

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

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

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INTRODUCTION

Nelsonville's decision to enact Ordinance 54-25 is an admittedly messy, but ultimately lawful exercise of its home rule authority. Fairly, at this latter stage in the year, the Athens County Board of Elections finds itself unsure how to handle Nelsonville's decision to enact Ordinance 54-25, so it has not acted on the change in the law.

Nelsonville finds itself, with the Board, in deeply uncharted waters. But Nelsonville finds itself stranded without recourse *lawfully*, under extraordinary circumstances, but nevertheless entitled to conduct the elections its law authorizes. And to be clear, the county board of elections exists for a singular purpose—to administer local elections authorized by law. The Athens County Board of Elections refuses to conduct the lawful elections provided for by Nelsonville's current law and instead is maintaining unlawful elections for municipal positions that no longer exist. There are no remedies at this late stage absent the last resort lifeline that is mandamus. While not a textbook election case, this is a true extraordinary circumstance that justifies mandamus.

Yes, enforcement as requested against the Athens County Board of Elections will result in the end of Ms. Hashman's current candidacy. But she raises no challenges that meets her high burden to prove Ordinance 54-25 is unconstitutional beyond a reasonable doubt. And Ordinance 54-25 is a blunt tool, not the targeted attack described. It also ends the candidacies of two current Nelsonville councilmembers and the current Nelsonville city manager for various statutory races. Unfortunately, sometimes the necessary consequence of the correct application of

election law has the unpopular consequence of exercising prospective candidates off the ballot during that cycle, and to restrain the call of individual candidates seeking reprieve so that further chaos is prevented. *See State ex. rel. Demora v. Larose*, 2022-Ohio-2173, ¶ 66.

Nelsonville has acted in good faith to give its citizens certainty and continuity in government. The citizens of Nelsonville can rightfully and loudly criticize how City Council exercised its authority here. But those criticisms are reserved for the electorate. Nelsonville respectfully submits that it has followed the law here, and that nothing presented should sway this Court from giving due constitutional deference to Nelsonville's lawful enactment, whether it be prudent, or not.

At bottom, this is a properly framed mandamus issue and thus Nelsonville, if nothing else, asks full consideration on the merits such that certainty and finality are brought to this year's election.

ARGUMENT

I. Nelsonville Is Entitled to Relief Because It Must Be Allowed to Conduct the Elections that It Has Duly Authorized Under the Law.

Nobody is going to confuse this matter with a textbook elections case that fits neatly in line with this Court's recent expedited elections jurisprudence. Instead, Nelsonville brings the Court a brand-new set of puzzle pieces that do not easily click into that framework. But nonetheless, once those pieces are put together, this presents as a classic example of the extraordinary circumstance that mandamus exists to address.

A. Mandamus Relief Is Appropriate.¹

Mandamus has been described as the “last resort” remedy. *State ex rel. Pressley v. Indus. Comm’n*, 11 Ohio St.2d 141, 168 n.5 (1967) (Taft, C.J. concurring in part and dissenting in part). At its common law roots, mandamus provides a bridge to justice, allowing a court to “enforce the execution of the law” where there is otherwise no remedy. *Id.* To get there, this Court must exercise “sound legal and judicial discretion ***based upon all of the facts and circumstances in the individual case and the justice to be done.***” *Id.* at paragraph 7 of the syllabus (emphasis added).

This Court has established a familiar and specific framework for narrowing the analysis of an expedited election mandamus involving a county board of elections or the secretary of state. *See State ex rel. Ferrara v. Trumbull Cnty. Bd. of Elections*, 2021-Ohio-3156, ¶ 7. That framework focuses this Court’s attention on whether the board “engaged in fraud, corruption, or abuse of discretion, or acted in clear disregard of applicable legal provisions.” *Id.* Ms. Hashman insists that framework is the only path to mandamus relief. (Hashman Br. 12). But that would improperly narrow the allowable scope of mandamus relief in this situation, where Nelsonville has a right to

¹ Nelsonville concedes that prohibition is an unlikely avenue for relief. On September 5, 2025, Nelsonville presented a timely protest to write-in candidates for the statutory positions. (*See* Dent Aff. Ex. C, Ex. D). But Nelsonville suggests no great answers lie in that audio. (*Id.*). The protest was made, preserved, and denied by the Board. (*Id.* at Ex. D). But even if Nelsonville meets a quasi-judicial element here, it is narrow and collateral to the overall relief sought. Given the unique and unprecedented facts before the Court, Nelsonville stops short of withdrawing the prohibition claim and instead defers to the Court on the parties’ current submissions on if that is an appropriate tool to deploy here.

relief, the Athens County Board of Elections has a duty to provide it, and the law provides no adequate remedies.

First, Nelsonville maintains that the Athens County Board of Elections is acting in clear disregard of the applicable legal provisions by not giving effect to Ordinance 54-25, as discussed more below. But even if this Court encounters issues applying the traditional framework here, that should not be dispositive. Instead, this Court must look at the facts and circumstances of this *individual case*, not try and fit it into imperfect-fit examples that came before it. *Pressley* at paragraph 7 of the syllabus; *see also Demora*, 2022-Ohio-2173 at ¶¶ 85–86 (Fisher J., concurring in part and dissenting in part).²

At bottom, Nelsonville satisfies each mandamus element by clear and convincing evidence.

1. Nelsonville Has Established a Clear Legal Right to the Relief Requested.

The Athens County Board of Elections does not directly challenge the validity or constitutionality of Ordinance 54-25. (*See Athens Cnty. Bd. of Elections Br. 5*). Ms. Hashman makes several challenges to the Ordinance, all of which are addressed in sections below. But assuming for the moment that the Ordinance stands, Nelsonville has established a clear legal right to the requested relief. Importantly:

- There is no dispute that throughout 2025, Nelsonville continues to be governed by the Charter. (Nelsonville Br. 2–3; *see also* Hashman Br. 2 (conceding this point)).

² Nelsonville reads these two paragraphs in conjunction as suggestive that when finding ourselves this far down the rabbit hole, the historical three mandamus factors outlined in ¶ 85 can form a distinct analysis additional to the fraud, corruption, abuse of discretion framework referenced at ¶ 86.

- Last year the citizens advocating for Issue 23’s placement on the ballot—nonparties here—successfully litigated to assure that the petition that would become Issue 23 was construed as a citizen initiative pursuant to Nelsonville’s City Charter. *State ex rel. Smith v. Clement*, 2024-Ohio-5520, ¶ 31 (4th Dist.).
- There is no dispute that Issue 23 “did not provide any transition plan to enact its effect” and that it “did not restrict—in any manner whatsoever—the current government’s authority under the Charter prior to January 1, 2026.” (Nelsonville Br. 7; *see also* Hashman Br. 3).

Importantly, the citizens of Nelsonville had at least a few choices for how to abolish the Charter. As discussed more below, their specific decision to enact it as an initiated ordinance under the Charter subjected its fate to expanded process exercised under that same Charter.

And because Ordinance 54-25 is a lawful enactment, Nelsonville has a clear legal right to its enforcement over the local municipal elections set to happen this November. *See e.g., State ex rel. Bedford v. Bd. of Elections*, 62 Ohio St.3d 17, 20 (1991).

2. Nelsonville Has Established that the Athens County Board of Elections Has a Clear Legal Duty to Provide the Requested Relief.

At bottom, a county board of elections exists to administer lawful local elections. *State ex rel. Summit Cnty. Republican Party Exec. Comm. v. Brunner*, 2008-Ohio-2824, ¶ 56 (Cupp, J. concurring) (“The role of a county board of elections is to even-handedly and fairly implement the election laws as expressed in the Revised Code and the Administrative Code and by the directives and advisories of the secretary of state.”). The Athens County Board of Elections hesitates to act here because the Ohio Revised Code does not provide a mechanism for it to alter the

election slate at this late stage. (Athens Cnty. Bd. of Elections Br. 6–8). At every point raised, Athens pivots back to their lack of statutory authority to act via the Revised Code. (*Id.* at 8–10). In sum, Athens “believes this situation is so unique that there is no clear course under the Ohio Revised Code for how it is to act.” (*Id.* at 5).

Nelsonville does not fault the Athens County Board of Elections here and agrees that this situation is unique. But “municipal elections on matters of local concern are within the powers of local self-government” as conferred by Ohio’s Constitution. *Bedford* at 19. The fact that Athens finds a conflict between applying the Revised Code and Ordinance 54-25 is entirely immaterial because in “the event of a conflict with state law, the charter prevails on matters of local self government, including the administration of local elections.” *Pennington v. Bivens*, 2021-Ohio-3134, ¶ 11, (Kennedy, J.).

Nelsonville’s Ordinance 54-25 enacted pursuant to Nelsonville’s broad home rule authority—including its authority over local municipal elections—has set the lawful elections that should occur in November. Nelsonville Ord. 54-25 (Nelsonville App’x 037–039).

