specified by ordinance or resolution, powers shall be exercised in the manner provided under this Charter. It is the intention of the people by the adoption of this Charter that a substantial compliance with the Charter's provisions shall be sufficient to sustain any action taken under this Charter.

§3.02. Construction.

The powers of the City under this Charter shall be construed liberally in favor of the City. As applied in this Charter, unless the context otherwise requires, the singular includes the plural; the plural includes the singular; words of one gender include the other gender; and words in the present tense include the future tense.

§3.03. Intergovernmental relations.

The City may exercise any of its functions, and participate in the financing thereof, including the incurrence of debt, jointly or in cooperation, by contract or otherwise, with one or more political subdivisions, s or civil divisions thereof, or the United States or any agency thereof.

ARTICLE IV - THE COUNCIL

§4.01. Number, selection and term.

§4.02. Qualifications.

§4.03. Vacancies.

§4.04. Quorum.

§4.05. Meetings.

§4.06. Clerk of Council.

§4.07. Special meetings.

§4.08. Powers of Council.

§4.09. Forms of action by Council.

§4.10. Enactment of ordinances.

§4.11. Effective date.

§4.12. Publication of ordinances.

§4.13. Initiative and referendum.

§4.14. Adoption of standard codes by reference.

§4.15. Council compensation.

§4.01. Number, selection and term.

The legislative powers of the City except as are reserved to the people by this Charter (Initiative and Referendum), and by the Constitution of the State of Ohio, shall be vested in a Council, which shall consist of seven (7) members elected at large by a non-partisan ballot. All such members must be and must remain residents of the City. The term of office of members of Council shall be for four (4) years beginning the first Monday of December next following their election and they shall hold office until their successors

are elected and qualified. To effect election by staggered terms of its members, the four (4) members who receive the highest number of votes shall be elected for four (4) years, and the three (3) members receiving the next highest votes shall be elected for two (2) years. At succeeding elections all members shall be elected for four (4) year terms of office.

§4.02. Qualifications.

Any qualified elector who has been continuously a resident and a qualified elector of the City of one (1) year next prior to their election, and who is not the occupant of an incompatible office, shall be eligible to serve as a member of City Council. Each member of Council shall continue to be a resident and qualified elector of the City throughout his term of office, failing which Council shall remove him from office.

§4.03. Vacancies.

Vacancies in Council shall be filled by appointment of a qualified person. The appointment shall be made by a majority vote of Council and shall continue until the next election is held at which time a successor shall be elected to fill the unexpired term. In the event Council fails to fill the vacancy within thirty (30) days the President of Council shall make the appointment within fifteen (15) days of Council's failure to do so.

§4.04. Quorum.

Four (4) members of Council shall constitute a quorum to transact business, but a lesser number may adjourn from time to time and compel the attendance of absent members in such manner and under such penalties as may be prescribed by Council rules and regulations duly adopted.

§4.05. Meetings.

The Council shall meet at such times and places as may be prescribed by its ordinances, resolutions, rules or by motion. Regular meetings shall be held at least twice in each calendar month, except that during the months of July and August the Council may dispense with one of its regular meetings. The Council shall determine its own rules and order of business and shall keep a journal of its proceedings. Council may appoint, from its own body, such officers or employees deemed necessary for efficient operation of Council. Except for such closed executive sessions as may be permitted by Ohio law, all meetings of Council and its committees shall be open to the public. Any person shall have access to the public records of the City as permitted by Ohio law.

§4.06. Clerk of Council.

Council shall appoint, by majority vote, a person to serve as Clerk of Council. The Clerk shall serve at the pleasure of Council and may be removed by a majority vote of Council. The Clerk of Council may not hold other office or position of employment in the City. The Clerk of Council shall keep an accurate and complete journal of the proceedings of Council and perform such other duties as this Charter or Council may require. Council shall set a reasonable salary for

the position of Clerk of Council, before any such appointment is made.

§4.07. Special meetings.

The President of Council or any three (3) members thereof may call special meetings of Council upon written notice served personally upon each member, or left at their usual place of residence twenty-four (24) hours previous to the time fixed for such meeting. Any request for a special meeting and the notice calling same shall the subject(s) to be considered, and such meeting shall be limited to a consideration of such subject(s).

§4.08. Powers of Council.

All legislative power of the City shall be vested in the Council except as otherwise provided by this Charter and The Constitution of the State of Ohio therefore. Council shall have authority to:

(1) Adopt ordinances and resolutions on any subject within the scope of its powers and provide penalties for the violation thereof;

(2) Establish the internal organization, staffing and compensation of the departments, boards and commissions created by this Charter;

(3) Set up such additional departments, boards, or commissions as it may deem necessary and determine their powers and duties;

(4) Adopt and modify the master plan and official map of the City;

(5) Have the power to adopt and provide for the enforcement of zoning classifications, districts, uses and regulations by ordinance as authorized under the provisions of the Ohio law;

(6) Adopt a subdivision platting ordinance and approve subdivision plats which conform thereto.

(7) Enact a comprehensive building code;

(8) Adopt an annual appropriation ordinance based upon the annual budget;

(9) Appoint and remove, and establish compensation for, the office of Mayor and Vice-Mayor. The Mayor and Vice-Mayor will be elected biennially from among the seven Council members. The Mayor shall act as President of Council and preside over Council, but will have no veto powers. The Mayor will act as a ceremonial figure for various civic functions where the City should be represented. The Mayor shall preside over Mayor's Court and supervise the bailiff of that Court. The Vice-Mayor shall perform the duties of the Mayor when the Mayor is absent;

(10) Appoint and remove, and establish compensation for, the position of City Manager, and appoint an acting Manager when necessary;

(11) Confirm and remove, and establish compensation for, the position of City Attorney;

(12) Inquire into the conduct of any City officer or employee in the performance of their functions;

(13) Make investigations of any office, department or agency of the City;

(14) Employ a public accountant to make an audit of the financial affairs of the City whenever such audit is deemed necessary or required by law;

(15) Provide for the employment of engineering and other professional services on a consulting basis when deemed necessary; and

(16) Issue subpoenas for witnesses and the production of books and papers which may be necessary in the conduct of any hearing or investigation.

§4.09. Forms of action by Council.

The action of Council shall be by ordinance or resolution. On all matters of a general or permanent nature, or granting a franchise, or levying a tax, or appropriating money, or contracting indebtedness, or issuing bonds or notes, or for the purchase, lease or transfer of property, action shall be taken formally, by ordinance, in the manner hereinafter provided. Action on all other matters of a temporary or informal nature may be taken by resolution.

§4.10. Enactment of ordinances.

Each proposed ordinance shall be introduced in writing by a member of the Council, and, in addition to the title, shall contain an opening clause reading as follows, "Be it ordained by the Council of the City of Nelsonville, Ohio." The action proposed to be taken shall be fully and clearly set forth in the body of the ordinance. Each ordinance shall contain one subject only, which shall be clearly in the title. No ordinance shall be passed without the concurrence of a majority of all the members elected to Council, except that emergency ordinances, as hereinafter provided, shall require concurrence of five (5) members elected to Council for passage. Every ordinance shall be fully and distinctly read on two (2) different days before its enactment, unless an emergency is declared as hereinafter provided, or unless, by a vote of five (5) members elected to Council, the reading in full on two (2) different days is dispensed with, in which cases such ordinance may be read one (1) time and passed on the day as such reading. Final passage of all ordinances and resolutions shall be certified by the Mayor or Vice-Mayor and the Clerk of Council.

§4.11. Effective date.

Ordinances provided for appropriations for current expenses of the City, or for public improvements petitioned for by the owners of a majority of the foot frontage of property benefited and to be specially assessed for the cost thereof, or for raising revenue, or ordinances wherein an emergency is declared to exist, shall become effective immediately upon passage or at such later date as may be provided therein, and such ordinances shall not be subject to referendum. All other ordinances shall take effect thirty (30) days after passage. An emergency ordinance as referred to herein is one which must be passed and made effective at once or in less than thirty (30) days to meet an emergency in the operation of the City government, or which is necessary for the immediate preservation of the public peace, health, safety, morals or welfare. Each emergency ordinance must contain therein a separate Section setting forth the reason for the emergency.

No ordinance granting a franchise or fixing a rate to be charged by a public utility shall be passed as an emergency measure.

§4.12. Publication of ordinances.

Within fourteen (14) days after passage, ordinances required by law to be published, shall be published by posting the complete text of the ordinance in each of the four (4) public places in the City, such places to be designated by Council, for a period of at least fifteen (15) days. In addition, all ordinances shall be posted on one prominent protected bulletin board in City Hall for a period of at least fifteen (15) days.

§4.13. Initiative and referendum.

Except as otherwise provided in this Charter, ordinances may be proposed and submitted to popular vote by initiative and referendum under the procedures set forth in Ohio law.

§4.14. Adoption of standard codes by reference.

The Council may adopt model or standard codes prepared and published by public or private agencies on such matters as building construction, plumbing, heating, ventilation, air conditioning, electric wiring, smoke regulation, fire prevention and other similar regulatory subjects by reference to the date and source of the code without reproducing the same in full in the ordinance. At least six (6) copies of all such Codes shall be kept in the office of the Clerk of Council for reference and consultation by interested persons during regular office hours, and additional copies shall always be available for sale, at cost, by the Clerk of Council. Any standard code adopted in this manner shall not be required to be published at length.

§4.15. Council compensation.

Compensation of Council members shall be established by ordinance but shall not be changed during their terms of office, nor by any ordinance passed subsequent to thirty (30) days before the final date fixed by the general election laws of Ohio or by provisions of this Charter for filing as candidate for such office.

For the first term of service under this Charter, Council members shall receive a salary of \$1,200.00 per year. The President of Council shall receive an additional \$1,200.00.

ARTICLE V- CITY MANAGER

- §5.01. Approval and removal.
- §5.02. Qualifications.
- §5.03. Acting Manager.
- §5.04. Powers and duties of the City Manager.
- §5.05. Council, Manager relations.

§5.01. Appointment and removal.

Council shall appoint a City Manager, herein also referred to as the Manager, and establish the compensation for that position. A majority vote of the members elected to

Council shall be required for the appointment of the City Manager. The Council may remove the City Manager from office in accordance with the following procedures:

(1) If the City Manager served less than six (6) months he may be removed by a two-thirds vote of the members of Council without any right to a public hearing and without the benefit of the provisions of subsections (2) to (4), inclusive, of this Section;

(2) If the City Manager has served six (6) months or more the Council shall adopt by a vote of two-thirds of its members a preliminary resolution which must the reasons for removal and may suspend the City Manager from duty for a period not to exceed forty-five (45) days. A copy of the resolution shall be delivered promptly to the City Manager;

(3) Within five (5) days after a copy of the resolution is delivered to the City Manager, he may file with the Clerk of Council a written request for a public hearing. This hearing shall be held at a regular or special Council meeting not earlier than fifteen (15) days and no later than thirty (30) days after the request is filed. The date of the public hearing shall be set by the City Manager. The City Manager may file with the Clerk of Council a written reply to the reasons for removal contained in the preliminary resolutions, not later than five (5) days before the hearing;

(4) The Council may adopt a final resolution of removal which may be made effective immediately, by a vote of two-thirds of its members at any time after five (5) days from the date when a copy of the preliminary resolution was delivered to the Mayor, if he has not requested a public hearing, or at any time after the public hearing, if he has requested one;

(5) The City Manager shall continue to receive his salary until the effective date of a final resolution of removal. The decision of the Council to suspend or remove the City Manager shall be the sole discretion of the Council and shall not be subject to review by any Court; or

(6) If the City Manager is suspended from duty under subsections (1) or (2), the Council shall appoint by vote of a majority of the members thereof an administrative officer who shall serve as acting manager until the City Manager is restored to duty, or until Council shall appoint another person as Acting Manager, or until another person is appointed City Manager in accordance with this Charter. The Acting Manager so appointed shall exercise all powers, duties and functions of the City Manager under this Charter.

§ 5.02. Qualifications.

The City Manager shall be appointed solely on the basis of his executive and administrative qualifications, and need not be a resident of the City at the time of his appointment, but shall become a resident of the City within six (6) months after his appointment.

§5.03. Acting Manager.

The City Manager may designate, by letter filed with the Clerk of Council, any qualified administrative officer of the City to perform his powers, duties and functions during his temporary absence from the City or during his disability. Such designation shall not be effective until the Council has

approved it by a majority vote of the members of the Council, and the Council may revoke such designation by a majority vote of the members thereto. If such designation has not been made and the Manager is absent from the City or unable to perform his duties or to make such designation, Council may, by motion, appoint any qualified administrative officer of the City to perform the powers, duties and functions of the City Manager during the temporary absence from the City due to disability of the City Manager.

In the event of a vacancy in the office of City Manager, the Council may designate a person as Acting City Manager, who shall exercise all powers, duties and functions of the City Manager until a City Manager is appointed.

Upon the recommendation of the City Manager, the Police Chief is hereby appointed the Acting City Manager in the absence of the City Manager. The City Manager shall still file with the Clerk of Council the designation of the Police Chief as Acting City Manager and the term of each designation. City Council reserves the right pursuant to this Section of the Nelsonville City Charter to revoke this designation at any time by passage of this ordinance.

§5.04. Powers and duties of the City Manager.

The City Manager shall be the chief executive and administrative officer of the City. He shall be responsible to the Council for the administration of all City affairs placed in his charge by or under this Chapter, the ordinances of the City and Ohio laws. He shall have the following powers and duties:

(1) He shall appoint and, when he deems it necessary for the good of the service, suspend or remove or otherwise discipline all City employees and appointive administrative officers, except as provided for by or under this Charter, in the manner provided by the rules adopted by the Civil Service Commission pursuant to this Charter. He may authorize any administrative officer who is subject to his direction and supervision to exercise these powers with respect to subordinates in that officer's department, division, office or agency. He shall have the power and authority to appoint various City positions, including the City Attorney, under this Charter. He shall not have the power or authority to appoint or remove, suspend or discipline any member of any board or commission established under this Charter;

(2) He shall direct and supervise the administration of all departments, divisions, offices and agencies of the City, except as otherwise provided by this Charter;

(3) He shall attend all Council meetings and shall have the right to take part in discussion but may not vote;

(4) He shall see that all laws, provisions of this Charter, and ordinances and resolutions of the Council, subject to enforcement by him or by officers subject to his direction and supervision, are faithfully executed;

(5) He shall prepare and submit the annual budget and capital program to Council;

(6) He shall submit to Council and make available to the public a complete report on the finances and administrative activities of the City as of the end of each fiscal year;

(7) He shall make such other reports as the Council may require concerning the operations of City departments, divisions, offices, boards, commissions and agencies subject to his direction and supervision;

(8) He shall make detailed monthly reports to Council fully advising Council as to the financial condition and future operating and capital needs of the City and make such recommendations to the Council concerning the affairs of the City;

(9) He shall require reports and information of subordinate officers and employees of the City as he deems necessary in the orderly operation of the City, or when requested to do so by Council or any board or commission of the City;

(10) He shall be the contracting officer of the City and shall award and execute contracts and agreements on behalf of the City in the manner and under the procedures required by this Charter, provided that:

(a) When the expenditure of funds for the purchase of supplies or materials, or to provide labor for any work to be performed under contract exceeds the amount specified by the laws of the State of Ohio for which such purchases or work may be accomplished without advertisement and competitive bidding, such expenditure shall first be authorized and directed by ordinance passed by the Council. The City Manager shall recommend to Council the lowest and best bid, and upon approval of Council, may award a written contract to the lowest and best bidder after advertisement on the same day of each week for not less than two (2) nor more than four (4) consecutive weeks in a newspaper determined by the Council to be of circulation within the City;

(b) Compensation of persons and employees; contracts with persons, firms or corporations for services requiring specialized skill, knowledge, or training; and expenditures required because of a real and present emergency arising in connection with the maintenance, operation or repair of City buildings, equipment and facilities, and City services, when authorized by ordinance adopted by a two-thirds vote of all members of the Council, need not be advertised and notices need not be published as provided hereinabove;

(c) Modifications and changes to contracts awarded under competitive bidding, and in excess of One Thousand Dollars (\$1,000), shall first be authorized by ordinance;

(d) The City Manager may designate an administrative officer or employee of the City to act as purchasing agent to award and execute contracts, orders or agreements on behalf of the City, when such contracts, orders or agreements do not authorize an expenditure of money in excess of Five Thousand Dollars (\$5,000); and

(e) The City Manager or any other person designated by him as purchasing agent shall not willfully cause or allow any contract or order to be split or divided into separate orders or contracts in order to avoid the requirements of subsection (4) above, or the requirements of competitive bidding as provided by this Charter.

(11) He shall execute on behalf of the City all contracts and agreements, except as otherwise hereinabove provided by paragraph (10) of this Section regarding the designation of a purchasing agent, conveyances, evidences of indebtedness and other instruments to which the City is a party;

(12) He shall affix to official documents and instruments of the City the City Manager's Seal which shall be the seal of the City, but the absence of the seal shall not affect the validity of any such document or instrument;

(13) He shall perform such duties and have such other powers as are conferred or required by this Charter, by any ordinance or resolution of the Council, or by the laws of the State of Ohio; and

(14) He shall endeavor to actively pursue the awarding of grants to aid in the operation of the City.

§5.05. Council, Manager relations.

Neither the Council nor any of its members shall in any manner dictate the appointment or removal of any administrative officers or employees whom the City Manager or any of his subordinates are empowered to appoint, unless otherwise provided by this Charter, but the Council may express its views and fully and freely discuss with the Manager anything pertaining to appointment and removal of such officers and employees. Except for the purpose of inquiries and investigations, the Council or its members shall deal with officers and employees who are subject to the direction and supervision of the City Manager solely through the Manager, and neither the Council nor its members shall give orders to any such officer or employee, either publicly or privately, except that the Council may require of the Departments of Law and Finance such reports, information, and opinions as Council shall determine. This Section shall not be construed as limiting the power of Council to remove or suspend the City Manager because of his practices in connection with the appointment, promotion, disciplining or removal of officers and employees of the City.

ARTICLE VI- ADMINISTRATIVE DEPARTMENTS

- §6.01. Creation of departments.
- §6.02. Creation of new departments.
- §6.03. Department directors and division heads.
- §6.04. Administrative Code.
- §6.05. Department of Law.
- §6.06. Department of Finance.
- §6.06.01. Auditor: term.
- §6.06.02. Auditor: qualifications.
- §6.06.03. Auditor: powers and duties.
- §6.06.04. Auditor: compensation.
- §6.06.05. Auditor: vacancy.
- §6.06.06. Auditor: staff.
- §6.06.07. Treasurer: term.
- §6.06.08. Treasurer: qualifications.
- §6.06.09. Treasurer: powers and duties.
- §6.06.10. Treasurer: compensation.

§6.06.11. Treasurer: vacancy.
§6.07. Department of Public Safety.
§6.07.01. Division of Water.
§6.07.02. Division of Water Distribution.
§6.07.03. Division of Sewers.
§6.07.04. Division of Streets.
§6.08. Department of Public Safety.
§6.08.01. Division of Police.
§6.08.02. Division of Fire.
§6.08.03. Residence requirements.
§6.08.04. Procedure for appointment of Police and Fire Chief.

§6.01. Creation of departments.

The administrative functions of the City shall be carried on by the departments of Law, Finance, Public Safety, and Public Service. This Section shall not preclude the Council from providing for such services by contract or through joint participation with other governmental agencies.

§6.02. Creation of new departments.

The Council may, by ordinance or resolution, create, change or abolish any office, department, division, or subunit of any department or division, or agency, other than those established by the Charter. Council may assign additional duties to any department established by this Charter, but may not discontinue or assign to any other office, department, or agency, any function assigned by this Charter to a particular office, department, or agency.

§6.03. Department directors and division heads.

Unless otherwise provided by this Charter, the Director of each department shall be the Manager. Unless otherwise provided by this Charter, the head of each division shall be a part-time or full-time Division Head, appointed by the City Manager and approved by a majority vote of Council, who shall exercise division supervision and control subject to the direction of the Manager. Two (2) or more divisions may be headed by the same person, and the Manager, with approval of Council, may serve as the division head of one (1) or more divisions. Each division head shall be an administrative officer of the City.

§6.04. Administrative Code.

Subject to the provisions of this Charter, Council shall, by ordinance or resolution, adopt, revise or repeal an ordinance or resolution referred to as the Administrative Code, which Code shall provide for the organization of the City government that is consistent with this Charter, define the powers and duties of each organizational unit, and determine administrative procedures. Council may delegate to the City Manager the power to make rules and regulations to govern management practices, consistent with this Charter, the Administrative Code and other ordinances and resolutions.

§6.05. Department of Law.

There shall be a Department of Law, the head of which shall be the City Attorney. The City Attorney shall be an attorney-at-law, qualified to practice law in the State of

Ohio, appointed by the City Manager subject to approval by a majority vote of City Council.

A law firm, as well as an individual attorney, may serve as the City Attorney and in that case, the person designated by the law firm shall serve with the title of City Attorney, and other persons so designated may serve as Acting City Attorney with all the power, duties and functions of the City Attorney when the person designated as City Attorney is not available. The City Attorney shall serve as the chief legal advisor to Council, the City Manager, and all city departments, divisions, offices and other agencies, boards or commissions. The City Attorney shall represent the City in all legal proceedings and shall perform any other duties prescribed by this Charter, by ordinance or resolution or by the Administrative Code or the general laws of Ohio, except that the person or firm holding the office of City Attorney shall not be required to represent any school district or any other unit of government, other than the City, by virtue of holding the office of City Attorney. When necessary, the Council may appoint special legal counsel to represent the City, together with or in place of the City Attorney. The City Attorney shall be present at all Council meetings, and may be requested to attend any Commission and Board meetings. The person or firm holding the office of City Attorney shall not be required to be resident of the City.

§6.06. Department of Finance.

The direction of and the responsibility for the Department of Finance shall be split between the City Auditor and the City Treasurer, each being elected by the public. Each shall be solely responsible for the operation of their office as prescribed by this Charter and the laws of Ohio.

§6.06.01. Auditor: term.

The City Auditor, herein referred to as the Auditor, shall be elected at the regular municipal election held in the year 1995 and every four (4) years thereafter, for a term of four (4) years, commencing on the first day of December next after such election, and shall serve until succeeded as in this Charter provided. The office of Auditor shall be a nonpartisan office.

§6.06.02. Auditor: qualifications.

No person shall be eligible to hold office of Auditor unless he shall have been continuously a resident and a qualified elector of the City for one (1) year next prior to his election. The Auditor shall continue to be a resident and qualified elector of the City throughout his term of office, failing which Council shall remove him from office.

§6.06.03. Auditor: powers and duties.

The Auditor shall attend all regular meetings of Council, and may be requested to attend any special or committee meetings. The Auditor (and the Manager) shall execute on behalf of the City all contracts, conveyances, evidences of indebtedness and all other instruments to which the City is a party.

The Auditor shall be the fiscal officer of the City. He shall serve the Manager and the Council as financial

adviser in connection with City affairs, shall be responsible for the preparation and submission of the annual estimate of receipts and expenditures and appropriation measures and shall at all times keep the Manager and Council informed of the financial condition and needs of the City. He shall authenticate all records, documents and instruments of the City on which authentication are proper. The Auditor shall examine all payrolls, bills and other claims against the City and shall issue no warrant unless he shall find that the claim is in proper form, correctly computed and duly approved, that it is due and payable, that a lawful appropriation has been made therefore, and that the amount required to pay said claim is in the treasury or in process of collection to the credit of an appropriate fund free from any previous encumbrances. He shall perform such other duties consistent with their office as the Manager or the Council may request and shall comply with the laws of Ohio relating to certifications for expenditures of public moneys.

§6.06.04. Auditor: compensation.

The Council shall fix the salary of the Auditor, which salary, for the term of 1995 through 1999, shall be fixed by Council prior to August 1, 1995.

If the established salary of the Auditor is to be changed or adjusted in respect to a succeeding term of Office, such change or adjustment must be made by Council not later than February 1st of the last year of the elective term then being served by the Auditor but the salary shall not be increased or decreased during the elective term of office which is then being served by the Auditor. Unless and until the salary is changed, it shall remain as last fixed.

§6.06.05. Auditor: vacancy.

When a vacancy occurs in the office of Auditor, the vacancy shall be filled by an appointment made by the Manager, subject to confirmation by a majority of the members of Council, and the person so appointed shall serve for the unexpired term or until succeeded as in this Charter provided.

§6.06.06. Auditor: staff.

The Auditor shall have a staff of two (2) employees. They shall be titled the Deputy Auditor and the City Tax Clerk. They shall be hired subject to the requirements of the Civil Service provisions, where applicable, and shall be subject to a job description as provided by the City Auditor. Council may approve to increase or decrease this staff, but Council may never decrease below a staff of two (2).

§6.06.07. Treasurer: term.

The City Treasurer, herein also referred to as the Treasurer, shall be elected at the regular municipal election held in the year 1995 and 1997, and every four (4) years thereafter, for a term of four (4) years, commencing on the 1st day of December next after such election, and shall serve until succeeded as in this Charter provided. The office of City Treasurer shall be a nonpartisan office.

§6.06.08. Treasurer: qualifications.

No person shall be eligible to hold the office of Treasurer unless he shall have been continuously a resident and a qualified elector of the City for one (1) year next prior to his election. The Treasurer shall continue to be a resident and qualified elector of the City throughout his term of office, failing which Council shall remove him from office.

§6.06.09. Treasurer: powers and duties.

The Treasurer shall be custodian of all moneys of the City and of all evidences of investments of City moneys, and shall keep and preserve the same in such public depositories as are authorized by the laws of the State of Ohio or by ordinance of Council. They shall pay out money from the City treasury only on warrants issued by the Auditor. They shall keep a detailed record of all receipts from taxes and other sources, as well as a detailed record of all disbursements of City moneys and a record of the expenditures from various appropriated funds.

§6.06.10. Treasurer: compensation

The Council shall fix the salary of the Treasurer, which salary, for the term of 1995 through 1997, shall be fixed by Council prior to August 1, 1995.

If the established salary of the Treasurer is to be changed or adjusted in respect to a succeeding term of office, such change or adjustment must be made by Council not later than February 1st of the last year of the elective term then being served by the Treasurer, but the salary shall not be increased or decreased during the elective term of office which is then being served by the Treasurer. Unless and until the salary is changed, it shall remain as last fixed.

§6.06.11. Treasurer: vacancy.

When a vacancy occurs in the office of Treasurer, the vacancy shall be filled by an appointment made by the Manager, subject to confirmation by a majority of the members of Council, and the person so appointed shall serve for the unexpired term or until succeeded as in this Charter provided.

§6.07. Department of Public Service

There shall be a Department of Public Service, the head of which shall be the City Manager. The Department of Public Service shall be responsible for the general supervision, custody, care and maintenance of the public buildings, grounds, streets, sewers, utilities, cemeteries and property owned or operated by the City. The department shall consist of four (4) divisions: Water, Water Distribution, Sewers, and Streets, with each division having its own Division Head.

§6.07.01. Division of Water.

The direction of and the responsibility for the Division of Water shall be vested in the Manager. The Division Head shall be appointed by the Manager with the majority approval of Council, and shall report to the Manager for administrative purposes. The appointment of all members of the Division of Water shall be made by the Manager,

subject to the requirements of the Civil Service Provisions where applicable.

§6.07.02. Division of Water Distribution.

The direction of and the responsibility for the Division of Water Distribution shall be vested in the Manager. The Division Head shall be appointed by the Manager with the majority approval of Council, and shall report to the Manager for administrative purposes. The appointment of all members of the Division of Water Distribution shall be made by the Manager, subject to the requirements of the Civil Service Provisions where applicable.

§6.07.03. Division of Sewers.

The direction of and the responsibility for the Division of Sewers shall be vested in the Manager. The Division Head shall be appointed by the Manager with the majority approval of Council, and shall report to the Manager for administrative purposes. The appointment of all members of the Division of Sewers shall be made by the Manager, subject to the requirements of the Civil Service Provisions where applicable.

§6.07.04. Division of Streets.

The direction of and the responsibility for the Division of Streets shall be vested in the Manager. The Division Head shall be appointed by the manager with the majority approval of Council, and shall report to the Manager for administrative purposes. The appointment of all members of the Division of Streets shall be made by the Manager, subject to the requirements of the Civil Service Provisions where applicable.

§6.08. Department of Public Safety.

There shall be a Department of Public Safety, the administrative head of which shall be the City Manager.

§6.08.01. Division of Police.

The Division of Police as presently established shall continue in existence. The operating rules and procedures shall be under the direction of a Chief of Police who shall report to the Manager for administrative purposes. The appointment and removal of all members of the Division of Police, excluding the appointment of the Chief of Police, shall be made by the Manager with approval of the majority of Council, subject to the requirements of the Civil Service Provisions where applicable.

§6.08.02. Division of Fire.

The Division of Fire as presently established shall continue in existence. The operating rules and procedures shall be under the direction of a Chief of Fire who shall report to the Manager for administrative purposes. The appointment and removal of all members of the Division of Fire, excluding the appointment of the Chief of Fire, shall be made by the Manager with approval of the majority of Council, subject to the requirements of the Civil Service Provisions where applicable.

§6.08.03. Residence requirement.

As of January 1, 2001, all new employees of the Department of Public Safety must reside within 25 miles of the corporate limits of the City, within one (1) year after completing their probation.

§6.08.04. Procedure for appointment of Police and Fire Chief.

The City Manager, by rule and regulation subject to Council's approval, shall provide for and develop procedures for the operation of a review board to consider applicants for a vacancy in the office of Chief of Police and Chief of Fire. The Civil Service Commission shall adopt rules and regulations for the certification to the review board of the names of the applicants who receive the top five scores on the written examination for the position of Chief of Police and Chief of Fire without regard to whether or not any individual whose name is so certified is serving or has served previously with the Nelsonville Police Department of the Nelsonville Fire Department.

The Review Board established in Section 6.08.4 of this Charter shall consist of four (4) members, two being Chiefs from surrounding communities, plus the City Manager. The appointment of the four (4) members shall be made by the City Manager with approval of the majority of Council. Each time the Review Board is convened, the members of the Review Board shall be compensated for their services.

The Review Board shall interview each applicant certified to them, and thereafter shall submit to the City Manager the names of the top (3) applicants whom the Review Board by consensus or by majority vote, finds to be the best qualified for the appointment to the vacancy. The Review Board, in its discretion may rank the candidates in order of preference. Each applicant shall be interviewed concerning the following areas applicable to either the Police or Fire Chief: procedure skills, administrative skills, and leadership skills. A psychological evaluation shall be performed on each applicant. In making its selection, the Review Board shall consider each applicant's job experience, education, and work history, as well as skills, knowledge, and abilities shown by the applicant during the Review Board process. The Review Board shall be supplied with any materials necessary to make an informed decision.

The appointment of the Police Chief or Fire Chief shall be made by the City Manager with the approval of majority of Council from the list submitted by the Review Board. Should either the City Manager or City Council decline to make an appointment from the Review Board list, the process shall be repeated after the City Manager calls for a new Civil Service test.

ARTICLE VII- BOARDS AND COMMISSIONS

- §7.01. Creation of boards and commissions.
- §7.02. Appointment of members of boards and commissions.
- §7.03. General rules for boards and commissions.
- §7.04. The Civil Service Commission.
- §7.05. City Planning Commission.

- §7.06. Board of Zoning Appeals.
§7.07. Board of Parks and Recreation.

§7.01. Creation of boards and commissions.

The Boards and Commissions of the City shall include: A Civil Service Commission; a Planning Commission; a Board of Zoning Appeals; a Board of Parks and Recreation; and such other boards and commissions as may be created by Council by ordinance or resolution.

§7.02. Appointment of members of boards and commissions.

By concurrence of a majority of its members then holding office, Council shall have the power to appoint members of boards and commissions. Vacancies on boards and commissions shall be filled by a majority vote of the members of Council then holding office for the unexpired term of office.

§7.03. General rules for boards and commissions

A. Unless otherwise provided for in this Charter:

(1) Members of a board or commission of the City shall be electors of the City;

(2) Each board or commission shall elect a Chairperson and Vice Chairperson, and shall appoint a Secretary, which Secretary may be (1) a member of the board or commission or (2) hold other employment with the City, if the Manager approves of the person holding such other employment to serve as the Secretary;

(3) Each board or commission shall keep a journal or other records of its proceedings;

(4) Each board or commission shall establish its own rules for its operation, which rules shall not conflict with this Charter or the City's ordinances or resolutions;

(5) All members of boards and commissions shall serve without compensation unless otherwise provided for by the Council by ordinance or resolution;

(6) The City Manager, or the Manager's designee, shall be an ex officio member, without voting power, of each board and commission except the Civil Service Commission; and

(7) Boards and commissions shall have all powers and shall perform all duties and functions imposed upon them by this Charter and the City's ordinances and resolutions.

B. A majority vote of the members of the board or commission then holding office shall be required to take action.

§7.04. The Civil Service Commission.

A. Composition and Term.

The Civil Service Commission shall consist of three (3) electors of the City, not holding other municipal office, to be appointed for a term of six (6) years, except that of the three first appointed, one shall be appointed for a term of two

(2) years, one for a term of four (4) years, and one for a term of six (6) years.

B. Duties.

The Civil Service Commission shall provide by rule for the ascertainment of merit and fitness as the basis for appointment and promotion of all regular employees in the service of the City as required by the Constitution and laws of Ohio, and for appeals from the action of the City Manager in any case of transfer, reduction or removal. The action of the Commission on any such appeal shall be final, except as otherwise provided by the laws of Ohio.

Civil Service examination shall not be required for the appointment of any member of a board or commission, or to the Clerk, or to appointment to any office or position requiring professional or exceptional qualifications.

All permanent employees who have had at least twelve (12) months service with this City prior to the effective date of this Section may be retained in the same or any similar position without examinations. Except as herein provided, the Civil Service Commission shall determine the practicability of competitive examinations for any non-elective office or job classification in the service of the City.

§7.05. City Planning Commission.

The Planning Commission shall consist of five (5) members serving overlapping terms of five (5) years each, provided that initial appointments under this Charter shall be as follows: One for a term of one (1) year, one for a term of two (2) years, one for a term of three (3) years, one for a term of four (4) years, and one for a term of five (5) years.

The Council, by ordinance or resolution, shall designate the Planning Commission to serve as the platting commission of the City, and the Commission shall have control of platting and shall recommend regulations to Council covering the platting of all lands within the City.