3. Nelsonville Has Established that There Is No Adequate Remedy at Law.

As a general matter, Nelsonville establishes this point given the proximity of the election. *See State ex rel. Bobovnyik v. Mahoning Cnty. Bd. of Elections*, 2020-Ohio-4003, ¶ 12. Ms. Hashman does not disagree. (Hashman Br. 10). But moreover, Athens County has declared it lacks the tools to give force to the operative law here, despite its duty to conduct lawful elections. (Athens Cnty. Bd. of Elections Br. 7–9).

Thus, Nelsonville has no recourse at law to give effect to its lawful enactment, and it has established it lacks adequate remedy at law, in addition to the timing here.

B. This Litigation Is Not an Attempt to Overturn an Election.

Ms. Hashman argues that if this Court grants relief here the result will be “overturning a lawful election.” (Hashman Br. 17). Ms. Hashman further argues that the only lawful way to overturn election results are through the protest process provided under R.C. § 3515.09. (*Id.*). Nelsonville does not challenge the result of any election and Ms. Hashman conflates the lawful effect of Ordinance 54-25 with the nature of this action in an attempt to inflame this Court.

That said, Nelsonville acknowledges that passing Ordinance 54-25 achieves the same practical outcome. But Ordinance 54-25 was lawfully passed to *repeal* Issue 23, the initiated ordinance passed via last year’s general election. The distinction matters as discussed above and below. At bottom, this is not an R.C. § 3515.09 issue.

C. This Litigation Is Not an Attempt to Substitute Mandamus for Declaratory Judgment or Injunction.

Ms. Hashman argues that this cause is an impermissible attempt to substitute mandamus for declaratory judgment or an injunction. (Hashman Br. 23–24). She cites several decisions from this Court in support of that argument. (*Id.*). These cases each deal with individual challenges to, or by, individual candidates. (*Id.*). That is not the issue at play here where a city seeks enforcement of a law that calls for an entirely different slate of elections to occur.

Nelsonville is mindful that the bulk of the briefing here centers on the constitutionality of Ordinance 54-25. And of course, Nelsonville readily acknowledges

that this Court lacks original jurisdiction when the real object of mandamus seeks a declaratory judgment or advisory opinion on the constitutionality of a legislative enactment. *See State ex rel. JobsOhio v. Goodman*, 2012-Ohio-4425, ¶ 15; *see generally State ex rel. Martens v. Findlay Mun. Court*, 2024-Ohio-5667 (overturning *Sheward* public-right standing).

But this Court properly exercises its mandamus jurisdiction to determine the constitutionality of a legislative enactment when that issue is determinative of the legal rights and duties at issue in the underlying mandamus claim. *See State ex rel. Ohio Acad. of Trial Lawyers v. Sheward*, 86 Ohio St.3d 451, 520 (1999) (Moyer, C.J., dissenting); *see also State ex rel. Zupancic v. Limbach*, 58 Ohio St.3d 130, 133 (1991).

Simply put, the object here is not to declare whether Ordinance 54-25 is a lawful exercise of the City’s legislative authority. It is just necessarily the threshold consideration this Court cannot avoid because it is determinative of the mandamus claim itself. *Id.*

D. This Litigation Is Not an Attempt to Relitigate Last Year’s Fourth District Appeal.

Through the same legal counsel that litigated last year’s result in the Fourth District, Ms. Hashman implores the Court to use Ozian logic to reframe that decision; she tells this Court to pay no attention to what the appellate court actually said and instead look to her interpretation. But what else could “we find that the initiative to abolish the city charter of Nelsonville is governed by Article X of its charter,” reasonably mean—other than the provisions of the entire Article apply? *Smith*, 2024-

Ohio-5520 at ¶ 31. Ms. Hashman’s effort to ignore the plain meaning, simply because it is inconvenient now, must fail.

Indeed, accepting Ms. Hashman’s argument requires the Court to reach the absurd result that the Fourth District held only *some* of the provisions of Article X apply to Issue 23, while others do not. And, of course, the Fourth District only applied some specific portions of Article X, as those were the provisions relevant to getting an initiative on the ballot. But the court did not rule that **only** Sections 10.01, 10.02, and 10.03 applied to the initiative—it explicitly stated Article X. *Id.* It is neither Nelsonville’s nor Ms. Hashman’s place to question to assume the court meant something different than what it expressly opined. And Ms. Hashman cannot claim that the appellate court was unaware of Section 10.06 of the Charter when issuing its holding—***Nelsonville cited to it in one of its briefs.*** (Appellants’ Reply Br., *Smith v. Clement*, No. 24CA28 (4th Dist.) (Nelsonville App’x 202)).³

What Ms. Hashman characterizes as “relitigating,” is really just following the controlling law. The Fourth District’s holding is unequivocal: “Because Article X governs initiatives to abolish the city charter, Ohio Constitution, Article XVIII, § 9 has no application.” *Smith* at ¶ 31. And the plain text of Issue 23 reflects that it was passed as an ordinance. (Robe Aff. Ex. C) (“Shall the **proposed ordinance** to abolish charter and return to same form of government as it had prior be adopted?” (emphasis

³ In fact, Nelsonville pointed out the issue that Article X would allow Nelsonville to pass additional ordinances related to the initiative, to support its argument that the Constitutional amendment procedures applied. (Appellants’ Reply Br., *Smith v. Clement*, No. 24CA28 (4th Dist) (Nelsonville App’x 202)).

added)). Just as Ms. Hashman cannot pick the meaning of words merely on the basis of her own convenience, she likewise cannot cherry pick which portions of Article X do and do not apply to Issue 23, also based solely on her convenience. The citizens of Nelsonville litigated to assure this result and Ms. Hashman fails to present any compelling reason to abandon that holding now.

II. Ms. Hashman’s Remaining Arguments Fail.

Outside the points impacting the elements of mandamus, addressed above, Ms. Hashman presents several additional arguments throughout her brief, scattered over the various sections. These arguments can be categorized into three categories: (1) constitutional challenges; (2) charter-based challenges; (3) procedural and other challenges. Nelsonville organizes its responses to the remaining challenges by these categories.

A. Ms. Hashman’s Constitutional Challenges Fail.

Ms. Hashman challenges Ordinance 54-25 as an unconstitutional attempt to adopt a charter. (*See* Hashman Br. 32–36). Not true. Through Issue 23, the citizens of Nelsonville intentionally opted for a novel mechanism to restructure their government, an initiated ordinance through the Charter itself. (Robe Aff. Ex. C). Moreover, the proponents of Issue 23—not parties here—previously litigated to assure that the matter would be controlled by the Charter process. *See generally Smith*, 2024-Ohio-5520.

1. *Singer’s* Holding Is Not Limited to Non-Charter Cities.

Initially, Ms. Hashman argues that *Singer’s* holding is limited to non-charter cities. (Hashman Br. 16). Not so, as already addressed by Nelsonville in its Merit

Brief. (Nelsonville Br. 20–21); *see also* Jefferson B. Fordham & J. Russell Leach, The Initiative and Referendum in Ohio, 11 Ohio St. L.J. 495, 523 (1950) (observing only by a specific charter provision prohibiting future repeal could a municipality “assure the voters the last word on a particular measure”). Moreover, as *Singer* observed, its general holding is not ***automatically*** applicable to cities with a charter because “[t]o render the power of initiative and referendum effective, the legislative power of the council is ***commonly restricted by provisions*** that, no ordinance or amendment to an ordinance adopted by the electors shall be repealed or amended by council.” *State ex rel. Singer v. Cartledge*, 129 Ohio St. 279, 282–83 (1935) (quoting 2 Eugene McQuillin, *Municipal Corporations*, § 867 at 934 (1st Ed. 1928)).

In other words, each charter must be analyzed on a case-by-case basis because a charter could impose additional restrictions not dealt with under statute by a non-charter city. *See id.* at 283–85. And although such provisions in a charter are common, they are not mandatory and Nelsonville’s Charter does not contain any such restrictive provisions, as discussed more in the next section.

Further, at least one Ohio court has applied the principles of *Singer* to a charter city that did not contain any restrictions on council’s authority to repeal an initiated ordinance. In *Int’l Bhd., Local Union No. 49 v. Cincinnati Gas & Elec. Co.*, the trial court determined that the holding in *Singer* was not limited to non-charter cities. Hamilton C.P. No. A-94696, 1946 Ohio Misc. LEXIS 193, *7 (Apr. 5, 1946). The court considered the specific provisions of the Cincinnati charter and noted that it contained no limitations on the city’s authority to repeal initiated laws. *Id.* at *9. In

doing so, the court found that *Singer* “is, therefore, applicable as precedent insofar as initiative and referendum actions of the people are concerned in the city of Cincinnati. The council of the city of Cincinnati is in the same position in regard thereto as the council of a non-charter city.” *Id.*

2. *Singer* and *Craver* Stand for Different Legal Propositions. *Singer* Controls Here.

Ms. Hashman points to this Court’s decision in *Craver* as controlling. (Hashman Br. 35–36). But *Craver* stands for a distinct proposition not directly at issue here. Indeed, *Craver* confronted the threshold question of whether a city which had adopted a home rule charter under the Ohio Constitution could ***ever*** be abolished by citizen action. See *Youngstown v. Craver*, 127 Ohio St. 195, 201 (1933). In *Craver*, Youngstown argued that Ohio law prevented the abolishment of a home rule charter after adopted—full stop. *Id.* This Court rightly rejected that logic because if a Charter could never be abolished under Ohio’s current constitution, then “the people of Youngstown would be required to cajole the Legislature into calling a constitutional convention, or wait until 1952,⁴ and even at that time they would be at the mercy of the people of the state.” *Id.* And no, of course people do not have to wait for a constitutional convention to change their form of government, that is a process that was and remains protected under Ohio’s Constitution. *Id.* at 201–02. And the *Craver* Charter guaranteed the widest interpretation of the citizen’s initiative power because it expressly adopted them without further restriction.

⁴ This is the next time the question of calling a constitutional convention was subject to a periodic vote pursuant to Article XVI, Section 3 of the Ohio Constitution.

Last year the citizens of Nelsonville advocating for Issue 23 litigated significantly to ensure the reform presented by that initiated ordinance was governed not under the broadest allowance of the state law, as discussed in *Craver*. But instead by the more procedurally restrictive process governed by Article X of the Charter. (Robe Aff. ¶ 6). Again—certain citizens of Nelsonville actively litigated against the City to assure this precise application and result. (*Id.* at ¶ 9); *see also Smith*, 2024-Ohio-5520. And Issue 23 could have included—or restricted—transitional authority, but it did not. (Robe Aff. Ex. C). In any manner, whatsoever. We cannot now second guess the intent or wisdom of this choice.

And the initiated ordinance process under the Nelsonville Charter certainly afforded certain lawful benefits to the proponents of Issue 23, such as lower signature thresholds. *See Nelsonville City Charter* § 10.03(A) (Nelsonville App'x 013). But it also subjected the reform to lawful procedural controls under that same Charter, such as its classification upon enactment as an ordinance, fully subject to the Charter. *Id.* at § 10.06(A) (Nelsonville App'x 013). And we are not in a place to second guess why the citizens opted for this process or further interpret their intentions, we can only apply what was enacted. *State ex rel Dudley v. Yost*, 2024-Ohio-5166, ¶14. Issue 23 was enacted as an Article X initiated ordinance under the Charter, fully subject thereafter to the authority and process of that charter—up to and including repeal—until it took effect. *See generally Singer*, 129 Ohio St.

The road here has been bumpy. And Nelsonville's actions have been and will continue to be subject to loud criticism from its citizens that voted for Issue 23. But

those political discussions do not hold sway here. Instead, Nelsonville acting under its constitutional home rule authority lawfully enacted Ordinance 54-25 and that legislative act is entitled to broad deference here. Ms. Hashman has not met her burden to prove any unconstitutionality beyond a reasonable doubt.

3. *Hittle* Is Distinguishable.

. *Hittle*, to the extent considered, is distinguishable from the matter here. *Hittle*, like *Craver* which it is rooted in, considered the constitutional process for charter abolishment. That case did not confront the conscious decision of an electorate to opt for a more procedurally restrictive process. *See generally Hittle v. Muskingum Cnty. Bd. of Elections*, 1979 Ohio App. LEXIS 10706 (5th Dist.).

B. Ms. Hashman's Charter-Based Arguments Fail.

Throughout her Brief, Ms. Hashman makes several arguments that Ordinance 54-25 is invalid under various provisions of the Charter. But Ms. Hashman misrepresents or misunderstands the Charter. As always, when discerning the meaning of a city charter, this Court applies the general rules of statutory interpretation. *See State ex rel. Elmore v. Franklin Cty. Bd. of Elections*, 2025-Ohio-2585, ¶ 20; *see also* Scalia and Garner, *Reading Law: The Interpretation of Legal Texts*, 56 (2012). In doing so here, each one of Ms. Hashman's Charter-based arguments fail.

1. Section 4.01 Must Be Read *In Pari Materia* with the Rest of the Charter.

First, Ms. Hashman incorrectly points to Section 4.01 of the Charter as restricting Nelsonville's City Council from amending or repealing the initiative here.

(Hashman Br. 16–17). Not true. The reservation *referenced* in Section 4.01 is not an unlimited reservation as explained by Article X. Nelsonville City Charter §§ 10.01(A), 10.06(A) (Nelsonville App’x 012–013).

Ms. Hashman impermissibly reads Section 4.01 in isolation of the rest of the Charter. But of course, a city charter must be read *in para materia* with the entire charter. *See State ex rel. Miller v. Hamilton Cnty. Bd. of Elections*, 2021-Ohio-831, ¶ 33 (noting that when analyzing a city charter this court does not “simply consider words in isolation but consider the text as a whole”).

Here, Section 4.01 of the Charter provides:

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.

Nelsonville City Charter § 4.01 (Nelsonville App’x 002). Article X of the Charter discusses in detail the specific initiative and referendum powers are reserved for the citizens by the Charter. *Id.* at § 10.01 (Nelsonville App’x 012). As it pertains to initiative, the reservation of legislative powers to the citizens is:

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.

Id. at § 10.01(A) (Nelsonville App’x 012). But the Charter does not reserve unlimited power to the citizens on initiatives. Instead, the Charter places issues adopted under the initiated ordinance process under the further purview of City Council:

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.

Id. at § 10.06(A) (Nelsonville App’x 013). This limitation is further illustrated by how referendums are treated under the Charter: “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.” *Id.* at § 10.06(B) (Nelsonville App’x 013).

2. Section 10.06 Must Be Read to Give Effect to Its Plain Meaning.

Next, Ms. Hashman argues that the meaning of Section 10.06 of the Charter is open to multiple interpretations. (Hashman Br. 18–19). Again, she provides only a surface level analysis that fails under scrutiny. Section 10.06 provides that after an initiated ordinance is adopted by the voters, “it shall be treated in all respects in the same manner as ordinances or resolutions of the same kind adopted by Council.” *Id.* at § 10.06(A) (Nelsonville App’x 013). Ms. Hashman argues that it is “not clear, and subject to different interpretations” as to what this means. (Hashman Br. 18). Not so. It means exactly what it says.

When analyzing the meaning of a charter provision, this Court starts with the plain meaning of the text. *Elmore*, 2025-Ohio-2585 at ¶ 20. Indeed, “[t]he words of a governing text are of paramount concern, and what they convey, in their context, is what the text means.” *State v. Reed*, 2020-Ohio-4255, ¶ 17 (quoting Scalia and Garner, *Reading Law: The Interpretation of Legal Texts*, 56 (2012)). “Where the language of a statute is plain and unambiguous and conveys a clear and definite meaning there is no occasion for resorting to rules of statutory interpretation. An unambiguous statute is to be applied, not interpreted.” *Sears v. Weimer*, 143 Ohio St. 312 (1944), paragraph 5 of the syllabus.

Here, Ms. Hashman argues alternative interpretations for how an initiated ordinance should be treated under these words. (Hashman Br. 18–19). This argument attempts to add words to the Charter and narrow the post-election handling of an initiated ordinance. This Court cannot add words to the statute to determine its meaning. *State v. Maxwell*, 2002-Ohio-2121, ¶ 10. The plain language of Section 10.06 calls for initiated ordinance to be treated like council originated in “all respects.” Nelsonville City Charter § 10.06(A) (Nelsonville App’x 013).

Further, Ms. Hashman’s reliance on *State ex rel. Sharpe v. Hitt*, is misplaced. The Court’s holding there is not that the initiative rights under the Ohio Constitution are limitless. *State ex rel. Sharpe v. Hitt*, 155 Ohio St. 529, 536 (1951). Instead, given the broad initiative rights of the people, the Court determined that a municipality could not prohibit its citizens from pursuing the initiative procedures to repeal an ordinance, where referendum is unavailable. *Id.* at 536–37.

Indeed, should the citizens of Nelsonville choose to, they very well could circulate a petition to pass an ordinance to repeal Ordinance 54-25. *See id.* Nothing prohibits the citizens from “submitting a similar initiative at the next appropriate election.” (Stay Order Pending Appeal, *Smith v. Clement*, No. 24CI0180 (Athens C.P.) (Nelsonville App’x 118)). But that initiative would still be subject to the provisions of Article X of the Charter. *Smith*, 2024-Ohio-5520 at ¶ 31

3. Ordinance 54-25 Complies with the Single-Subject Rule in Section 4.10

Ms. Hashman next takes issue with Ordinance 54-25, asserting that it is unenforceable because it contains “3 separate subjects.” (Hashman Br. 28). Not true. To be sure, the Charter provides that “Each ordinance shall contain one subject only, which shall be d (sic) clearly in the title.” Nelsonville City Charter § 4.10 (Nelsonville App’x 004).⁵ But this provision is not violated by the inclusion of matters that are relevant and germane to the general subject in the title. *See Albrecht v. Cincinnati*, 104 Ohio St. 226, 272–73 (1922) (finding that an ordinance that called for the improvement of a street could authorize the construction of sewer, as it was under the same umbrella of the street improvement).