The Planning Commission shall recommend to Council, for the Council's adoption with or without revisions thereto, a comprehensive general plan or revisions thereto for the physical development of the City, which shall include, but not be limited to: The location of public ways, property, bridges, utilities, buildings, parks, playgrounds, bikeways, and recreation areas. The comprehensive general plan shall show the existing school locations in the City and shall show the projected locations of all new schools as determined by the governing board of the appropriate school district.

The Planning Commission shall prepare and recommend to Council such ordinances and resolutions as will promote the general welfare of the City and its inhabitants; recommend for the Council's approval a base map to be titled the "Official Map of the City of Nelsonville"; and exercise control over the subdivision of lands and the improvement or development thereof as authorized by the City's ordinances and resolutions.

In the performance of its functions, the Planning Commission may enter upon any land in a lawful manner to make examinations and surveys, and place and maintain necessary monuments and markers thereon. The Planning Commission shall have such other powers and perform such

other duties and functions as provided by the City's ordinances and resolutions.

§7.06. Board of Zoning Appeals.

The Board of Zoning Appeals shall consist of five (5) members serving overlapping terms of five (5) years each. The first members appointed under this Charter shall be appointed for terms as follows: One for a term of one (1) year, one for a term of two (2) years, one for a term of three (3) years, one for a term of four (4) years, and one for a term of five (5) years.

The Board of Zoning Appeals shall hear and determine applications for variances from the provisions of any zoning ordinances and resolutions, in harmony with the intent and purposes of any zoning ordinances and resolutions and in accordance with procedures provided therein. The Board of Zoning Appeals shall also hear and determine appeals from any order, requirement, decision, or determination made by the administrative department or administrative officer who is in charge of the enforcement and application of any zoning ordinances and resolutions. The Board shall have such other powers and perform such other duties and functions as provided by ordinance or resolution.

§7.07. Board of Parks and Recreation.

The Board of Parks and Recreation shall consist of five (5) members serving overlapping terms of five (5) years each. The first members appointed under this Charter shall be appointed for terms as follows: One for a term of one (1) year, one for a term of two (2) years, one for a term of three (3) years, one for a term of four (4) years, and one for a term of five (5) years.

It shall be the function and duty of the Board of Parks and Recreation to recommend a program to Council for the operation of public parks, recreation facilities, and the acquisition, improvement, construction and maintenance of the parks, parkways, bikeways, and any other services related thereto. The Board's functions and duties shall be advisory only.

ARTICLE VIII- FINANCE, TAXATION AND DEBT

- §8.01. General.
- §8.02. Capital Improvements Plan.
- §8.03. Temporary appropriations.
- §8.04. Income tax.
- §8.05. Purchasing and contracting; competitive bidding.

§8.01. General.

The laws of Ohio relating to budgets, appropriations, taxation, debt, bonds and notes, assessments, and other fiscal matters of the City shall be applicable to the City, except as such laws are modified by or are inconsistent with the provisions of this Charter, or when provisions for such matters are made in the Constitution of Ohio.

§8.02. Capital Improvement Plan.

A. Submission to Council.

The City Manager shall prepare and submit to Council a five (5) year Capital Improvement Plan, or revision thereto, at least one (1) month prior to the final date for submission of the tax budget to the Council.

B. Contents.

The Capital Improvement Plan shall include:

- (1) A clear, general summary of its contents;
- (2) a list of all capital improvements which are proposed to be undertaken during the five (5) fiscal years next ensuing, with appropriate supporting information as to the necessity for such improvements;
- (3) cost estimates, methods of financing and recommended time schedules for each improvement; and
- (4) the estimated annual cost of operating and maintaining the facilities to be constructed or acquired.

C. Adoption by Council.

The Council, by ordinance or resolution, shall adopt the Capital Improvements Plan, with or without amendment, prior to adoption of the tax budget. The Capital Improvements Plan shall be advisory only and shall not affect the validity of any tax budget and shall not prevent the Council from undertaking capital improvements, or the issuance of debt therefore, which are not shown in or are inconsistent with the Capital Improvements Plan.

§8.03. Temporary appropriations.

If the annual appropriation measure is not adopted by the first day of January, the Council may, by ordinance or resolution, provide for temporary appropriations. If a temporary appropriations measure is not adopted, the amounts appropriated for the preceding fiscal year shall be deemed appropriated for the ensuing fiscal year on a month-to-month basis, with all items prorated accordingly, until such time as Council adopts the annual appropriations resolution for the ensuing year.

§8.04. Income tax.

After the effective date of this Charter the Council shall not have the power to adopt and levy a City income tax without the approval of a majority vote of the electors voting on such issue at a general, primary or special election.

§8.05. Purchasing and contracting; competitive bidding.

A. The Manager shall award all contracts in manner consistent with subsections (j) and (k) of Section 5.04 of this Charter. Where competitive bidding is required pursuant to Council's determination under subsection (B) of this Section, the contract shall be awarded to the lowest and best bidder.

B. The Council shall, by ordinance or resolution, provide for:

- (1) The circumstances under which competitive bidding shall be required, including but not limited to the amount of an expenditure to be made pursuant to a contract above which bidding shall be required; contractual expenditures which shall be exempted from competitive bidding requirements; and the procedure to be followed where

bidding is required. The Council may, by ordinance or resolution, exempt any specific contract or contractual expenditure from bidding requirements which would, under the City's general ordinances or resolutions, be subject to bidding.

(2) All other matters relating to the contracting powers and procedures of the City. Until the Council acts pursuant to subsection (B) of this Section, the general laws of Ohio shall apply with respect to the matters described in this subsection B.

ARTICLE IX- NOMINATIONS AND ELECTIONS

- §9.01. City elections.
- §9.02. Nominations.
- §9.03. Absence of general laws.

§9.01. City elections.

All City elections shall be on a non-partisan basis and there shall be no party designation on either nominating petitions or ballots for any City office.

Both regular and special City elections shall be conducted by the Board of Elections of Athens County, Ohio, under the provisions of this Charter. Where this Charter is silent, the provisions of the election laws of the State of Ohio shall apply.

Regular City elections shall be held on the first Tuesday after the first Monday in November in the odd numbered years. Any matter which, by the terms of this Charter, may be submitted to the electors of the City at any special election may be submitted at the time of a primary election or of a general election.

The candidates for any office, equal in number to the places to be filled, who shall receive the highest number of votes, shall be declared elected.

Passage of tax levies and bond issues shall require an affirmative vote of a simple majority of those voting therein.

In case of a tie between candidates or issues, the plan of the laws of the State of Ohio shall be followed concerning such emergencies.

§9.02. Nominations.

Qualifications as a candidate for City office shall be a petition signed by not less than fifty (50) electors of the City. Petitions shall be standard forms provided by the election authorities under the general laws for the nomination of individual non-partisan candidates for municipal offices. Group petitions shall not be used. Petitions shall be filed with the Board of Elections in the time and manner prescribed by the general laws of Ohio.

§9.03. Absence of general laws.

Whenever the general laws of Ohio do not provide for the procedures or the method of conducting elections or the nomination of officers, and this Charter refers to the general laws, the Council shall, by ordinance or resolution,

provide the necessary procedure to implement this Charter's provisions.

ARTICLE X- INITIATIVE, REFERENDUM AND RECALL

- §10.01. General authority.
- §10.02. Commencement of proceedings; petitioner's committee.
- §10.03. Petitions.
- §10.04. Referendum petitions; suspension of effect of ordinance.
- §10.05. Action of petitions.
- §10.06. Results of election.

§10.01. General authority.

A. Initiative.

The qualified voters of the City shall have the power to propose ordinances or resolutions to Council provided that such power shall apply only to the first ordinance, resolution or other measure required to be passed and not to any subsequent ordinances, resolutions or other measures relating thereto, and further provided that such power shall not extend to the tax budget or any ordinance relating to the appropriation of money or salaries of non-elected City Officers or employees. If Council fails to adopt an ordinance or resolution so proposed without any change in substance, the voters may adopt or reject said ordinance or resolution at a general, primary or special election.

B. Referendum.

The qualified voters of the City shall have the power to reject any adopted ordinance or resolution provided that the power to reject shall apply only to the first ordinance, resolution or other measure required to be passed and not to any subsequent ordinances, resolutions or other measures relating thereto, and further provided that such power to reject ordinances and resolutions shall not extend to the tax budget, or any other ordinance relating to the appropriation of money or salaries of non-elected City officers or employees or ordinances or resolutions adopted as emergency measures. The voters may approve or reject such ordinance or resolution at a general, primary or special election.

C. Recall.

The qualified voters of the City shall have the power to propose the removal of any elected City official as herein provided, and if said official fails to resign, to remove said official by majority vote of those electors voting on the issue.

§10.02. Commencement of proceedings; petitioner's committee.

A. Any five (5) qualified voters may commence initiative, referendum or recall proceedings by filing with the Clerk of Council a written statement that they constitute the petitioner's committee and will be responsible for circulating and filing the petition in proper form and in such compliance with all applicable general laws of Ohio. Such statement shall list the names and addresses of all committee members, specify a mailing address for the committee, and set out in full, the proposed initiative ordinance, the ordinance sought to

be considered, or the office and name of the official to be considered for recall and shall be accompanied by a non-refundable fee of fifty dollars (\$50.00) payable to the City.

B. Upon the filing of a petitioners' statement, the Clerk of Council shall promptly inform the Council of the committee's intent. Within ten (10) days of receipt of a petition, the Clerk of Council shall determine its sufficiency and advise the petitioners' committee and Council of such findings. If the petition is found to be sufficient, Council shall pass an ordinance at its next regular meeting that the issue be placed on the ballot in accordance with Ohio law. If the Clerk of Council finds the petition deficient, the Clerk shall inform the petitioners' committee of such deficiency and return the petition. The petitioners' committee shall have thirty (30) days in which to correct the petition, and failure to do so shall void the petition.

§10.03. Petitions.

A. Number of signatures.

Initiative, referendum and recall petitions must be signed by qualified electors of the City in number to at least fifteen percent (15%) of the total number of the votes cast within the City in the last gubernatorial election.

B. Form and content.

All papers of a petition shall be uniform in size and style and shall be assembled as one instrument for filing. Each signature shall be executed in ink or indelible pencil, and shall be followed by the address of the person signing. Petitions shall contain, or have attached thereto throughout their circulation, the full text of the ordinance or resolution proposed, or sought to be reconsidered, or the name and office of the official to be recalled.

C. Procedure.

Each petition shall be circulated and signed in the manner prescribed by applicable law and not in conflict with the provisions of this Charter.

D. Time for filing referendum petitions.

Referendum petitions must be filed within thirty (30) days after adoption by Council of the ordinance or resolution sought to be reconsidered. All petitions shall be filed with the election authorities. The election authorities shall review same for sufficiency according to law, and shall notify both the petitioners' committee and the Clerk of Council as to the outcome of said review.

§10.04. Referendum petitions; suspension of effect of ordinance.

When a referendum petition is filed with the Clerk of Council, the ordinance or resolution sought to be reconsidered shall be suspended from taking effect. Such suspension shall terminate when:

- (1) there is a final determination of insufficiency of the petition;
- (2) the petitioners' committee withdraws the petition;
- (3) the Council repeals the ordinance or resolution; or

(4) the electors of the City have approved the adoption of the ordinance or resolution and the election authorities have certified the results of the election.

§10.05. Action of petitions.

A. Submission to voters.

The vote of the electors of the City on a proposed or referred ordinance or resolution shall be held at the next scheduled general or primary election or a special election called by Council, not less than seventy-five (75) days after the ordinance or resolution is certified by the election authorities.

B. Action by official.

When a recall petition has been determined sufficient, the City official shall have ten (10) days to resign. If said official fails to resign during the ten-day period, a recall election shall be held at the next general or primary election or at the next possible special election called by Council, if the next scheduled general or primary election or a special election called by Council shall not occur within seventy-five (75) days.

C. Withdrawal of petitions.

An initiative, referendum or recall petition may be withdrawn at any time prior to the fifteenth (15th) day preceding the day scheduled for a vote of the electors in the City, by filing with the Clerk of Council a request for withdrawal signed by at least four (4) members of the petitioners' committee. Upon the filing of such request, the petition shall have no further force or effect and all proceedings therein shall be terminated.

§10.06. Results of election.

A. Initiative.

If a majority of the qualified electors voting on a proposed initiative vote in its favor, such initiative shall be considered adopted upon certification of the results and shall be treated in all respects in the same manner as ordinances or resolutions of the same kind adopted by Council. If conflicting ordinances or resolutions are approved at the same election, the one receiving the greatest number of affirmative votes shall prevail to the extent of such conflict.

B. Referendum.

If a majority of the qualified electors vote on a referred ordinance or resolution vote for its passage, such ordinance or resolution shall take effect upon the certification of the election results.

C. Recall.

If a majority of the votes cast at a recall election are in favor of recall, the official in questions shall forfeit office upon certification of the election results. Such vacancy shall be filled as set forth in this Charter. The official recalled shall be ineligible to hold any City office for the remainder of the unexpired term of said office. If the majority of the votes cast at a recall election are against the recall, the official may not again be subject to recall for a period of eighteen (18) months after the election at which he was unsuccessfully subjected to recall.

ARTICLE XI- GENERAL PROVISIONS

- §11.01. Oath of Office.
- §11.02. Official bonds.
- §11.03. Fees.
- §11.04. Amendments.
- §11.05. Conflicting amendments.
- §11.06. Effect of partial invalidity.
- §11.07. Political activity.

- §11.08. Removal of official.
- §11.09. Conflicts of interest; ethics; campaign financing.
- §11.10. Succession.
- §11.11. Effect of Charter on existing laws and rights.

§11.01. Oath of Office.

All officers of the City shall, before entering upon their offices, take and subscribe an appropriate oath or affirmation to be filed and kept in the office of the Clerk of Council.

§11.02. Official bonds.

The City shall pay the costs of all surety bonds for those of its officers and employees that are required by the Council to be bonded. The amount of such bonds shall be established by Council. Surety bonds shall be issued by a company authorized to do business in the State of Ohio, and such bonds shall be approved as to form and content by the City Attorney.

§11.03. Fees.

All fees and costs received directly by officers or employees of the City in connection with the performance of their official duties and functions that are included within the scope of their office or employment with the City shall be accounted for and paid into the City's treasury.

§11.04. Amendments.

This Charter may be amended as provided in Article XVIII of the Ohio Constitution.

§11.05. Conflicting amendments.

In the event conflicting amendments of the Charter are approved at the same election by a majority of the total number of votes cast, the amendment receiving the highest number of affirmative votes shall prevail to the extent of such conflict.

§11.06. Effect of partial invalidity.

A determination that all or any part of any Article, Section or Division of this Charter is invalid shall not invalidate or impair the force and effect of any other part, except to the extent that the other part is wholly dependent for its operation upon the part declared invalid.

§11.07. Political activity.

A. Except for one's own campaign, no employee or officer of the City, other than an elected official or a member of a board or commission of the City, shall:

(1) solicit or receive any contributions to the campaign funds of any candidate for City office; or

(2) take any part in the campaign for the office of any candidate for City office other than to vote and to express personal opinions.

§11.08. Removal of official.

A. The Council members and members of boards and commissions shall be removed for cause as provided in this Section of this Charter.

B. The Charging Official having reason to believe there is probable cause (as such causes are defined in this Section) for the removal of a Council member or member of a board or commission, shall give notice of the alleged cause for removal and the time, date and place of the commencement of hearing for removal, which shall not be earlier than ten (10) days after the service of the notice to the accused person by personal service, certified mail, or by leaving a copy of such notice at the person's last known place of residence in the City. At such time, date and place, and at any adjourned meetings, the Council shall hear, provide an opportunity to the accused person to be heard and present defense, and determine whether the accused person shall be removed from office. The Council shall remove an official for any of the following causes by a two-thirds ($\frac{2}{3}$) vote of the Council members then holding office, providing that if the accused person is a Council member, such person shall not vote on any matter during the removal procedures and shall not be counted in determining required majorities:

(1) Failure to possess or maintain the qualifications of the office prescribed by this Charter;
(2) Intentional violation of Section 5.05 of this Charter;

(3) Conviction of a felony; or
(4) Unexcused absence from any three (3) consecutive regular meetings of the Council, board or commission on which such person serves. An absence from a regular meeting may be excused by a majority vote of the members of the Council then holding office, or by a majority vote of the members of the board or commission then holding office on which such person serves. Such absence may be excused at any time, including the excusing of any absence after the action is initiated but prior to the commencement of hearings for the person's removal under this Section.

C. Upon the removal of an official from office pursuant to this Section, the office of the offending person shall be vacant, subject to any appeal to and review by an appropriate Court, and the vacancy shall be filled as provided in this Charter.

D. The removal of an official or the occurrence of any of the causes permitting the removal shall not invalidate any official action of the Council, board or commission in which the member participated. The subsequent removal of a person, who fills a vacancy created pursuant to this Section by the reinstatement by a Court of a person previously removed by the council, shall not invalidate any action of the person who filled the vacancy or the Council, board or commission in which such person who filled the vacancy participated.

E. The Council shall be the judge of the grounds for removal from office and shall conduct the proceedings relative to removal. The Council shall have the power to subpoena witnesses, administer oaths and require the producing of

evidence, either on its own motion or through the process of any appropriate Court or officer thereof. A person charged with conduct constituting grounds for removal from office shall be entitled to a public hearing on demand, but in any case, a record of the proceedings shall be made and preserved. If a public hearing is demanded, a notice of such hearing shall be published in one or more newspapers of general circulation in the City at least one (1) week in advance of the hearing, and in such an event, the Charging Official may reschedule the time, date and place of the hearing to accommodate the publication of the notice. If the hearing is rescheduled, the Charging Official shall notify the accused person of such fact. Decisions made by the Council under this Section shall be subject to review by the Courts on matters of law and whether the Council acted arbitrarily and without probative evidence to support the grounds for removal.

F. Council shall request the County Prosecutor or his designee to prosecute the removal proceedings before the Council and any reviews thereof by the Courts. If the County Prosecutor refuses to accept the responsibility, Council shall appoint a Special Prosecutor who shall prosecute the removal proceedings before the Council and any reviews thereof by the Courts. If a person accused is not finally removed, the City shall pay the reasonable costs of the defense of such persons and any compensation withheld pending the appeal of the action of the Council.

§11.09. Conflicts of interest; ethics; campaign financing.

The laws of Ohio pertaining to conflicts of interest, criminal misbehavior, ethics and financial disclosure by City officials and employees, and campaign financing and other election practices of candidates for City office shall apply under this Charter.

§11.10. Succession.

The City of Nelsonville under this Charter is hereby declared to be the legal successor of the City of Nelsonville under the laws of Ohio; and shall have title to all property, real and personal, owned by its predecessor, including all moneys on deposit and all taxes or assessments in process of collection, together with all accounts receivable and rights of action, the City shall be liable for all outstanding orders, contracts and debts of its predecessor, and any other obligations for which it may be held liable by any Court with jurisdiction. All contracts entered into by the City or for its benefit prior to the effective date of this Charter shall continue in full force and effort.

§11.11. Effect of Charter on existing laws and rights

A. The adoption of this Charter shall not affect any pre-existing rights of the City nor any right, liability, pending suit or prosecution, either on behalf of or against the City or any officer thereof, nor any franchise granted by the City nor pending proceedings for the authorization of public improvements or the levy of assessments thereof. Except as a contrary intent appears in this Charter, all acts of Council of the City including ordinances and resolutions in effect the date

this Charter becomes effective, shall continue in effect until amended or repealed.

B. No action or proceeding pending against the City or an officer thereof shall be abated or affected by the adoption of this Charter. All actions or proceedings shall be prosecuted or defended under the laws in effect at the time they were filed.

ARTICLE XII- TRANSITIONAL PROVISIONS

§12.01. Effective date.

§12.02. Effect of Charter on existing personnel.

§12.03. Votes of Council during transition period.

§12.01. Effective date.

A. This Charter shall be submitted to the electors of the City of Nelsonville, Ohio, at an election to be held on November 8, 1994. If approved by a majority of the electors voting on the issue, this Charter shall be come effective January 1, 1995.

B. Except as provided in Section 12.02 of this Charter, the Council members, the Mayor and any other elected City officials provided for under this Charter shall be those persons who are elected at the primary and general elections to be held in 1995 and at subsequent elections pursuant to the provisions of this Charter and any person appointed to fill a vacancy in any elected office. All persons elected to public office at the primary and general election to be held in 1995, shall be elected to terms of office prescribed in this Charter commencing on June 1, 1995, or December 1, 1995, respectively.

C. In the interim period beginning January 1, 1995, and ending November 30, 1995, the City shall function under this Charter as described in Section 12.02 hereafter.

§12.02. Effect of Charter on existing personnel.

A. All elected offices and the terms of elected offices under the general statutory plan of government for cities shall be abolished and terminated as of December 31, 1994, however, said elected City office holders as of January 1, 1995, shall continue in service to the City until May 31, 1995, or November 30, 1995, upon the following conditions:

(1) All persons elected to the office of Council member at or before the regular election on November 8, 1994, serve as Council members under this Charter until May 31, 1995.

(2) The person holding the office of City Attorney under the general statutory plan of government on December 31, 1994, shall serve as City Attorney under this Charter until January 1, 1996.

(3) The person holding the office of City Treasurer under the general statutory plan of government on December 31, 1994, shall serve as City Treasurer under this Charter until November 30, 1995.

(4) The person holding the office of City Auditor under the general statutory plan of government on December 31, 1994, shall serve as City Auditor under this Charter until November 30, 1995.

(5) Should vacancies on Council occur during the period of December 31, 1994, through May 31,

1995, the vacancies created shall be filled as provided in this Charter on an interim basis, terminating May 31, 1995.

(6) No person holding a City elective office on December 31, 1994, shall be prohibited from being appointed as a City official by virtue of this Charter.

(7) The elected positions of Mayor and Council President under the general statutory plan of government on December 31, 1994, shall be abolished.

B. The person holding the office of Director of Public Safety and Service under the general statutory plan of government on December 31, 1994, shall serve as Acting City Manager under this Charter until Council appoints a City Manager. Except as otherwise provided by this Charter, all other persons holding office at the time this Charter takes effect shall continue in office and in the performance of their duties until other provisions have been made in accordance with this Charter for the performance of their duties by others or the discontinuance of the duties of or the discontinuance of the office. When such provisions shall have been made, the term of any officer shall expire and the office shall be abolished. The powers conferred and the duties imposed upon any office, body, commission, board, department or division of the City under the laws of Ohio or under any municipal ordinance, resolution or contract in force at the time of this Charter takes effect, if the office, body, commission, board, department or division is abolished by this Charter, shall be thereafter exercised and discharged by those upon whom are imposed corresponding functions, powers and duties by this Charter or by any ordinance or resolution of Council thereafter enacted.

C. Every employee of the City on January 1, 1995, shall continue in such employment subject in all respects to the provisions of this Charter and ordinances, resolutions, rules or regulations enacted or promulgated under this Charter.

§12.03. Votes of Council during transition period.

During the transition period beginning January 1, 1995, and ending May 31, 1995, wherever this Charter requires a vote of five (5) members of Council or a majority of Council, such vote shall be defined as the simple majority of the remaining number of Council members then serving; a majority of two-thirds ($\frac{2}{3}$) shall be defined as two-thirds ($\frac{2}{3}$) of the remaining number of Council members then serving; and a three-fourths ($\frac{3}{4}$) majority of Council shall be defined as three-fourths ($\frac{3}{4}$) of the remaining number of Council members then serving.

CERTIFICATE

We, the qualified members of the Charter Commission of the City of Nelsonville, Ohio, elected May 3, 1994, have framed the foregoing Charter and have fixed November 8, 1994, as the time of the election at which the Charter shall be submitted to the electors of the City of Nelsonville, Ohio.

Gary Edwards, Chairperson
Mary T. Sparks, Vice Chairperson
Janet Pritchard, Secretary
Bill McKnight, Treasurer
Ruth Brooker
Lowell Cole
Keith Conner
Violet Hollenbaugh
Wilma Lanning
Melvin MacCombs
Mary Jane McKinley
Melissa Meeks
Dan Pfeiffer
Charles Schnipke
Theodore Sharpe

Appendix 2

Ordinance No. 83-24

Passed SEPTEMBER 23 2024

ORDINANCE 83-24

AN ORDINANCE REGARDING A PROPOSED BALLOT INITIATIVE ON THE QUESTION OF WHETHER TO ABOLISH OR RETAIN NELSONVILLE CITY CHARTER.

WHEREAS, the Ohio Constitution guarantees to the people of a municipality the right to choose their form of government;

WHEREAS, by Resolution 2305, duly passed by the Council of the City of Nelsonville, the City reaffirmed the City’s long-standing commitment to respecting the right of the people of the City of Nelsonville to choose their form of government;

WHEREAS, the purpose of Resolution 2305 was to clarify for the people of the City of Nelsonville the proper procedures to follow for the exercise of the people’s right to choose the form of government for the City;

WHEREAS, Resolution 2305 clarified that the proper procedures for lawfully abolishing Nelsonville City Charter, should the people so choose to exercise their right, are set forth in the Ohio Constitution and applicable implementing state law and not Nelsonville City Charter;

WHEREAS, the City is currently involved in litigation over the proper procedures for lawfully abolishing Nelsonville City Charter, in Athens County Court of Common Pleas, Case No. 24CI0180 and Court of Appeals (Athens County) Fourth District, Case Nos. 24CA0017, 24CA0022, 24CA0028 and 24CA0029;

WHEREAS, the trial court in Case No. 24CI0180 issued an order on September 13, 2024 stating, in relevant part, “the Court orders a preemptive limited writ of mandamus ordering Nelsonville City Council members, Respondents herein, to enact forthwith an ordinance providing for the submission of the proposed petition initiative to the Nelsonville electors in the November 5, 2024 election and that the Athens County Board of Elections certify that Relaters’ petition initiative has enough valid signatures to qualify for placement on the general election ballot. Nelsonville City Council shall cause a copy of the passed ordinance to be received by the Athens County Board of Elections no later than 3:00 p.m. on September 16, 2024. *See R.C. 2731.06 and State ex rel. Sanduskians for Sandusky v. Sandusky* (2022), 169 Ohio St.3d 702. Although the record is clear that the Clerk found Relaters’ petition to be sufficient, the record is not clear the number of votes cast in the last general election and that number forms the basis of the 10% threshold of valid signatures required for the initiative to be placed upon the ballot. That issue is left to the BOE to verify that the petition has enough valid signatures to meet the 10% threshold under Ohio Constitution Article XVIII, Sec. 9”;

WHEREAS, the City respectfully disagrees with the trial court on the point that “the record is clear that the Clerk found Relaters’ petition to be sufficient...”;

WHEREAS, the Nelsonville Clerk of Council has not certified the petition to be sufficient, nor has the trial court ordered the Clerk of Council to make such a certification;

WHEREAS, the trial court did not order Nelsonville City Council to act ministerially under the Ohio Constitution;

RECORD OF ORDINANCES

GRAPHIC VILLAGE - CINCINNATI, OH

Form V6220S

Ordinance No. 83-24

Passed SEPTEMBER 23, 2024

WHEREAS, the trial court instead ordered, effectively, Nelsonville City Council to act ministerially under Nelsonville City Charter, which does not apply to abolishing Nelsonville City Charter;

WHEREAS, the trial court found a conflict existed between Nelsonville City Charter and the Ohio Constitution;

WHEREAS, there is no conflict between Nelsonville City Charter and the Ohio Constitution;

WHEREAS, the trial court issued a stay of its September 13 order;

WHEREAS, the Court of Appeals (Athens County) Fourth District lifted the trial court's stay on September 18, 2024 and noted, accordingly, the trial court's September 13 order is currently effective, pending appeal;

WHEREAS, the findings of fact relied upon to lift the stay are not supported by record facts;

WHEREAS, specifically, the effect of lifting the stay is to disenfranchise Nelsonville voters who have requested overseas ballots, which voters disproportionately are serving in the United State military overseas;

WHEREAS, specifically, federal law guarantees to members of the United States military serving overseas the right to vote in elections and the City is not permitted to take action which would deprive members of the United States military the right to vote and thereby violate their federal civil rights;

WHEREAS, specifically, any elector of the City (including the Relators in Case No. 24CI0180) has the right and ability to resubmit a petition to abolish Nelsonville City Charter in the future, at any time and as many times as such elector desires, so there is no extreme prejudice or manifest injustice;

WHEREAS, specifically, the City reserves the right to explain in the future, as may be necessary, other specific instances in which the findings of fact relied upon to lift the stay are not supported by record facts;

WHEREAS, the Ohio Constitution is of superior legal obligation to Nelsonville City Charter;

WHEREAS, no court has jurisdiction to order any public body or officer to act contrary to the provisions of the Ohio Constitution;

WHEREAS, the City is committed to upholding the rule of law and abiding by the dictates of the Ohio Constitution;

WHEREAS, the City seeks to preserve, protect, and defend its lawful interests, including preserving every legal argument at its disposal;

WHEREAS, the City does not waive any right of the City under any applicable law, including the Ohio Constitution, the Ohio Revised Code, the Nelsonville City Charter, the Ohio Rules of Civil Procedure, or the Ohio Rules of Appellate Procedure;

WHEREAS, Council reserves for its future consideration authorizing and directing future litigation or other appropriate legal action before any judicial or quasi-judicial tribunal of competent jurisdiction, as may be necessary, to uphold,

RECORD OF ORDINANCES

Ordinance No. 83-24

Passed SEPTEMBER 23, 2024

preserve, protect, and defend the City's lawful interests against unlawful attempts to subvert the City,

NOW THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF NELSONVILLE, ATHENS COUNTY, OHIO, AS FOLLOWS:

1. Council affirms Resolution 2305, a copy of which is attached hereto as **Exhibit A** and incorporated herein by reference for all purposes.
2. The proposed petition initiative attached hereto as **Exhibit B**, shall be forthwith submitted to the Athens County Board of Elections ("BOE"), subject to the conditions and prerequisites set forth in Sections 3-7 herein.
3. As the Court stated in its Order in Athens County Court of Common Pleas, Case No. 24CI0180, it "is not clear the number of votes cast in the last general election and that number forms the basis of the 10% threshold of valid signatures required for the initiative to be placed upon the ballot. That issue is left to the BOE to verify that the petition has enough valid signatures to meet the 10% threshold under Ohio Constitution Article XVIII, Sec. 9." Accordingly, if the BOE determines the 10% threshold has not been met, then according to the express terms of the Order, the initiative may not lawfully appear on the November 5, 2024, ballot.
4. The City takes this action with no further comment on whether the petition initiative is proper in form or substance such that it is proper to appear on the November 5, 2024, ballot. The City passes this ordinance in compliance with the trial court's order and the Fourth District's dissolution of the stay of that order. The litigation is still on appeal and the City, by and through its attorneys, maintains its previous legal positions on this matter with full intent to further prosecute their appeal before the Fourth District Court of Appeals, seeking any and all appropriate relief.
5. Nothing in this Ordinance shall be construed as waiving any right of the City under any applicable law, including the Ohio Constitution, the Ohio Revised Code, the Nelsonville City Charter, the Ohio Rules of Civil Procedure, or the Ohio Rules of Appellate Procedure.
6. Nothing in this Ordinance shall be construed as waiving any argument of the City in any litigation involving the City.
7. The City Attorney is hereby authorized, directed, and instructed to take all appropriate action according to law to fully vindicate the City's lawful legal position, to protect the City's lawful interests, and to present the arguments and evidence in support of the City's arguments, which the City has not yet been afforded an opportunity to do. The City Attorney shall give to Council a full and complete report of actions so taken at a time set by Council.
8. The Clerk of Council is hereby directed and ordered to provide a certified copy of this Ordinance to the Athens County Board of Elections. The Clerk shall furnish proof to Council once such service has been completed.

RECORD OF ORDINANCES

Ordinance No. 83-24

Passed SEPTEMBER 23 2024

9. Council hereby finds and determines that all formal actions taken relative to the adoption of this ordinance were taken in an open meeting of the Nelsonville City Council, and that all deliberations of Council and of its committees, if any, which resulted in formal action, were taken in meetings open to the public in full compliance with applicable legal requirements.
10. Five (5) members of Council voting to dispense with the two readings of this Ordinance, the rules are hereby suspended for this Ordinance and this Ordinance is hereby enacted on the first reading, pursuant to O.R.C. 731.15, and Nelsonville City Charter Sections 4.09 through 4.11. This Ordinance is hereby passed as an emergency measure pursuant to O.R.C. 731.30, Article IV, Sections 4.09 through 4.11 as an emergency in the operation of the City government to prevent further procedural complications in ongoing litigation while allowing the City and other interested parties to further litigate the merits of this matter and is thus necessary for the immediate preservation of the public peace, health, safety, morals or welfare of the City, and this Ordinance shall be in full force and effect upon its adoption.

Duly enacted by Council on first reading on the 23rd day of September, 2024.

NELSONVILLE CITY COUNCIL


President of Council


Clerk of Council

First Reading: 09/23/2024

Appendix 3

Ordinance No. 98-24

Passed DECEMBER 9, 2024

ORDINANCE 98-24

AN ORDINANCE ESTABLISHING AN ADVISORY COMMISSION ON THE IMPLEMENTATION OF ISSUE 23 AND DECLARING AN EMERGENCY.

WHEREAS, by Resolution 2305, Nelsonville City Council reaffirmed the City’s commitment to respecting the right of the people of the City of Nelsonville to choose the form of government for the City of Nelsonville;

WHEREAS, Issue 23 was an ordinance submitted to the voters of Nelsonville under the initiative procedures set forth in Article X of Nelsonville City Charter;

WHEREAS, the voters of Nelsonville voted to adopt the Issue 23 ordinance to abolish Nelsonville City Charter and establish a mayoral form of government under the Ohio Revised Code;

WHEREAS, Nelsonville City Charter Section 4.08(3) empowers Nelsonville City Council to “set up such additional departments, boards, or commissions as it may deem necessary and determine their powers and duties;”

WHEREAS, Nelsonville City Charter Article VII governs the creation of and rules governing commissions which Nelsonville City Council may create and establish;

WHEREAS, given the complexities associated with implementation of Issue 23 and facilitating any lawful transition, Council finds it is necessary and expedient to establish an advisory commission to advise Council on implementation of Issue 23;

WHEREAS, the Judiciary Committee has recommended to Council that Council creates the Advisory Commission;

WHEREAS, Council determines it is necessary and expedient for the advisory commission to have full authority to gather information and present recommendations to Council to implement Issue 23 and to facilitate the transition,

NOW THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF NELSONVILLE, ATHENS COUNTY, OHIO AS FOLLOWS:

- 1. **Advisory Commission Created and Established.**
 - a. Council hereby creates and establishes the Advisory Commission on the Implementation of Issue 23.
 - b. The Advisory Commission shall be composed of six (6) electors of the City of Nelsonville. However, no person currently serving in an elected or appointed office of the City of Nelsonville shall be eligible to serve on the Advisory Commission. Each Member appointed to the Advisory Commission shall be entitled to all rights and privileges associated with serving on the Advisory Commission.
 - c. Pursuant to Nelsonville City Charter Section 7.03(A)(6), the City Manager or his designee shall serve as an ex officio Member of the Advisory Commission but shall have no vote.
 - d. Members of the Commission shall serve from the date of their respective appointment and through December 31, 2025.
 - e. The Advisory Commission shall dissolve on December 31, 2025, unless the Council shall by law extend the date for dissolution.