When considering the single-subject requirement, this Court has noted that the rule “was intended to prevent the uniting in one ordinance of diverse subjects or measures and effecting its passage by uniting in its support all those in favor of any,

⁵ The Ohio Revised Code contains a nearly identical requirement for municipalities: “No ordinance, resolution, or bylaw shall contain more than one subject, which shall be clearly expressed in its title.” R.C. 731.19. So, cases that analyze the analogous statutory requirement are instructive here.

and to prevent the adoption of ordinances by the votes of councilmen ignorant of their contents.” *Heffner v. Toledo*, 75 Ohio St. 413 (1907), paragraph 1 of the syllabus. Further, this Court should evaluate whether an ordinance runs afoul of the requirement not based on the form of the ordinance but based on its substance, considering the “mischief” the rule was intended to prevent. *Id.* at paragraph 2 of the syllabus. The single-subject requirement is *directory only*. *City of Jackson v. Stacey*, 96 Ohio App.3d 169, 173 (4th Dist. 1994) (citing *Brady v. Carlson*, 9 Ohio App.3d 24 (1st Dist. 1983)). The purpose is *to ensure that **City Council** is informed* about what is in the ordinance, *rather than the general public*. *Brady* at 26.

The directory nature of the single-subject requirement is dispositive of the issue. *See City of Jackson* at 173. Ms. Hashman makes no allegation that any of the Councilmembers were confused about what they were passing. (Hashman Br. 28–29). The Court need not consider this argument any further. *See Phillips v. Avon*, 1992 Ohio App. LEXIS 867, *5 (9th Dist. Feb. 19, 1992) (“Phillips has made no allegation that the Council was uninformed of the ordinance or misled by the title. Therefore we find, without addressing whether Ordinance No. 53-90 contains more than one subject, that Phillips first assignment of error lacks merit.”).

Even if this Court were to consider the substance of Ordinance 54-25, it complies with the single-subject rule. Ms. Hashman takes issue with paragraphs 3 and 5 of 54-25:

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.

. . .

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.

Nelsonville Ord. 54-25 (Nelsonville App'x 039). Both paragraphs relate to the same general object: the repeal of Issue 23. *See Albrecht*, 104 Ohio St. at 272–73; *Heffner*, 75 Ohio St. at paragraph 1 of the syllabus. Paragraph 3 authorizes the City Law Director to defend the Ordinance to “ensure the continuity of home rule governance in Nelsonville.” Nelsonville Ord. 54-25 (Nelsonville App'x 039). This provision is designed to give effect to the repeal, in the case that the Ordinance is challenged or not followed—*the exact issue at hand in this case*.⁶ And the public education campaign outlined in Paragraph 5 is relevant to the repeal of Issue 23, given that Issue 23 was a citizen-initiated ordinance and the breath of public discourse on the subject in the past year.

⁶ Indeed, Nelsonville was publicly threatened with legal action related to Ordinance 54-25 not even twenty-four hours after it was enacted. David Forster, *Nelsonville council repeals a citizen initiative that called for a change in the city's government*, <https://woub.org/2025/08/12/nelsonville-council-repeals-a-citizen-initiative-that-called-for-a-change-in-the-citys-government/> (accessed Sept. 7, 2025) (“Greg Smith, a former City Council member and one of the residents who sued the council to keep the initiative on the ballot, said he now plans on filing a lawsuit to overturn the council’s decision Monday to repeal it.”).

Accordingly, Ordinance 54-25 complies with the Charter’s requirement that an ordinance contain only one subject, as all provisions relate back to the repeal of Issue 23. *See Albrecht* at 272–73.

4. Ordinance 54-25 Was Lawfully Enacted as an Emergency Measure.

Disappointingly, Ms. Hashman resorts to attacks on individual Council members to convince this Court to invalidate Ordinance 54-25. (Hashman Br. 29–30). This Court should not waste its time with this muckraking.

This Court has noted that under general Ohio election laws, “a candidate for public office need not be qualified in order to run for that office, but must remove any disqualifications immediately upon assuming the office; otherwise, the officeholder forfeits that office.” *State ex rel. Vana v. Maple Heights City Council*, 54 Ohio St.3d 91, 94 (1990). In the context of a felony disqualification, courts have interpreted the immediacy requirement to allow a reasonable time to cure the disqualification. *State ex rel. Gains v. Rossi*, 1999 Ohio App. LEXIS 986, *26–27 (7th Dist. Mar. 9, 1999) (“Gains I”), *aff’d State ex rel. Gains v. Rossi*, 86 Ohio St.3d 620 (1999) (“Gains II”); *State ex rel. Powers v. Curtis*, 2003-Ohio-6104, ¶ 51 (12th Dist.).

At the outset, Nelsonville notes that the instant mandamus action to enforce Ordinance 54-25 is an inappropriate method to challenge Mr. Peck’s position on Nelsonville City Council. Although he is a Council member, he, individually, is not a party to this action and thus this Court cannot vacate his seat *sua sponte*. But even if this Court were to consider Mr. Peck’s eligibility for office, this would not invalidate Ordinance 54-25.

Mr. Peck was appointed by Council President Mr. Clement to Nelsonville City Council on April 14, 2025, to fill a vacancy on the Council.⁷ (Clement Aff. ¶¶ 3–7, Ex. A, Ex. B). At the time of his appointment, Mr. Clement was unaware of Mr. Peck’s prior felony conviction. (*Id.* at ¶ 8). The Charter provides that a Council member may be removed for cause, including the conviction of a felony, after a hearing. Nelsonville City Charter § 11.08(B) (Nelsonville App’x 014). However, this applies to felony convictions while in office, not to prior convictions. *See id.* To date, no removal proceedings have been initiated against Mr. Peck.

“[A] convicted felon may *remain* in office if the officeholder is restored to competency midterm.” *State ex rel. Reynolds v. Nix*, 2024-Ohio-4669, ¶ 20 (citing *Gains II*, 86 Ohio St.3d at 624) (emphasis in original). Thus, Mr. Peck’s seat is not automatically forfeited upon appointment by virtue of his prior conviction. *See id.*; *see also Powers*, 2003-Ohio-6104 at ¶ 58 (holding that relator validly occupied his seat upon appointment but later forfeited it for not removing his disqualification within a reasonable time).

Even if this Court were to take the extraordinary step to remove Mr. Peck from Nelsonville City Council, this would not affect prior actions that Mr. Peck was involved in. The Charter explicitly provides that 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***

⁷ Nelsonville does not dispute that the office of City Council is an office of honor, trust, or profit.

participated.” Nelsonville City Charter § 11.08(D) (Nelsonville App’x 014) (emphasis added). And this Court has given effect to charter provisions that set forth standards for council members, even in cases of disqualification. *See Vana*, 54 Ohio St.3d at 94 (finding that disqualified council member could continue to serve on council until his successor was appointed pursuant to charter provision).

Ms. Hashman’s attempt to invalidate Mr. Peck’s votes on Ordinance 54-25 fails. Mr. Peck did not automatically forfeit his seat on City Council upon his appointment. And the Charter specifically validates official City Council actions—like the passing of ordinances—that a later disqualified member participated in. Nelsonville City Charter § 11.08(D) (Nelsonville App’x 014). So, Ordinance 54-25 was effectively passed as an emergency measure.

5. This Court Does Not Invalidate Ordinances for Mere Noncompliance with the Procedural Rules.

“It has been decided by the courts of last resort of many states, and also by the United States Supreme Court, that a legislative act will not be declared invalid for noncompliance with rules.” *State ex rel. City Loan & Sav. Co. v. Moore*, 124 Ohio St. 256, 259 (1931) (citing *United States v. Ballin*, 144 U.S. 1 (1891)); *see also Humphrey v. Youngstown*, 1955 Ohio App. LEXIS 736, *15–16 (7th Dist. Oct. 6, 1955) (“Non compliance of city council with its own rules in the enactment of legislation does not make invalid a legislative act.”). Further, the requirements of procedural rules are met where the municipality substantially complies with procedural mandates. *See Swickrath & Sons, Inc. v. Village of Elida*, 2003-Ohio-6288, ¶15 (8th Dist.) (citing *Brow v. Sherwin-Williams Co.*, 109 N.E.2d 864 (8th Dist. 1952)).

Ms. Hashman raises two arguments that this Court should invalidate Ordinance 54-25 due to perceived issues with procedural rules: (1) Ordinance 54-25 was not posted as required by Section 4.12 of the Charter; and (2) Ordinance 54-25 was not introduced in writing as required by Section 4.10 of the Charter. This Court should reject both. *See City Loan & Sav. Co.* at 259.

First, Ordinance 54-25 was passed as an emergency, effective immediately on August 11, 2025. *See* Nelsonville Ord. 54-25 (Nelsonville App'x 039). By its text, it went into effect before the posting requirement began. *Id.* And Ms. Hashman cannot claim that she did not have sufficient notice as she moved to intervene in this action within a week of City Council enacting Ordinance 54-25. (*See generally* Hashman Mot. to Intervene). The mere fact that the Ordinance was not posted in the time frame outlined by Section 4.12 does not retroactively invalidate it. *See City Loan & Sav. Co.* at 259; *Humphrey* at *15–16.

Second, the Charter's requirement that an ordinance be introduced in writing does not specify the *form* of the writing. Nelsonville City Charter § 4.10 (Nelsonville App'x 004). And Ms. Hashman acknowledges that Mr. Robe was “reading” off his laptop during the August 11, 2025 meeting. (Hashman Br. 31). This is a tacit concession that the Ordinance was prepared in writing—just not printed out. And of course, it is possible to confirm that what Mr. Robe read is the same as the text of Ordinance 54-25 that was enacted. Ms. Hashman can simply compare what Mr. Robe read with the text of the Ordinance—the same as any Nelsonville citizen who reviews the record of a City Council meeting.

So, this Court should reject Ms. Hashman's arguments that Ordinance 54-25 is invalid for failing to strictly comply with procedural requirements. *See City Loan & Sav. Co.* at 259; *Humphrey* at *15–16.

6. The City Attorney's Contract, Approved by City Council, Authorizes Him to Engage Outside Counsel at His Discretion.

Ms. Hashman argues the undersigned is not authorized to bring this action, and thus, it should be stricken because it violates Ohio Civil Rule 11. (Hashman Br. at 36–37). Ms. Hashman cites a perceived lack of authority for the representation because she did not find a specific ordinance on Nelsonville's public website. (*Id.* at 36). This argument is perplexing. And it is disappointing.⁸ Ms. Hashman does not cite any authority that Nelsonville bears a burden of proving its counsel may present this case. But, out of an abundance of caution, Nelsonville addresses this point.

Mr. Robe is the City Attorney for Nelsonville. (*See Robe Aff.* ¶ 3). Pursuant to the Charter, Mr. Robe was appointed by the City Manager and approved by City Council. Nelsonville Ord. 92-24 (Nelsonville App'x 186–187); (*Supp. Robe Aff.* ¶ 5, Ex. N). And, in approving Mr. Robe's appointment, City Council expressly adopted and incorporated Mr. Robe's contract with Nelsonville. Nelsonville Ord. 92-24

⁸ Ms. Hashman's counsel frequently litigates against Nelsonville, most often representing Ms. Hashman's father, Greg Smith, in matters where the undersigned represents the City, including last year's Fourth District litigation. (*Robe Aff. Ex. A; see also* Petition for Mandamus, *Smith v. Clement*, No. 24CI0180 (Athens C.P.) (Nelsonville App'x 041–060)). As well as more recent public record litigation. (*See Smith v. City of Nelsonville*, No. 24CI0144 (Athens C.P.)). And even now, in a common pleas declaratory judgment action. (*See City of Nelsonville v. Smith*, No. 25CI0136 (Athens C.P.)). This is the first time Mr. Klos challenges the undersigned's authority to act.

(Nelsonville App'x 186, 188–193); (Supp. Robe Aff. ¶ 6, Ex. O) As part of his duties, Mr. Robe is authorized to manage the budget for the legal department, which “may include, without limitation, agreeing with outside legal counsel for obtaining and/or retaining legal services that the City Attorney, in his discretion but subject to approval by Council, may from time to time deem appropriate for the City.” (Supp. Robe Aff. ¶ 7, Ex. O at § 6(f)).

Pursuant to Mr. Robe's authority under Ordinances 92-24 and 54-25, and his potential role as a witness in this matter, Mr. Robe retained the undersigned and his firm to represent Nelsonville's interests in repealing Issue 23. (*Id.* at ¶ 9). And Reminger has a long history of representing Nelsonville in a variety of matters—both insured and uninsured. (*Id.*). In any event, and out of an abundance of caution, this evening City Council confirmed without doubt, that the undersigned is authorized to act on the City's behalf in this case. Nelsonville Res. 2353 (Nelsonville App'x 195). This disposes of Ms. Hashman's frivolous position.

C. Ms. Hashman's Procedural Arguments Fail.

1. Nelsonville's Complaint Meets the Pleading Standards.

Ms. Hashman argues that Nelsonville's Complaint is deficient because it fails to *aver* the necessary elements required for the issuance of the requested writs. (*See generally* Hashman Br. 12–16). Ms. Hashman insists the Complaint must be dismissed for what she perceives as insufficient pleadings. (*Id.* at 16). But in her attack on the pleadings, Ms. Hashman misunderstands the standards at issue and confuses the law.

First, the Respondent which Nelsonville originally brought this action against, the Athens County Board of Elections, does not take the same (or any) issue with the sufficiency of Nelsonville's pleadings. Second, deciding this issue on such pleading technicalities solves absolutely nothing for the citizens of Nelsonville. At bottom, the claims are sufficiently plead out under this Court's standards and the Court should consider them on their merits.

a. Nelsonville Has Stated a Viable Claim in Mandamus Under this Court's Well-Established Pleading Standards.

This Court has found that the standard for stating a claim in a complaint for mandamus parallels the notice pleading requirements of Civil Rule 8. *See State ex rel. Hanson v. Guernsey Cnty. Bd. of Comm'rs*, 65 Ohio St.3d 545, 549 (1992). In other words, a "complaint in mandamus states a claim if it alleges the existence of the legal duty and the want of an adequate remedy at law with sufficient particularity ***so that the respondent is given reasonable notice of the claim asserted.***" *Id.* (quoting *State ex rel. Bush v. Spurlock*, 42 Ohio St.3d 77, 80–81 (1989), and *State ex rel. Baran v. Fuerst*, 55 Ohio St.3d 94, 96–97 (1990)) (emphasis added).

Indeed, "a plaintiff or relator is not required to prove his or her case at the pleading stage and need only give reasonable notice of the claim." *State ex rel. Bey v. Byrd*, 2020-Ohio-2766, ¶ 55 (quoting *State ex rel. Williams Ford Sales, Inc. v. Connor*, 72 Ohio St.3d 111, 113 (1995)) (Kennedy, J., dissenting in part) (discussing the pleading requirements of a mandamus action).

Here, Ms. Hashman departs from this standard and attempts to expand it. Instead of looking at whether the complaint gives reasonable notice of the claims, Ms.

Hashman argues that Nelsonville fails to state a claim because they (1) do not more specifically allege their legal case; and (2) that the Complaint fails to provide “documentary evidence” that notice of Ordinance 54-25 was transmitted to the Athens County Board of Elections. (Hashman Br. 12–15).

First, Ms. Hashman makes an argument that this mandamus action requires Relators to allege, at the pleading stage, the elements of a specific test this Court employs to analyze the claims. (*Id.* at 12–13). But she offers no support for that proposition of law. Nelsonville sufficiently alleged a legal right on their part, a legal duty on the Athens County Board of Elections’ part, and no adequate remedy at law. (See Compl. ¶¶ 60–66). And that is sufficient at this stage. *Hanson*, 65 Ohio St. 3d at 549; *Bey* at ¶ 55.

Second, Ms. Hashman complains that Nelsonville’s Complaint contains no “documentary evidence” of the notice of Ordinance 54-25 as transmitted to the Athens County Board of Elections. Again, she offers no actual legal support for why this would be required at the pleading stage. Stranger than that, she fails to acknowledge that the Athens County Board of Elections *admitted* it received the notice in its Answer. (Athens County Board of Elections Ans. ¶ 58). And that the documentary evidence referenced has been submitted as part of the merit briefing. (Robe Aff. ¶ 33, Ex. M). Again, Nelsonville has met the pleading requirements to state a claim in mandamus. *Hanson* at 549; *Bey* at ¶ 55.

b. Nelsonville Has Stated a Viable Claim in Prohibition Under this Court's Well-Established Pleading Standards.

As noted above, Nelsonville concedes prohibition is an unlikely path here. Briefly, Ms. Hashman's arguments about Nelsonville's claim for a writ of prohibition are similarly disposed of. This Court has applied the same pleading standards to writs of prohibition as to writs of mandamus. *See State ex rel. Kaylor v. Bruening*, 80 Ohio St.3d 142, 147 (1997) (citing *State ex rel. Harris v. Toledo*, 74 Ohio St.3d 36, 37–38 (1995), and *State ex rel. Williams Ford Sales, Inc. v. Connor*, 72 Ohio St.3d 111, 113 (1995)). As with its claim for mandamus, Nelsonville sufficiently alleged the elements of a writ of prohibition. (*See* Compl. ¶¶ 67–71). Accordingly, Nelsonville has met the pleading requirements to state a claim. *See Kaylor* at 147.

2. Nelsonville's Complaint Is Not Barred by Laches.

Ms. Hashman argues that Nelsonville is “guilty of laches.” (Hashman Br. 21–23). Ms. Hashman argues that because Relators knew about the passage of Issue 23 on November 6, 2024, it was too late to enact Ordinance 54-25 when they did so, on August 11, 2025. (*Id.*). Essentially, Ms. Hashman evokes the judicial doctrine of laches in an unprecedented attempt to nullify legislative action. Ms. Hashman misunderstands laches.