RECORD OF ORDINANCES

Ordinance No. 98-24

Passed DECEMBER 9, 2024

2. Powers of the Advisory Commission.

- a. The Advisory Commission shall have full power gather information and prepare recommendations to Council.
- b. The Advisory Commission shall have full power to conduct hearings and to compel the production of testimony and evidence as it prepares recommendations to Council.
- c. The Advisory Commission shall have power to elect its own officers and establish its own rules as provided in Article VII of Nelsonville City Charter.
- d. The City Attorney shall serve as legal counsel to the Advisory Commission.
- e. The Advisory Commission shall have power to formally transmit to Council such recommendations as the Advisory Commission, in its sole discretion and judgment, shall deem appropriate to transmit. Upon transmission to Council of any recommendation, such recommendation shall be added to the agenda of the next regular Council meeting for Council consideration and discussion.
- f. The Advisory Commission shall remain independent in the exercise of its powers as granted herein subject only to law. Accordingly, it shall be unlawful for any person to unlawfully interfere with the Advisory Commission's exercise of its powers and authorities, provided that this prohibition shall not be construed to abridging the First Amendment right of any person.
- g. The Advisory Commission shall keep a journal or other records of its proceedings according to law and shall deposit such journal or record with the Clerk of Council.

3. Compensation.

- a. Members of the Advisory Commission shall be paid a monthly salary of \$100 each for their service.
- b. The Advisory Commission may appoint a Secretary of the Advisory Commission pursuant to Nelsonville City Charter 7.03(A)(2). Unless otherwise provided for by law, the Secretary shall be paid a monthly stipend of \$1,000.00 for his or her service.

4. Five (5) members of Council voting to dispense with the two readings of this Ordinance, the rules are hereby suspended for this Ordinance and this Ordinance is hereby enacted on the first reading, pursuant to O.R.C. 731.15, and Nelsonville City Charter Sections 4.09 through 4.11. This Ordinance is hereby passed as an emergency measure pursuant to O.R.C. 731.30, Article IV, Sections 4.09 through 4.11 as an emergency in the operation of the City government because there is a need to implement Issue 23 to the extent the law permits and is necessary for the immediate preservation of the public peace, health, safety, morals or welfare of the City, and this Ordinance shall be in full force and effect upon its adoption.

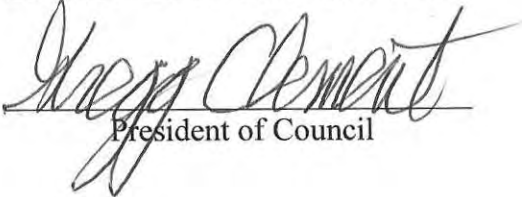
RECORD OF ORDINANCES

Ordinance No. 98-24

Passed DECEMBER 9, 2024

Duly enacted by Council on first reading on the 9th day of December, 2024.

NELSONVILLE CITY COUNCIL


President of Council


Clerk of Council

First Reading: 12/09/24

Appendix 4

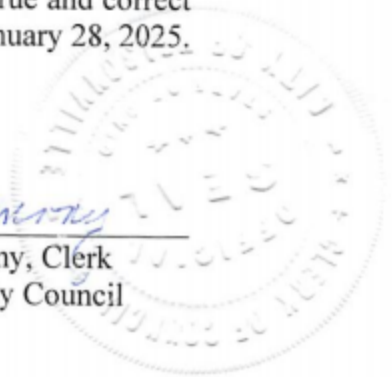
RECEIVED

FEB 05 2025

ATHENS COUNTY
BOARD OF ELECTIONS

CLERK'S CERTIFICATION

I, Susan Harmony, Clerk of Nelsonville City Council, certify that the attached copy of **ORDINANCE 05-25, AN ORDINANCE TO PLACE ON THE PRIMARY/SPECIAL ELECTION SCHEDULED FOR MAY 6, 2025 A PROPOSED AMENDMENT TO NELSONVILLE CITY CHARTER TO GIVE EFFECT TO THE EXPRESSED WILL OF THE VOTERS OF NELSONVILLE AND DECLARING AN EMERGENCY** is a true and correct copy of THE Ordinance adopted by Nelsonville City Council on January 28, 2025.



Susan Harmony, Clerk
Nelsonville City Council

RECEIVED

FEB 05 2025

ATHENS COUNTY
BOARD OF ELECTIONS

ORDINANCE 05-25

AN ORDINANCE TO PLACE ON THE PRIMARY/SPECIAL ELECTION SCHEDULED FOR MAY 6, 2025 A PROPOSED AMENDMENT TO NELSONVILLE CITY CHARTER TO GIVE EFFECT TO THE EXPRESSED WILL OF THE VOTERS OF NELSONVILLE AND DECLARING AN EMERGENCY.

WHEREAS, the 2025 municipal primary/special election is scheduled for May 6, 2025;

WHEREAS, the deadline for certifying any local questions and issues for the May 6 primary/special election to the Athens County Board of Elections is February 5, 2025;

WHEREAS, the voters of the City of Nelsonville, by a vote with a margin of approximately 70% to 30% on Issue 23, have expressed their desire to change the form of government of the City of Nelsonville to have an elected mayor;

WHEREAS, the language of Issue 23 did not include any provision for authority to provide for a transition for the change in the form of government of the City of Nelsonville, thus rendering any transitional action taken by the City prior to the 2025 general municipal election subject to potential court challenges;

WHEREAS, the Ohio Constitution guarantees to the people of a municipality the right to choose their form of government;

WHEREAS, by Resolution 2305, duly passed by the Council of the City of Nelsonville, the City reaffirmed the City's long-standing commitment to respecting the right of the people of the City of Nelsonville to choose their form of government;

WHEREAS, the purpose of Resolution 2305 was to clarify for the people of the City of Nelsonville the proper procedures to follow for the exercise of the people's right to choose the form of government for the City;

WHEREAS, the City is committed to upholding the rule of law and abiding by the dictates of the Ohio Constitution;

WHEREAS, the issue for the proper and lawful procedures for abolishing a municipal charter is presently pending before the Ohio Supreme Court in case no. 2024-1737;

WHEREAS, if the Ohio Supreme Court reverses the court of appeals in case no. 2024-1737, such reversal could call into question the entire validity of Issue 23 and thereby prevent an attempt to give effect to the expressed will of the voters with respect to a change in the form of government of the City;

WHEREAS, Council finds it appropriate to ensure the expressed will of the voters is given effect and the City of Nelsonville can lawfully establish and provide for a form of government with an elected mayor at the earliest time practicable;

WHEREAS, the appropriate means to ensure the expressed will of the voters is given effect is the procedures set forth in Article XVIII, Section 9 of the Ohio Constitution (municipal charter amendment procedure);

WHEREAS, the Acting City Manager/Police Chief has proposed a charter

amendment to give effect to the expressed will of the voters and to provide for an elected mayoral form of government for the City;

WHEREAS, Council finds it appropriate and expedient to certify the Acting City Manager/Police Chief's proposal to the Athens County Board of Elections to place such proposal on the ballot for the voters,

NOW THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF NELSONVILLE, ATHENS COUNTY, OHIO AS FOLLOWS:

1. Council re-affirms Resolution 2305.
2. The proposed charter amendment attached hereto as **Exhibit A** shall be forthwith submitted to the Athens County Board of Elections for inclusion on the ballot submitted to the voters of the City of Nelsonville at the primary/special election to be held on May 6, 2025.
3. The Clerk of Council is hereby directed and ordered to provide a certified copy of this Ordinance (with **Exhibit A**) to the Athens County Board of Elections. The Clerk shall furnish proof to Council once such service has been completed.
4. The City Attorney is hereby directed and ordered to prepare language for the complete charter amendment in accordance with the proposal of the Acting City Manager/Police Chief. Such language, along with a summary of the proposal, shall be mailed to every registered voter in the City, in accordance with the requirements of Article XVIII, Section 9 of the Ohio Constitution.
5. Council hereby finds and determines that all formal actions taken relative to the adoption of this ordinance were taken in an open meeting of the Nelsonville City Council, and that all deliberations of Council and of its committees, if any, which resulted in formal action, were taken in meetings open to the public in full compliance with applicable legal requirements.
6. Five (5) members of Council voting to dispense with the two readings of this Ordinance, the rules are hereby suspended for this Ordinance and this Ordinance is hereby enacted on the first reading, to O.R.C. 731.15, and Nelsonville City Charter Sections 4.09 through 4.11. This Ordinance is hereby passed as an emergency measure pursuant to O.R.C. 731.30, Article IV, Sections 4.09 through 4.11 as an emergency in the operation of the City government because the February 5, 2025 deadline for the 2025 municipal primary election is imminent and because it is necessary to give effect to the expressed will of the voters at the earliest time practicable and is necessary for the immediate preservation of the public peace, health, safety, morals or welfare of the City, and this Ordinance shall be in full force and effect upon its adoption.

Duly enacted by Council on first reading on the 28th day of January, 2025.

NELSONVILLE CITY COUNCIL


President of Council


Clerk of Council

First Reading: 01/28/2025

Under suspension of the rules

City of Nelsonville

211 Lake Hope Drive
Nelsonville, Ohio 45764

Telephone: (740) 753-1314

RECEIVED

FEB 05 2025

ATHENS COUNTY
BOARD OF ELECTIONS

Charter Update Proposal

To effect the wishes of the voters of Nelsonville while still preserving a continuity of government, ensuring all public services are able to be rendered uninterrupted to the citizens of Nelsonville, providing security to the employees who have faithfully served the City of Nelsonville, as well as to the residents to which they serve.

An amendment to the Charter of the City of Nelsonville is recommended to make the following changes:

The office of the City Manager

1. The office of the City Manager shall be reformed into the Office of the Mayor.
2. The Mayor shall be a qualified elector of the City of Nelsonville.
3. The Mayor shall serve a term of 4 years, serving a maximum of 3 consecutive terms.
4. The Office of the Mayor shall be a non-partisan office.
5. In the vacancy of the Mayor the Council President shall fill the vacancy until a permanent appointment can be made by 2/3 majority vote of council or until the vacancy is filled through election
6. The Mayor shall have veto powers over council.
7. The current composition of the Office of the City Manager shall continue as it exists under the Office of the Mayor.

City of Nelsonville

211 Lake Hope Drive
Nelsonville, Ohio 45764

Telephone: (740) 753-1314

The Council of the City of Nelsonville

1. City Council shall be composed of 8 non-partisan council members
 - a. One Council President, Elected at large
 - b. Three Council members Elected at large
 - c. Four members elected from wards
 - i. Wards to be established through ordinance
 1. Wards to be re-evaluated every 10 years commencing on the release of updated Federal Census counts
 - d. Council members shall serve two year terms with a lifetime limit of 12 years of service
 - e. Council President shall be non-voting member unless the event of a tie.
 - i. Shall preside, call, and manage council meetings.
 - ii. The Council Clerk shall serve all of council but report to the council president.
 - f. Vacancy for the council shall be nominated by the Mayor with a majority vote of council members present confirming the selection
 - g. Council by 2/3 majority of all council members elected may override a mayoral veto

This proposal shall be certified to the board of elections to run on the 2025 Primary ballot and for the election of all offices to be held in the following general election. All current council seats will be considered as expiring at this term (i.e. all 7 seats will be up for election) Provided its passage the current council will appoint an

City of Nelsonville

211 Lake Hope Drive
Nelsonville, Ohio 45764

Telephone: (740) 753-1314

interim Mayor with 3/4th majority vote of all members elected to council. Nothing shall preclude this interim Mayor from running in the general election, nor shall it count towards their number of terms. Council shall set the pay or the Mayor by separate ordinance prior to the first election. The interim Mayor shall be paid a base salary of \$59,000

Council will have authority to effectuate all necessary steps to implement these changes.

This amendment shall be certified and placed on the May 5th, 2025 primary ballot. Should this amendment pass, following the Board of Elections official result certification shall become effective no later than 30 days thereafter.

In the event this amendment proves ineffective in providing proper governance over the City of Nelsonville Council shall have full authority to call for the dissolution of the Charter of the City of Nelsonville to be voted on by the Citizens of the City of Nelsonville. Should the Citizens pass such provision by popular vote Council shall have full authority to implement any necessary transition into a statutory form of government.

By enacting this amendment to the City of Nelsonville Charter, Ordinance #(issue 23) shall henceforth be repealed. At no time would this provision prohibit the Citizens of Nelsonville from calling for the abolishment of the City Charter under their rights set forth in the Constitution of the State of Ohio.

Appendix 5

CLERK'S CERTIFICATION

I, Susan Harmony, Clerk of Nelsonville City Council, certify that the attached copy of **ORDINANCE 54-25, AN ORDINANCE REPEALING ISSUE 23 DUE TO ITS LACK OF TRANSITIONAL PLAN AND AUTHORITY AND DECLARING AN EMERGENCY**, is a true and correct copy of the Ordinance 54-25 adopted by Nelsonville City Council on August 11, 2025.


Susan Harmony, Clerk
Nelsonville City Council

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Ordinance No. 54-25Passed AUGUST 11, 2025**ORDINANCE 54-25****AN ORDINANCE REPEALING ISSUE 23 DUE TO ITS LACK OF TRANSITIONAL PLAN AND AUTHORITY AND DECLARING AN EMERGENCY.**

WHEREAS, Nelsonville City Charter, adopted by the voters in November 1994 and effective January 1, 1995, serves as the foundational governing document of the City of Nelsonville, establishing its home rule authority and structure of governance under the Ohio Constitution;

WHEREAS, each Member of Council swears an oath to support the United States Constitution, the Ohio Constitution, and Nelsonville City Charter and therefore each Member must fulfill their duties in accordance with such oath, including supporting and defending Nelsonville City Charter when there is a lack of clear superior law supplying a rule of decision;

WHEREAS, the Ohio Constitution guarantees to the people of a municipality the right to choose their form of government, a principle which Council reaffirmed in Resolution 2305;

WHEREAS, the Council of the City of Nelsonville desires to reaffirm the City's commitment to respecting the right of the people of the City of Nelsonville to choose the form of government for the City of Nelsonville;

WHEREAS, it has long been the legal position of the City of Nelsonville that the proper procedures for lawfully abolishing Nelsonville City Charter, should the people so choose to exercise their right, are set forth in the Ohio Constitution and applicable implementing state law and not Nelsonville City Charter;

WHEREAS, Article X of Nelsonville City Charter lays out the procedures by which the people of Nelsonville may exercise the initiative and referendum powers for "ordinances or resolutions";

WHEREAS, Nelsonville City Charter cannot be abolished by an ordinance or resolution because Nelsonville City Charter is of superior legal obligation to any Nelsonville ordinance or resolution;

WHEREAS, therefore, the initiative procedures set forth in Article X of Nelsonville City Charter do not apply to abolishing Nelsonville City Charter;

WHEREAS, therefore, Nelsonville City Charter Section 10.03 pertains to initiative, referendum, and recall petitions other than the abolishment of a charter;

WHEREAS, the Fourth District Court of Appeals held in *State ex rel. Smith, et al. vs. Clement, et al.*, 2024 Ohio 5220 (Athens Cnty) that a hybrid approach mixing procedural requirements under Ohio Constitution Article XVIII procedures with Nelsonville City Charter Article X procedures is unlawful and that only the procedures of Article X applied to Issue 23;

WHEREAS, Issue 23, a citizen-led initiative passed by the voters on November 5, 2024, seeks to abolish the Nelsonville City Charter and transition the city to a statutory form of government under the Ohio Revised Code, effective January 1, 2026;

WHEREAS, Nelsonville City Charter Section 10.06 expressly provides "If a majority of the qualified electors voting on a proposed initiative vote in its favor, such initiative shall be considered adopted upon certification of the results and shall

RECORD OF ORDINANCES

Ordinance No. 54-25

Passed AUGUST 11 2025

be treated in all respects in the same manner as ordinances or resolutions of the same kind adopted by Council;

WHEREAS, the Nelsonville City Charter, as the city's foundational governing document, cannot be abolished through a citizen initiative under its own provisions, rendering Issue 23 legally invalid;

WHEREAS, the Ohio Constitution, under Article XVIII, Sections 7 and 9, grants municipalities the authority to adopt and amend charters but does not provide clear statutory guidance for abolishing a charter, creating ambiguity that supports the position that Issue 23's procedure was improper;

WHEREAS, the Fourth District Court of Appeals upheld in 2024 litigation a lower court's order to place Issue 23 on the ballot, but the question of its substantive legality remains unresolved and subject to potential legal challenge, particularly due to Issue 23's lack of a transitional plan and authority;

WHEREAS, the City appealed the Fourth District Court of Appeals' decision to the Ohio Supreme Court, which declined to take the appeal and therefore the City must accept the decision of the courts on the 2024 litigation; however, the decision of the courts left to Nelsonville City Council the authority and discretion under Nelsonville City Charter Section 10.06 to amend or repeal Issue 23;

WHEREAS, the passage of Issue 23 without a clear transition plan, as noted by the Nelsonville Ad-Hoc Advisory Commission, risks significant disruption to city governance, including the expiration of current council terms on November 30, 2025, and the lack of legal authority to establish wards or other necessary governance structures;

WHEREAS, the Nelsonville City Council finds that the potential illegality of Issue 23, combined with the absence of a transition plan and authority, constitutes an emergency affecting the health, safety, and welfare of the residents of Nelsonville, necessitating immediate action to preserve continuity of government and public services;

WHEREAS, the Nelsonville City Council, in exercising its authority under the Nelsonville City Charter and Ohio law, seeks to repeal Issue 23 to prevent legal uncertainty, ensure continuity of governance, and protect the rights of Nelsonville residents to maintain their home rule authority;

WHEREAS, the City remains committed to the right of the people of the City of Nelsonville to choose the form of government for the City of Nelsonville under the lawful measures available to the people under the Ohio Constitution;

WHEREAS, exercise of the right of the people of the City of Nelsonville to choose the form of government for the City of Nelsonville under the Ohio Constitution and procedures set forth therein cannot be questioned by Nelsonville City Council;

NOW THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF NELSONVILLE, ATHENS COUNTY, OHIO, AS FOLLOWS:

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

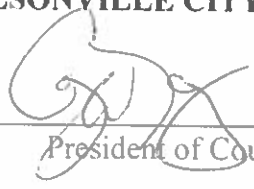
Ordinance No. 5425Passed AUGUST 11, 2025

charter shall continue uninterrupted until lawfully amended or repealed in accordance with the Ohio Constitution and Nelsonville City Charter.

3. The City Council directs the City Law Director to take all necessary legal actions to defend this Ordinance, including but not limited to filing or responding to any legal challenges related to the repeal of Issue 23, to ensure the continuity of home rule governance in Nelsonville.
4. The City Council Clerk is directed to certify a copy of this Ordinance and transmit it to the Athens County Board of Elections.
5. The City Council authorizes the establishment of a public education campaign to inform residents of the legal and practical implications of this resolution and to facilitate community input on future governance decisions, in coordination with non-partisan community organizations, including, if possible, the League of Women Voters of Ohio and Athens County or other appropriate organizations.
6. Council hereby finds and determines that all formal actions taken relative to the adoption of this ordinance were taken in an open meeting of the Nelsonville City Council, and that all deliberations of Council and of its committees, if any, which resulted in formal action, were taken in meetings open to the public in full compliance with applicable legal requirements.
7. Five (5) members of Council voting to dispense with the two readings of this Ordinance, the rules are hereby suspended for this Ordinance and this Ordinance is hereby enacted on the first reading, pursuant to O.R.C. 731.15, and Nelsonville City Charter Sections 4.09 through 4.11. This Ordinance is hereby passed as an emergency measure pursuant to O.R.C. 731.30 and Article IV, Sections 4.09 through 4.11 of Nelsonville City Charter as an emergency in the operation of the City government as the Athens County Board of Elections deadline for certifying November 2025 ballots is August 18, 2025 and is near approaching and this Ordinance needs to be conveyed to the Athens County Board of Elections prior to the August 18 deadline and is necessary for the immediate preservation of the public peace, health, safety, morals or welfare of the City, and this Ordinance shall be in full force and effect upon its adoption.

Duly enacted by Council on first reading on the 11th day of August, 2025.

NELSONVILLE CITY COUNCIL


President of Council


Clerk of Council

First Reading:

08/11/2025

Under suspension of the rules

Appendix 6

IN THE COURT OF COMMON PLEAS
ATHENS COUNTY, OHIO
CIVIL DIVISION

State Ex Rel.

GREGORY SMITH
238 ADAMS STREET
NELSONVILLE, OHIO

and

VICKI LYNN MCDONALD
46 HARPER WAY
NELSONVILLE, OHIO
Relators,

vs.

GREG CLEMENT, MEMBER OF
NELSONVILLE CITY COUNCIL,
211 LAKE HOPE DRIVE
NELSONVILLE, OHIO 45764

and

JUSTIN BOOTH, MEMBER OF
NELSONVILLE CITY COUNCIL
211 LAKE HOPE DRIVE
NELSONVILLE, OHIO

and

CORY TAYLOR, MEMBER OF
NELSONVILLE CITY COUNCIL
211 LAKE HOPE DRIVE
NELSONVILLE, OHIO

and

NANCY SONIC, MEMBER OF

Case No.

PETITION FOR MANDAMUS

JUDGE:

NELSONVILLE CITY COUNCIL
211 LAKE HOPE DRIVE
NELSONVILLE, OHIO 45764

and

ANTHONY DUNFEE, UNOFFICIAL
MEMBER OF NELSONVILLE CITY
COUNCIL
211 LAKE HOPE DRIVE
NELSONVILLE, OHIO 45764

and

OPHA LAWSON, UNOFFICIAL MEMBER
OF NELSONVILLE COUNCIL
211 LAKE HOPE DRIVE
NELSONVILLE, OHIO 45764

and

JONATHAN FLOWERS, MEMBER OF
NELSONVILLE CITY COUNCIL
211 LAKE HOPE DRIVE
NELSONVILLE, OHIO 45764

and

CITY OF NELSONVILLE, OHIO
211 LAKE HOPE DRIVE.
NELSONVILLE OH 45764

Respondents.

PETITION

Relators come now before this Court and respectfully requests this Court, pursuant to the Ohio Constitution Art XVIII, §§ 5, 8, 9, and 14, Ohio Revised Code Athens and the Nelsonville City Charter to issue a Writ of Mandamus to compel the members of Nelsonville City Council to comply with the provisions of Article 10 of the Nelsonville Ohio City Charter and to order Nelsonville Council, to submit an initiative petition to the Athens County Ohio Board of Elections to be placed on the November 5, 2024 ballot for the consideration of the Citizens of Nelsonville. Upon clear failure of Nelsonville Council to complete an act required by the Nelsonville City Council, Relators request the court to order the initiative to be submitted to the Athens County Board of elections to be placed on the ballot for the November 5, 2024, general election.

PARTIES

1. Relators are residents of the State of Ohio, City of Nelsonville, County of Athens. Relator McDonald is a member of the petitioners committee on the initiative petition.
2. Respondents were, or are at all times, relevant members of the Nelsonville City Council and subject to the provision and rules of the Nelsonville City Charter.

JURISDICTION AND VENUE

3. Because the Respondents are officials of the City of Nelsonville Ohio, Athens County Ohio, and are charged with upholding the mandates of the Nelsonville City Charter and the relator is attempting to seek compliance with the Nelsonville Charter this court has jurisdiction and venue.

FACTUAL ALLIGATIONS COUNT ONE

4. Respondent City of Nelsonville is a municipal corporation with a City Charter and political subdivision of the State of Ohio that is bound to operate under the Articles of the Nelsonville City Charter.

5. Respondents Gregg Clement, Cory Taylor, Jonathan Flowers, Justin Booth, Nancy Sonic, Anthony Dunfee, and Opha Lawson are current members of the Nelsonville City Council with a duty under oath to uphold the Nelsonville City Charter.

6. On May 28, 2024, Relator Vicki McDonald, pursuant to Nelsonville City Charter Article 10:02, served both the Clerk of the Nelsonville City Council and the City Auditor a notice of commencing an initiative petition and paid the required fifty dollars to commence a petition to return the City of Nelsonville to the form of government it had before adopting the Nelsonville City Charter. The notice provided the full language of the proposed initiative measure, which was attached and made part of all the petitions circulated. (EXHIBIT 1)

7. On June 24, 2024, Relator McDonald filed part - petitions with the Nelsonville Clerk of Council which all contained the full and complete language of the proposed initiative with 207 signatures. (EXHIBIT 2)

8. On June 27, 2024, the Athens County Board of Elections provided a verification letter to Susan Harmony, Nelsonville Council Clerk, stating that the number of required signatures for the initiative petition to abolish Nelsonville City Charter is 136 valid signatures and the part petitions contained 180 valid signatures. (EXHIBIT 3)

9. On June 28, 2024, Susan Harmony phoned Relator McDonald and told her that the board found 180 valid signatures.

10. Pursuant to Nelsonville City Charter Article 10:02 (B) requires “Within ten (10) days of receipt of a petition, the Clerk of Council shall determine its sufficiency and advise the petitioners' committee and Council of such findings.”

11. On July 5, 2024, Relator Greg Smith, a valid signer of the initiative petition, telephoned Susan Harmony, Nelsonville Council Clerk to ensure Nelsonville Council would have an ordinance at the July 8th, 2024, regular meeting as required by Nelsonville Charter. The Clerk told Smith that she would try to get the ordinance on the agenda for the July 8, 2024, meeting.

12. On July 8, 2024, Relator McDonald, during a regular meeting of Nelsonville City Council, inquired of Council why they did not have legislation at that meeting to send the initiative petitions to the Athens County Board of Elections to be put on the ballot for the general election. The question was referred to Jonathan Robe, Law Director who stated the city's position was that Article 10 of the Nelsonville Charter did not pertain to initiatives which abolished the charter and that Nelsonville City Council had memorialized this policy in 2015 by ordinance 32-15.

13. Nelsonville Ordinance 32:15 ordained as follows:

NOW THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF NELSONVILLE, ATHENS COUNTY, OHIO AS FOLLOWS: 1. The City of Nelsonville, Ohio hereby declares the initiative petitions attached hereto and incorporated herein by reference, to be invalid for failure to contain in the initiative petitions a reasonable transition period and procedure for returning to a statutory form of government. (EXIBIT 4)

14. The petition presented to Nelsonville Council in 2015 did not have a transition plan, nor did it allow needed time to elect the required office holders and would have rendered

the City of Nelsonville unable to operate, therefore Council rejected it. Relator McDonald was involved in that petition but did not choose at that time to seek redress in the courts.

15. A reading of the full language of the proposed initiative in (EXIBIT 1) which was attached to every part-petition, clearly provides a transition plan and allows time for the election of city officers before taking effect on January 1, 2026. Therefore, Nelsonville City Ordinance 32-15 does not set policy for future initiatives and is not factually the same as the current initiative.

16. Ohio Revised Code 731.48 states Sections [731.28](#) to [731.41](#), inclusive, of the Revised Code do not apply to any municipal corporation which adopts its own charter containing an initiative and referendum provision for its own ordinances and other legislative measures.

17. The Ohio Supreme Court opined in EX REL. HUEBNER, APPELLANT, v. WEST JEFFERSON VILLAGE COUNCIL ET. 75 Ohio St. 3d 381 (Ohio 1995) that a municipal legislative authority such as a city or village council lacks authority to consider substantive errors in reviewing the sufficiency of petitions and is instead limited to reviewing the form of the petition. *State ex rel. Polcyn v. Burkhardt* (1973), [33 Ohio St.2d 7, 11-12, 62 O.O.2d 202, 204, 292 N.E.2d 883, 886](#); *State ex rel. Concerned Citizens for More Professional Govt. v. Zanesville City Council* (1994), [70 Ohio St.3d 455, 457-458, 639 N.E.2d 421, 423](#); *State ex rel. Citizens for a Better Portsmouth v. Sydnor* (1991), [61 Ohio St.3d 49, 572 N.E.2d 649](#).

18. Nelsonville City Charter Article 10:02 (B) grants the sole power to determine the sufficiency of an initiative petition to the Clerk of Council. Susan Harmony, the Clerk of Council, sought guidance from the Athens County Board of Elections that found the petitions sufficient and certified the sufficiency to Harmony. The Board of Elections also determined that 136 valid signatures were required for the initiative to be placed on the ballot, and the part petitions contained 180 valid signatures.

19. Nelsonville City Charter Art, 10:02(B) states: If the petition is found to be sufficient, Council shall pass an ordinance at its next regular meeting that the issue be placed on the ballot in accordance with Ohio law.

20. The Ohio Supreme Court also opined in *Huebner v. Village of West Jefferson*, 75 Ohio St. 3d 381, 385 (Ohio, 1995) that “Where a municipal legislative authority erroneously either fails to submit a charter amendment when it is presented with a legally sufficient petition or fails to make a prompt determination on the sufficiency of the petition within the constitutional time period, this court has issued writs of mandamus to order placement on the next regular election ballot. *Morris v. Macedonia City Council* (1994), [71 Ohio St.3d 52](#), [641 N.E.2d 1075](#); *State ex rel. Citizens for a Better Portsmouth v. Sydnor*, *supra*; *State ex rel. Jurcisin v. Cotner* (1984), [10 Ohio St.3d 171](#), [10 OBR 503](#), [462 N.E.2d 381](#).”

21. The initiative petition which has been properly examined by the Nelsonville, Ohio Clerk of Council and the Athens County Board of Elections must be submitted to the board of elections by August 7, 2024, to be placed on the ballot for the November 5, 2024, general election.

22. On July 16, 2024, Relator McDonald filed certified copies of the initiative petitions with the Athens County Board of Elections. Board director Tony Brooks stated to Relator McDonald that he would take the filing, but it was unlikely that he could put it on the ballot because of the Nelsonville Charter. Respondents have placed the Citizens of Nelsonville in the impossible position of trying to gain the initiative rights granted by the Ohio Constitution. Ohio Revised Code §731.41 mandates following a charter in an initiative process and the City of Nelsonville Council, by and through advice from its law director is refusing to follow the Charter, stating that the initiative process in the charter is not valid for the matters concerning a Charter.

(EXHIBIT 5)

23. The law director's opinion on this matter has been completely eviscerated by the Ohio Supreme Court in *Ex Rel, Huebner v Village of West Jefferson*. The Law director makes the totally unsupported legal argument that the Nelsonville Charter can be amended by an ordinance (32-15) of Nelsonville Council.

CLAIMS FOR RELIEF

Claim One: Writ Of Mandamus Directed to Respondents.

24. The allegations set forth in paragraphs 1 through 23 are incorporated herein by reference.

25. Pursuant to the Ohio Constitution, Ohio Revised Code §731.41 and Article 10 of the Nelsonville City Charter Relator is entitled to a Writ of Mandamus from this court and an injunction to compel the members of the Nelsonville City Council to comply with its provisions of the Ohio Constitution and Article 10 of the Nelsonville City Charter.

26. Pursuant to Ohio Constitution Relator is entitled to a Writ of Mandamus ordering the initiative petition submitted to the Athens County Board of Elections for placement on the November 5 general election.

Claim Two: Monetary Damages

27. The allegations set forth in paragraphs 1 through 26 are incorporated herein by reference.

28. Relators are entitled to damages as in a civil action which includes costs, expenses and reasonable attorney fees for this action and any other relief as the court deems just and proper pursuant to Ohio Revised Code §2731.11.

PRAYER FOR RELIEF

WHEREFORE, Relator respectfully prays that this Court:

1. To expedite this request for mandamus because of the August 7, 2024, deadline for submitting initiative petitions.
2. Issue a Writ of Mandamus and injunction to be served upon the Respondents personally, by copy, by the sheriff or by a person specially authorized by the court or judge issuing the writ, ordering the Nelsonville City Council to comply with the Nelsonville City Charter Article 10:02 (B) by submitting the initiative petition to the Athens County Ohio Election Board.
3. Issue a Writ of Mandamus ordering placement of the initiative petition on the November 5, 2024, general election.
4. Award Relators damages as in a civil action to includes costs, expenses and reasonable attorney fees for this action and any other relief as the court deems just and proper pursuant to Ohio Revised Code §2731.11.

Respectfully submitted,



Daniel H. Klos (0031294
1911 Country Place
Lancaster, Ohio 43130
Voice (614 261-9581
Fax (614 262-5732
Email klosdhesq@aol.com
Attorney for Relator

**NOTICE TO CLERK OF NELSONVILLE CITY COUNCIL AND
NELSONVILLE CITY AUDITOR**

THE FOLLOWING FIVE QUALIFIED VOTERS ARE COMMENCING A
INITIATIVE DEFINED IN FULL BELOW AND WILL CONSTITUTE THE
PETITIONER'S COMMITTEE THAT WILL BE RESPONSIBLE FOR
CIRCULATING AND FILING THE PETITIONS IN PROPER FORM AND
COMPLIANCE WITH THE LAWS OF THE STATE OF OHIO. THE
ADDRESS OF THE COMMITTEE SHALL BE 46 HARPER WAY,
NELSONVILLE, OHIO 45764 IN CARE OF VICKI MCDONALD.

MCDONALD, VICKI LYNN 46 HARPER WAY, NELSONVILLE OH 45764
BISHOP, BARBARA LYNN 1080 BURR OAK BLVD, NELSONVILLE OH 45764
POTTS, LEEANNA JOE 1038 POPLAR ST, NELSONVILLE OH 45764
MCDONALD, WILMA J 373 POPLAR ST, NELSONVILLE OH 45764
MACCOMBS, PATRICIA ANN 1040 WALNUT ST, NELSONVILLE OH 45764

FULL PROPOSED INITIATIVE

AN INITIATIVE OF THE ELECTORS OF THE CITY OF NELSONVILLE, OHIO TO BE
SUBMITTED TO THE ATHENS COUNTY OHIO BOARD OF ELECTIONS FOR
NOVEMBER 5, 2024, GENERAL ELECTION IN ATHENS COUNTY OHIO.