First, “as a general rule laches does not apply to bar a claim made by a governmental unit.” *State ex rel. Chester Twp. Bd. of Trs. v. Makowski*, 12 Ohio St.3d 94, 96 (1984). As a practical matter, *Makowski* recognized a limited exception where the local taxing authority brought claims against the county spanning 25 years. *Id.* That exception is not present here.

Second, Ms. Hashman does not cite any authority that uses laches to invalidate legislation. Instead, laches may bar a legal action brought in court where there is an unexcused delay in asserting a legal right. *See State ex rel. Clark v. City of Twinsburg*, 2022-Ohio-3089, ¶ 11. Here, Ordinance 54-25 is the source of the right asserted, and it was passed on August 11, 2025. Nelsonville Ord. 54-25 (Nelsonville App'x 037–039). This action was brought two days later, on the same day the Athens County Board of Elections met and failed to take actions in compliance with the law. (*See* Compl.; Joint Stip. ¶ 2). Thus, if laches can even be applied to Nelsonville under this Court's precedent, the argument fails because Nelsonville exercised the utmost diligence in asserting its right here.

CONCLUSION

For the foregoing reasons, and for those already presented, Nelsonville asks this Court to issue writs sufficient to order the Athens County Board of Elections to conduct the lawful elections called for under the City Charter in place of the now planned unlawful statutory positions.

Respectfully Submitted,

/s/ Thomas N. Spyker

Thomas N. Spyker (0098075)

Mrinali Sethi (0101295)

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Counsel for Relators

CERTIFICATE OF SERVICE

On Monday, September 8, 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)

APPENDIX⁹

Nelsonville Governing Documents and Ordinances

17. Nelsonville Ordinance 92-24

18. Nelsonville Resolution 2353

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

19. October 15, 2024 Reply Brief of Appellants

⁹ Nelsonville attached an Appendix to its initial Merit Brief. For the Court's convenience, Nelsonville has continued the numbering and pagination conventions from its Merit Brief.

Appendix 17

Ordinance No. 92-24

Passed DECEMBER 9, 2024

ORDINANCE 92-24

AN ORDINANCE CONFIRMING THE APPOINTMENT OF ATTORNEY JONATHAN E. ROBE TO BE CITY ATTORNEY FOR THE PERIOD JANUARY 1, 2025, THROUGH DECEMBER 31, 2025, AND AUTHORIZING THE CITY TO ENTER INTO A CONTRACT THERETO AND DECLARING AN EMERGENCY.

WHEREAS, the current contract for City Attorney is set to expire December 31, 2024;

WHEREAS, the City Manager has authority, pursuant to Nelsonville City Charter § 5.04(1), to appoint a qualified person to serve as City Attorney, which qualifications are set forth in Nelsonville City Charter § 6.05;

WHEREAS, the City Manager's appointment of a City Attorney is subject to confirmation and approval by Council as set forth in Nelsonville City Charter §§ 4.08(11) and 6.05;

WHEREAS, the office of City Manager has appointed Jonathan E. Robe to be City Attorney for a term commencing January 1, 2025, and ending December 31, 2025, on a part-time basis;

WHEREAS, said Jonathan E. Robe possesses the requisite qualifications to serve as City Attorney for a term commencing January 1, 2025, and ending December 31, 2025.

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

1. The office of City Manager's appointment of Attorney Jonathan E. Robe to be City Attorney for a term commencing January 1, 2025, and ending December 31, 2025, on a part-time basis is hereby confirmed and approved by a majority of Council.
2. The City Manager, Acting City Manager, and/or Police Chief is hereby authorized to enter into a contract with Jonathan E. Robe for compensation for the City Attorney for a term commencing January 1, 2025, and ending December 31, 2025, on a part-time basis. A copy of the contract is attached hereto as **Exhibit A** and is incorporated in its entirety for all purposes as if set forth herein.
3. The compensation for the City Attorney for such term shall be as provided and set forth in **Exhibit A**. No other compensation may be paid to the City Attorney except as provided for by law.
4. The City Attorney shall have such authority and duties as are set forth in the Nelsonville City Charter for the office of City Attorney.
5. City Council hereby finds that this Ordinance was adopted in a meeting open to the public as required by applicable law.
6. This Ordinance shall be in full force and effect at the earliest time permitted by law.

RECORD OF ORDINANCES

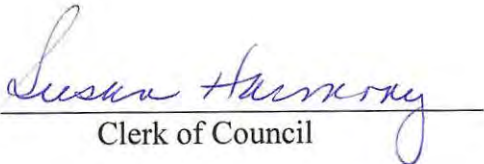
Ordinance No. 92-24

Passed DECEMBER 9, 2024

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

NELSONVILLE CITY COUNCIL


President of Council


Clerk of Council

First Reading: 11/25/24
Second Reading: 12/09/24

AGREEMENT

This Agreement is made at Nelsonville, Ohio, the 13th day of January, 2025, by and between the **City of Nelsonville, Ohio**, an Ohio municipal corporation (“City”), and **Jonathan E. Robe**, Attorney at law, WITNESSETH:

WHEREAS, the City of Nelsonville, Ohio desires to obtain and retain legal counsel to assist and advise the City, its officers, and departments; and

WHEREAS, the Council of the City of Nelsonville, Ohio, as required under Nelsonville City Charter, has established the office of City Attorney to be filled by a duly admitted Attorney at Law in Ohio for the purpose of providing legal counsel to the City, its officers, and departments; and

WHEREAS, the office of City Attorney will become vacant after December 31, 2024 when the City Attorney’s current contract expires; and

WHEREAS, the Council of the City of Nelsonville, Ohio duly enacted Ordinance No. 92-24 on December 9, 2024, which Ordinance provided for the employment of an Attorney at Law as City Attorney, as of January 1, 2025 and ending on December 31, 2025; and

WHEREAS, Ordinance No. 92-24 authorized the City Manager, Acting City Manager, and/or Police Chief to enter into a contract to fill the position of City Attorney; and

WHEREAS, Jonathan E. Robe, an Attorney at Law and admitted to practice before the courts of the State of Ohio, has agreed to serve as City Attorney but only for the term ending on December 31, 2025,

NOW, THEREFORE, IT IS AGREED by and between the City of Nelsonville, and Jonathan E. Robe, that:

1. Jonathan E. Robe shall be employed as City Attorney for the City as set forth more particularly herein.

2. **Term.** Jonathan E. Robe shall be employed as City Attorney for the period commencing January 1, 2025, and ending December 31, 2025.

3. **Compensation.** Jonathan E. Robe shall be compensated as follows:

a. Jonathan E. Robe shall be paid an annual base salary of \$60,000. Starting January 1, 2025, Jonathan E. Robe shall be paid in 12 monthly installments of \$5,000.00 per month.

i. The Parties agree that the entire salary shall be subject to such City income tax withholding as is established by law and made applicable to income earned within the jurisdiction of the City of Nelsonville.

b. Jonathan E. Robe shall be entitled to three (3) weeks of paid vacation per year. Any vacation taken shall be approved by the City Manager's office in advance.

c. The City shall provide to Jonathan E. Robe the same level of family health, vision, and dental insurance benefits coverage as is provided to other City officers and/or employees. Such benefits shall not be considered taxable income for Jonathan E. Robe.

d. Jonathan E. Robe's services shall constitute fully-creditable OPERS service and the City shall provide full OPERS contributions for Jonathan E. Robe at the City's expense.

4. **Reimbursement of Expenses.** The City agrees to reimburse Jonathan E. Robe for any reasonable expenses incurred as a result of his work as City Attorney. Except as specifically set forth herein, any request for reimbursement by Jonathan E. Robe shall be submitted to the City Auditor for prior approval. Any request for reimbursement shall include documentation of any

expenses incurred. Reimbursement of expenses shall not constitute taxable income for Jonathan E. Robe.

a. The City shall reimburse Jonathan E. Robe up to \$5,000.00 in 2024 for continuing legal education expenses.

b. The City shall reimburse Jonathan E. Robe for the cost of any professional liability insurance premiums specifically related to his representation of the City. Jonathan E. Robe shall promptly submit for such reimbursement when it is incurred.

5. **Liability Insurance.** The City agrees that Jonathan E. Robe shall be covered by the City's municipal liability insurance policy to the extent necessary (as determined by the City Attorney) and as required or permitted by law.