"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 it's 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.

CERTIFICATION

EXHIBIT 1

PAGE 1 OF 3

This notice of initiative was served by personal service to Taylor
Sappington, Nelsonville Auditor, on the 28th day of May, 2024

Signed Vicki McDonald

Received _____

MAY 28 2024

NELSONVILLE APP'X 050

Check No. _____

RECEIPT		DATE <u>5-28-2024</u>	No. <u>687907</u>
RECEIVED FROM <u>Vicki McDonald</u>		\$ <u>50.00</u> <u>100</u>	
FOR <u>Fifty</u>		DOLLARS	
FOR <u>Proposed Initiative</u>			
AMOUNT		☒ CASH	
PAYMENT	<u>50</u> <u>00</u>	☐ CHECK	
INCL. DUE		☐ MONEY ORDER	
		☐ CREDIT CARD	
		FROM	TO
		BY <u>[Signature]</u>	

EXHIBIT 1

PAGE 2 OF 3

**NOTICE TO CLERK OF NELSONVILLE CITY COUNCIL AND
NELSONVILLE CITY AUDITOR**

THE FOLLOWING FIVE QUALIFIED VOTERS ARE COMMENCING A
INITIATIVE DEFINED IN FULL BELOW AND WILL CONSTITUTE THE
PETITIONER'S COMMITTEE THAT WILL BE RESPONSIBLE FOR
CIRCULATING AND FILING THE PETITIONS IN PROPER FORM AND
COMPLIANCE WITH THE LAWS OF THE STATE OF OHIO. THE
ADDRESS OF THE COMMITTEE SHALL BE 46 HARPER WAY,
NELSONVILLE, OHIO 45764 IN CARE OF VICKI MCDONALD.

MCDONALD, VICKI LYNN 46 HARPER WAY, NELSONVILLE OH 45764
BISHOP, BARBARA LYNN 1080 BURR OAK BLVD, NELSONVILLE OH 45764
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MCDONALD, WILMA J 373 POPLAR ST, NELSONVILLE OH 45764
MACCOMBS, PATRICIA ANN 1040 WALNUT ST, NELSONVILLE OH 45764

FULL PROPOSED INITIATIVE

AN INITIATIVE OF THE ELECTORS OF THE CITY OF NELSONVILLE, OHIO TO BE
SUBMITTED TO THE ATHENS COUNTY OHIO BOARD OF ELECTIONS FOR
NOVEMBER 5, 2024, GENERAL ELECTION IN ATHENS COUNTY OHIO.

"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 it's 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.

EXHIBIT 1

CERTIFICATION

PAGE 3 OF 3

This notice of initiative was served by personal service to Susan Harmony,
Nelsonville Clerk of Council on the 28th day of May, 2024

Signed Vicki L McDonald

To: Nelsonville Ohio Council Clerk,

Pursuant to Article 10.02B of the Nelsonville City Charter the petitioner's committee is filing the below listed Petitions to allow you to check the sufficiency of the signed petitions.

If the petitions are found to be sufficient, or if you find some deficiently, please contact committee member Vicki McDermald at 740-753-4544.

I have received 8 petitions with a total of 207 signatures

Susan Harmony Date June 24, 2024
Susan Harmony,

Clerk of Nelsonville, Ohio Council

EXHIBIT 2

PAGE 1 OF 1

Sky Petty
Chair

Debra L. Quivcy
Director

Tony L. Brooks, II
Deputy Director

Athens County Board of Elections
15 South Court St., Room 130
Athens, Ohio 45701
(740) 592-3201
Fax (740) 592-3262
<https://www.boc.ohio.gov/athens/>

Aundrea S. Carpenter-Colvin
Member

Kate McGuckin
Member

Gary Van Meter
Member

June 27, 2024

To: Nelsonville City Clerk of Council Susan Harmony

From: Athens County Board of Elections

Re: Petition Verification Results

EXHIBIT 3

PAGE 1 OF 1

On behalf of the Athens County Board of Elections, I hereby certify that the board has examined the enclosed part-petitions. The number of required signatures for the Initiative Petition - abolishing the City Nelsonville Charter is 136 valid Signatures.

	Petitions	Signatures
1. Number of Valid Part-Petitions	<u>8</u>	
Number of Valid Signatures		<u>180</u>
Number of Invalid Signatures		<u>27</u>
2. Number of Invalid Part-Petitions	<u>0</u>	
Number of Signatures on Invalid Part-Petitions		<u>0</u>
3. Total number of Part-Petitions received (Valid and Invalid)	<u>8</u>	
4. Total number of Signatures on Part-Petitions (Valid and Invalid)		<u>207</u>

Tony L. Brooks II
Deputy Director

06-27-2024
Date

RECORD OF ORDINANCES

EXHIBIT 4

PAGE 1 OF 3

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Form 8220

Ordinance No. 32-15

Passed May 26, 2015

ORDINANCE 32-15

AN ORDINANCE DECLARING THE INITIATIVE PETITIONS TO ABOLISH THE NELSONVILLE CHARTER AND RETURN TO A STATUTORY FORM OF GOVERNMENT EFFECTIVE DECEMBER 31, 2015 TO BE INVALID FOR FAILURE OF THE PETITIONS TO HAVE A REASONABLE TRANSITION PERIOD AND PROCEDURE AND RETURNING THE PETITIONS TO THE PETITIONERS.

WHEREAS, on May 11, 2015, Vicki McDonald, Ed Mash, and Robertu Warren filed with the Clerk of Council an Initiative Petitions seeking to abolish the Nelsonville City Charter and to return effective December 31, 2015 to a statutory form of government;

WHEREAS, the Initiative Petitions contained one hundred sixty-six (166) signatures;

WHEREAS, the Board of Elections has determined that one hundred fifty (150) signatures are valid;

WHEREAS, Nelsonville City Charter Section 10.03 provides: Number of signatures. Initiative, referendum and recall petitions must be signed by qualified electors of the City in number to at least fifteen percent (15%) of the total number of the votes cast within the City in the last gubernatorial election;

WHEREAS, Nelsonville City Charter Section 10.03 pertains to initiative, referendum, and recall petitions other than the abolishment of a charter;

WHEREAS, the creation and abolishment of a city charter is authorized and regulated by the Ohio Constitution;

WHEREAS, Ohio Constitution Article XVIII, Section 3 states 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.";

WHEREAS, Ohio Constitution Article XVIII, Section 9, states: 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;

WHEREAS, Ohio Constitution Article XVIII, Section 15 provides: All elections and submissions of questions provided for in this article shall be conducted by the election authorities prescribed by general law. The percentage of electors required to sign any petition provided for herein shall be based upon the total vote cast at the last preceding general municipal election;

WHEREAS, both of these provisions of the Ohio Constitution are still in effect, even though the provisions are inconsistent with each other. Section 9 provision requires ten per centum of the electors of Nelsonville, while Section 14 requires ten per centum of the total votes cast at the last preceding general election;

WHEREAS, the Ohio Supreme Court has opined on this matter, however, the decision does not settle the issue. In *State ex rel. Huebner v. West Jefferson Village Council*, 1995 Ohio 105, 72 Ohio St. 3d 589, 651 N.E.2d 1001, 1995 Ohio

NELSONVILLE APP'X 055

168
RECORD OF ORDINANCES

EXHIBIT 4

PAGE 2 OF 3

8223

THOMAS BETHLEHEM, CLERK OF THE COMMONS, CINCINNATI, OHIO

Ordinance No. 32-15

Passed May 26, 2015

LEXIS 1465 (Ohio 1995), the Ohio Supreme Court ruled that, Ohio Constitution art XVIII, § 9 requires that petitions for a proposed charter amendment be signed by ten per cent of all registered voters, not just of those electors who voted in the last general election. However, upon reconsideration, the Ohio Supreme Court ruled that, [I]n determining the number of valid part-petition signatures necessary to establish a right to the placement of a proposed amendment of a municipal charter before the voters, Ohio Const. art XVIII, §§ 5, 8, 9, and 14 must be construed in pari materia. Accordingly, the percentage of electors required to sign such part-petitions is ten percent of the electors of the municipality based upon the total number of votes cast at the last preceding general municipal election: State ex rel. Huebner v. West Jefferson Village Council, 75 Ohio St. 3d 381, 662 N.E.2d 339, 1995 Ohio LEXIS 2683 (Ohio 1995). This decision was a 4-3 decision leaving it unsettled how the matter would be resolved in a future case since the make up of the court is different.

WHEREAS, the Athens County Board of Elections has indicated the total number of registered voters in Nelsonville for the General Election held on November 4, 2014 was 2563, the total number of registered voters for the May primary held on Nelsonville in the May 5, 2015 primary was 2580 and the total number of votes cast on November 4, 2014 was 798. If Ohio Constitution Article XVIII, Section 9 controls, the signatures needed is 258. If Ohio Constitution Article XVIII, Section 14 controls, the signatures needed is 80. If Nelsonville City Charter 10.03 controls, the signatures needed is 120. There are one hundred fifty (150) valid signatures. The Board of Elections needs to decide which number of signatures is needed to place the issue on the ballot.

WHEREAS, switching from a statutory form of government to a charter form of government took about a year and one half;

WHEREAS, the Initiative petition mandates Nelsonville switch back from a charter form of government to a statutory form of government, is less than two month;

WHEREAS, all council members by the Charter are elected on non-partisan ballots; in a statutory form of government, all elected officials are elected on a partisan ballot;

WHEREAS, Article XVII, Section 1 of the Ohio Constitution provides that all municipal officials are elected on the first Tuesday after the first Monday in November in odd numbered years;

WHEREAS, the next opportunity for this to happen would be at the General Election in 2017;

WHEREAS, the Initiative Petition needs to contain a reasonable transition period and procedure for transition just as the Charter initiative did when it was adopted.

NOW THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF NELSONVILLE, ATHENS COUNTY, OHIO AS FOLLOWS:

1. The City of Nelsonville, Ohio hereby declares the initiative petitions attached hereto and incorporated herein by reference, to be invalid for failure to contain in the initiative petitions a reasonable transition period and procedure for returning to a statutory form of government.
2. This Ordinance shall be in full force and effect at the earliest

NELSONVILLE APP'X 056

RECORD OF ORDINANCES

169

FORM 100-101, PUBLISHED, AND REPRODUCED

Form 5700

Ordinance No. 32-15

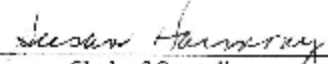
Passed May 26, 2015

moment permitted by law.

Duly enacted by Council on first reading under suspension of the rules on the 26th day of May, 2015.

NELSONVILLE CITY COUNCIL


President of Council


Clerk of Council

First Reading: 05/26/15 Under Suspension of the Rules

EXHIBIT 4

PAGE 3 OF 3

Receipt for Cash, Petitions or Resolution

№ 0347

Office of the Board of Elections, Athens County, Ohio July 14, 2024

Received of Vicki McDonald

- ☐ Declaration of Candidacy Petitions for the Office of _____ of the _____ party
- ☐ Nominating Petitions for the office of _____
- ☐ Local Option Petition
- ☐ Referendum Petition
- ☒ Initiative Petition

EXHIBIT 5

PAGE 1 OF 1

Filing Fee Paid: \$ _____ ☐ Cash ☐ Check # _____

Subdivision: Nelsonville City

Number of Signatures: 207 / 108 valid Number of Part - Petitions: 8

DESCRIPTION - PURPOSE, RATE, DATE OF ELECTION, ETC.

- ☐ TAX LEVY - PURPOSE _____
- _____
- MILLAGE _____ TYPE _____ LENGTH OF TIME _____
- COMMENCING _____ CALENDAR YEAR _____
- ☐ BOND ISSUE _____
- ☐ CHARTER AMENDMENT _____
- ☐ OTHER _____

OTHER CASH RECEIVED \$ _____ FOR _____

☐ Cash ☐ Check # _____

ATHENS CO BOARD OF ELECTIONS, By: David L. Brooks

(SIGNED)

OFFICE USE: BOE COMM _____ BOE REF _____

DEPOSIT DATE _____ BATCH NUMBER _____

ATHENS COUNTY COMMON PLEAS COURT
ATHENS, OHIO
CIVIL DIVISION

AFFIDAVIT OF GREGORY SMITH

STATE OF OHIO :
COUNTY OF ATHENS : ss.
:

1. I, Gregory Smith, being first duly sworn, depose and state the following as true based on my personal knowledge;
2. I am over 18 years of age and competent to give testimony in a court of law;
3. I am the Relator in the attached Petition for Mandamus as filed in this Court.
4. I have reviewed the foregoing Petition for Mandamus in its entirety;
5. I know and verify that all the averments recited therein for which I have personal knowledge are true to the best of my knowledge;
6. I believe and verify the remaining averments that I do not have personal knowledge of are true and are based on specific information, documents, or both, as attached hereto and recited therein.

Sworn to and subscribed in my presence this 17th day of July 2024


Notary Public


Gregory Smith, Affiant



Gena R. Eichmiller
Notary Public, State of Ohio
Commission Number: 2019-RE-762784
My Commission Expires January 23, 2029

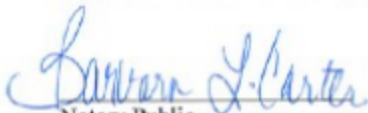
ATHENS COUNTY COMMON PLEAS COURT
ATHENS, OHIO
CIVIL DIVISION

AFFIDAVIT OF VICKI L MCDONALD

STATE OF OHIO :
: ss.
COUNTY OF ATHENS :

1. I, Vicki L. McDonald, being first duly sworn, depose and state the following as true based on my personal knowledge;
2. I am over 18 years of age and competent to give testimony in a court of law;
3. I am the the Relator in the attached Petition for Mandamus as filed in this Court.
4. I have reviewed the foregoing Petition for Mandamus in its entirety;
5. I know and verify that all the averments recited therein for which I have personal knowledge are true to the best of my knowledge;
6. I believe and verify the remaining averments that I do not have personal knowledge of are true and are based on specific information, documents, or both, as attached hereto and recited therein.

Sworn to and subscribed in my presence this 18th day of July 2024


Notary Public


Vicki L. McDonald, Affiant



BARBARA L. CARTER
Notary Public, State of Ohio
My Commission Expires
September 17, 2024

Appendix 7

IN THE COURT OF COMMON PLEAS
ATHENS COUNTY, OHIO
CIVIL DIVISION

Case No. 24CI0180

State Ex Rel.

GREGORY SMITH
238 ADAMS STREET
NELSONVILLE, OHIO 45764

and

VICKI LYNN MCDONALD
46 HARPER WAY
NELSONVILLE, OHIO 45764
Relators,

vs.

GREGG CLEMENT, MEMBER OF
NELSONVILLE CITY COUNCIL,
211 LAKE HOPE DRIVE
NELSONVILLE, OHIO 45764

and

JUSTIN BOOTH, MEMBER OF
NELSONVILLE CITY COUNCIL
211 LAKE HOPE DRIVE
NELSONVILLE, OHIO 45764

and

CORY TAYLOR, MEMBER OF
NELSONVILLE CITY COUNCIL
211 LAKE HOPE DRIVE
NELSONVILLE, OHIO 45764

and

NANCY SONICK, MEMBER OF
NELSONVILLE CITY COUNCIL

AMENDED PETITION FOR
MANDAMUS

JUDGE: GEORGE P. MCCARTHY

211 LAKE HOPE DRIVE
NELSONVILLE, OHIO 45764

and

ANTHONY DUNFEE, UNOFFICIAL
MEMBER OF NELSONVILLE CITY
COUNCIL
211 LAKE HOPE DRIVE
NELSONVILLE, OHIO 45764

and

OPHA LAWSON, UNOFFICIAL MEMBER
OF NELSONVILLE COUNCIL
211 LAKE HOPE DRIVE
NELSONVILLE, OHIO 45764

and

JONATHAN FLOWERS, MEMBER OF
NELSONVILLE CITY COUNCIL
211 LAKE HOPE DRIVE
NELSONVILLE, OHIO 45764

and

CITY OF NELSONVILLE, OHIO
211 LAKE HOPE DRIVE
NELSONVILLE OH 45764

and

ATHENS COUNTY BOARD OF
ELECTIONS
15 S. COURT ST #130,
ATHENS, OH 45701

Respondents.

AMENDED PETITION

Now come the Relators pursuant to Ohio Rules of Civil Procedure 15(A) and amend their pleading as permitted per Rule. This amendment is within 28 days of its original filing. No Answer or responsive pleading has been filed by the originally named Respondents. This amendment adds one Respondent.

Relators come now before this Court and respectfully requests this Court, pursuant to the Ohio Constitution Art XVIII, §§ 5, 8, 9, and 14, Ohio Revised Code Athens and the Nelsonville City Charter to issue a Writ of Mandamus to compel the members of Nelsonville City Council to comply with the provisions of Article 10 of the Nelsonville Ohio City Charter and to order Nelsonville Council to pass an ordinance to submit the initiative petition language to the Athens County Ohio Board of Elections to be placed on the November 5, 2024 ballot for the consideration of the Citizens of Nelsonville and for the Respondent Athens County Board of Elections (BOE) to accept such initiative petition language to be placed on the ballot for the November 5, 2024, general election.

In the alternative, upon failure of Nelsonville Council to pass an ordinance to submit the initiative petition language to the Athens County Ohio Board of Elections on or before August 2, 2024, Relators request the court issue a Writ of Mandamus to the BOE to order the initiative language as submitted to the Athens County Board of Elections on July 16, 2024 by Relator McDonald to be placed on the ballot before August 7, 2024 for the November 5, 2024, general election.

PARTIES

1. Relators are residents of the State of Ohio, City of Nelsonville, County of Athens. Relator McDonald is a member of the petitioners committee on the initiative petition.

Commented [DK1]: [THE STATE EX REL.] PENNINGTON ET AL. v. BIVENS, CITY ATTY., ET AL.
[Cite as State ex rel. Pennington v. Bivens, 166 Ohio St.3d 241, 2021-Ohio-3134.]

Procedures for circulating referendum or initiative petition set forth in R.C.731.28 through 731.41 do not apply to municipality that has adopted its own charter containing an initiative and referendum provision—Because it had adopted a charter containing an initiative and referendum provision, petitioners were not required to comply with R.C. 731.32

2. Respondent members and unofficial members of the Nelsonville City Council are subject to the provision and rules of the Nelsonville City Charter regarding initiatives and Respondent Athens County Board of Elections (BOE) has sole authority over placing initiatives on the ballot in Athens County, including for the November 5, 2024 general election, subject to Ohio law.

JURISDICTION AND VENUE

1. This court has jurisdiction and venue because the Respondents City of Nelsonville Ohio, Athens County Ohio are charged with upholding the mandates of the Nelsonville City Charter and the Relators are attempting to seek compliance with the Nelsonville Charter. This court has jurisdiction and venue because the Respondent Athens County Board of Elections has sole authority over placing initiatives on the ballot in Athens County subject to Ohio law and Relators are attempting to seek compliance with Ohio law to place their initiative on the ballot. All actions have taken place within Athens County.

FACTUAL ALLIGATIONS COUNT ONE

2. Respondent City of Nelsonville is a municipal corporation with a City Charter and is a political subdivision of the State of Ohio that is bound to operate under the Articles of the Nelsonville City Charter. The Athens County Board of Elections operates under the laws of the State of Ohio for placing initiatives on the ballot for general elections.

3. Respondents Gregg Clement, Cory Taylor, Jonathan Flowers, Justin Booth, Nancy Sonick, Anthony Dunfee, and Opha Lawson are current members of the Nelsonville City Council with a duty under oath to uphold the Nelsonville City Charter. Respondent Athens County Board of Elections has a duty to comply with Ohio law Ohio for placing initiative language on the ballot for general elections in Athens County.

4. On May 28, 2024, Relator Vicki McDonald, pursuant to Nelsonville City Charter Article 10:02, served both the Clerk of the Nelsonville City Council and the City Auditor a notice of commencing an initiative petition and paid the required fifty dollars to commence a petition to return the City of Nelsonville to the form of government it had before adopting the Nelsonville City Charter. The notice provided the full language of the proposed initiative measure, which was attached and made part of all the petitions circulated. (EXHIBIT 1)

5. On June 24, 2024, Relator McDonald filed part - petitions with the Nelsonville Clerk of Council which all contained the full and complete language of the proposed initiative with 207 signatures. (EXHIBIT 2)

6. On June 27, 2024, the Athens County Board of Elections provided a verification letter to Susan Harmony, Nelsonville Council Clerk, stating that the number of required signatures for the initiative petition to abolish Nelsonville City Charter is 136 valid signatures and the part petitions contained 180 valid signatures. (EXHIBIT 3)

7. On June 28, 2024, Susan Harmony phoned Relator McDonald and told her that the board found 180 valid signatures.

8. Pursuant to Nelsonville City Charter Article 10:02 (B) requires "Within ten (10) days of receipt of a petition, the Clerk of Council shall determine its sufficiency and advise the petitioners' committee and Council of such findings."

9. On July 5, 2024, Relator Greg Smith, a valid signer of the initiative petition, telephoned Susan Harmony, Nelsonville Council Clerk to ensure Nelsonville Council would have an ordinance at the July 8th, 2024, regular meeting as required by Nelsonville Charter. The Clerk told Smith that she would try to get the ordinance on the agenda for the July 8, 2024, meeting.

10. On July 8, 2024, Relator McDonald, during a regular meeting of Nelsonville City Council, inquired of Council why they did not have legislation at that meeting to send the initiative petitions to the Athens County Board of Elections to be put on the ballot for the general election. The question was referred to Jonathan Robe, Law Director who stated the city's position was that Article 10 of the Nelsonville Charter did not pertain to initiatives which abolished the Charter and that Nelsonville City Council had memorialized this policy in 2015 by ordinance 32-15.

11. Nelsonville Ordinance 32:15 ordained as follows:

NOW THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF NELSONVILLE, ATHENS COUNTY, OHIO AS FOLLOWS: 1. The City of Nelsonville, Ohio hereby declares the initiative petitions attached hereto and incorporated herein by reference, to be invalid for failure to contain in the initiative petitions a reasonable transition period and procedure for returning to a statutory form of government. (EXHIBIT 4)

12. The petition presented to Nelsonville Council in 2015 did not have a transition plan, nor did it allow needed time to elect the required office holders and would have rendered the City of Nelsonville unable to operate, therefore Council rejected it. Relator McDonald was involved in that petition but did not choose at that time to seek redress in the courts.

13. A reading of the full language of the proposed initiative in (EXHIBIT 1) which was attached to every part-petition, clearly provides a transition plan and allows time for the election of city officers before taking effect on January 1, 2026. Therefore, Nelsonville City Ordinance 32-15 does not set policy for future initiatives and is not factually the same as the current initiative.

14. Ohio Revised Code 731.41 states Sections 731.28 to 731.41, inclusive, of the Revised Code do not apply to any municipal corporation which adopts its own charter containing an initiative and referendum provision for its own ordinances and other legislative measures.

15. The Ohio Supreme Court opined in *Huebner v. Village of West Jefferson*, 75 Ohio St.3d 381, 385 (Ohio, 1995) that a municipal legislative authority such as a city or village council lacks authority to consider substantive errors in reviewing the sufficiency of petitions and is instead limited to reviewing the form of the petition. *State ex rel. Polcyn v. Burkhardt* (1973), 33 Ohio St.2d 7, 11-12, 62 O.O.2d 202, 204, 292 N.E.2d 883, 886; *State ex rel. Concerned Citizens for More Professional Govt. v. Zanesville City Council* (1994), 70 Ohio St.3d 455, 457-458, 639 N.E.2d 421, 423; *State ex rel. Citizens for a Better Portsmouth v. Sydnor* (1991), 61 Ohio St.3d 49, 572 N.E.2d 649.

16. Nelsonville City Charter Article 10:02 (B) grants the sole power to determine the sufficiency of an initiative petition to the Clerk of Council. Susan Harmony, the Clerk of Council, sought guidance from the Athens County Board of Elections that found the petitions sufficient and certified the sufficiency to Harmony. The Board of Elections also determined that 136 valid signatures were required for the initiative to be placed on the ballot, and the part petitions contained 180 valid signatures.

17. Nelsonville City Charter Article, 10:02(B) states: If the petition is found to be sufficient, Council shall pass an ordinance at its next regular meeting that the issue be placed on the ballot in accordance with Ohio law.

18. The Ohio Supreme Court also opined in *Huebner v. Village of West Jefferson*, 75 Ohio St. 3d 381, 385 (Ohio, 1995) that “Where a municipal legislative authority erroneously either fails to submit a charter amendment when it is presented with a legally sufficient petition

or fails to make a prompt determination on the sufficiency of the petition within the constitutional time period, this court has issued writs of mandamus to order placement on the next regular election ballot. *Morris v. Macedonia City Council* (1994), 71 Ohio St.3d 52, 641 N.E.2d 1075; *State ex rel. Citizens for a Better Portsmouth v. Sydnor, supra*; *State ex rel. Jurcisin v. Cotner* (1984), 10 Ohio St.3d 171, 10 OBR 503, 462 N.E.2d 381.”

19. The initiative petition which has been properly examined by the Nelsonville, Ohio Clerk of Council and the Athens County Board of Elections must be submitted to the board of elections by August 7, 2024, to be placed on the ballot for the November 5, 2024, general election.

20. On July 16, 2024, Relator McDonald filed certified copies of the initiative petitions with the Athens County Board of Elections. Board director Tony Brooks stated to Relator McDonald that he would take the filing, but it was unlikely that he could put it on the ballot because of the Nelsonville Charter. Respondents have placed the Citizens of Nelsonville in the impossible position of trying to gain the initiative rights granted by the Ohio Constitution. Ohio Revised Code §731.41 mandates following a charter in an initiative process and the City of Nelsonville Council, by and through advice from its law director is refusing to follow the Charter, stating that the initiative process in the charter is not valid for the matters concerning a Charter. (EXHIBIT 5)

21. The law director’s opinion on this matter has been completely eviscerated by the Ohio Supreme Court in *Ex Rel, Huebner v Village of West Jefferson*. The Law director makes the totally unsupported legal argument that the Nelsonville Charter can be amended by an ordinance (32-15) of Nelsonville Council.

CLAIMS FOR RELIEF

Claim One: Writ Of Mandamus Directed to Respondents.

22. The allegations set forth in paragraphs 1 through 21 are incorporated herein by reference.

23. Pursuant to the Ohio Constitution, Ohio Revised Code §731.41 and Article 10 of the Nelsonville City Charter, Relators are entitled to a Writ of Mandamus ordering Nelsonville Respondents to provide the ordinance of the initiative petition language to the Athens County Board of Elections for placement on the November 5, 2024 general election ballot and ordering the Respondent BOE to accept the initiative language in full. In the alternative, Relators are entitled to a Writ of Mandamus ordering Respondent BOE to accept the initiative language as filed by Relator McDonald on July 16, 2024 in sufficient time for full placement on the November 5, 2024 general election ballot.

Claim Two: Monetary Damages

24. The allegations set forth in paragraphs 1 through 23 are incorporated herein by reference.

25. Relators are entitled to damages as in a civil action which includes costs, expenses and reasonable attorney fees for this action and any other relief as the court deems just and proper pursuant to Ohio Revised Code §2731.11.

PRAYER FOR RELIEF

WHEREFORE, Relator respectfully prays that this Court:

1. To expedite this request for mandamus because of the August 7, 2024, deadline for submitting initiative petitions.

2. Issue a Writ of Mandamus and injunction to be served upon the Nelsonville Respondents personally, by copy, by the sheriff or by a person specially authorized by the court or judge issuing the writ, ordering the Nelsonville City Council to comply with the Nelsonville City Charter Article 10:02 (B) by submitting an ordinance according to Ohio timely placing the initiative petition language on the November 5, 2024 general election ballot to the Athens County Ohio Election Board.
3. In the alternative, issue a Writ of Mandamus serving it personally, by copy, by the sheriff or by a person specially authorized by the court or judge issuing the writ, ordering the BOE to place the initiative petition language on the ballot in time for the November 5, 2024 general election.
4. Award Relators damages as in a civil action to includes costs, expenses and reasonable attorney fees for this action and any other relief as the court deems just and proper pursuant to Ohio Revised Code §2731.11.

Respectfully submitted,



Daniel H. Klos (0031294
1911 Country Place
Lancaster, Ohio 43130
Voice (614 261-9581
Fax (614 262-5732
Email klosdhesq@aol.com
Attorney for Relator

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the foregoing **Amended Petition for Mandamus** was served upon this 28th day of July, 2024 by email and by filing with the Clerk's electronic filing service.

Jonathan E. Robe (100698)
Robe Law Office
14 W. Washington St.
Athens, Ohio 45701
Phone (740) 593-5576
Fax (740) 593-5280
jonathan.robe@robelawoffice.com
City Attorney, City of Nelsonville, Ohio

Respectfully submitted,



Daniel H. Klos (0031294)
1911 Country Place
Lancaster, Ohio 43130
Voice (614) 261-9581
Fax (614) 262-5732
Email klosdhesq@aol.com
Attorney for Relator

**NOTICE TO CLERK OF NELSONVILLE CITY COUNCIL AND
NELSONVILLE CITY AUDITOR**

THE FOLLOWING FIVE QUALIFIED VOTERS ARE COMMENCING A
INITIATIVE DEFINED IN FULL BELOW AND WILL CONSTITUTE THE
PETITIONER'S COMMITTEE THAT WILL BE RESPONSIBLE FOR
CIRCULATING AND FILING THE PETITIONS IN PROPER FORM AND
COMPLIANCE WITH THE LAWS OF THE STATE OF OHIO. THE
ADDRESS OF THE COMMITTEE SHALL BE 46 HARPER WAY,
NELSONVILLE, OHIO 45764 IN CARE OF VICKI McDONALD.

MCDONALD, VICKI LYNN 46 HARPER WAY, NELSONVILLE OH 45764
BISHOP, BARBARA LYNN 1080 BURR OAK BLVD, NELSONVILLE OH 45764
POTTS, LEEANNA JOE 1036 POPLAR ST, NELSONVILLE OH 45764
MCDONALD, WILMA J 373 POPLAR ST, NELSONVILLE OH 45764
MACCOMBS, PATRICIA ANN 1040 WALNUT ST, NELSONVILLE OH 45764

FULL PROPOSED INITIATIVE

AN INITIATIVE OF THE ELECTORS OF THE CITY OF NELSONVILLE, OHIO TO BE
SUBMITTED TO THE ATHENS COUNTY OHIO BOARD OF ELECTIONS FOR
NOVEMBER 5, 2024, GENERAL ELECTION IN ATHENS COUNTY OHIO.

"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 it's 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.

CERTIFICATION

EXHIBIT 1

PAGE 1 OF 3

This notice of initiative was served by personal service to Taylor
Seppington, Nelsonville Auditor, on the 28th day of May, 2024

Signed Vicki McDonald

Received _____

MAY 28 2024

Check No. _____

RECEIPT		DATE <u>5-28-2024</u>	No. <u>687907</u>
RECEIVED FROM <u>Vicki McDonald</u>		\$ <u>50.00</u>	
FOR <u>Fifty</u>		<u>50</u> DOLLARS	
☐ CASH ☒ CHECK ☐ MONEY ORDER ☐ CREDIT CARD		FROM _____ TO _____ BY <u>[Signature]</u>	

EXHIBIT 1

PAGE 2 OF 3

**NOTICE TO CLERK OF NELSONVILLE CITY COUNCIL AND
NELSONVILLE CITY AUDITOR**

THE FOLLOWING FIVE QUALIFIED VOTERS ARE COMMENCING A
INITIATIVE DEFINED IN FULL BELOW AND WILL CONSTITUTE THE
PETITIONER'S COMMITTEE THAT WILL BE RESPONSIBLE FOR
CIRCULATING AND FILING THE PETITIONS IN PROPER FORM AND
COMPLIANCE WITH THE LAWS OF THE STATE OF OHIO. THE
ADDRESS OF THE COMMITTEE SHALL BE 46 HARPER WAY,
NELSONVILLE, OHIO 45764 IN CARE OF VICKI McDONALD.

MCDONALD, VICKI LYNN 46 HARPER WAY, NELSONVILLE OH 45764
BISHOP, BARBARA LYNN 1080 BURR OAK BLVD, NELSONVILLE OH 45764
POTTS, LEEANNA JOE 1038 POPLAR ST, NELSONVILLE OH 45764
MCDONALD, WILMA J 373 POPLAR ST, NELSONVILLE OH 45764
MACCOMBS, PATRICIA ANN 1040 WALNUT ST, NELSONVILLE OH 45764

FULL PROPOSED INITIATIVE

AN INITIATIVE OF THE ELECTORS OF THE CITY OF NELSONVILLE, OHIO TO BE
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NOVEMBER 5, 2024, GENERAL ELECTION IN ATHENS COUNTY OHIO.

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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.

EXHIBIT 1

CERTIFICATION

PAGE 3 OF 3

This notice of initiative was served by personal service to Susan Harmony,
Nelsonville Clerk of Council on the 28th day of May, 2024

Signed Vicki L McDonald

To: Nelsonville Ohio Council Clerk.

Pursuant to Article 10.02B of the Nelsonville City Charter the petitioner's committee is filing the below listed Petitions to allow you to check the sufficiency of the signed petitions.

If the petitions are found to be sufficient, or if you find some deficiency, please contact committee member Vicki McDunale at 740-753-2544.

I have received 8 petitions with a total of 207 signatures.

Susan Harmony Date June 24, 2024

Susan Harmony,

Clerk of Nelsonville, Ohio Council.

EXHIBIT 2

PAGE 1 OF 1

Sty Perry
Chair

Debra L. Quivey
Director

Tony L. Brooks, II
Deputy Director

Athens County Board of Elections
15 South Court St., Room 130
Athens, Ohio 45701
(740) 592-3201
Fax (740) 592-3262
<https://www.boc.ohio.gov/athens/>

Andrea S. Carpenter-Cohn
Member

Kate McGuckin
Member

Gary Van Meter
Member

June 27, 2024

To: Nelsonville City Clerk of Council Susan Harmony

From: Athens County Board of Elections

Re: Petition Verification Results

EXHIBIT 3
PAGE 1 OF 1

On behalf of the Athens County Board of Elections, I hereby certify that the board has examined the enclosed part-petitions. The number of required signatures for the Initiative Petition - abolishing the City Nelsonville Charter is 136 valid signatures.