6. **Duties of the City Attorney.** Jonathan E. Robe shall have the following duties as City Attorney.

a. The City Attorney shall attend regular council meetings, unless excused by the City Manager. The City Manager may also request that the City Attorney attend special council meetings or council committee meetings that may be called from time to time and depending on Jonathan E. Robe's schedule.

b. The City Attorney shall devote 40 hours per month to the office, at the direction of and in accordance with a schedule set by the City Manager and the City Attorney. The City Manager, may at his discretion but in advance consultation with the City Attorney, adjust such monthly hourly requirement based on the monthly needs of the City. Time spent by the City Attorney to special projects, as set forth below, shall not be applied to such monthly hourly requirements.

c. The City Attorney shall be present in his office at City Hall during regular business hours on each Monday that Council holds its regular council meetings, as directed by the City Manager. On such Mondays, the City Attorney shall attend staff meetings called by the City Manager and shall perform such other duties as may be required of the City Attorney.

d. The City Attorney shall act as attorney and counsel for the City and the officers thereof in their respective official capacities, and as such attorney, the City Attorney shall prosecute and defend all legal actions by or against the City or any department or officer thereof and shall, upon request, render legal opinions to the Council or any department or officer of the City. In the case of legal actions (regardless of nature or style) by or against the City, the City and City Attorney shall make separate engagement arrangements, as set forth in subparagraph 6(h) herein.

e. The City Attorney shall provide, without limitation, the following legal services: rendering legal opinions, either written or oral, on procedural matters relating to conduct of Council or the conduct of any board, department, or officer, thereof of the City; preparation of ordinances and resolutions to be considered and/or adopted by the Council of the City; document preparation; real estate or bond questions; and/or legal research. The City Attorney shall have authority to properly and effectively carry out the duties of his office, including performing any legal service as provided for herein. Accordingly, the City Attorney shall have authority to prescribe the manner and form by which any question, issue, and/or task are submitted to him, and the City Attorney may request that any question or issue of law brought to the City Attorney be in a writing that requests a written legal opinion. For purposes of this subparagraph, an e-mail may constitute a writing. It is understood by the City that Jonathan E. Robe's representation extends to the City only, not to individual Members of Council.

f. The City Attorney shall, under the supervision of the City Manager, oversee and manage a legal department budget that the Council of the City may from time to time make appropriation by law. Such management of the legal department budget may include, without limitation, agreeing with outside legal counsel for obtaining and/or retaining legal services that the City Attorney, in his discretion but subject to approval by Council, may from time to time deem appropriate for the City. Such legal department budget may include funds for the hiring of an Assistant to the City Attorney who shall report directly and exclusively to the City Attorney and who shall be subject to such governing regulations as are required under Ohio law for an assistant to an attorney at law.

g. The City Attorney shall prepare a monthly report for the City Manager for time spent on each task, assignment, or projects for which he is compensated as set forth herein, as may be requested by the City Manager.

h. No time spent by the City Attorney on any special project shall be covered by the base salary or benefits set forth above. For any special project, the City and Jonathan E. Robe hereby agree to enter into separate contractual arrangement to specify the legal work to be performed and the payment to be rendered for such legal work. For such special project, the City Attorney shall be compensated for his billable time spent on such special project. Unless otherwise expressly provided in the separate contractual arrangement, the City shall pay Jonathan E. Robe at the hourly rate of Two Hundred Fifty Dollars (\$250.00) per hour. For such special project, Jonathan E. Robe shall submit reports of time spent to the City Manager and Council on at least a quarterly basis and within 30 days following the end of the previous quarter, but the City Manager may, in writing, extend this deadline at his discretion. For purposes of this subparagraph, special projects shall include, without limitation, infrastructure projects for which funding is supplied by

a grant to the City and which includes funding for legal services such grant-funded projects for which the City may from time to time require additional legal services, and any legal actions by or against the City, any prosecutions of annexation proceedings which would increase the City's population by more than 200, any legal work associated with transitions in the form of City government, and any other legal work so delineated by act of Council as a special project beyond the ordinary scope of the City Attorney's duties expressly specified above.

CITY OF NELSONVILLE:

Signed By: Devon Tolliver
By: 31372F4B87B3404...

Print Name: Devon Tolliver

Title: Acting City Manager 1/16/2025

By: _____

Print Name: _____

Title: _____

ATTORNEY: Jonathan E. Robe
By: _____
Jonathan E. Robe

Initial
TC

AS received
by Payroll

1/22/2025

Appendix 18

RESOLUTION 2353

A RESOLUTION RATIFYING THE CITY ATTORNEY'S ENGAGEMENT OF REMINGER CO. LPA TO REPRESENT THE CITY IN OHIO SUPREME COURT CASE NO. 2025-1061.

WHEREAS, by Ordinance 92-24, Council had confirmed the Acting City Manager's appointment of a City Attorney for a term ending December 31, 2025;

WHEREAS, Ordinance 92-24 authorized the City to enter into a contract with the City Attorney and the contract specified certain authorities of the City Attorney;

WHEREAS, one of the authorities give to the City Attorney included the authority to agree with "outside legal counsel for obtaining and/or retaining legal services that the City Attorney, in his discretion but subject to approval by Council, may from time to time deem appropriate for the City";

WHEREAS, Council had previously approved the City Attorney's retention, on behalf of the City, of Reminger Co. LPA for general legal consultation and litigation, including for the matter of Ohio Supreme Court Case No. 2025-1061;

WHEREAS, out of abundance of caution, Council deems it necessary to formally and specifically ratify its approval of Reminger Co. LPA specifically for the litigation matter of Ohio Supreme Court Case No. 2025-1061,

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

1. The City Attorney's agreement with Reminger Co. LPA to represent the City in the litigation matter of Ohio Supreme Court Case No. 2025-1061 is hereby ratified and deemed approved as of the first date of the City Attorney's agreement with Reminger Co. LPA.
2. Council shall, by separate legislation, authorize any proper expenditure of money for Reminger Co. LPA's representation of the City.
3. This Resolution shall be in full force and effect at the earliest time permitted by law.

Duly adopted by Council on first reading on the 8th day of September, 2025.

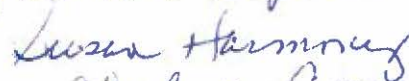
NELSONVILLE CITY COUNCIL


President of Council


Clerk of Council

First Reading: 09/08/2025

I, Susan Harmony, certify that Resolution 2353 is a true and correct copy of the resolution adopted by Nelsonville City Council September 8, 2025.


Susan Harmony
Clerk of Council

Appendix 19

OCT 15 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.*,

Relators-Appellees,

v.

Gregg Clement, *et al.*,

Respondents-Appellants.

Case No. 24CA0028

~~24CA0029~~

On Appeal from the
Athens County Court of
Common Pleas,
Case No. 24CI0180

REPLY BRIEF OF APPELLANTS, CITY OF NELSONVILLE OHIO, COUNCIL
MEMBER GREGG CLEMENT, COUNCIL MEMBER JUSTIN BOOTH, COUNCIL
MEMBER CORY TAYLOR, COUNCIL MEMBER NANCY SONICK, COUNCIL
MEMBER ANTHONY DUNFEE, COUNCIL MEMBER OPHA LAWSON, AND
COUNCIL MEMBER JONATHAN FLOWERS—ORAL ARGUMENT REQUESTED

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Counsel for Appellees

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Counsel for Nelsonville Appellants

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INTRODUCTION

This case presents important and novel questions: What are the proper and lawful procedures by which the people of the City of Nelsonville may determine their City's form of government? Are those proper and lawful procedures established by the Ohio Constitution, which establishes the right of the people to choose their form of government, or the City Charter?¹ For years, Nelsonville has consistently maintained that the Ohio Constitution establishes the proper and lawful procedures for a ballot initiative to abolish the City Charter. The constitutional text, the plain text of the City Charter, and Ohio Supreme Court precedent compel that answer. But Relators disagree, insisting that, contrary to the plain language of the City Charter, the Charter provisions for legislative initiative apply. Relators are wrong.

And the procedures actually matter. If improper and unlawful procedures are followed, then Relators risk a potential post-election invalidation of ballot measures adopted by the people of Nelsonville. And a post-election invalidation of such a ballot measure could cause additional confusion. The people of Nelsonville deserve certainty. Certainty as to the procedures through which they exercise their rights and certainty that their representatives are acting within the scope of their authority. Accordingly, the trial court's judgment should be reversed.

LAW AND ARGUMENT

I. The Initiative Provisions of the Article X of the City Charter Cannot Apply to Abolishing the Charter.

A. A Plain Reading of Article X of the City Charter Shows that "Other Measures" Refers to Legislative Actions.

Nelsonville previously explained that the initiative power set forth in the City Charter is restricted to the power to "propose ordinances or resolutions." Nelsonville City Charter §

¹ The capitalized terms used herein have the same meaning as set forth in Nelsonville's merit brief.

10.01(A). But Relators disagree with the plain meaning of Section 10.01(A), instead reading the phrase “other measure” beyond what the text says. (*See* Rel. Br. at 7) (asserting the “[i]nitiative [power] is broader than Appellants have cited” because Section 10.01 refers to “ordinance, resolution or other measure”). This is incorrect.