	Petitions	Signatures
1. Number of Valid Part-Petitions	<u>8</u>	
Number of Valid Signatures		<u>180</u>
Number of Invalid Signatures		<u>27</u>
2. Number of Invalid Part-Petitions	<u>0</u>	
Number of Signatures on Invalid Part-Petitions		<u>0</u>
3. Total number of Part-Petitions received (Valid and Invalid)	<u>8</u>	
4. Total number of Signatures on Part-Petitions (Valid and Invalid)		<u>207</u>

Tony L. Brooks II
Deputy Director

06-27-2024
Date

RECORD OF ORDINANCES

EXHIBIT 4

PAGE 1 OF 3

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TO BE FILED WITH THE CLERK OF COUNCIL

FORM 30720

Ordinance No. 32-15

Passed May 26, 2015

ORDINANCE 32-15

AN ORDINANCE DECLARING THE INITIATIVE PETITIONS TO ABOLISH THE NELSONVILLE CHARTER AND RETURN TO A STATUTORY FORM OF GOVERNMENT EFFECTIVE DECEMBER 31, 2015 TO BE INVALID FOR FAILURE OF THE PETITIONERS TO HAVE A REASONABLE TRANSITION PERIOD AND PROCEDURE AND RETURNING THE PETITIONS TO THE PETITIONERS.

WHEREAS, on May 11, 2015, Vicki McDonald, Ed Mash, and Robert Warren filed with the Clerk of Council an Initiative Petitions seeking to abolish the Nelsonville City Charter and to return effective December 31, 2015 to a statutory form of government;

WHEREAS, the Initiative Petitions contained one hundred sixty-six (166) signatures;

WHEREAS, the Board of Elections has determined that one hundred fifty (150) signatures are valid;

WHEREAS, Nelsonville City Charter Section 10.03 provides: Number of signatures. Initiative, referendum and recall petitions must be signed by qualified electors of the City in number to at least fifteen percent (15%) of the total number of the votes cast within the City in the last gubernatorial election;

WHEREAS, Nelsonville City Charter Section 10.03 pertains to initiative, referendum, and recall petitions other than the abolishment of a charter;

WHEREAS, the creation and abolishment of a city charter is authorized and regulated by the Ohio Constitution;

WHEREAS, Ohio Constitution Article XVIII, Section 3 states 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;"

WHEREAS, Ohio Constitution Article XVIII, Section 9, states: 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;

WHEREAS, Ohio Constitution Article XVIII, Section 15 provides: All elections and submissions of questions provided for in this article shall be conducted by the election authorities prescribed by general law. The percentage of electors required to sign any petition provided for herein shall be based upon the total vote cast at the last preceding general municipal election;

WHEREAS, both of these provisions of the Ohio Constitution are still in effect, even though the provisions are inconsistent with each other. Section 9 provision requires ten per centum of the electors of Nelsonville, while Section 14 requires ten per centum of the total votes cast at the last preceding general election;

WHEREAS, the Ohio Supreme Court has opined on this matter, however, the decision does not settle the issue. In *State ex rel. Huthner v. West Jefferson Village Council*, 1995 Ohio 165, 72 Ohio St. 3d 589, 631 N.E.2d 1091, 1995 Ohio

RECORD OF ORDINANCES EXHIBIT 4

PAGE 2 OF 3

Ordinance No. 32-15

Passed May 26, 2015

LEXIS 1663 (Ohio 1995), the Ohio Supreme Court ruled that, Ohio Constitution art. XVIII, § 9 requires that petitions for a proposed charter amendment be signed by ten per cent of all registered voters, not just of those electors who voted in the last general election. However, upon reconsideration, the Ohio Supreme Court ruled that, [i]n determining the number of valid part-petition signatures necessary to establish a right to the placement of a proposed amendment of a municipal charter before the voters, Ohio Const. art. XVIII, §§ 5, 8, 9, and 14 must be construed in pari materia. Accordingly, the percentage of electors required to sign such part-petitions is ten percent of the electors of the municipality based upon the total number of votes cast at the last preceding general municipal election: *State ex rel. Husbner v. West Jefferson Village Council*, 75 Ohio St. 3d 381, 662 N.E.2d 339, 1995 Ohio LEXIS 2683 (Ohio 1995). This decision was a 4-3 decision leaving it unsettled how the matter would be resolved in a future case since the make up of the court is different.

WHEREAS, the Athens County Board of Elections has indicated the total number of registered voters in Nelsonville for the General Election held on November 4, 2014 was 2563, the total number of registered voters for the May primary held on Nelsonville in the May 5, 2015 primary was 2580 and the total number of votes cast on November 4, 2014 was 798. If Ohio Constitution Article XVIII, Section 9 controls, the signatures needed is 258. If Ohio Constitution Article XVIII, Section 14 controls, the signatures needed is 80. If Nelsonville City Charter 10.03 controls, the signatures needed is 120. There are one hundred fifty (150) valid signatures. The Board of Elections needs to decide which number of signatures is needed to place the issue on the ballot.

WHEREAS, switching from a statutory form of government to a charter form of government took about a year and one half;

WHEREAS, the Initiative petition mandates Nelsonville switch back from a charter form of government to a statutory form of government in less than two months;

WHEREAS, all council members by the Charter are elected on non-partisan ballots; in a statutory form of government, all elected officials are elected on a partisan ballot;

WHEREAS, Article XVII, Section 1 of the Ohio Constitution provides that all municipal officials are elected on the first Tuesday after the first Monday in November in odd numbered years;

WHEREAS, the next opportunity for this to happen would be at the General Election in 2017;

WHEREAS, the Initiative Petition needs to contain a reasonable transition period and procedure for transition just as the Charter Initiative did when it was adopted.

NOW THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF NELSONVILLE, ATHENS COUNTY, OHIO AS FOLLOWS:

1. The City of Nelsonville, Ohio hereby declares the initiative petitions attached hereto and incorporated herein by reference, to be invalid for failure to contain in the initiative petitions a reasonable transition period and procedure for returning to a statutory form of government.
2. This Ordinance shall be in full force and effect at the earliest

RECORD OF ORDINANCES

169

SMITH-EDWARDS, PUBLISHED, AUGUST 1989

20-0-0750

Ordinance No. 32-15

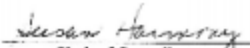
Passed May 26, 2015

moment; permitted by law.

Duly enacted by Council on first reading under suspension of the rules on the 26th day of May, 2015.

NELSONVILLE CITY COUNCIL


President of Council


Clerk of Council

First Reading: 05/26/15 Under Suspension of the Rules

EXHIBIT 4

PAGE 3 OF 3

Receipt for Cash, Petitions or Resolution

№ 0347

Office of the Board of Elections, Athens County, Ohio July 16, 2024

Received of Vicki McDonald

- ☐ Detachment of Candidacy Petitions for the Office of _____ of the _____ party
- ☐ Nominating Petitions for the office of _____
- ☐ Local Option Petition
- ☐ Referendum Petition
- ☒ Initiative Petition

EXHIBIT 5

PAGE 1 OF 1

Filing Fee Paid \$ _____ ☐ Cash ☐ Check # _____

Subdivision: Nelsonville City

Number of Signatures 207 / 108 valid Number of Part-Petitions 8

DESCRIPTION - PURPOSE, RATE, DATE OF ELECTION, ETC.

- ☐ TAX LEVY - PURPOSE _____

 MILLAGE _____ TYPE _____ LENGTH OF TIME _____
 COMMENCING _____ CALENDAR YEAR _____
- ☐ BOND ISSUE _____
- ☐ CHARTER AMENDMENT _____
- ☐ OTHER _____

OTHER CASH RECEIVED \$ _____ FOR _____

☐ Cash ☐ Check # _____

ATHENS CO BOARD OF ELECTIONS, By David A. Brubaker Jr

(SIGNED)

OFFICE USE: BOEY DVAL _____ BOEY REF _____

DEPOSIT DATE _____ BATCH NUMBER _____

ATHENS COUNTY COMMON PLEAS COURT
ATHENS, OHIO
CIVIL DIVISION

AFFIDAVIT OF GREGORY SMITH

STATE OF OHIO :
 : ss.
COUNTY OF ATHENS :

1. I, Gregory Smith, being first duly sworn, depose and state the following as true based on my personal knowledge;
2. I am over 18 years of age and competent to give testimony in a court of law;
3. I am the Relator in the attached Amended Petition for Mandamus as filed in this Court.
4. I have reviewed the foregoing Amended Petition for Mandamus in its entirety;
5. I know and verify that all the averments recited therein for which I have personal knowledge are true to the best of my knowledge;
6. I believe and verify the remaining averments that I do not have personal knowledge of are true and are based on specific information, documents, or both, as attached hereto and recited therein.

Sworn to and subscribed in my presence this 28th day of July 2024


Notary Public


Gregory Smith, Affiant



DANIEL H. KLOS, Attorney at Law
NOTARY PUBLIC, STATE OF OHIO
My commission expires on 06/30/2026
E-Notary 647.80 P.E.O.

ATHENS COUNTY COMMON PLEAS COURT
ATHENS, OHIO
CIVIL DIVISION

AFFIDAVIT OF VICKI L. MCDONALD

STATE OF OHIO :
 : ss.
COUNTY OF ATHENS :

1. I, Vicki L. McDonald, being first duly sworn, depose and state the following as true based on my personal knowledge;
2. I am over 18 years of age and competent to give testimony in a court of law;
3. I am the Relator in the attached Amended Petition for Mandamus as filed in this Court.
4. I have reviewed the foregoing Amended Petition for Mandamus in its entirety;
5. I know and verify that all the averments recited therein for which I have personal knowledge are true to the best of my knowledge;
6. I believe and verify the remaining averments that I do not have personal knowledge of are true and are based on specific information, documents, or both, as attached hereto and recited therein.

Sworn to and subscribed in my presence this 28th day of July 2024


Notary Public



DANIEL H. HLOC, Attorney at Law
NOTARY PUBLIC, STATE OF OHIO
My commission expires on 06/30/2026
SUSAN W. HLOC


Vicki L. McDonald, Affiant

Appendix 8

**IN THE COURT OF COMMON PLEAS OF ATHENS COUNTY, OHIO
CIVIL DIVISION**

GREGORY SMITH et al,

Relators,

v.

GREG CLEMENT et al,

Respondents.

Case Number: 24CI0180

Judge: GEORGE P. MCCARTHY

PRELIMINARY INJUNCTION AND PERMANENT INJUNCTION ORDER

Now comes the Court this 30th day of July 2024 upon motion of the Relators. Present were Attorney Daniel Klos for Relators along with Gregory Smith and Vicki McDonald; Asst. Prosecutor T.L. Warren for the Athens County Board of Elections; and Nelsonville Law Director Jonathan Robe and Attorney Mrinali Sethi for Nelsonville City Council and the City of Nelsonville. Nelsonville City Council members were also present.

The Court finds that Relators have standing to bring the action in this matter and that the parties were given adequate notice of hearing. The initiative at issue in this case seeks to disband Nelsonville's current city charter form government and return to a statutory form of government. An ordinance needs passed by city council sending an initiative found to be valid to the Athens County Board of Elections by August 7, 2024 in order for it to be placed on the November 5, 2024 ballot. Therefore, time is short. Relators filed their petition for writ of mandamus on July 18, 2024 and on July 24, 2024 filed a subsequent motion for TRO, preliminary

and permanent injunction. This hearing on all matters is being held six days later on July 30, 2024.

The Court finds it could have issued a writ and/or a temporary restraining order, without the benefit of hearing from the parties. Instead, the Court choose to hold hearing on the matter to hear all from the parties involved before making a decision as the matters before the Court concerns important issues that will affect all the citizens of Nelsonville.

The Court heard testimony from Relators Gregory Smith and Vicki McDonald. The Court finds that both are citizens and electors of Nelsonville, Ohio and that Relator McDonald is the head of the committee that circulated the petition initiative to disband the charter form of government.

The Court further finds that the Nelsonville Clerk of Court received the initiative petition and contacted the Athens County Board of Elections which determined that 136 signatures were required to add the initiative to the election ballot for November 5, 2024. The Court further finds 180 signatures on the petition were validated and concludes the initiative contains a sufficient number of valid signatures to be considered by Nelsonville City Council. Further, the Court finds that on or about June 27, 2024 the Athens Board of Elections sent correspondence to the Nelsonville City Clerk advising enough valid signatures were obtained for the initiative to go forward. Relator McDonald testified that the clerk also contacted her and notified her that there were enough valid signatures obtained for the initiative to proceed.

As a result, the Court finds that the initiative contained the requisite number of valid signatures and was required to come before Nelsonville City Council for their consideration of passing an ordinance to send the initiative to the Athens County Board of Elections at the very

next city council meeting. A city ordinance containing the initiative is required to be submitted to the board of elections by August 7, 2024 so that the initiative can be placed on the November 5, 2024 ballot for the citizens of Nelsonville to consider.

The Court further finds that Relator McDonald took reasonable steps to make sure that the initiative would come before Nelsonville City Council on their next meeting held on July 8, 2024. The Court finds that July 8th was the very next council meeting that would take place after the City of Nelsonville was advised through their clerk that enough initiative petition signatures were validated by the Athens County Board of Elections for the matter to proceed to council. The Court finds the city charter required the initiative be considered by Nelsonville City Council on July 8, 2024 for the passing an ordinance to send the validated initiative to the Board of Elections. *See Nelsonville City Charter, Sec. 10:02.*

The Court further finds that Relator McDonald was at the Nelsonville City Council meeting on July 8, 2024 and Relator's petition initiative and communication from the Board of Elections verifying enough signatures were not addressed. As a result, the Court finds that the Nelsonville City Council, without cause, failed to carry out their duty pursuant to the city charter to consider a resolution adopting an ordinance to refer the initiative to the board of elections. *See Nelsonville City Charter, Sec. 10:02.*

Respondent Board of Elections objects relying on Nelsonville Ordinance 32:15 where a previously filed initiative was rejected by council. The Court finds Nelsonville Ordinance 32:15 denying the initiative applies only to one specific petition submitted in 2015 and did not otherwise affect the city charter. Additionally, the Court finds that ordinance did not reject that 2015 initiative based upon the failure of the city charter to provide a process to disband the city

charter form of government. It was rejected because it failed to provide for a transition period to return to a statutory form of government. Therefore, it does not prevent Relators' petition initiative herein from being approved.

All other objections by respondents not specifically addressed herein have been carefully considered and are overruled.

The Court finds: 1) there is a substantial likelihood that the Realtors will prevail on the merits, 2) Relators will suffer irreparable injury by missing the opportunity to place the measure on the ballot for November 5, 2024 which includes the election for President of the United States where there will be greater voter turnout, 3) No third parties will be harmed by the placement of the initiative on the ballot, and 4) the public interest is best served by placing the initiative on the Nelsonville ballot. Further, it appears Respondents will continue to permit the obstruction of council's consideration of passing an ordinance to send the initiative (attached) to the Athens County Board of Elections in a timely manner in violation of Relator's rights.

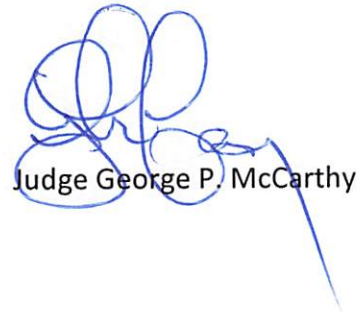
Therefore, upon motion of Relators, and pursuant to R.C. § 2727.02, the Ohio Constitution Arts. I Sec 2, XVII Sec 1, XVIII, §§ 5, 8, 9, and 14, Ohio Revised Code §731.28 to 731.41, and the Nelsonville City Charter, and for good cause shown, the Court orders a Preliminary Injunction and Permanent Injunction to all Respondents restraining them from preventing Nelsonville City Council from considering and passing an ordinance requiring the submission of petitioners' initiative to the Athens County Ohio Board of Elections by August 7, 2024 for placement on the November 5, 2024 ballot.

Respondents oral motion for stay is denied. No bond is required as the Respondents include a political subdivision and officers thereof. *Civ.R. 65(C)*. As a preliminary and permanent

injunction has been ordered after a hearing has been conducted, Relators motion for temporary restraining order is denied as it is now moot.

This is a final appealable order.

IT IS SO ORDERED.



Judge George P. McCarthy

TO THE CLERK:

Please provide a copy of the foregoing to all parties of record, via their attorney if represented, through the clerk's electronic filing case management system and if unable to do so then by regular U.S. Mail., proper postage prepaid.

**NOTICE TO CLERK OF NELSONVILLE CITY COUNCIL AND
NELSONVILLE CITY AUDITOR**

THE FOLLOWING FIVE QUALIFIED VOTERS ARE COMMENCING A
INITIATIVE DEFINED IN FULL BELOW AND WILL CONSTITUTE THE
PETITIONER'S COMMITTEE THAT WILL BE RESPONSIBLE FOR
CIRCULATING AND FILING THE PETITIONS IN PROPER FORM AND
COMPLIANCE WITH THE LAWS OF THE STATE OF OHIO. THE
ADDRESS OF THE COMMITTEE SHALL BE 46 HARPER WAY,
NELSONVILLE, OHIO 45764 IN CARE OF VICKI MCDONALD.

MCDONALD, VICKI LYNN 46 HARPER WAY, NELSONVILLE OH 45764
BISHOP, BARBARA LYNN 1080 BURR OAK BLVD, NELSONVILLE OH 45764
POTTS, LEEANNA JOE 1038 POPLAR ST, NELSONVILLE OH 45764
MCDONALD, WILMA J 373 POPLAR ST, NELSONVILLE OH 45764
MACCOMBS, PATRICIA ANN 1040 WALNUT ST, NELSONVILLE OH 45764

FULL PROPOSED INITIATIVE

AN INITIATIVE OF THE ELECTORS OF THE CITY OF NELSONVILLE, OHIO TO BE
SUBMITTED TO THE ATHENS COUNTY OHIO BOARD OF ELECTIONS FOR
NOVEMBER 5, 2024, GENERAL ELECTION IN ATHENS COUNTY OHIO.

"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 it's 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.

EXHIBIT 1

CERTIFICATION

PAGE 3 OF 3

This notice of initiative was served by personal service to Susan Harmony,
Nelsonville Clerk of Council on the 28th day of May, 2024

Signed Vicki L. McDonald

Appendix 9

IN THE COURT OF COMMON PLEAS
ATHENS COUNTY, OHIO
CIVIL DIVISION

Gregory Smith et al,

Case Number: 24 CI 0180

Relators,

v.

Judge McCARTHY

GREG CLEMENT, et al,

Respondents.

ORDER OF ALLOWANCE
ALTERNATIVE WRIT
AND
ORDER TO SHOW CAUSE

Now comes the Court this 30th day of July 2024 upon Relators Petition for Mandamus. After review of the record and for good cause shown the Court finds that Relators have presented sufficient evidence and applicable law for the Court to issue an alternative writ. *R.C. 2731.16*. Therefore, the Court allows the alternative writ.

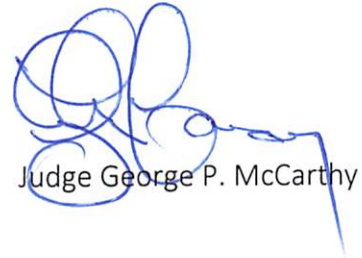
The Court orders Respondents, upon service of this order, to comply with the Nelsonville City Charter Article 10:02 (B) and orders Nelsonville City Council to convene and consider passing an ordinance submitting petitioners' initiative, attached as Exhibit 1, to the Athens County Ohio Board of Elections by August 2, 2024 for placement on the November 5, 2024 ballot.

*****HEARING NOTICE*****

This matter is scheduled for further hearing on Friday, August 2, 2024 at 10:00 a.m. for Respondents to show just cause if they have not complied with this Court's order above.

The Court reserves ruling on Relator's request for an award of damages to includes costs, expenses and reasonable attorney fees for this action and any other relief as the court deems just and proper pursuant to Ohio Revised Code §2731.11. A hearing will be scheduled at a later date concerning the requested damages.

IT IS SO ORDERED.



Judge George P. McCarthy

PRAECIPE

TO THE CLERK:

The Clerk is instructed to enter this order immediately upon its journal. See *R.C. 2731.07*.

The Clerk shall cause a copy of this ALTERNATIVE WRIT to be served by personal service to all parties of record, through their attorneys if represented, by the Athens County Sheriff or his designee and make proper return on the following:

- T.L. Warren, Asst. Prosecutor and Attorney for Athens County Ohio Board of Elections, Athens County Prosecutor's Office, 1 S Court St, Athens, OH 45701
- Jonathan Robe, Nelsonville City Attorney, Attorney for Respondents Nelsonville City Council and City of Nelsonville, Robe Law Office, 14 W. Washington Street, Athens, OH 45701
- ANTHONY DUNFEE, UNOFFICIAL MEMBER OF NELSONVILLE CITY COUNCIL, 211 LAKE HOPE DRIVE, NELSONVILLE, OHIO 45764, RESPONDENT
- OPHA LAWSON, UNOFFICIAL MEMBER OF NELSONVILLE COUNCIL, 211 LAKE HOPE DRIVE NELSONVILLE, OHIO 45764, RESPONDENT

The Clerk shall cause a copy of the ALTERNATIVE WRIT to be served personally by the Fairfield County Sheriff or their designee and make proper return forthwith upon

- Daniel Klos, Attorney for Relators, 1911 Country Place, Lancaster, OH 43130.

The Clerk shall cause a copy of the ALTERNATIVE WRIT to be served personally by the Franklin County Sheriff or their designee and make proper return forthwith upon

- MRINALI SETHI, REMINGER CO., LPA, ATTORNEY FOR RESPONDENTS NELSONVILLE CITY COUNCIL MEMBERS AND FOR THE CITY OF NELSONVILLE, OHIO 200 CIVIC CENTER DRIVE, SUITE 800, COLUMBUS, OH 43215

**NOTICE TO CLERK OF NELSONVILLE CITY COUNCIL AND
NELSONVILLE CITY AUDITOR**

THE FOLLOWING FIVE QUALIFIED VOTERS ARE COMMENCING A
INITIATIVE DEFINED IN FULL BELOW AND WILL CONSTITUTE THE
PETITIONER'S COMMITTEE THAT WILL BE RESPONSIBLE FOR
CIRCULATING AND FILING THE PETITIONS IN PROPER FORM AND
COMPLIANCE WITH THE LAWS OF THE STATE OF OHIO. THE
ADDRESS OF THE COMMITTEE SHALL BE 46 HARPER WAY,
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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.

EXHIBIT 1

CERTIFICATION

PAGE 3 OF 3

This notice of initiative was served by personal service to Susan Harmony,
Nelsonville Clerk of Council on the 28th day of May, 2024

Signed Vicki L. McDonald

FILED

Athens County, Ohio

07/18/2024 04:02 PM

Candy Russell Clerk

CaseNumber:24CI0180

Judge:MCCARTHY, GEORGE P

**IN THE COURT OF COMMON PLEAS
ATHENS COUNTY, OHIO
CIVIL DIVISION**

State Ex Rel.

**GREGORY SMITH
238 ADAMS STREET
NELSONVILLE, OHIO**

and

**VICKI LYNN MCDONALD
46 HARPER WAY
NELSONVILLE, OHIO
Relators,**

vs.

**GREG CLEMENT, MEMBER OF
NELSONVILLE CITY COUNCIL,
211 LAKE HOPE DRIVE
NELSONVILLE, OHIO 45764**

and

**JUSTIN BOOTH, MEMBER OF
NELSONVILLE CITY COUNCIL
211 LAKE HOPE DRIVE
NELSONVILLE, OHIO**

and

**CORY TAYLOR, MEMBER OF
NELSONVILLE CITY COUNCIL
211 LAKE HOPE DRIVE
NELSONVILLE, OHIO**

and

NANCY SONIC, MEMBER OF

Case No.

PETITION FOR MANDAMUS

JUDGE:

NELSONVILLE CITY COUNCIL
211 LAKE HOPE DRIVE
NELSONVILLE, OHIO 45764

and

ANTHONY DUNFEE, UNOFFICIAL
MEMBER OF NELSONVILLE CITY
COUNCIL
211 LAKE HOPE DRIVE
NELSONVILLE, OHIO 45764

and

OPHA LAWSON, UNOFFICIAL MEMBER
OF NELSONVILLE COUNCIL
211 LAKE HOPE DRIVE
NELSONVILLE, OHIO 45764

and

JONATHAN FLOWERS, MEMBER OF
NELSONVILLE CITY COUNCIL
211 LAKE HOPE DRIVE
NELSONVILLE, OHIO 45764

and

CITY OF NELSONVILLE, OHIO
211 LAKE HOPE DRIVE
NELSONVILLE OH 45764

Respondents.

PETITION

Relators come now before this Court and respectfully requests this Court, pursuant to the Ohio Constitution Art XVIII, §§ 5, 8, 9, and 14, Ohio Revised Code Athens and the Nelsonville City Charter to issue a Writ of Mandamus to compel the members of Nelsonville City Council to comply with the provisions of Article 10 of the Nelsonville Ohio City Charter and to order Nelsonville Council, to submit an initiative petition to the Athens County Ohio Board of Elections to be placed on the November 5, 2024 ballot for the consideration of the Citizens of Nelsonville. Upon clear failure of Nelsonville Council to complete an act required by the Nelsonville City Council, Relators request the court to order the initiative to be submitted to the Athens County Board of elections to be placed on the ballot for the November 5, 2024, general election.

PARTIES

1. Relators are residents of the State of Ohio, City of Nelsonville, County of Athens. Relator McDonald is a member of the petitioners committee on the initiative petition.
2. Respondents were, or are at all times, relevant members of the Nelsonville City Council and subject to the provision and rules of the Nelsonville City Charter.

JURISDICTION AND VENUE

3. Because the Respondents are officials of the City of Nelsonville Ohio, Athens County Ohio, and are charged with upholding the mandates of the Nelsonville City Charter and the relator is attempting to seek compliance with the Nelsonville Charter this court has jurisdiction and venue.

FACTUAL ALLIGATIONS COUNT ONE

4. Respondent City of Nelsonville is a municipal corporation with a City Charter and political subdivision of the State of Ohio that is bound to operate under the Articles of the Nelsonville City Charter.

5. Respondents Gregg Clement, Cory Taylor, Jonathan Flowers, Justin Booth, Nancy Sonic, Anthony Dunfee, and Opha Lawson are current members of the Nelsonville City Council with a duty under oath to uphold the Nelsonville City Charter.

6. On May 28, 2024, Relator Vicki McDonald, pursuant to Nelsonville City Charter Article 10:02, served both the Clerk of the Nelsonville City Council and the City Auditor a notice of commencing an initiative petition and paid the required fifty dollars to commence a petition to return the City of Nelsonville to the form of government it had before adopting the Nelsonville City Charter. The notice provided the full language of the proposed initiative measure, which was attached and made part of all the petitions circulated. (EXHIBIT 1)

7. On June 24, 2024, Relator McDonald filed part - petitions with the Nelsonville Clerk of Council which all contained the full and complete language of the proposed initiative with 207 signatures. (EXHIBIT 2)

8. On June 27, 2024, the Athens County Board of Elections provided a verification letter to Susan Harmony, Nelsonville Council Clerk, stating that the number of required signatures for the initiative petition to abolish Nelsonville City Charter is 136 valid signatures and the part petitions contained 180 valid signatures. (EXHIBIT 3)

9. On June 28, 2024, Susan Harmony phoned Relator McDonald and told her that the board found 180 valid signatures.

10. Pursuant to Nelsonville City Charter Article 10:02 (B) requires “Within ten (10) days of receipt of a petition, the Clerk of Council shall determine its sufficiency and advise the petitioners' committee and Council of such findings.”

11. On July 5, 2024, Relator Greg Smith, a valid signer of the initiative petition, telephoned Susan Harmony, Nelsonville Council Clerk to ensure Nelsonville Council would have an ordinance at the July 8th, 2024, regular meeting as required by Nelsonville Charter. The Clerk told Smith that she would try to get the ordinance on the agenda for the July 8, 2024, meeting.

12. On July 8, 2024, Relator McDonald, during a regular meeting of Nelsonville City Council, inquired of Council why they did not have legislation at that meeting to send the initiative petitions to the Athens County Board of Elections to be put on the ballot for the general election. The question was referred to Jonathan Robe, Law Director who stated the city's position was that Article 10 of the Nelsonville Charter did not pertain to initiatives which abolished the charter and that Nelsonville City Council had memorialized this policy in 2015 by ordinance 32-15.

13. Nelsonville Ordinance 32:15 ordained as follows:

NOW THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF NELSONVILLE, ATHENS COUNTY, OHIO AS FOLLOWS: 1. The City of Nelsonville, Ohio hereby declares the initiative petitions attached hereto and incorporated herein by reference, to be invalid for failure to contain in the initiative petitions a reasonable transition period and procedure for returning to a statutory form of government. (EXIBIT 4)

14. The petition presented to Nelsonville Council in 2015 did not have a transition plan, nor did it allow needed time to elect the required office holders and would have rendered

the City of Nelsonville unable to operate, therefore Council rejected it. Relator McDonald was involved in that petition but did not choose at that time to seek redress in the courts.

15. A reading of the full language of the proposed initiative in (EXIBIT 1) which was attached to every part-petition, clearly provides a transition plan and allows time for the election of city officers before taking effect on January 1, 2026. Therefore, Nelsonville City Ordinance 32-15 does not set policy for future initiatives and is not factually the same as the current initiative.

16. Ohio Revised Code 731.48 states Sections 731.28 to 731.41, inclusive, of the Revised Code do not apply to any municipal corporation which adopts its own charter containing an initiative and referendum provision for its own ordinances and other legislative measures.

17. The Ohio Supreme Court opined in EX REL. HUEBNER, APPELLANT, v. WEST JEFFERSON VILLAGE COUNCIL ET. 75 Ohio St. 3d 381 (Ohio 1995) that a municipal legislative authority such as a city or village council lacks authority to consider substantive errors in reviewing the sufficiency of petitions and is instead limited to reviewing the form of the petition. *State ex rel. Polcyn v. Burkhardt* (1973), 33 Ohio St.2d 7, 11-12, 62 O.O.2d 202, 204, 292 N.E.2d 883, 886; *State ex rel. Concerned Citizens for More Professional Govt. v. Zanesville City Council* (1994), 70 Ohio St.3d 455, 457-458, 639 N.E.2d 421, 423; *State ex rel. Citizens for a Better Portsmouth v. Sydnor* (1991), 61 Ohio St.3d 49, 572 N.E.2d 649.

18. Nelsonville City Charter Article 10:02 (B) grants the sole power to determine the sufficiency of an initiative petition to the Clerk of Council. Susan Harmony, the Clerk of Council, sought guidance from the Athens County Board of Elections that found the petitions sufficient and certified the sufficiency to Harmony. The Board of Elections also determined that 136 valid signatures were required for the initiative to be placed on the ballot, and the part petitions contained 180 valid signatures.

19. Nelsonville City Charter Art. 10:02(B) states: If the petition is found to be sufficient, Council shall pass an ordinance at its next regular meeting that the issue be placed on the ballot in accordance with Ohio law.

20. The Ohio Supreme Court also opined in *Huebner v. Village of West Jefferson*, 75 Ohio St. 3d 381, 385 (Ohio, 1995) that “Where a municipal legislative authority erroneously either fails to submit a charter amendment when it is presented with a legally sufficient petition or fails to make a prompt determination on the sufficiency of the petition within the constitutional time period, this court has issued writs of mandamus to order placement on the next regular election ballot. *Morris v. Macedonia City Council* (1994), 71 Ohio St.3d 52, 641 N.E.2d 1075; *State ex rel. Citizens for a Better Portsmouth v. Sydnor, supra*; *State ex rel. Jurcisin v. Cotner* (1984), 10 Ohio St.3d 171, 10 OBR 503, 462 N.E.2d 381.”

21. The initiative petition which has been properly examined by the Nelsonville, Ohio Clerk of Council and the Athens County Board of Elections must be submitted to the board of elections by August 7, 2024, to be placed on the ballot for the November 5, 2024, general election.

22. On July 16, 2024, Relator McDonald filed certified copies of the initiative petitions with the Athens County Board of Elections. Board director Tony Brooks stated to Relator McDonald that he would take the filing, but it was unlikely that he could put it on the ballot because of the Nelsonville Charter. Respondents have placed the Citizens of Nelsonville in the impossible position of trying to gain the initiative rights granted by the Ohio Constitution. Ohio Revised Code §731.41 mandates following a charter in an initiative process and the City of Nelsonville Council, by and through advice from its law director is refusing to follow the Charter, stating that the initiative process in the charter is not valid for the matters concerning a Charter.

(EXHIBIT 5)

23. The law director's opinion on this matter has been completely eviscerated by the Ohio Supreme Court in *Ex Rel, Huebner v Village of West Jefferson*. The Law director makes the totally unsupported legal argument that the Nelsonville Charter can be amended by an ordinance (32-15) of Nelsonville Council.

CLAIMS FOR RELIEF

Claim One: Writ Of Mandamus Directed to Respondents.

24. The allegations set forth in paragraphs 1 through 23 are incorporated herein by reference.

25. Pursuant to the Ohio Constitution, Ohio Revised Code §731.41 and Article 10 of the Nelsonville City Charter Relator is entitled to a Writ of Mandamus from this court and an injunction to compel the members of the Nelsonville City Council to comply with its provisions of the Ohio Constitution and Article 10 of the Nelsonville City Charter.

26. Pursuant to Ohio Constitution Relator is entitled to a Writ of Mandamus ordering the initiative petition submitted to the Athens County Board of Elections for placement on the November 5 general election.

Claim Two: Monetary Damages

27. The allegations set forth in paragraphs 1 through 26 are incorporated herein by reference.

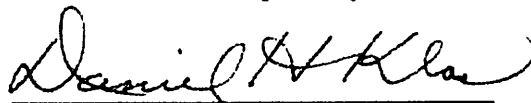
28. Relators are entitled to damages as in a civil action which includes costs, expenses and reasonable attorney fees for this action and any other relief as the court deems just and proper pursuant to Ohio Revised Code §2731.11.

PRAYER FOR RELIEF

WHEREFORE, Relator respectfully prays that this Court:

1. To expedite this request for mandamus because of the August 7, 2024, deadline for submitting initiative petitions.
2. Issue a Writ of Mandamus and injunction to be served upon the Respondents personally, by copy, by the sheriff or by a person specially authorized by the court or judge issuing the writ, ordering the Nelsonville City Council to comply with the Nelsonville City Charter Article 10:02 (B) by submitting the initiative petition to the Athens County Ohio Election Board.
3. Issue a Writ of Mandamus ordering placement of the initiative petition on the November 5, 2024, general election.
4. Award Relators damages as in a civil action to includes costs, expenses and reasonable attorney fees for this action and any other relief as the court deems just and proper pursuant to Ohio Revised Code §2731.11.

Respectfully submitted,



Daniel H. Klos (0031294
1911 Country Place
Lancaster, Ohio 43130
Voice (614 261-9581
Fax (614 262-5732
Email klosdhesq@aol.com
Attorney for Relator

**NOTICE TO CLERK OF NELSONVILLE CITY COUNCIL AND
NELSONVILLE CITY AUDITOR**

THE FOLLOWING FIVE QUALIFIED VOTERS ARE COMMENCING A
INITIATIVE DEFINED IN FULL BELOW AND WILL CONSTITUTE THE
PETITIONER'S COMMITTEE THAT WILL BE RESPONSIBLE FOR
CIRCULATING AND FILING THE PETITIONS IN PROPER FORM AND
COMPLIANCE WITH THE LAWS OF THE STATE OF OHIO. THE
ADDRESS OF THE COMMITTEE SHALL BE 46 HARPER WAY,
NELSONVILLE, OHIO 45764 IN CARE OF VICKI McDONALD.

MCDONALD, VICKI LYNN 46 HARPER WAY, NELSONVILLE OH 45764
BISHOP, BARBARA LYNN 1080 BURR OAK BLVD, NELSONVILLE OH 45764
POTTS, LEEANNA JOE 1038 POPLAR ST, NELSONVILLE OH 45764
MCDONALD, WILMA J 373 POPLAR ST, NELSONVILLE OH 45764
MACCOMBS, PATRICIA ANN 1040 WALNUT ST, NELSONVILLE OH 45764

FULL PROPOSED INITIATIVE

AN INITIATIVE OF THE ELECTORS OF THE CITY OF NELSONVILLE, OHIO TO BE
SUBMITTED TO THE ATHENS COUNTY OHIO BOARD OF ELECTIONS FOR
NOVEMBER 5, 2024, GENERAL ELECTION IN ATHENS COUNTY OHIO.

"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 it's 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.

CERTIFICATION

EXHIBIT 1

PAGE 1 OF 3

This notice of initiative was served by personal service to Taylor
Sappington, Nelsonville Auditor, on the 28th day of May, 2024

Signed Vicki McDonald

Received _____

MAY 28 2024

Check No. NELSONVILLE APP'X 105

RECEIPT		DATE <u>5-28-2024</u>	No. <u>687907</u>
RECEIVED FROM <u>Vicki McDonald</u>		\$ <u>50.00</u>	
<u>Fifty</u>		<u>50</u> DOLLARS	
FOR <u>Proposed Initiative</u>			
☐ CASH	☒ CASH	FROM _____ TO _____	
☐ CHECK	☐ CHECK	BY <u>[Signature]</u>	
☐ MONEY ORDER	☐ MONEY ORDER		
☐ CREDIT CARD	☐ CREDIT CARD		

EXHIBIT 1

PAGE 2 OF 3

**NOTICE TO CLERK OF NELSONVILLE CITY COUNCIL AND
NELSONVILLE CITY AUDITOR**

THE FOLLOWING FIVE QUALIFIED VOTERS ARE COMMENCING A
INITIATIVE DEFINED IN FULL BELOW AND WILL CONSTITUTE THE
PETITIONER'S COMMITTEE THAT WILL BE RESPONSIBLE FOR
CIRCULATING AND FILING THE PETITIONS IN PROPER FORM AND
COMPLIANCE WITH THE LAWS OF THE STATE OF OHIO. THE
ADDRESS OF THE COMMITTEE SHALL BE 46 HARPER WAY,
NELSONVILLE, OHIO 45764 IN CARE OF VICKI MCDONALD.

MCDONALD, VICKI LYNN 46 HARPER WAY, NELSONVILLE OH 45764
BISHOP, BARBARA LYNN 1080 BURR OAK BLVD, NELSONVILLE OH 45764
POTTS, LEEANNA JOE 1038 POPLAR ST, NELSONVILLE OH 45764
MCDONALD, WILMA J 373 POPLAR ST, NELSONVILLE OH 45764
MACCOMBS, PATRICIA ANN 1040 WALNUT ST, NELSONVILLE OH 45764

FULL PROPOSED INITIATIVE

AN INITIATIVE OF THE ELECTORS OF THE CITY OF NELSONVILLE, OHIO TO BE
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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.

EXHIBIT 1

CERTIFICATION

PAGE 3 OF 3

This notice of initiative was served by personal service to Susan Harmony,
Nelsonville Clerk of Council on the 28th day of May, 2024

Signed Vicki L. McDonald

To: Nelsonville Ohio Council Clerk.

Pursuant to Article 10.02B of the Nelsonville City Charter the petitioner's committee is filing the below listed Petitions to allow you to check the sufficiency of the signed petitions.

If the petitions are found to be sufficient, or if you find some deficiency, please contact committee member Vicki McDermid at 740-753-2544.

I have received 8 petitions with a total of 207 signatures

Susan Harmony — — Date June 24, 2024 — —

Susan Harmony,

Clerk of Nelsonville, Ohio Council

EXHIBIT 2

PAGE 1 OF 1

Sky Portney
Chair

Debra L. Quivry
Director

Tony L. Brooks, II
Deputy Director

Athens County Board of Elections
15 South Court St., Room 130
Athens, Ohio 45701
(740) 592-3201
Fax (740) 592-3262
<https://www.boc.ohio.gov/athens/>

Anndrea S. Carpenter-Calvin
Member

Kate McGuckin
Member

Gary Van Meter
Member

June 27, 2024

To: Nelsonville City Clerk of Council Susan Harmony

From: Athens County Board of Elections

Re: Petition Verification Results

EXHIBIT 3

PAGE 1 OF 1

On behalf of the Athens County Board of Elections, I hereby certify that the board has examined the enclosed part-petitions. The number of required signatures for the Initiative Petition - abolishing the City Nelsonville Charter is 136 valid Signatures.

	Petitions	Signatures
1. Number of Valid Part-Petitions	<u>8</u>	
Number of Valid Signatures		<u>180</u>
Number of Invalid Signatures		<u>22</u>
2. Number of Invalid Part-Petitions	<u>0</u>	
Number of Signatures on Invalid Part-Petitions		<u>0</u>
3. Total number of Part-Petitions received (Valid and Invalid)	<u>8</u>	
4. Total number of Signatures on Part-Petitions (Valid and Invalid)		<u>207</u>

Tony L. Brooks II
Deputy Director

06-27-2024
Date

RECORD OF ORDINANCES

EXHIBIT 4

PAGE 1 OF 3

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Ordinance No 32-15

Passed May 26, 2015

ORDINANCE 32-15

AN ORDINANCE DECLARING THE INITIATIVE PETITIONS TO ABOLISH THE NELSONVILLE CHARTER AND RETURN TO A STATUTORY FORM OF GOVERNMENT EFFECTIVE DECEMBER 31, 2015 TO BE INVALID FOR FAILURE OF THE PETITIONS TO HAVE A REASONABLE TRANSITION PERIOD AND PROCEDURE AND RETURNING THE PETITIONS TO THE PETITIONERS.

WHEREAS, on May 11, 2015, Vicki McDonald, Ed Mush, and Robert Warren filed with the Clerk of Council an Initiative Petition seeking to abolish the Nelsonville City Charter and to return, effective December 31, 2015 to a statutory form of government;

WHEREAS, the Initiative Petitions contained one hundred sixty-six (166) signatures;

WHEREAS, the Board of Elections has determined that one hundred fifty (150) signatures are valid;

WHEREAS, Nelsonville City Charter Section 10.03 provides: Number of signatures. Initiative, referendum and recall petitions must be signed by qualified electors of the City in number to at least fifteen percent (15%) of the total number of the votes cast within the City in the last gubernatorial election;

WHEREAS, Nelsonville City Charter Section 10.03 pertains to initiative, referendum, and recall petitions other than the abolishment of a charter;

WHEREAS, the creation and abolishment of a city charter is authorized and regulated by the Ohio Constitution;

WHEREAS, Ohio Constitution Article XVIII, Section 3 states 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."

WHEREAS, Ohio Constitution Article XVIII, Section 9, states: 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;

WHEREAS, Ohio Constitution Article XVIII, Section 13 provides: All elections and submissions of questions provided for in this article shall be conducted by the election authorities prescribed by general law. The percentage of electors required to sign any petition provided for herein shall be based upon the total vote cast at the last preceding general municipal election;

WHEREAS, both of those provisions of the Ohio Constitution are still in effect, even though the provisions are inconsistent with each other. Section 9 provision requires ten per centum of the electors of Nelsonville, while Section 14 requires ten per centum of the total votes cast at the last preceding general election;

WHEREAS, the Ohio Supreme Court has opined on this matter, however, the decision does not settle the issue. In *State ex rel. Huebner v. West Jefferson Village Council*, 1995 Ohio 105, 72 Ohio St.3d 589, 651 N.E.2d 1001, 1995 Ohio SONVILLE APP'X 110

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RECORD OF ORDINANCES EXHIBIT 4

PAGE 2 OF 3

Town of Nelsonville, Ohio

5523

Ordinance No. 32-15

Passed May 26, 2015

LEXIS 1465 (Ohio 1995), the Ohio Supreme Court ruled that, Ohio Constitution art XVIII, § 9 requires that petitions for a proposed charter amendment be signed by ten per cent of all registered voters, not just of those electors who voted in the last general election. However, upon reconsideration, the Ohio Supreme Court ruled that, (in determining the number of valid part-petition signatures necessary to establish a right to the placement of a proposed amendment of a municipal charter before the voters, Ohio Const. art XVIII, §§ 5, 8, 9, and 14 must be construed in pari materia. Accordingly, the percentage of electors required to sign such part-petitions is ten percent of the electors of the municipality based upon the total number of votes cast at the last preceding general municipal election: State ex rel. Huobner v. West Jefferson Village Council, 73 Ohio St. 3d 381, 662 N.E.2d 339, 1995 Ohio LEXIS 2683 (Ohio 1995). This decision was a 4-3 decision leaving it unsettled how the matter would be resolved in a future case since the make up of the court is different.

WHEREAS, the Athens County Board of Elections has indicated the total number of registered voters in Nelsonville for the General Election held on November 4, 2014 was 2563, the total number of registered voters for the May primary held on Nelsonville in the May 5, 2015 primary was 2580 and the total number of votes cast on November 4, 2014 was 798. If Ohio Constitution Article XVIII, Section 9 controls, the signatures needed is 258. If Ohio Constitution Article XVIII, Section 14 controls, the signatures needed is 80. If Nelsonville City Charter 10.33 controls, the signatures needed is 120. There are one hundred fifty (150) valid signatures. The Board of Elections needs to decide which number of signatures is needed to place the issue on the ballot.

WHEREAS, switching from a statutory form of government to a charter form of government took about a year and one half;

WHEREAS, the Initiative petition mandates Nelsonville switch back from a charter form of government to a statutory form of government is less than two months;

WHEREAS, all council members by the Charter are elected on non-partisan ballots; in a statutory form of government, all elected officials are elected on a partisan ballot;

WHEREAS, Article XVII, Section 1 of the Ohio Constitution provides that all municipal officials are elected on the first Tuesday after the first Monday in November in odd numbered years;

WHEREAS, the next opportunity for this to happen would be at the General Election in 2017;

WHEREAS, the Initiative Petition needs to contain a reasonable transition period and procedure for transition just as the Charter initiative did when it was adopted.

NOW THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF NELSONVILLE, ATHENS COUNTY, OHIO AS FOLLOWS:

1. The City of Nelsonville, Ohio hereby declares the initiative petitions attached hereto and incorporated herein by reference, to be invalid for failure to contain in the initiative petitions a reasonable transition period and procedure for returning to a statutory form of government.

2. This Ordinance shall be in full force and effect at the earliest

NELSONVILLE APP'X 111

RECORD OF ORDINANCES

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PRINTED AT THE OFFICE OF THE CLERK OF COUNCIL

NOV 19 2015

Ordinance No. 32-15

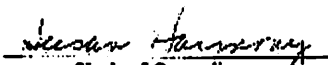
Passed May 26, 2015

moment permitted by law.

Duly enacted by Council on first reading under suspension of the rules on the 26th day of May, 2015.

NELSONVILLE CITY COUNCIL


President of Council


Clerk of Council

First Reading: 05/26/15 Under Suspension of the Rules

EXHIBIT 4

PAGE 3 OF 3

Receipt for Cash, Petitions or Resolution

№ 0347

Office of the Board of Elections, Athens County, Ohio July 14, 2024

Received of Vicki McDonald

- ☐ Detachment of Candidacy Petitions for the Office of _____, of the _____ party
- ☐ Nominating Petitions for the office of _____
- ☐ Local Opene Petition
- ☐ Referendum Petition
- ☒ Initiative Petition

EXHIBIT 5

PAGE 1 OF 1

Filing Fee Paid \$ _____ ☐ Cash ☐ Check # _____

Subdivision: Nelsonville City

Number of Signatures: 207 / 108 valid Number of Part - Petitions: 8

DESCRIPTION PURPOSE, RATE, DATE OF ELECTION, ETC.

☐ TAX Levy - PURPOSE _____

MILLAGE _____ TYPE _____ LENGTH OF TIME _____

COMMENCING _____ CALENDAR YEAR _____

☐ BOND ISSUE _____

☐ CHARTER AMENDMENT _____

☐ OTHER _____

OTHER CASH RECEIVED \$ _____ FOR _____

☐ Cash ☐ Check # _____

ATHENS CO BOARD OF ELECTIONS, By: James A. Brooks

(SIGNED)

OFFICE USE: _____ BOARD _____ BOARD _____

DISCREDIT DATE _____ BATCH NUMBER _____

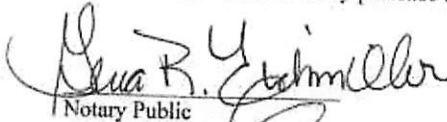
ATHENS COUNTY COMMON PLEAS COURT
ATHENS, OHIO
CIVIL DIVISION

AFFIDAVIT OF GREGORY SMITH

STATE OF OHIO :
COUNTY OF ATHENS : ss.

1. I, Gregory Smith, being first duly sworn, depose and state the following as true based on my personal knowledge;
2. I am over 18 years of age and competent to give testimony in a court of law;
3. I am the Relator in the attached Petition for Mandamus as filed in this Court.
4. I have reviewed the foregoing Petition for Mandamus in its entirety;
5. I know and verify that all the averments recited therein for which I have personal knowledge are true to the best of my knowledge;
6. I believe and verify the remaining averments that I do not have personal knowledge of are true and are based on specific information, documents, or both, as attached hereto and recited therein.

Sworn to and subscribed in my presence this 17th day of July 2024


Notary Public


Gregory Smith, Affiant



Gena R. Eichmiller
Notary Public, State of Ohio
Commission Number: 2019-RE-762784
My Commission Expires January 23, 2029

ATHENS COUNTY COMMON PLEAS COURT
ATHENS, OHIO
CIVIL DIVISION

AFFIDAVIT OF VICKI L. MCDONALD

STATE OF OHIO

ss.

COUNTY OF ATHENS

1. I, Vicki L. McDonald, being first duly sworn, depose and state the following as true based on my personal knowledge;
2. I am over 18 years of age and competent to give testimony in a court of law;
3. I am the the Relator in the attached Petition for Mandamus as filed in this Court.
4. I have reviewed the foregoing Petition for Mandamus in its entirety;
5. I know and verify that all the averments recited therein for which I have personal knowledge are true to the best of my knowledge;
6. I believe and verify the remaining averments that I do not have personal knowledge of are true and are based on specific information, documents, or both, as attached hereto and recited therein.

Sworn to and subscribed in my presence this 18th day of July 2024

Barbara L. Carter
Notary Public

Vicki L. McDonald
Vicki L. McDonald, Affiant



BARBARA L. CARTER
Notary Public, State of Ohio
My Commission Expires
September 17, 2024

Appendix 10

IN THE COURT OF COMMON PLEAS
ATHENS COUNTY, OHIO
CIVIL DIVISION

Gregory Smith et al,

Relators,

v.

GREG CLEMENT, et al,

Respondents.

Case Number: 24 CI 0180

Judge McCARTHY

STAY ORDER PENDING APPEAL

Now comes the Court this 1st day of August 2024 upon Defendant City of Nelsonville/Nelsonville City Council's Motion to Strike Relators Ex Parte Motion for Temporary Restraining Order and Motion for Preliminary and Permanent Injunction as well as their Notice of Appeal filed this day.

The Court notes that Relators' Petition for Mandamus herein was filed July 18, 2024 less than 30 days prior to the August 7, 2024 deadline by which the initiative was to be certified and sent to the Board of Elections. Further, Relator's Motion for injunctive relief was filed July 24, 2024. This is a case of first impression for this Court. After holding a hearing, the Court granted Relator's request only in part and Defendants have appealed. Therefore, if the Court were to grant Relators requested relief in full, the Court has no doubt some or all Defendants would have sought appeal in the matter, in part, due to issues raised at the hearing.

The Court also wants to avoid Nelsonville incurring additional costs in having to create and mail required items to all citizens of Nelsonville if the initiative is placed on the ballot as well as any expenses that may be required in preparing the ballots for the election since any appeal issue,

if found to have merit, could then take the initiative off the ballot.

Further, proceedings herein do not prevent Relators from submitting a similar initiative at the next appropriate election.

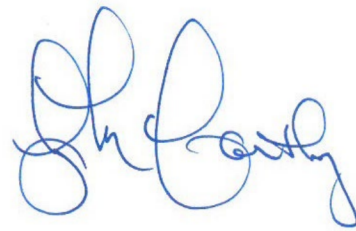
Additionally, the Court has concerns if the initiatives' timetable for a possible transition is long enough to be considered reasonable.

Based on the above, in part, the Court believes it would be wise to stay further proceedings until the Fourth District Court of Appeals has a chance to further review the matter.

Therefore, the Court issues a stay of all proceedings in the case pending appeal to the Fourth District Court of Appeals.

Accordingly, the hearing scheduled August 2, 2024 at 10:00 a.m. is hereby vacated.

IT IS SO ORDERED.

A handwritten signature in blue ink, appearing to read "G. McCarthy", is positioned above the printed name of the judge.

Judge George P. McCarthy

TO THE CLERK:

Please issue a copy of the foregoing to all parties of record via the clerk's electronic case management system.

Appendix 11

**IN THE COURT OF COMMON PLEAS OF ATHENS COUNTY, OHIO
CIVIL DIVISION**

GREGORY SMITH et al,

Case Number: 24CI0180

Relators,

v.

Judge: MCCARTHY

GREG CLEMENT et al,

Respondents.

**PRELIMINARY INJUNCTION TWO AND
PREEMPTIVE WRIT OF MANDAMUS
ENTRY & ORDER**

Now comes the Court this 12th day of September 2024 upon Relators' Motion for Preliminary Injunction filed August 28, 2024. The Court has reviewed the record, including all recent filings by the parties, the Court of Appeal's decisions in Case Nos. 24CA17, 24CA22 and proceeds to rule upon the motion.

This Court has previously ordered a preliminary and permanent injunction and an alternative writ and show cause order. This Court also issued a stay of proceedings at Respondents' request to allow them an opportunity to appeal. The Court notes that Respondents' appeal regarding this case was dismissed on or about August 26, 2024 in Case Nos. 24CA17 and 24CA22.

As the Court of appeals has dismissed the appeal, this Court's previous order of a stay of proceedings is hereby vacated and the matter returned to the active trial docket.

Once again, Relator asserts time is short. This is in part due to Realtors' petition being submitted to the Nelsonville Clerk in June and the subsequent refusal of Nelsonville City Council to pass an ordinance to send the Relators' petition initiative to the Board of Elections at their next public meeting held July 8, 2024. By failing to pass an ordinance, the petition initiative was not sent to the Board of Elections to be placed upon the November 5, 2024 ballot. Relators then secured legal counsel who filed Relators' petition for mandamus on July 18, 2024. This filing was 20 days away from the August 7, 2024 Athens Board of Elections deadline for accepting initiatives for placement on the November 5, 2024 ballot.

The Nelsonville citizens dearly have a right to submit a petition to the electorate for the citizens to decide by vote if the current charter form of government should stay in place or if it should return to a statutory form of government. The citizens previously voted to replace the statutory form of government with a charter form of government. It is axiomatic that the citizens can also chose to go back to a statutory form of government. One question that remains is what provision(s) should control the proposed dissolution of the charter form of government: the Charter's or the Ohio Constitution's?

By way of review, Relators filed their petition for writ of mandamus on July 18, 2024 and on July 24, 2024 filed a motion for TRO, preliminary and permanent injunctions. Because "time was short" then as well, the Court held an all-encompassing hearing consolidating the preliminary hearing and permanent injunction hearing together to be heard along with the issues brought forth in the petition for mandamus. Relators

filed an amended Complaint on July 29, 2024 adding the Board of Elections as a party. A hearing on all matters was held on July 30, 2024.

The Board of Elections were represented at the hearing with one days' notice although they had opportunity to join as an intervening necessary party at any time prior to the hearing. Although there is a question of actual notice being provided to the BOE, the Court finds that by being present at the hearing the BOE demonstrates it had actual notice of the amended complaint as well as the hearing. As time was exceedingly short (7 days before the BOE deadline), at the July 30, 2024 hearing the Court stated it could have summarily issued a preemptory writ and injunction just based upon the affidavits but chose to hold a hearing to hear from the parties, in part, because the issue is important to the city /citizens and the issue is novel. Therefore, since there were only seven days before the BOE deadline and the Court would have to write a lengthy order, BOE's motion to continue was not well taken and was denied.

The Court again finds that Relators have standing to bring the instant action. Further that upon receipt of the Relators' petition the Nelsonville Clerk appropriately contacted the Athens County Board of Elections which determined there were 180 valid signatures – enough to add the initiative to the election ballot for November 5, 2024 (*See Board of Elections letter to Nelsonville Clerk dated June 27, 2024*). See also the second letter dated August 2, 2024 and a third letter dated August 7, 2024 from the Board of Elections confirming 180 valid signatures were obtained and validated. In the last August 7, 2024 letter the BOE asserts that they do not provide legal advice or an opinion as to the sufficiency of the signatures as the BOE informed the Nelsonville

Clerk that only 136 valid signatures were needed indicating the petition initiative could proceed.¹ Regardless, the Nelsonville Clerk found the 180 valid signatures established the sufficiency of the petition. Therefore, the Court concludes the initiative contains a sufficient number of valid signatures to proceed to city council for the passing of an ordinance to send it to the BOE to be placed on the general election ballot.

Procedurally, once the clerk decided the sufficiency of the petition, she informed the city council and the petition committee of the results. The Court finds this was accomplished as evidenced by a petitioners' committee member testifying she received a call from the Nelsonville Clerk advising the petition was sufficient. Additionally, City Council sought a legal opinion from the City Law Director on the issue as a result immediately thereafter. Further, the petition was never found to have any deficiencies. If it did have any deficiencies it was required by law to be returned to the petitioners' committee with any deficiencies noted. The Court finds the petition was never returned to the petitioners' committee nor were any deficiencies noted.

As a result, this Court finds it then became incumbent upon the City Council to pass an ordinance sending the petition initiative to the board of elections for balloting in accordance with Ohio law. Nelsonville City Charter Section 10.02(B) states the City Council shall pass an ordinance if the Nelsonville Clerk of Council found the petition sufficient. The word "shall" used in NCC 10.02 make the provision mandatory

1. The 8/7/24 BOE Letter states "***This verification supersedes and rescinds the notices dated June 27, 2024 and August 2, 2024.**". Additionally, 8/7/24 was the last day to submit initiatives to the BOE.

and not discretionary. The City Council's duty at that point is ministerial. This Court finds the City Council must formalize the sufficiency of the petition found by the Nelsonville Clerk of Council. The City Council can suspend the three-reading rule of the proposed ordinance to expedite matters to pass the ordinance if time is short. However, City Council refused to pass, or even address, such an ordinance at their next meeting on July 8, 2024 as required by the Nelsonville Charter.

In the *Sandusky* case, the Ohio Supreme Court found that that city council erred when it failed to pass an ordinance sending petitioners' charter amendment to the board of elections for them to place on the ballot. *State ex rel. Sanduskians for Sandusky v. Sandusky*, 2022-Ohio-3362, 169 Ohio St. 3d 702, 712, 207 N.E.3d 730, 739, *reconsideration denied*, 2022-Ohio-3752, 168 Ohio St. 3d 1421. The Court noted in their *Sandusky* decision that in *State ex rel. Ebersole v. Powell*, 141 Ohio St.3d 17, 2014-Ohio-4283 "we recognized that the process for submitting a charter amendment to the ballot must not be conflated with the process for an initiative. *Id.* at ¶ 11. R.C. 731.31, which by its terms applies only to initiative and referendum petitions, is inapplicable to a municipal charter-amendment petition unless something in the municipal charter incorporates the statute into the charter-amendment process. Because the *Sandusky* Charter contains no provision that incorporates the full-text requirement of R.C. 731.31 into the charter-amendment process, city respondents erred in finding the petition invalid." Here the Court finds that the petitioners' initiative, once found to be satisfactory to the clerk, required the city council to pass an ordinance. *Sandusky, supra*.

Nelsonville City Charter Article 10 provides for "Initiatives, Referendums,

and Recalls.” An “initiative” is a proposal which allows the people to directly enact a law if they accept the proposal in an election and a “referendum” is a proposal which allows the people to directly repeal or ratify a law which has already been enacted by the legislature. *Ohio Const. art. 2, § 1f. State ex rel. Flak v. Betras*, 2017-Ohio-8109, 152 Ohio St. 3d 244, abrogated by (on other issues) *State ex rel. Maxcy v. Saferin*, 2018-Ohio-4035, 155 Ohio St. 3d 496. A “recall” of a public official is not the issue herein nor is a referendum. The significance, in part, is that a citizens’ initiative requires 15% of the electorate vote based upon the votes cast in the last gubernatorial election in order to proceed to council for an ordinance to be passed. *See NCC Section 10.03*. The Relators’ petition initiative herein seeks to disband Nelsonville’s current city charter form government and return to a statutory form of government. However, the Nelsonville City Charter does not set forth a specific procedure to dissolve their charter form of government. This was last attempted by the electorate in 2015.

The Ohio Supreme Court has weighed in on this issue stating, “Though a charter amendment can be initiated by a petition signed by 10 percent of a municipality’s electors, *see* Article XVIII, Section 9, Ohio Constitution, a charter amendment is *not* an “initiative.” Indeed, R.C. 731.28 describes initiatives as “[o]rdinances and other measures providing for the exercise of any powers of government.” We have observed that this definition does not describe a charter amendment.” *See State ex rel. Ebersole v. Powell City Council*, 141 Ohio St.3d 17, 2014-Ohio-4283, 21 N.E.3d 274, ¶ 11. *State ex rel. Sanduskians for Sandusky v. Sandusky*, 2022-Ohio-3362, 169 Ohio St. 3d 702, 711, 207 N.E.3d 730, 738, *reconsideration denied*, 2022-Ohio-3752, 168 Ohio St. 3d 1421, 196

However, the Ohio Constitution provides a process for how charter forms of governments are to amend their provisions in Article XVIII, Sec. 9. It states, "Amendments to any charter framed and adopted as herein provided may be submitted * * * 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." It does not state a specific process to dissolve a charter form of government. However, it provides a procedure for specifically amending the charter which could include dissolution of the charter form of government. Amendment of a city charter is controlled by provisions of state constitution addressing procedure to amend a municipal charter State ex rel. Maxcy v. Saferin, 2018-Ohio-4035, 155 Ohio St. 3d 496, 122 N.E.3d 1165.

It does not appear that the City Charter includes any of the State provisions regarding the charter amendment process nor sets forth a clear procedure to follow to dissolve their charter form of government. At most, the Nelsonville Charter provides a citizens' initiative proposal for the ballot needs to be signed by 15% of the electorate from the last gubernatorial race. *See NCC Section 10.03*. In applying Ohio Constitutional Article XVIII, Sec. 9, only 10% of the electors need to sign a petition, to amend the Charter to disband the Charter form of government. Other courts have previously found petitions containing signatures from ten percent of the electors of a municipality setting forth a proposed amendment to the municipality's charter trigger the duty of the legislative authority to submit the proposed charter amendment to the electorate. Ohio Const. Art.

18, § 9. *State ex rel. Maxcy v. Saferin*, 2018-Ohio-4035, 155 Ohio St. 3d 496, 122 N.E.3d 1165. As a result, the Nelsonville City Charter herein and the Ohio Constitution appear in conflict. When the city charter and state constitutional provisions conflict, the constitutional provisions prevail. See *State ex rel Sanduskians for Sandusky v. Sandusky* (2022), 169 Ohio St.3d 162. Therefore, the Court finds 10% of the electors of Nelsonville need to have signed the Relator's petition initiative for it to be valid to amend the charter. *State ex rel. Maxcy v. Saferin*, 2018-Ohio-4035, 155 Ohio St. 3d 496, 122 N.E.3d 1165. The Nelsonville Clerk found Relators' petition sufficient as evidenced when she contacted Relators committee to advise them of its sufficiency. The percentage of electors required to sign petitions is ten percent of the electors of the municipality based upon the total number of votes cast at the last preceding general municipal election. *State ex rel. Huebner v. W. Jefferson Vill. Council*, 75 Ohio St. 3d 381, 384, 662 N.E.2d 339, 342 (1995). The petition was never returned by the clerk to the petitioners' committee and they were never advised as to any deficiencies. The Court concludes the Clerk determined the petition initiative signatures to be sufficient. Presumably, the clerk applied a 15% electorate requirement pursuant to NCC 10.03, and found the petition initiative to be sufficient. Therefore, the Court finds since the Clerk found the "initiative" met the 15% threshold of valid signatures, it is axiomatic that it also met a lower threshold of 10% threshold of valid signatures under for a charter amendment pursuant to Ohio Constitutional Article XVIII, Sec. 9. The number of valid signatures required to warrant placement of a proposed city charter amendment before the voters is 10% of the number of votes cast at the last preceding general municipal election. *State ex rel.*

Commt. for the Charter Amend., City Trash Collection v. Westlake, 2002-Ohio-5302, 97 Ohio St. 3d 100, 776 N.E.2d 1041. Although the petition initiative is better described as a charter amendment, it is in compliance with Ohio Constitutional Article XVIII, Sec. 9. *State ex rel. Maxcy v. Saferin*, 2018-Ohio-4035.

Further, the Court finds that NCC Ordinance 32:15 does not provide a legal excuse for City Council to avoid introducing a new ordinance and voting on whether to send it to the board of elections. Regarding that ordinance, the 2015 city council rejected the petition initiative to disband the charter government for not providing for a transitional government. It did not pass an ordinance not for failing to comply with Ohio Constitutional Article XVIII, Sec. 9. Additionally, that action was not appealed to the Court so it has little to no precedential value as it was not legally challenged and upheld. Further, *State ex rel. Sanduskians for Sandusky v. Sandusky* (2022), 169 Ohio St.3d 162, specifically held that a city council's failure to submit the petition to the board of elections was improper even though that council did not submit the petition because they believed the petition to be in error. In *Sandusky*, the Ohio Supreme Court issued a limited writ compelling the city council to pass an ordinance to place the measure on the ballot. The Ohio Supreme Court has previously found that it is not the role of the city council to substitute its judgment for that of the voters as to what matters should appear on the ballot; nor can the city council assess the constitutionality of a proposal to amend the charter, because that role is reserved for the courts. *State ex rel. Ebersole v. Powell City Council*, 141 Ohio St.3d 17, 2014-Ohio-4283. City council's authority in reviewing sufficiency of petitions to place charter commission question on ballot is limited to

approving their form and not their substantive merits; signatures which for any reason have not been examined must be presumed to be valid. Const. Art. 18, §§ 7-9. *State ex rel. Concerned Citizens for more Pro. Govt. v. Zanesville City Council*, 70 Ohio St. 3d 455, 639 N.E.2d 421 (1994).

The proximity of the election one month after filing of mandamus petition establishes the lack of an adequate remedy in the ordinary course of law for proponents of a city ordinance by initiative. *State ex rel. Commt. for Proposed Ordinance to Repeal Ordinance No. 146-02, W. End Blight Designation, v. Lakewood*, 2003-Ohio-5771, 100 Ohio St. 3d 252, 798 N.E.2d 362. The impact to a proposed city charter amendment is at least equally as important. As far as Relators suffering irreparable harm caused by the initiative not being placed upon the ballot, the Court takes judicial notice that the presidential election is 53 days away, and that voter turnout is greater during such years. Further, the current council can encumber money and control spending of municipal funds through legislative action that may (or may not) survive the charter amendment dissolving the municipality. The transitional government, if passed, will take a year as well to implement. Therefore, to delay a vote on the initiative would cause harm to the Relators and citizens in Nelsonville, Ohio due to those factors so time is of the essence.

The Court is mindful that the placing of the initiative on the ballot may result in extra expense to the City. However, any extra expense could have been avoided if Council passed an ordinance in accordance with the charter's mandate provided in NCC Section 10.02 when called upon.

In addressing the motion for preliminary injunction, the Court finds: 1) there is a substantial likelihood that the Realtors will prevail on the merits, 2) Relators will suffer irreparable injury by missing the opportunity to place the measure on the ballot for the November 5, 2024 election, 3) No third parties will be harmed by the placement of the initiative on the ballot, and 4) the public interest is best served by placing the initiative on the Nelsonville ballot for the citizens' consideration. Further, it appears Respondents will continue to permit the obstruction of council's passing an ordinance to send the initiative to the Athens County Board of Elections in violation of Relators' rights.

Therefore, upon motion of Relators, and pursuant to R.C. § 2727.02, the Ohio Constitution Arts. I Sec 2, XVII Sec 1, XVIII, §§ 5, 8, 9, and 14, Ohio Revised Code §731.28 to 731.41, and the Nelsonville City Charter, and for good cause shown, the Court orders a Preliminary Injunction to all Respondents restraining them from preventing Nelsonville City Council from considering and passing an ordinance requiring the submission of petitioners' initiative to the Athens County Ohio Board of Elections by for placement on the November 5, 2024 ballot.