Under the canon of *ejusdem generis*, where “general words follow an enumeration of two or more things, they apply only to . . . things of the same general kind or class specifically mentioned.” A. Scalia & B. Garner, *Reading Law: The Interpretation of Legal Texts* 199 (2012); *see also Gabbard v. Madison Local School Dist. Bd. of Edn.*, 2021-Ohio-2067, ¶ 26 (quoting *State v. Aspell*, 10 Ohio St.2d 1 (1967), paragraph two of the syllabus).² “Ordinances or resolutions” refer to a legislative action. *E.g.*, *State ex rel. Citizen Action v. Hamilton Cty. Bd. of Elections*, 2007-Ohio-5379, ¶ 36 (“The test for determining whether the action of a legislative body is legislative or administrative is whether the action taken is one enacting a law, ordinance or regulation, or executing or administering a law, ordinance or regulation already in existence.”). Thus, the phrase “other measure” in Section 10.01 refers to a legislative action. *Cf.* O.R.C. 731.28 (statutory authority for initiative power: “Ordinances and other measures providing for the exercise of any powers of government granted by the constitution or delegated to any municipal corporation by the general assembly may be proposed by initiative petition.”).³ But, as Nelsonville explains below, legislative action, such as enactment of an ordinance—whether directly by Council or via the people’s right of initiative—cannot be effective to abolish the City Charter. Thus, the initiative

² The canon of *ejusdem generis* is applied more broadly than only statutory construction. *See, e.g. Chinnock v. Blackie*, 53 Ohio App.2d 237, 241 (8th Dist.1977) (“In the construction of laws the *ejusdem generis* rule is applied.”).

³ The overall structure of Nelsonville City Charter confirms the plain meaning of the text of Section 10.01. *See, e.g.*, Nelsonville City Charter § 4.13 (providing that the legislative powers of Council are subject to the people’s initiative and referendum powers); *id.* § 3.01 (“The City shall have all powers to which a city is entitled under the Constitution and laws of the State of Ohio[.]”).

power set forth in Article X does not, and cannot, extend to the constitutional right of the people to choose their form of government for the City of Nelsonville.

B. Relators Ignore the Fundamental Incongruity in Using an Ordinance to Abolish the City Charter.

The plain language of the City Charter indicates that the City Charter cannot be abolished via ordinance. Indeed, the City Charter provides that: “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[.]” Nelsonville City Charter § 10.01(A) (emphasis added). On its face, the City Charter allows Nelsonville to enact subsequent legislation related to a proposed legislative initiative. Here, it would not make sense for an ordinance to abolish the City Charter, as it would allow Nelsonville to pass subsequent ordinances and resolutions related to the abolition of the City Charter—the very document that Nelsonville derives its authority from.

A careful examination of the structure of Article X of the City Charter bears this out. Structurally, there is a three-step process to Article X initiatives. *First*, qualified voters “propose ordinances or resolutions to Council.” Nelsonville City Charter § 10.01(A). *Second*, only “[i]f Council fails to adopt an ordinance or resolution so proposed without any change in substance,” do the Charter initiative procedures then apply. *Id.* *Third*, assuming that the City Charter procedures apply, if those procedures are followed, then the initiative proposal will be placed on the ballot for the voters of Nelsonville. *Id.* at §§ 10.02–03; 10.04–.06.

Thus, if a proposed initiative is not a measure which Nelsonville may lawfully act on, then the proposed initiative does not fall within the scope of Article X. Again, Nelsonville, through Council, cannot enact an ordinance to abolish Nelsonville City Charter. If it did, the ordinance

would be invalid as it would conflict with the Charter. On the flip side, Council's failure to enact an ordinance to abolish the Charter is not a violation of any clear legal duty, it is actually Council's affirmative duty *not to* enact an ordinance which conflicts with the Charter.

Relators fail to distinguish *City of North Canton v. Osborne* from the matter at hand. They make much to do of the fact that there is no provision of the City Charter that explicitly addresses abolition. (Rel. Br. at 9–10). But in so arguing, Relators ignore that, by its very terms, abolishing the City Charter conflicts with the Charter. Relators also assert that Nelsonville is prohibited from considering the substance of the initiative to determine the appropriate method for determining sufficiency. (*Id.* at 18). But this is squarely within Nelsonville's authority. See *State ex rel. Werner v. Koontz*, 153 Ohio St. 325, 330–31 (1950); *City of North Canton v. Osborne*, 2015-Ohio-2942, ¶¶ 18–19 (5th Dist.). In *Werner*, the Ohio Supreme Court held that the initiative and referendum procedures outlined in a charter were not appropriate for submitting an amendment to the charter. *Werner*, at 330.⁴ Indeed, Relators dig their heels in, insisting that Section 10.02 of the City Charter is the correct and only way to present the Part Petition. (Rel. Br. at 12–13). But Nelsonville is not required to determine the sufficiency of what is functionally an Amendment to the City Charter with the distinct initiative and referendum standards. See *Werner*, at 330.

Accordingly, Nelsonville could not have considered Relators' Part Petition under the standards of Section 10.02 of the City Charter, and the trial court erred in ordering the peremptory writ.

⁴ Fatally, Relators make no alternative argument that even if Nelsonville could have considered the Part Petition under the constitutional standard, Nelsonville still should have passed the ordinance. Instead, Relators have put all their eggs in the wrong basket by arguing that only the City Charter legislative initiative procedures apply.

II. The Trial Court Did Not Afford Nelsonville a Full and Fair Opportunity to Respond to the Merits of Relators Petition for a Writ of Mandamus.

Relators put the cart before the horse. And not for the first time in this case. In essence, they argue—circularly—that simply because the trial court issued the orders that it did, Nelsonville was afforded all the due process it is entitled to. Not true.

First, Nelsonville points to inconsistencies in Relator McDonalds' testimony. Indeed, Relator McDonald's testimony changed several times regarding her knowledge of a letter issued by the Board of Elections. On direct examination, Relator McDonald testified about a letter from the Board of Elections regarding the number of valid signatures from the Part Petition. (*See* TRO Hearing Tr. at 18:6–19:20). Later, she testified that she had never seen that letter before the hearing. (*Id.* at 23:17–23). But, when asked on cross-examination, Relator McDonald changed her answer and testified that she had seen it before, but did not know when. (*Id.* at 26:24–27:19). Troublingly, Relator McDonald signed an affidavit when filing this action, stating that she reviewed the Petition for Mandamus—which included the letter discussed at the hearing. (*See* Aff. of Vicki McDonald).

Second, Relators take a “no-harm, no-foul” attitude to the inadequacy of notice that Nelsonville received for the TRO hearing. But that is not the point of the Ohio Rules of Civil Procedure. Relators failed to serve their original petition on Nelsonville before the TRO hearing. (*See* Nelsonville Br. at 10 n.3). And Relators raised issues with the notice afforded at the July 30, 2024 TRO hearing. (*See* TRO Hearing Tr. at 51:24–53:1, 59:20–24). Additionally, the trial court denied the Board of Elections' request to continue the hearing. (*See* Sept. 13, 2024 Inj. Order, at 3). Just because Nelsonville happened to learn about the mandamus action and the TRO hearing, does not mean that the trial court did not abuse its discretion in asserting that the hearing was an “all encompassing” hearing on the merits. (*Id.* at 2).

Third, Relators' assertion that it is *somehow Nelsonville's fault* that the trial court did not reissue an alternative writ after the first appeal in this case is simply absurd. Nelsonville does not waive their right to present defenses by responding to an alternative writ by timely appealing the trial court's decision. This Court noted—correctly—that although the trial court labelled the original injunction a permanent injunction, it was functionally a preliminary injunction and was therefore not a final appealable order. (Aug. 26, 2024 J. Entry, 24CA17 and 24CA22, at ¶ 19). And Nelsonville had intended to raise similar issues with the trial court's first injunction order in any merit briefing on the first appeal in this case. Nelsonville was faced with a decision following the trial court's July 31, 2024 order: appeal the decision promptly or risk waiving the issue later by complying with the trial court's legally erroneous order in the first instance.

Accordingly, the trial court abused its discretion by arbitrarily issuing a peremptory writ of mandamus without affording Nelsonville a full and fair opportunity to respond to the merits of Relators petition and present its case at a properly noticed evidentiary hearing.

III. Relators Do Not Refute the Merits of Nelsonville's Laches Argument.

Relators' focus on whether the trial court implicitly denied Nelsonville's laches argument is misplaced. The issue is not that it was presumed to be denied, but that laches is a dispositive defense in this matter. Relators do not refute this. In fact, Relators' attempt to muddy the timeline. While they assert that they only retained counsel on July 17, 2024, their attorney wrote to the Nelsonville City Attorney nearly two weeks prior, stating that he represented Relator Smith. (*Compare* Rel. Br. at 4, *with* Nelsonville Mot. to Strike, Ex. A, Ex. B).

CONCLUSION

For these reasons, and the reasons set forth in Nelsonville's initial brief, this Court should reverse the trial court's decision granting the peremptory writ.

Respectfully submitted,

/s/ Mrinali Sethi

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Mrinali Sethi (0101295)

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Counsel for Respondents

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing Brief of Appellants has been served upon the following by electronic mail in accordance with Civ. R. 5(B)(2)(f) on this 15th day of October, 2024:

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Counsel for Appellant Athens County Board of Elections

/s/ Mrinali Sethi
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Mrinali Sethi (0101295)
Jonathan E. Robe (0100698)