As City Council cannot ignore their duty under the charter to pass an ordinance, similarly the BOE cannot refuse to place the initiative on the ballot because they believe it to be unconstitutionally sound. As the Ohio Supreme Court previously stated in *State ex rel. Youngstown v. Mahoning Cty. Bd. of Elections*, 2015-Ohio-3761, 144 Ohio St. 3d 239, 41 N.E.3d 1229, "we held that a county board of elections cannot refuse to certify a ballot measure based on its assessment that the measure, in substance, would be unconstitutional if enacted. *Id.* at ¶ 4–5, 12 (requiring a county board of

elections to place a proposed city-charter amendment on the ballot despite its concern that the measure would be unenforceable because it conflicted with the Ohio Constitution). This court “ ‘will not consider, in an action to strike an issue from the ballot, a claim that the proposed amendment would be unconstitutional if approved, such claim being premature.’ ” “ ****333** *State ex rel. Walker v. Husted*, 144 Ohio St.3d 361, 2015-Ohio-3749, 43 N.E.3d 419, ¶ 16, quoting *State ex rel. Cramer v. Brown*, 7 Ohio St.3d 5, 6, 454 N.E.2d 1321 (1983). County boards of elections have no authority to review the substance of a proposed municipal-charter amendment; *State ex rel. Maxcy v. Saferin*, 2018-Ohio-4035, 155 Ohio St. 3d 496, 122 N.E.3d 1165.

The Court finds that a preliminary injunction preventing any hinderance to the council passing the ordinance should issue. Relators also request the Court to order the council to pass the ordinance to send the initiative to the ballot. That is an action requiring an act determined by mandamus, the substance of Relators’ amended complaint, as opposed to an injunctive act which is usually requested to prevent an action from occurring. Generally, to be entitled to a writ of mandamus, a relator 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.

In light of the above, the Court finds the Relators’ right to require the performance of the City Council to propose, introduce and pass an ordinance in accordance with NCC 10.02(B) is clear and it is apparent that no valid excuse can be given

for not doing it and therefore Relators are entitled to a limited preemptive writ.

Accordingly, the Court orders a preemptive limited writ of mandamus ordering Nelsonville City Council members, Respondents herein, to enact forthwith an ordinance providing for the submission of the proposed petition initiative to the Nelsonville electors in the November 5, 2024 election and that the Athens County Board of Elections certify that Relators' petition initiative has enough valid signatures to qualify for placement on the general election ballot. Nelsonville City Council shall cause a copy of the passed ordinance to be received by the Athens County Board of Elections no later than 3:00 p.m. on September 16, 2024. See *R.C. 2731.06* and *State ex rel. Sanduskians for Sandusky v. Sandusky* (2022), 169 Ohio St.3d 702.

Although the record is clear that the Clerk found Relators' petition to be sufficient, the record is not clear the number of votes cast in the last general election and that number forms the basis of the 10% threshold of valid signatures required for the initiative to be placed upon the ballot. That issue is left to the BOE to verify that the petition has enough valid signatures to meet the 10% threshold under Ohio Constitution Article XVIII, Sec. 9.

This issuance of the preemptive limited writ of mandamus constitutes a final appealable order.

IT IS SO ORDERED.

A handwritten signature in blue ink, appearing to read 'G. McCarthy', with a stylized flourish at the end.

Judge George P. McCarthy

TO THE CLERK:

Please provide a copy of the foregoing to all parties of record, via their attorney if represented, through the clerk's electronic filing case management system and if unable to do so then by regular U.S. Mail., proper postage prepaid.

Appendix 12

SEP 16 2024

Candy S. Russell, CLERK
OF COMMON PLEAS COURT

IN THE COURT OF COMMON PLEAS OF ATHENS COUNTY, OHIO
CIVIL DIVISION

GREGORY SMITH et al,

Case Number: 24CI0180

Relators,

v.

Judge: MCCARTHY

GREG CLEMENT et al,

Respondents.

ENTRY & ORDER OF STAY PENDING APPEAL II

Now comes the Court this 16th day of September 2024 upon Respondents Motion for Stay Pending Appeal.

This Court issued a preliminary injunction and preemptory writ of mandamus on September 13, 2024 requiring the Nelsonville City Council to pass an ordinance that originally was to be completed on July 8, 2024. A review of the case history is as follows before filing the petition for mandamus:

6/24/24 – Relator filed its part petition with City Council

6/27/24 – City Clerk receives verification letter from board of elections that 136 valid signatures were needed to proceed and 180 valid signatures were collected. BOE Letter #1.

6/28/24 – City Clerk calls Relator McDonald and informed her that 180 signatures were validated.

7/05/24 – Relator Smith calls the City Clerk to ensure City Council would have an ordinance ready at the next scheduled City Council

meeting of July 8, 2024 for submission to the board of elections by its 8/7/24 deadline to be placed on ballot.

- 7/08/24 – City Council's 1st opportunity to pass the ordinance. Relators reasonably anticipated council to pass ordinance sending petition initiative to board of elections for placement on ballot.
- City Counsel did not pass an ordinance relying on the law director's legal opinion.

7/02/24 – Board of Elections issues Letter #2 again stating 180 valid signatures collected.

The following is case proceedings since the filing of the complaint for mandamus:

7/18/24 – Complaint for Mandamus filed

7/24/24 – Relators' file ex-parte motion for temporary restraining order (TRO), preliminary injunction and permanent injunction.

7/25/24 – Court declines to issue TRO and schedules preliminary and permanent injunction motions, and hearing on writ of mandamus for 7/30/24. Normally this would be set at a minimum of thirty (30) days out to allow the parties time to prepare, however, Relators were faced with a 8/7/24 deadline (hearing 14 days from this filing) from the board of elections. And the nature of injunctions in general is that time is of the essence and the court was required to review the matter within a short amount of time.

7/29/24 – Relator's amended complaint to add board of elections

- Relators' Motion for Ex Parte TRO #2 filed
- Board of Elections file Answer

7/30/24 – Hearing held on injunctions and writ request. Board of Elections is present represented by the Athens County Prosecutor's Office (by law). All other parties are present.

- Court issues Order granting preliminary and permanent injunction.
- Court issues Allowance of Alternative Writ and schedules matter for Show Cause hearing on August 2, 2024.

7/31/24 - Court orders Amended Alternative Writ.

- Respondents file motion for stay.

- 8/01/24 - Respondents file Notice of Appeal & Motion for Stay.
 - Respondents' 2nd Motion for Stay.
- 8/02/24 - City Counsel does not pass ordinance by Show Cause hearing set this day.
 - Court orders to stay proceedings pending appeal.
- 8/07/24 - BOE deadline to file initiatives.
 - Board of elections "rescinds" two prior letters. Letter #3
- 8/16/24 - Respondents' Notice of Appeal filed.
- 8/24/24 - Appeals dismissed.
- 8/28/24 - Relators' Motion for Preliminary Injunction #2.
- 9/06/24 - Respondents Answer to Amended Petition.
- 9/11/24 - Respondents' Motion for Judgment on the Pleadings.
- 9/13/24 - Court's Order Granting Preliminary Injunction and Preemptive Writ of Mandamus.
 - Respondents Appeal #2
- 9/16/24 - City Council ordered by today to pass ordinance sending initiative to board of elections.
 - Board of Elections deadline for final draft of printing ballot.

Since the day it was filed sixty-one days have passed. Through an expedited process, the matter has been to the court of appeals and back in that short period of time.

This Court has now issued its second order requiring city council to pass an ordinance and Respondents have chosen to file their second appeal.

The Court notes that it made a thoughtful determination of the Relators' rights to have their initiative placed upon the ballot weighed against the Respondents'

arguments that the initiative should not be placed on the ballot. Although there would be expense incurred if the appellate court sided with Respondents (which is always possible), the Court finds its obligation to see that the constitution is upheld in the process is greater even in light of additional costs possibly being incurred. And the Court also has taken into consideration that even when ruled upon at the appellate level, a party losing the appeal could file an additional appeal to the Ohio Supreme Court if they so desired resulting in the process being lengthened further. However, the Court 's obligation at this stage is to see that citizens' right to process is protected while weighing the Respondents' rights as well, and in light of the record, believes the matter should not be summarily dismissed because it might be "inconvenient."

The Court finds time is of the essence in this matter and that Relators will arguably be hurt if not allowed to place their initiative on the ballot and therefore issued its second set of orders requiring council compliance due to time constraints of the board of elections deadline for printing the ballot. Although time is extremely short, Relators' are still entitled to due process. However, Respondents are correct when they point out there is nothing that prevents Relators from submitting their charter amendment proposal in the future.

Accordingly, Ohio Civil Rule 62 titled "Stay of proceedings to enforce a judgment" provides in pertinent part:

“(B) Stay upon appeal. When an appeal is taken the appellant may obtain a stay of execution of a judgment or any proceedings to enforce a judgment by giving an adequate supersedeas bond. * * * (C) Stay in favor of the government. When an appeal is taken by this state or political subdivision, or administrative agency of either, or by any officer thereof acting in his representative capacity and the operation or enforcement of the judgment is stayed, no bond, obligation or other security shall be required from the appellant.”

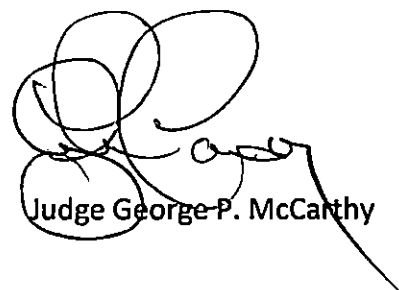
Pursuant to this rule, respondent-appellants are entitled to a stay of the judgment as a matter of right. The

requirement of Civ.R. 62(B) is the giving of an adequate supersedeas bond. Civ.R. 62(C) renders the bond requirement unnecessary here, and the Court has no discretion to deny the stay. Therefore, there is no evidentiary hearing required concerning the motion for stay.

The Court orders further proceedings stayed pending appeal. The case is ordered stayed until further order of the Court. This case shall be inactivated forthwith on the Ohio Supreme Court Reports until such time when the case is reactivated.

No bond is ordered. Civ.R. 62(C).

IT IS SO ORDERED.



Judge George P. McCarthy

TO THE CLERK:

Please provide a copy of the foregoing to all parties of record, via their attorney if represented, through the clerk's electronic filing case management system and if unable to do so then by regular U.S. Mail, proper postage prepaid.

Appendix 13

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

AUG 26 2024

Candy S. Russell, CLERK
COURT OF APPEALS

State ex rel, Gregory Smith, et al., : Case No. 24CA17
Relators-Appellees, : 24CA22
v. :
Gregg Clement, et al., : JUDGMENT ENTRY
Respondents-Appellants. :

Hess, J.

{¶1} Relators Gregory Smith and Vicki McDonald are residents of the City of Nelsonville involved in an initiative to return the City of Nelsonville to a statutory form of government from its current charter form of government. Respondents-Appellants are seven members of Nelsonville City Council, the City of Nelsonville, and the Athens County Board of Elections. Respondents-Appellants appeal two orders from the Athens County Court of Common Pleas. The first order granted the relators an injunction restraining the respondents from preventing the Nelsonville City Council from considering and passing an ordinance to send the initiative to the Athens County Board of Elections by August 7, 2024 for placement on the November 5, 2024 ballot. The second order granted an alternative writ which ordered respondents to comply with their duty to convene and consider passing an ordinance to submit the initiative to the Athens County Board of Elections for placement on the November 5, 2024 ballot or to show cause why it should not be complied with. The trial court scheduled a show cause hearing for August 2, 2024 at 10:00 am for respondents to appear and answer why they should not comply with the

trial court's orders. These two orders were entered by the trial court on July 30 and 31, 2024, respectively and the notice of appeal was filed by the Nelsonville city council members on August 1, 2024. Also on August 1, 2024, the trial court issued a stay of all proceedings in the case pending appeal. The Athens County Board of Elections filed an appeal from these same two orders and requested that its appeal be consolidated.

{12} On August 5, 2024, relators-appellees filed a motion in this Court for (1) an order suspending the stay of the trial court, (2) an injunction to order the Athens County Board of Elections to place the initiative on the ballot, and (3) a motion for a conference for expedited docket and syllabus.

{13} We find that the order granting an alternative writ is not a final appealable order and the appeal from the injunction order is moot. Accordingly, we dismiss this appeal.

I. PROCEDURAL HISTORY

{14} On July 18, 2024, relators filed a petition for a writ of mandamus in the Athens County Court of Common Pleas in which they alleged that they had an initiative to be placed on the ballot for the November 5, 2024 general election. The initiative would return the City of Nelsonville to the form of government it had before it adopted its city charter. The relators alleged that the Athens County Board of Elections verified that the initiative had the proper number of valid signatures and provided a verification letter to the clerk of city council. Relators contended that because the petition was sufficient, city council must pass an ordinance at its next regular meeting that the initiative must be placed on the ballot. However, the relators contended that the respondents, who were all members of the Nelsonville City Council, failed to comply with their obligations.

{15} Relators sought two claims for relief. First, relators sought a writ of mandamus directed at the respondents to compel them to comply with their legal obligations as city council members and submit the initiative to the Athens County Board of Elections for placement on the November 5, 2024 general election. Second, relators sought monetary damages, including costs, expenses, reasonable attorney fees, and any other relief as the court deems just and proper under R.C. 2731.11 (governing damages in mandamus proceedings). The relators also asked that the mandamus proceedings be expedited because of the August 7, 2024 deadline for submitting initiative petitions.

{16} On July 24, 2024, the relators filed a combined ex parte motion for a temporary restraining order and motion for preliminary and permanent injunction to order the city council members to submit the initiative to the Athens County Board of Elections to be placed on the November 5, 2024 ballot for consideration by the citizens of Nelsonville. The trial court set a hearing on the motion for injunctive relief for July 30, 2024. On July 29, 2024, The respondent city council members filed a motion to strike the ex parte motion for injunctive relief on several grounds, including that relators' attorney failed to certify his efforts to give notice or reasons why notice to the other party should not be given as required by Civ.R. 65(A).

{17} On July 28, 2024, the relators filed an amended petition for writ of mandamus in which they added a party, the Athens County Board of Elections, as a respondent. Relators sought an additional writ of mandamus against the Athens County Board of Elections to compel them to place the initiative on the ballot for the November 5, 2024 general elections. Other than adding this additional party and an additional

request for writ of mandamus, there were no other substantive modifications to the amended petition.

{¶8} Respondent Athens County Board of Elections filed an answer to the petition for writ of mandamus on July 29, 2024 and a response to the ex parte motion for a temporary restraining order on July 30, 2024 immediately prior to the injunction hearing in which the Board also contended it did not receive adequate notice of the motion as required by Civ.R. 65(A), among other issues.

{¶9} Following the July 30, 2024 hearing on the motion for injunctive relief, the trial court issued an injunction to all respondents "restraining them from preventing Nelsonville City Council from considering and passing an ordinance requiring the submission of petitioners' initiative to the Athens County Ohio Board of Elections by August 7, 2024 for placement on the November 5, 2024 ballot."

{¶10} On July 31, 2024 the trial court issued an amended order¹ allowing an alternative writ and order to show cause why the alternative writ should not be obeyed. The show cause hearing on the writ was set for August 2, 2024. Thus, there were two hearings that were set by the trial court: one on the injunction motion for July 30, 2024 and one on the mandamus petition for August 2, 2024. The alternative writ contained a praecipe for service requiring the Athens County clerk to enter it on its journal and for it to be served on the parties and counsel in Athens County by the Athens County Sheriff. It required the Fairfield and Franklin County Sheriff's Offices to serve it personally on the parties residing in those counties.

¹ This amended order corrected an almost identical order issued the day before on July 30, 2024. It appears that the only revision was to add a citation to R.C. 2731.06, the statutory provision governing alternative writs.

{¶11} On August 1, 2024, respondents Nelsonville city council members filed an appeal from the July 31, 2024 order of alternative writ and from the July 30, 2024 order granting injunctive relief. On August 16, 2024, respondent Athens County Board of Elections filed an appeal from these two orders and asked for its appeal to be consolidated with the Nelsonville city council members' appeal.

II. LEGAL ANALYSIS

{¶12} "Courts of appeals shall have such jurisdiction as may be provided by law to review and affirm, modify, or reverse judgments or final orders of the courts of record inferior to the court of appeals within the district" Ohio Constitution, Article IV, Section 3(B)(2). "If a court's order is not final and appealable, we have no jurisdiction to review the matter and must dismiss the appeal." *Clifton v. Johnson*, 2015-Ohio-4246, ¶ 8 (4th Dist.). "In the event that the parties do not raise the jurisdictional issue, we must raise it sua sponte." *Id.*

{¶13} Generally, an order must meet the requirements of R.C. 2505.02 and Civ.R. 54(B), if applicable, to constitute a final appealable order. *Chef-Italiano Corp. v. Kent State Univ.*, 44 Ohio St.3d 86 (1989), syllabus. Under R.C. 2505.02(B)(1), an order is final if it "affects a substantial right in an action that in effect determines the action and prevents a judgment[.]" "For an order to determine the action and prevent a judgment for the party appealing, it must dispose of the whole merits of the cause or some separate and distinct branch thereof and leave nothing for the determination of the court." *State ex rel. Sands v. Culotta*, 2021-Ohio-1137, ¶ 8, quoting *Hamilton Cty. Bd. of Mental Retardation & Dev. Disabilities v. Professionals Guild of Ohio*, 46 Ohio St.3d 147, 153, (1989).

{¶14} "Additionally, if the case involves multiple parties or multiple claims, the court's order must meet the requirements of Civ.R. 54(B) to qualify as a final, appealable order." *Clifton* at ¶ 10. Civ.R. 54(B) states: "When more than one claim for relief is presented in an action . . . or when multiple parties are involved, the court may enter final judgment as to one or more but fewer than all of the claims or parties only upon an express determination that there is no just reason for delay." "Absent the mandatory language that 'there is no just reason for delay,' an order that does not dispose of all claims is subject to modification and is not final and appealable." *Clifton* at ¶ 10. The purposes of Civ.R. 54(B) are "to make a reasonable accommodation of the policy against piecemeal appeals with the possible injustice sometimes created by the delay of appeals' . . . , as well as to insure that parties to such actions may know when an order or decree has become final for purposes of appeal. . . ." *Pokorny v. Tilby Dev. Co.*, 52 Ohio St.2d 183, 186 (1977), quoting *Alexander v. Buckeye Pipe Line Co.*, 49 Ohio St.2d 158, 160 (1977).

A. Allowance of An Alternative Writ and Order to Show Cause

{¶15} Mandamus proceedings are governed by R.C. 2731.01 through R.C. 2731.16. When a relator applies for a writ of mandamus, a trial court may respond in one of three ways: (1) allow the writ without notice; (2) grant an order requiring that respondent perform the act requested by the writ or show cause why the act should not be done; or (3) require that notice of the petition be given to the respondent and schedule a hearing on the matter. R.C. 2731.04; *State ex rel. American Legion Post 25 v. Ohio Civil Rights Comm.*, 2006-Ohio-5509, ¶ 30-35 (12th Dist.) (explaining the basic procedures involved in mandamus proceedings).

{¶16} "When the right to require the performance of an act is clear and it is apparent that no valid excuse can be given for not doing it, a court, in the first instance, may allow a *peremptory* mandamus. In all other cases an *alternative writ* must first be issued on the allowance of the court, or a judge thereof." (Emphasis added) R.C. 2731.06. An alternative writ is "a writ in the nature of an order to show cause . . . why a peremptory or final writ should not issue." *State ex rel. Downs v. Panioto*, 2006-Ohio-8, ¶21, quoting Webster's Third New International Dictionary (1986) 63. "An alternative writ commands the person to whom it is directed either to obey the mandate of the writ or show cause why it should not be obeyed. In essence, it is a substitute for service of summons." *Id.*, quoting Whiteside, Ohio Appellate Practice (2002) 215, Section 10.8. "An alternative writ does not determine the action and prevent a judgment, because further action by the court that issues the writ is contemplated." *Id.* Therefore, an alternative writ is not a final appealable order.

{¶17} The first order appealed was the July 31, 2024 amended allowance of an alternative writ and order to show cause, which was the second option in R.C. 2731.04 as described above. The trial court's July 31, 2024 order was an alternative writ under R.C. 2731.06 — it granted an order requiring that respondents perform the act requested by the writ or show cause why the act should not be done. The date for the respondents to answer was August 2, 2024. It included service by the sheriffs in each of the respective counties and was, in essence, a substitute for service of summons. It did not determine the action and prevent judgment because it contemplated further action by the court. At a minimum, the further action would be a hearing on August 2, 2024 where respondents could answer or otherwise present a defense. Additionally, had the respondents failed to

answer the alternative writ, the trial court could have issued a peremptory writ and set a hearing to determine the damages portion of the case. See R.C. 2731.10 ("If no answer is made to an alternative writ of mandamus, a peremptory mandamus must be allowed against the defendant."); *State ex rel. Papp v. Norton*, 1993-Ohio-104 (the failure to answer an alternative writ is grounds for the court to grant a peremptory writ of mandamus). A peremptory writ is a final appealable order. *State ex rel. Hughes v. Celeste*, 67 Ohio St.3d 429, 430 (1993), overruled on other grounds by *Clermont Cty. Transp. Improvement Dist. v. Gator Milford, L.L.C.*, 2015-Ohio-241. However, here because the mandamus petition included a claim for monetary damages under R.C. 2731.11, an order which granted relators a peremptory writ without addressing their outstanding damage claim would need to include language under Civ.R. 54(B) that there is no just reason for delay.

{¶18} The July 31, 2024 Amended Order allowing the alternative writ and order to show cause is not a final appealable order and we lack jurisdiction over an appeal from it.

B. Preliminary Injunction and Permanent Injunction Order and Mootness

{¶19} The second order appealed was the July 30, 2024 Injunction order. We note that the trial court's Injunction order is captioned as both a "preliminary" and a "permanent" injunction and the body of the order references it as both a "preliminary injunction and permanent injunction." It cannot be both. Under Civ.R. 65(B), a preliminary injunction can issue with reasonable notice to the adverse party. However, a permanent injunction—which issues after a final determination of the merits of the case—cannot issue at this stage of the proceedings unless the trial court orders "the trial of the action on the merits

to be advanced and consolidated with the hearing on the application" for a preliminary injunction. Civ.R.65(B)(2); *Bd. of Educ. Ironton City Schools v. Ohio Dept. of Educ.*, 1993 WL 256320, *3 (4th Dist. June 29, 1993) ("Before consolidation, the parties should normally receive clear and unambiguous notice of the court's intent to consolidate the trial and the hearing either before the hearing commences or at a time which will still afford the parties a full opportunity to present their respective cases."). Here the trial court's entry setting the July 30, 2024 hearing did not include an order consolidating the trial on the merits of the mandamus petition with the injunction hearing. Additionally, the injunction order itself did not make final findings on the merits but instead found "there is a substantial likelihood that the Realtors [sic] will prevail on the merits . . ." which contemplates a future trial on the merits. (July 25, 2024 Order, p. 4). Therefore, despite the inclusion of both the term "preliminary injunction" and the term "permanent injunction," the order satisfies only the requirements of a preliminary injunction under Civ.R. 65(B). *B&N Coal, Inc. v. Blue Racer Midstream, LLC*, 2023-Ohio-2641, ¶ 37 (7th Dist.) (the permanent injunction test requires a higher standard than the preliminary injunction test; it requires "the moving party to demonstrate a right to relief under the applicable substantive law" and not just a substantial likelihood of success).

{¶20} A preliminary injunction is generally not a final appealable order.²

A preliminary injunction is a provisional remedy that is considered interlocutory, tentative, and impermanent in nature. As such, an order granting or denying a preliminary injunction does not automatically qualify as a final appealable order. Instead, a trial court's order granting or denying a preliminary injunction is a final appealable order only if it fulfills the two-pronged test set forth in R.C. 2505.02(B)(4).

² Although the entry states that it is "a final appealable order," we have repeatedly held that "appellate courts are not bound by a trial court's determination or statement that a judgment constitutes a final appealable order." *Colman v. Stroup*, 2023-Ohio-1080, ¶ 26 (4th Dist.), quoting *Chilli Assocs. Ltd. Partnership v. Denti Restaurants Inc.*, 2022-Ohio-848, ¶ 27 (4th Dist.).

(Citations omitted). *Wells Fargo Ins. USA Servs., Inc. v. Gingrich*, 2012-Ohio-677, ¶ 5 (12th Dist.). Therefore, an appellate court may only consider the trial court's order granting a request for preliminary injunctive relief if it falls within the confines of R.O. 2505.02(B)(4). *Id.* However, we need not address the issue of whether the trial court's injunction order is "preliminary" or "permanent" or whether it is a final appealable order because the trial court's injunction order is moot — it has expired by its own terms. *Gemmell v. Anthony*, 2014-Ohio-4183 (4th Dist.) (where appeal is dismissed as moot, we need not determine whether the order appealed was a final appealable order); *Hussain v. Sheppard*, 2015-Ohio-657, ¶ 10 (10th Dist.) (appellate court may sua sponte dismiss an appeal that has become moot).

{¶21} In *Gemmell*, appellant Anthony filed an appeal from a trial court order granting a preliminary injunction against him requiring him to establish a bank account for a zipline business. Appellee Gemmell filed a motion to dismiss the appeal on two grounds: (1) the preliminary injunction order was not a final appealable order and (2) the injunction had become moot because it was no longer effective now that a receivership had been established for the zipline business. We held that the preliminary injunction order had become moot because a receiver was placed in charge of the business bank accounts. Accordingly, we dismissed the appeal as moot without determining whether the preliminary injunction order was a final appealable order. *Id.* at ¶ 10.

{¶22} "[I]t is the duty of every judicial tribunal to decide actual controversies between parties legitimately affected by specific facts and to render judgments which can be carried into effect. It has become settled judicial responsibility for courts to refrain from giving opinions on abstract propositions and to avoid the imposition by judgment of

premature declarations or advice upon potential controversies." *Fortner v. Thomas*, 22 Ohio St.2d 13, 14 (1970), citing Section 4(B), Article IV, of the Ohio Constitution. "Moreover, the Supreme Court of Ohio has advised us that it is reversible error for an appellate court to consider the merits of an appeal that has become moot." *Millennia Hous. Mgt., Ltd. v. Withrow*, 2013-Ohio-278, ¶ 5 (4th Dist.).

A case or controversy is lacking and the case is moot "when the issues presented are no longer "live" or the parties lack a legally cognizable interest in the outcome." "No actual controversy exists where a case has been rendered moot by an outside event. 'It is not the duty of the court to answer moot questions, and when, pending proceedings in error in this court, an event occurs without the fault of either party, which renders it impossible for the court to grant any relief, it will dismiss the petition in error.' "A cause will become moot only when it becomes impossible for a tribunal to grant meaningful relief, even if it were to rule in favor of the party seeking relief."

(Citation omitted.) *Id.* at ¶ 6.

{¶23} Here the trial court's order found, "An ordinance needs passed by the city council sending an initiative found to be valid to the Athens County Board of Elections by August 7, 2024 in order for it to be placed on the November 5, 2024 ballot. Therefore, time is short." In granting the requested relief, the trial court ordered an injunction "to all Respondents restraining them from preventing Nelsonville City Council from considering and passing an ordinance requiring the submission of petitioners' initiative to the Athens County Ohio Board of Elections by August 7, 2024 for placement on the November 5, 2024 ballot." We are now well past the August 7, 2024 date referenced in the injunction. Therefore, it is impossible for us to grant any meaningful relief even if we were to rule in favor of the appellants. The injunction expired by its own terms on August 7, 2024. The appeal from the injunction order is moot.

III. CONCLUSION

JUDGMENT ENTRY

It is ordered that the **APPEAL IS DISMISSED**. Appellants shall pay the costs.

The Court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this Court directing the Athens County Common Pleas Court to carry this judgment into execution.

Any stay previously granted by this Court is hereby terminated as of the date of this entry.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

FOR THE COURT

A handwritten signature in black ink, appearing to read "Michael D. Hess", is written over a horizontal line.

Michael D. Hess, Judge

NOTICE TO COUNSEL

Pursuant to Local Rule No. 14, this document constitutes a final judgment entry and the time period for further appeal commences from the date of filing with the clerk.

Appendix 14

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

SEP 18 2024

Candy S. Russell, CLERK
COURT OF APPEALS

Gregory Smith, et al., : Case No. 24CA28
Relators-Appellees, :
v. :
Gregg Clement, et al., : JUDGMENT ENTRY
Respondents-Appellants. :

{¶1} Relators-Appellees, Gregory Smith and Vicki McDonald, are residents of the City of Nelsonville involved in an initiative to return the City of Nelsonville to a statutory form of government from its current charter form of government. Respondents-Appellants are seven members of Nelsonville City Council, the City of Nelsonville, and the Athens County Board of Elections. Respondents-Appellants appeal an order granting a peremptory writ and preliminary injunction issued by the Athens County Court of Common Pleas (the “Order”).¹ The Order required Respondents-Appellants “to enact forthwith an ordinance providing for the submission of the proposed petition initiative to the Nelsonville electors in the November 5, 2024 election and that the Athens County Board of Elections certify that Relators’ petition initiative has enough valid signatures to qualify for placement on the general election ballot.” The trial court’s writ also issued a preliminary injunction to all Respondents “restraining them from preventing Nelsonville City Council from considering and passing [the ordinance]”

¹ The order is a final, appealable order as it does not contain the non-finality issues reflected in the prior orders discussed in the dismissal in *State ex rel. Smith v. Clement*, Athens App. No. 24CA17 (Aug. 24, 2024).

{¶2} Respondents-Appellants appealed the Order and sought a stay from the trial court to “stay all further actions and enforcements” under the Order. The trial court carefully considered the request for a stay pending appeal and identified several factors that weighted against granting a stay, “Although there would be expense incurred if the appellate court sided with Respondents . . . , the Court finds its obligation to see that the constitution is upheld in the process is greater even in light of additional costs possibly being incurred.” It further noted, “[T]he Court’s obligation at this stage is to see that citizens’ right to process is protected while weighing the Respondents’ rights as well” The trial court acknowledged that “time is of the essence in this matter and that Relators will arguably be hurt if not allowed to place their initiative on the ballot Although time is extremely short, Relators’ are still entitled to due process.”

{¶3} Despite acknowledging the several factors that weigh against granting a stay, the trial court correctly noted that Civ.R. 62(B) and (C) do not give the trial court discretion to deny a stay when an appeal is taken by the government. Thus, the trial court issued a stay finding, “the Court has no discretion to deny the stay.” *State ex rel. State Fire Marshal v. Curl*, 2000-Ohio248 (“the State Fire Marshal was entitled to a stay as a matter of right pending his appeal”).

{¶4} However, the Civil and Appellate Rules of Procedure do not restrict an appellate court’s discretion in such a manner. Thus, Relators-Appellees have filed a motion in our Court for an order suspending the trial court’s stay of the Order. Civ.R. 62(D) states “The provisions in this rule do not limit any power of an appellate court. . . .” An appellate court may enter orders granting partial or full injunctive relief from a stay. See *Bd. of Edu. Of the Dayton City School Dist. V. Dayton Edu. Assoc.*, 80 Ohio App.3d 758,

760-762 (2d Dist. 1992) (relying on the authority of Civ.R. 62(D) and App.R. 7(A) to issue an affirmative injunction lifting a portion of the stay granted by the trial court).

If an appellate court had no authority to issue injunctive relief pending appeal in order to assure to an appellee the enjoyment of some part or all of the rights to which he has been held to be entitled by a trial court as part of its judgment, then no court would have the power to prevent manifest and extreme injustice where all or some part of those rights will otherwise be irrevocably lost to appellee, and the appellant has little or nothing to lose. We cannot believe that such a result is intended. . . .

We conclude that this court has the power, pursuant to App.R. 7(A) and Civ.R. 62(D), to issue the order requested by the association. Furthermore, we conclude that the relative harm to the parties balances in favor of the association under the peculiar circumstances of this case. Accordingly, we find the association's motion to be well taken, and it is hereby granted.

Id. at 761–62.

{¶15} Thus, for the reasons identified by the trial court and quoted above, we grant Relators-Appellees' motion for an injunctive order suspending the trial court's stay of the peremptory writ and preliminary injunction.² Relators-Appellees would suffer extreme prejudice and manifest injustice if the stay is not lifted and Respondents-Appellants have little to nothing to lose. The trial court correctly noted that any incremental costs the Respondents-Appellants may incur do not weigh in their favor: "The Court is mindful that the placing of the initiative on the ballot may result in extra expense to the City. However, any extra expense could have been avoided if Council passed an ordinance . . . when called upon."

{¶16} Additionally, Relators-Appellees request that we issue a prohibitive injunction against Respondents-Appellants prohibiting them from violating the trial court's writ and injunction. However, we find that our injunction lifting the trial court's stay provides

² Under App.R. 15(B), a motion for a procedural order such as this one "may be acted upon at any time, without awaiting a response thereto."

Relators-Appellees the necessary relief. The trial court's Order is effective. To go further and order compliance would require us to anticipate and assume that Respondents-Appellants will disregard the court's orders. We will not presume a party will engage in contemptuous activity in the future. Therefore we deny Relators-Appellees motion for injunction to order the parties to obey the trial court's Order.

{¶7} The Relators-Appellees' motion for an expedited briefing schedule for this appeal is granted. The Court will issue an expedited schedule in a subsequent entry.

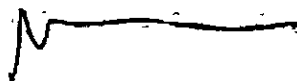
{¶8} For the foregoing reasons, we grant the motion suspending the trial court's stay of the writ and injunction. We deny the motion to order compliance with the writ and injunction. The trial court's Order is currently in effect and the failure of any party to comply may be future grounds for contempt findings, but is not ripe now.

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.**

MOTION GRANTED IN PART, DENIED IN PART. IT IS SO ORDERED.

Smith, P.J., & Wilkin, J.: Concur.

FOR THE COURT



Michael D. Hess
Administrative Judge

Appendix 15

OCT 31 2024

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

Candy S. Russell, CLERK
COURT OF APPEALS

State ex rel. Gregory Smith, et al.,	:	Case No. 24CA28
	:	24CA29
Relators-Appellees,	:	
	:	
v.	:	
	:	DECISION AND
Gregg Clement, et al.,	:	JUDGMENT ENTRY
	:	
Respondents-Appellants.	:	

APPEARANCES:

Thomas N. Spyker, Mrinali Sethi, Reminger Co., L.P.A., Columbus, Ohio, and Jonathan E. Robe, Robe Law Office, Athens, Ohio, for Respondents-Nelsonville Appellants.

Timothy L. Warren, Assistant Athens County Prosecutor, Athens County Prosecutor's Office, Athens, Ohio, for Respondent-Athens County Board of Elections Appellant.

Daniel H. Klos, Klos Law Office, Lancaster, Ohio, for Relators-Appellees.

Hess, J.

{11} Relators-Appellees Gregory Smith and Vicki McDonald are residents of the City of Nelsonville involved in an initiative to return the City of Nelsonville to a statutory form of government from its current charter form of government (i.e., to abolish the city charter). Respondents-Appellants are seven members of Nelsonville City Council and the City of Nelsonville (collectively "Nelsonville"), and the Athens County Board of Elections ("BOE"). Respondents-Appellants appeal an order of the Athens County Court of Common Pleas granting a peremptory writ and injunction issued by the Athens County Court of Common Pleas. The writ required Respondents-Appellants "to enact forthwith an ordinance providing for the submission of the proposed petition initiative to the

Nelsonville electors in the November 5, 2024 election and that the Athens County Board of Elections certify that Relators' petition initiative has enough valid signatures to qualify for placement on the general election ballot."

{¶12} Appellants raise several issues with the trial court's grant of the writ. First, they argued that Nelsonville had no clear legal duty to act under the city charter to pass an ordinance to place the issue on the ballot because the city charter does not apply to petitions to abolish the charter. Instead, Nelsonville argues that the Ohio Constitution, Article XVIII, §.9 applies and Appellees did not gather enough signatures under that provision. Appellants also argue that the trial court did not give them a full opportunity to submit evidence and brief the legal issues, the trial court's injunction is now moot, and the trial court should have denied the writ on laches grounds.

{¶13} We find that the trial court did not err in granting the writ. The Nelsonville City Charter provides the method to abolish the charter and appellees obtained a sufficient number of signatures. Because the petition to abolish the charter was sufficient, the charter requires Nelsonville City Council to pass the ordinance placing the abolition of the charter on the ballot. They have no discretion to do otherwise. However, we find that the trial court erred when it applied the signature requirement contained in the Ohio Constitution, because we find that the Nelsonville City Charter governs the process and contains the applicable signature requirement. However, we find this error harmless because appellees exceeded the number of signatures required by the charter. Additionally, for the reasons that follow, we find no merit to appellants other assignments of error. We affirm the trial court's decision to issue the writ.

I. FACTUAL & PROCEDURAL BACKGROUND

{14} The material facts are undisputed. The appellees are residents of the City of Nelsonville who circulated a petition to abolish the city charter of Nelsonville. On June 27, 2024, the BOE sent a letter to the clerk of Nelsonville City Council confirming that there were 180 valid signatures on the petition. Appellees expected that city council would pass an ordinance at the next regular meeting on July 8, 2024 to place the issue of abolishing the charter on the ballot. However, city council refused to do so. Appellees consulted the city charter and determined that they should present it to the BOE, which they did on July 16, 2024. The BOE informed appellees that the BOE could not put it on the ballot without an ordinance from city council. On July 17, 2024 appellees consulted with legal counsel and on July 18, 2024, they filed a petition for a writ to compel city council to pass an ordinance placing the issue on the ballot for the November 5, 2024 election.

{15} The trial court held a hearing on July 30, 2024 and issued an injunction and an alternative writ ordering Nelsonville to show cause on August 2, 2024 why it should not be required to comply with the writ. Nelsonville filed an appeal rather than appear and answer the alternative writ. On August 24, 2024, we dismissed the appeal because the alternative writ was not a final appealable order. See *State ex rel. Smith v. Clement*, Athens App. No. 24CA17 (Aug. 24, 2024).

{16} With the case back before the trial court, Nelsonville and the BOE filed answers to the mandamus petition, responses to the injunctive request, and motions for judgment on the pleadings. On September 13, 2024, the trial court issued its final decision granting injunctive relief and issuing a peremptory writ ordering Nelsonville City

Council members to enact forthwith an ordinance to put the issue of abolishing the charter on the ballot for the November 5, 2024 election.

{17} The trial court found that appellees had submitted their petition to the Nelsonville Clerk of Council and the Clerk appropriately contacted the BOE to determine the validity of the signatures. The BOE determined there were 180 valid signatures and that established the sufficiency of the petition. "Therefore, the Court concludes the initiative contains a sufficient number of valid signatures to proceed to city council for the passing of an ordinance to send it to the BOE to be placed on the general election ballot."

{18} The trial court also found that after "the clerk decided the sufficiency of the petition, she informed the city council and the petition committee of the results. . . . As a result, this Court finds it then became incumbent upon the City Council to pass an ordinance sending the petition initiative to the board of elections for balloting in accordance with Ohio law." The trial court found that the Nelsonville City Charter § 10.02(B) uses the word "shall" and the word "shall" "makes the provision mandatory and not discretionary. City Council's duty at that point is ministerial."

{19} The trial court acknowledged that the city charter has a process in Article 10 for "initiatives," "referendums," and "recalls." And that the Ohio Constitution has provisions in Article XVIII, § 8 and 9 for "creating" city charters and "amending" them. However, the trial court found that neither the city charter, nor the Ohio Constitution contained provisions that explicitly address "abolishing" a city charter. The court found that Article 10 of the city charter requires an initiative petition be signed by 15 percent of the electorate from the last gubernatorial election and that § 9 of Article XVIII of the Ohio Constitution required 10 percent of the electors' signatures. The trial court found that

these two provisions conflicted and therefore the Ohio Constitution's 10 percent signature requirement prevailed. However, because the 180 signatures met the 15 percent threshold of the city charter, the trial court found that it necessarily met the 10 percent threshold of the Ohio Constitution.

{¶10} The trial court engaged in a robust and thorough analysis of relevant case law and determined that neither city council, nor the BOE had discretion to reject a ballot initiative on substantive or constitutional grounds: "[I]t is not the role of the city council to substitute its judgment for that of the voters as to what matters should appear on the ballot; nor can city council assess the constitutionality of a proposal to amend the charter, because that role is reserved for the courts." The trial court also held, "As City Council cannot ignore their duty under the charter to pass an ordinance, similarly the BOE cannot refuse to place the initiative on the ballot because they believe it to be unconstitutionally sound."

{¶11} Essentially the trial court took a hybrid approach and applied the city charter provisions to the entire process except for the percentage signature requirement. There, because the Ohio Constitution's charter "amendment" process had a 10 percent figure, which differed from the 15 percent charter figure, the trial court applied that 10 percent figure to the signature requirement. Additionally, the trial court noted that the 10 percent figure was to be applied to "the number of votes cast in the last general election," citing *State ex rel. Huebner v. W. Jefferson Village Council*, 75 Ohio St.3d 381, 384 (1995), and this figure was not part of the record even though the trial court presumed the BOE used it to verify the sufficiency of the signatures in their June 27, 2024 letter. Therefore, the trial court ordered BOE to determine that figure.

{¶12} The BOE and Nelsonville appealed and obtained a stay of the writ and injunction from the trial court on September 15, 2024, which we lifted on September 18, 2024 upon appellees' motion. According to representations made in appellees' brief, which were supported by documentation and uncontroverted in appellants' brief, on September 23, 2024, city council passed an ordinance that the issue of whether to abolish the city charter be placed on the ballot for the November 5, 2024 general election. On September 26, 2024, the BOE adopted a resolution to accept the petition to abolish the city charter for placement on the ballot for the November 5, 2024 general election. In accordance with the trial court's order and *State ex rel. Huebner, supra*, the BOE determined that there were 930 votes in the 2023 general municipal election and 10 percent of them would be 93 votes.

II. ASSIGNMENTS OF ERROR

{¶13} Nelsonville presents three assignments of error:

- I. The trial court erred by granting a peremptory writ of mandamus where Nelsonville had no clear legal duty to act under Section 10.02 of the Nelsonville Charter.
- II. The trial court erred by granting a peremptory writ of mandamus under R.C. 2731.06 without allowing for Nelsonville to present evidence on unlitigated factual issues and fully brief the pertinent issues of law or issuing an alternative writ.
- III. The trial court erred by granting a peremptory writ of mandamus without considering or addressing the laches argument raised in Nelsonville's motion for judgment on the pleadings.

{¶14} The BOE did not present assignments of error and instead only presented issues for review. See App.R. 16(A)(3) and (4). Therefore, we could completely disregard the BOE's brief. App.R. 12(A)(2); *Pankey v. Ohio Adult Parole Auth.*, 2011-Ohio-4209; ¶ 4 (10th Dist.). Those three issues are: (1) whether the trial court used the correct standard

for determining the sufficiency of valid signatures; (2) whether the injunction is moot; and (3) whether appellees' claims are barred by laches. The BOE's first and third issues are subsumed by Nelsonville's first and third assignments of error and are addressed there. We will briefly discuss the mootness question raised concerning the injunctive relief because we prefer to decide cases on their merits rather than procedural technicalities. *Troon Mgt., Ltd. v. Adams Family Tr.*, 2023-Ohio-3489, ¶ 17 (4th Dist.).

{¶15} Additionally, appellees argue that we should remand this matter so that the trial court can consider their request for attorney fees. However, the trial court issued its final writ without granting appellees attorney fees and appellees did not file a cross appeal and raise the trial court's failure to award them attorney fees as an assignment of error. See App.R. 4(B)(1). Therefore, we lack jurisdiction to consider that issue. *O'Keeffe v. McClain*, 2021-Ohio-2186, ¶ 18 (court lacks jurisdiction to consider issue not raised through a cross appeal and appellee forfeits the issue).

III. LEGAL ANALYSIS

A. Injunctive Relief & Mootness

{¶16} The trial court granted injunctive relief to the appellees in which it restrained Nelsonville and the BOE from preventing city council from passing the ordinance to place the initiative to abolish the city charter on the ballot for the November 5, 2024 election. It also enjoined the BOE from refusing to place the initiative on the ballot.

{¶17} Both the appellees and the BOE argue that the injunction is now moot. The BOE argues that the trial court erred in issuing the injunction because major events on the Secretary of State's calendar had passed by the time the injunction was issued on September 13, 2024. However, this argument is plainly refuted by the additional facts

presented by appellees. Despite the calendar dates, city council passed the ordinance to place the initiative to abolish the city charter on the ballot, it was presented to the BOE, the BOE accepted the petition for placement on the ballot, the BOE confirmed the total voter count in the 2023 general municipal election was 930, the BOE calculated that 10 percent of 930 constituted 93 signatures and the 180 verified signatures exceeded this threshold, and the issue of whether to abolish the city charter is on the official November 5, 2024 ballot.

{¶18} The appellees argue that any errors in the trial court's issuance of the injunction are now moot because the injunction has expired. The city council has voted on the ordinance and the BOE placed it on the ballot. No relief can be granted by modifying or lifting the injunction that prevented interference with this process which has come full circle.

{¶19} An issue becomes moot when it presents only a hypothetical or academic question, and a judicial resolution of the issue would have no practical significance. *State ex rel. Ford v. Ruehlman*, 2016-Ohio-3529, ¶ 55. "It has been long and well established that it is the duty of every judicial tribunal to decide actual controversies between parties legitimately affected by specific facts and render judgment which can be carried into effect." *Fortner v. Thomas*, 22 Ohio St.2d 13, 14 (1970). Consequently, when an appellate court discovers that an event has occurred that renders moot one of the questions in the case before it, that court must dismiss the part of the case that has become moot. *Hagerman v. Dayton*, 147 Ohio St. 313 (1947), paragraph one of the syllabus; *Darr v. Livingston*, 2017-Ohio-841, ¶ 13 (10th Dist.).

{¶20} The parties have presented evidence from outside the record in arguing that the injunction is now moot. A court may consider evidence from outside the record to determine whether an issue has become moot. *State ex rel. Cincinnati Enquirer v. Dupuis*, 2002-Ohio-7041, ¶ 8. Moreover, in deciding whether an issue is moot, an appellate court, acting sua sponte, may take judicial notice of facts capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned, including “public records and government documents available from reliable sources on the internet.” *Hoerig v. Bowling Green State Univ.*, 2023-Ohio-3189, ¶ 15 (6th Dist.); *Darr v. Livingston*, 2017-Ohio-841, ¶ 16 (10th Dist.) (court properly sua sponte considered county auditor’s online records). “A judicially noticed fact must be one not subject to reasonable dispute in that it is either (1) generally known within the territorial jurisdiction of the trial court or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.” Ohio Evid. R. 201(B). A court may use its discretion and sua sponte take judicial notice, and it may be taken at any stage of the proceeding. Ohio Evid. R. 201(C) and (F).

{¶21} In support of their arguments, the appellees and the BOE have presented facts concerning calendar dates, the status of the official ballot, and the number of voters in the various relevant prior elections that could form the basis for the 10 and 15 percent calculations. The accuracy of these representations can readily be determined from the Athens County Board of Elections website, a government website and reliable source on the internet. We can sua sponte take judicial of these facts relevant to the mootness issues: (1) the total voters in the 2023 general municipal election was 930; (2) the total voters in the 2022 gubernatorial election was 929; and (3) the issue of whether to abolish

the city charter of Nelsonville has been placed on the November 5, 2024 official ballot.¹ The 2024 Ohio Elections Calendar is available on the Ohio Secretary of State's website.²

{¶22} Upon review of the status of the ballot issue and relevant facts, we agree with appellees that the injunction, which enjoined the appellants from interfering with the city council and the BOE's processes, has now expired and any alleged errors the trial court made in granting it are moot. We reject the BOE's second issue presented. We dismiss that portion of the appeal concerning the injunction.

B. The Peremptory Writ of Mandamus

{¶23} For its first assignment of error, Nelsonville argues that the process to abolish a city charter is not governed by Article X of the city charter. Instead, it argues that the right to amend and enact a charter are governed by the Ohio Constitution, Article XVIII, § 8 and 9. And that the act of "abolishing" a charter is the same as "amending" a charter. Additionally, Nelsonville argues that under the Ohio Constitution signature requirement for amending a charter, the appellees did not have enough valid signatures.

{¶24} The trial court found that the city charter governed the process and it characterized the petition as an "initiative." The court found that the city charter governed the process. However, it found that the signature requirements in the charter and the Ohio Constitution conflicted, so it applied the Ohio Constitution's 10 percent of the total vote cast in the last preceding general municipal election as the signature requirement.

{¶25} The relevant provisions at issue in this case are:

¹ The voter totals are from <https://www.boe.ohio.gov/athens/c/elecres/20231107precinct.pdf> and <https://www.boe.ohio.gov/athens/c/elecres/20221108precinct.pdf>. The November 5, 2024 official ballot is https://lookup.boe.ohio.gov/vtrapp/athens/getballot.aspx?elect=20241105G&prsid=0022_1&bpty=X. The total number of registered voters in Nelsonville, which "varies over time" see *Huebner, supra*, at 384-385, is available at <https://lookup.boe.ohio.gov/vtrapp/athens/vtrreport.aspx>.

² https://www.ohiosos.gov/globalassets/publications/election/2024electionscalendar_11x17.pdf.

Nelsonville City Charter, Article X – INITIATIVE, REFERENDUM AND RECALL**§ 10.01 General Authority.****A. Initiative.**

The qualified voters of the City shall have the power to propose ordinances or resolutions to Council provided that such power shall apply only to the first ordinance, resolution or other measure required to be passed If Council fails to adopt an ordinance or resolution so proposed without any change in substance the voters may adopt or reject said ordinance or resolution at the general, primary or special election.

§10.02 Commencement of proceedings; petition's committee.

A. Any five (5) qualified voters may commence initiative, referendum or recall proceedings by filing with the Clerk of Council a written statement that they constitute the petitioner's committee and will be responsible for circulating and filing the petition

B. . . . Within ten (10) days of receipt of a petition, the Clerk of Council shall determine its sufficiency and advise the petitioners' committee and Council of such findings. If the petition is found to be sufficient, Council shall pass an ordinance at its next regular meeting that the issue be placed on the ballot in accordance with Ohio law

§ 10.03 Petitions.**A. Number of signatures.**

Initiative, referendum and recall petitions must be signed by qualified electors of the City in number to at least fifteen percent (15%) of the total number of the votes cast within the City in the last gubernatorial election.

Nelsonville City Charter, Article XI – GENERAL PROVISIONS**§ 11.04 Amendments.**

This charter may be amended as provided in Article XVIII of the Ohio Constitution.

OHIO CONSTITUTION, Article XVIII, § 9 Amendment of charter; referendum

Amendments to any charter framed and adopted as herein provided may be submitted to the electors of a municipality . . . and upon petitions signed by ten per centum of the electors of the municipality setting forth any such proposed amendment. . . .

OHIO CONSTITUTION, Article XVIII, § 14 Municipal Elections

. . . . The percentage of electors required to sign any petition provided for herein shall be based upon the total vote cast at the last preceding general municipal election.

{¶26} Neither the city charter nor the Ohio Constitution specifically, by using the word "abolish" or similar clear language, address the process for abolishing the city charter. Similarly, there are no definitions for "initiative," "referendum," "recall," or "amendment" that expressly and clearly include the concept of "abolishing" a charter. The Ohio Constitution, Article II, Section 1f states that initiative and referendum powers are reserved to the people of each municipality on questions that municipalities govern. The Supreme Court of Ohio has defined an initiative as "a proposal which allows the people to directly enact a law if they accept the proposal in an election" and a referendum as "a proposal which allows the people to directly repeal a law which has already been enacted by the legislature." *State ex rel. Flak v. Betras*, 2017-Ohio-8109, ¶ 10, fn. 5, *abrogated on other grounds*. The city charter defines these terms the same as the Court did in *Flak*. Article §10.01 describes an initiative as "the power to propose ordinances or resolutions" and a referendum "the power to reject any adopted ordinance or resolution." Recall is the "power to propose the removal of any elected City official." A municipal charter is "the creative act of incorporation . . . together with the defining powers of the corporation." *Black's Law Dictionary* (8th Ed. 2004). Based on these definitions, a proposal to abolish the city charter most closely fits the definition of an initiative. Under Ohio Constitution, Art. XVIII, § 8, a city charter is "framed" by a commission, and thus is not an "ordinance" that could be "repealed" by a referendum. However, a law could be passed to abolish it, which would be an initiative.

{¶27} Provisions governing "initiatives" and "referendums" do not govern "amendments" to the city charter. *State ex rel. Sanduskians for Sandusky v. Sandusky*, 2022-Ohio-3362, ¶ 28 (the Sandusky charter adopted R.C. 731.28 to govern its initiatives

and referendum procedures and that process could not be used to adopt an amendment to the charter). Here, the city charter contains its own provisions governing initiatives and referendums in Article 10, which differ from those set forth in R.C. 731.28. The city charter also contains a separate provision for amendments to the charter in Article §11.04 and provides, "This Charter may be amended as provided in Article XVIII of the Ohio Constitution."

{¶28} Amending a city charter is not the same as abolishing or abandoning it. *Switzer v. State ex rel. Silvey*, 103 Ohio St. 306 (1921). In *Switzer*, the city of Dayton had operated under a city charter since 1913 that provided for a "modified plan" which was a combination of "the commission plan" and some portion of "the city manager plan" and was denominated in the charter as a "commission manager plan." *Id.* at 310. Amendments to Dayton's charter were governed by Article XVIII, Section 9 of the Ohio Constitution. Silvey and others wanted to change Dayton's charter's commission manager plan to a "federal plan." The "federal plan" was one of three types of optional plans provided for in the Ohio statute, General Code Section 3515-1 et seq. *Id.* at 310 (the three types were (a) commission plan, (b) city manager plan, and (c) federal plan). But instead of using the amendment process for amending a city charter outlined in the Ohio Constitution, Silvey attempted to modify the charter by using provisions in the General Code, Section 3515-69 which governed the abandonment of any of the three plans described in the General Code. That section required the municipality to wait five years before it could abandon a plan and it outlined detailed steps to take to do so. *Id.* at 311.

{¶29} The Supreme Court of Ohio rejected Silvey's attempt to use the "abandonment" provisions in the General Code to modify Dayton's charter. The Court found that Dayton had adopted a charter and therefore none of the statutory provisions governing the three plans applied to Dayton. Likewise, the statutory provisions in the General Code governing abandonment of plans did not apply to Dayton. "The City of Dayton, never having operated under the act, is in no wise governed or controlled by the act. The relators have clearly mistaken their course of procedure for amendment of the charter. Dayton having operated under a charter framed by its own commission, of its own choosing, instead of a plan framed by the General Assembly, is . . . immune or exempt from the operation of the statute." *Id.* at 311-312. The Court held that if Silvey wanted to change the plan provided for in the charter, it needed to use the amendment procedure in the Ohio Constitution. *Id.* at 313-314. The Court also frankly acknowledged that what Silvey was attempting to do was not to amend the charter at all, but to abandon it. The Court astutely criticized Silvey and made clear that an abandonment of a charter and an amendment of a charter are *not* the same:

It should be frankly stated in all fairness to the relators [Silvey's group] that they do not pretend to offer any amendment to the charter, thereby to change said charter agreeable to the state Constitution. Their proposal is not an amendment in name or nature, but, instead, is an abandonment. By what system of legal legerdemain [i.e. sleight of hand, deception] it can be held that an entire and essential abandonment, so labeled on its face, is an amendment, I cannot comprehend.

Switzer v. State ex rel. Silvey, 103 Ohio St. 306, 315 (1921).

{¶30} The distinction between amending a charter and abolishing it was made clear again by the Supreme Court of Ohio in *City of Youngstown v. Craver*, 127 Ohio St. 195 (1933) in a case almost on point with the facts before us. In *Craver*, the people of

Youngstown – like the appellees here – sought to abolish the city charter. Amendments to Youngstown's charter, like amendments to Nelsonville's charter, were governed by Ohio Constitution, Article XVIII, Section 9. And, both Youngstown and Nelsonville had separate provisions in their charters governing initiatives and referendums. However, where Nelsonville adopted its own initiative and referendum procedures in Article X of its charter, Youngstown, in Section 82 of its charter, adopted the initiative and referendum provisions in General Code 4227-1 and 4227-13, except that it changed the number of electors necessary to initiate a petition from 6 percent to 3 percent. *Id.* at 200. The Court held that under the General Code initiative and referendum provisions Youngstown adopted via Section 82 of its charter, it could pass an initiative to abolish the charter. The initiative to abolish the charter was not governed by the amendment procedures in the Ohio Constitution, Article XVIII, § 8 and 9.

It is the holding of this court that the people of the city of Youngstown thus had ample power to submit the proposal in question, even though it entails the complete abolition of the city charter; that such action is not in derogation of any provision of the Constitution of the state of Ohio.

Craver at 203. The Court rejected Craver's argument that the trial court erred when it found that the Ohio Constitution, Article XVIII, § 8 and 9 were not applicable to the initiative. Craver identified this argument as his fourth assignment of error (of 14 total assignments of error) and the Court condensed or "boiled down" the 14 assignments of error to 5 and restated his fourth assignment of error as their first: "First, did the court err in deciding that sections 8 and 9 of article XVIII are not applicable to a proposal to be submitted to the electors of the city of Youngstown for the abolishment of the home rule charter of the city of Youngstown and the return to government under the General Code?" *Id.* at synopsis. The Court stated that its holding that Youngstown's charter could be

abolished through the initiative and referendum procedures adopted in Section 82 of its charter, meant that Craver's fourth (the Court's first) assignment of error, which argued that the Ohio Constitution's amendment provisions applied, had been disposed of, "This holding disposes of all except the eighth, ninth, and tenth assignments of error [involving allegations of deception]." *Id.* at 204 (the Court went on to find no evidence of deception by the people of Youngstown, overruling the eighth, ninth, and tenth assignments of error); see also Baldwin's Ohio Practice, *Local Government Law – Municipal*, Oh.Mun.L. §4:41 (August 2024 Update) ("It was held [in *Craver*], accordingly, that the question of the repeal or abandonment of a charter may be submitted by initiative petition to the electors of a municipality.").

{¶31} Based on the holding in *Craver*, we find that the initiative to abolish the city charter of Nelsonville is governed by Article X of its charter, just as the initiative to abolish the city charter of Youngstown was governed by Section 82 of its charter. The trial court properly applied Article § 10.02 to the petition. Because Article X governs initiatives to abolish the city charter, Ohio Constitution, Article XVIII, § 9 has no application. Therefore, the signature requirement in §9 that the petition be signed by 10 percent of the electors based upon the total vote cast in the last preceding general municipal election is likewise inapplicable. It does not conflict with the signature requirement in Article §10.03(A) of the charter, which states that initiative petitions must be signed by qualified electors in a number to at least 15 percent of the total number of the votes cast within the city in the last gubernatorial election. Therefore, instead of using a hybrid approach, which applied parts of the city charter and parts of the Ohio Constitution, the trial court should have applied the city charter to the entire process.

{¶32} Thus, we find that the trial court erred when it applied the 10 percent of the total votes cast in the last general municipal election as set forth in Ohio Constitution, Art. XVIII, § 9 and did not apply 15 percent of the total votes cast in the last gubernatorial election. However, we find this was harmless error as it did not affect the outcome or prejudice the parties. The appellees obtained 180 valid signatures. The trial court's calculation found that the total number of signatures required was 93, which was based on 10 percent of the 930 votes cast in the 2023 general municipal election. Under the correct calculation under Article §10.03(A), the total number of signatures required is 139, which is based on 15 percent of the 929 votes cast in the 2022 gubernatorial election. The 180 valid signatures appellees obtained comfortably clears both bars.

{¶33} Additionally, we reject the BOE's argument that the proper calculation under Ohio Constitution, Art. XVIII, § 9 is 10 percent of the total registered voters in Nelsonville, which at the time they filed their brief on September 27, 2024, was 2,453 register voters (i.e., 245 valid signatures). First, as we have explained, the city charter § 10.03(A) applies to initiatives to abolish the city charter and requires 15 percent of the total votes cast in the last gubernatorial race. Second, the Supreme Court of Ohio soundly rejected the argument that the "total number of registered voters of the municipality" should be the base used in Ohio Constitution, Art. XVIII, § 9. See *Huebner, infra*. Not only is this the correct application of Article XVIII, §14 ("The percentage of electors required to sign any petition provided for herein shall be based upon the total vote case in the last preceding general municipal election.") but it is supported by public policy. The total number of registered voters in the city varies over time and cannot be known with any certainty when the petitioners are gathering signatures.

It is also the correct result for reasons of public policy. . . . [T]he number of actual electors of a municipality may vary over time based on voter registration drives, annexations, or other events. Conversely, this uncertainty does not exist if Section 14 [of Ohio Constitution, Art. XVII] is applied, since petitioners know the precise number of valid signatures required for submission of the issue to the electorate. Furthermore, this interpretation fosters the goal of providing citizens with access to the ballot, a foundation of our democracy. . . . *We note as well that the Secretary of State, the state's chief election officer, has urged this interpretation of the relevant provision of the Ohio Constitution.*

(Emphasis added.) *State ex rel. Huebner v. W. Jefferson Village Council*, 75 Ohio St. 3d 381, 384-385 (1995).

{¶34} We overrule Nelsonville's first assignment of error and reject the BOE's first issue presented.

C. Nelsonville's Answer to the Amended Petition and Additional Briefing

{¶35} Nelsonville contends that it did not get an opportunity to fully present facts or evidence in defense of the mandamus petition. We reject this argument. First, Nelsonville did not appear and answer the alternative writ on August 2, 2024 as ordered by the trial court and present their case fully. Rather, Nelsonville immediately filed an appeal of the alternative writ, which was dismissed for lack of finality. We do not suggest that Nelsonville had to forfeit its right to appeal and we recognize that the trial court's alternative writ contained language that stated it was a final, appealable order. However, App.R. 4 gives a party 30 days to file an appeal. Nelsonville had plenty of time to appear on August 2, 2024 and present its case in full and still file a timely appeal to safeguard its appellate rights. Nelsonville's first appeal served only to inject, intentionally or not, unnecessary delay in the proceedings, which by their nature require speedy resolution.

{¶36} Second, the material facts in this case are straightforward and undisputed, the legal question is narrow, and the relevant legal authority is limited. Nelsonville

answered the amended petition, and all the parties have prepared well-reasoned, thorough legal arguments for their positions in the multiple filings made in the trial court and in their appellate briefs and oral arguments. There are no statutory provisions that require a court deciding a mandamus action to hold an evidentiary hearing. See R.C. Chapter 2731; e.g., Loc.App.R. 16 (evidence related to mandamus is submitted by agreed statements of facts, affidavits, etc. Oral testimony will not be heard unless ordered by court). Additionally, Nelsonville cites to nothing in the record to support its contention that the trial court failed to consider Nelsonville's evidence or arguments. Most importantly, Nelsonville fails to identify any evidence it was unable to present in its filings that would have materially affected the outcome in the trial court. Therefore, it cannot show prejudice from any alleged procedural error.

"To demonstrate a reversible denial of due process, as with any alleged error on appeal, an appellant typically must make a showing of identifiable prejudice." Thus, to support reversal, the record must show affirmatively "not only that error intervened, but that such error was to the prejudice of the party seeking such a reversal."

Flynn v. State Med. Bd. of Ohio, 2016-Ohio-5903, ¶ 50 (10th Dist.).

{¶37} We overrule Nelsonville's second assignment of error.

D. Laches

{¶38} For their final argument, Nelsonville and the BOE argue that the trial court erred in rejecting their laches defense. They contend that the appellees waited ten days after learning that Nelsonville would not vote on an ordinance before filing their petition for mandamus. They assert that they have been prejudiced by the delay because "final proofing of the ballot" was underway on July 18, 2024 when appellees filed the mandamus petition and the ballots were supposed to be submitted for printing on September 14,

2024. The BOE asserts that it had to “resubmit ballots to voters based on this case, further costing taxpayer money.”

{¶39} The appellees argue that they responded expeditiously. They presented the initiative to the BOE after city council refused to vote on it because Article §10.01(A) contains the following: “If Council fails to adopt an ordinance or resolution so proposed without any change in substance, the voters may adopt or reject said ordinance or resolution at a general, primary, or special election.” It was only after this attempt was made and rejected by the BOE that appellees believed they had exhausted their options and sought legal advice. They filed their mandamus petition two days after the BOE rejected them.

1. Standard of Review

{¶40} “Laches is an omission to assert a right for an unreasonable and unexplained length of time, under circumstances prejudicial to the adverse party.” *Connin v. Bailey*, 15 Ohio St.3d 34, 35 (1984). Laches is predominantly a question of fact to be resolved according to the circumstances of each individual case. The application of the doctrine of laches is within the sound discretion of the trial court. A reviewing court must therefore refrain from reversing a trial court's decision pertaining to the application of laches absent an abuse of discretion. *State ex rel. Scioto Cty. Child Support Enft Agency v. Gardner*, 113 Ohio App.3d 46, 56–57 (4th Dist.1996).

2. Legal Analysis

{¶41} The elements of a laches defense are “(1) unreasonable delay or lapse of time in asserting a right, (2) absence of an excuse for the delay, (3) knowledge, actual or constructive, of the injury or wrong, and (4) prejudice to the other party.” *State ex rel.*

Carrier v. Hilliard City Council, 2016-Ohio-155, ¶ 8. "[A] party asserting a laches defense must demonstrate that it has been prejudiced by the other party's delay." *State ex rel. Davis v. Summit Cty. Bd. of Elections*, 2013-Ohio-4616, ¶ 10. Prejudice must be material before laches will bar relief. *State ex rel. Rife v. Franklin Cty. Bd. of Elections*, 70 Ohio St.3d 632, 635 (1994). However, a laches defense "rarely prevails in election cases." *State ex rel. Duclos v. Hamilton Cty. Bd. of Elections*, 2016-Ohio-367, ¶ 8.

{¶42} The trial court did not explicitly use the term "laches" in its decision, but it did discuss potential prejudice to Nelsonville and the BOE due to the timing of the mandamus petition. It noted that the presidential election was 53 days away and that there may be some additional expense incurred by the city but found that any extra expenses were partly the fault of city council for failing to promptly act in accordance with the charter.

{¶43} We find that the trial court did not abuse its discretion when it did not dismiss the petition on laches grounds. First, there was no unreasonable delay. The appellees acted expeditiously and explained why they took additional time to present the initiative to the BOE before filing the mandamus action. The petition for mandamus was filed two days after it was apparent it was their only remaining recourse, and it was filed only ten days after the city council refused to carry out their obligations under the charter. It was filed 110 days before the general election date. The BOE asserts that ballots were printed on September 20, 2024 and absentee ballots were first mailed to overseas citizens and military personnel on September 20, 2024. The mandamus petition was filed more than 60 days before the printing and mailing of these ballots.

{¶44} We overrule Nelsonville's third assignment of error and the BOE's third issue for review.

IV. CONCLUSION

{¶45} We find that the trial court properly issued a writ of mandamus compelling appellants to enact an ordinance submitting the initiative to abolish the Nelsonville City Charter on the ballot for the November 5, 2024 election. However, we find the trial court erred in applying the signature requirement contained in the Ohio Constitution (10 percent of the total votes cast at the last preceding general municipal election). The proper signature requirement is in Article §10.03(A) of the city charter (15 percent of the total number of the votes cast within the city in the last gubernatorial election). We find this error was harmless as it did not affect the results; the number of valid signatures readily surpassed the percentage required under Article §10.03(A). We overrule appellants' assignments of error and affirm the trial court's judgment, as modified herein.

JUDGMENT AFFIRMED, AS MODIFIED.

JUDGMENT ENTRY

It is ordered that the JUDGMENT IS AFFIRMED, AS MODIFIED and that appellants shall pay the costs.

The Court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this Court directing the Athens County Court of Common Pleas to carry this judgment into execution.

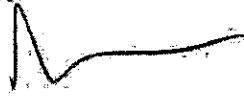
Any stay previously granted by this Court is hereby terminated as of the date of this entry.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

Smith, P.J. & Wilkin, J.: Concur in Judgment and Opinion.

For the Court

BY:



Michael D. Hess, Judge

NOTICE TO COUNSEL

Pursuant to Local Rule No. 14, this document constitutes a final judgment entry and the time period for further appeal commences from the date of filing with the clerk.

Appendix 16

Ohio Constitution, Article XVIII, Section 3

Subject to the requirements of Section 1 of Article V of this 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.