

**PROTEST TO CHARTER PETITION**

September 8, 2016

**To:** Meigs County Board of Elections  
113 E. Memorial Dr., Suite A  
Pomeroy, OH 45769

**Complainant:** Daniel Lantz  
40216 State Route 684  
Pomeroy, Ohio 45769

As set forth herein, I hereby file the following protest concerning the petition for the proposed County Charter for Meigs County originally submitted to the Meigs County Board of Elections on June 24, 2015. I am a qualified elector of Meigs County entitled to vote upon the proposed charter.



**Daniel Lantz**

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**1. Procedural Background.**

The Petition under protest was originally filed with the Meigs County Board of Elections on June 24, 2015. On July 2nd, 2015, in a letter to the Meigs County Board of Commissioners, the Board of Elections certified the sufficiency of the signatures on the Petition. The Board of County Commissioners concluded that this letter was insufficient to properly certify the Petition, and related this conclusion to the Board of Elections in a letter on July 9. The Board of Elections replied to the Board of County Commissioners in a letter on July 13 and clarified its certification that the Petition contained more than the required number of signatures and was

valid “as to form on the face of the petition.” However, the Board of County Commissioners determined that the deadline to certify the Petition to the Board of Elections for the purposes of calling for an election had already passed, and declined to take any further action on the Petition.

The committee for the Petition commenced litigation in the Fourth District Court of Appeals, seeking a writ of mandamus to compel the Board of County Commissioners to certify the Petition to the Board of Elections. The case eventually reached the Ohio Supreme Court, which issued its decision on September 6, 2016. The Supreme Court issued a writ of mandamus compelling the Board of County Commissioners to adopt a resolution placing the proposed charter on the November 8, 2016 ballot. See *State ex rel. Meigs Cty. Home Rule Commt. v. Meigs Cty. Bd. of Commrs.*, Slip Opinion No. 2016-Ohio-5658 at ¶ 25.

The current protest is timely in light of the fact that a protest could not have been filed any earlier. Protests may not be filed until a petition has been certified by the county commissioners to the board of elections, R.C. 307.95, and that did not occur in this instance until September 8, 2016. The Supreme Court ruled that the Meigs County Board of Commissioners erred when it declined to certify the Petition to the Board of Elections in July, 2015. This protestor, as an eligible elector in Meigs County, has a right to file a protest under R.C. 307.95(B), and this is the first opportunity that he has had to exercise that right. Furthermore, in its recent decision regarding the Petition, the Supreme Court acknowledged that the right to file such a protest had not expired despite unusual delay occasioned by the Board of County Commissioners’ decision not to certify the Petition. *State ex rel. Meigs Cty. Home Rule Commt. v. Meigs Cty. Bd. of Commrs.*, Slip Opinion No. 2016-Ohio-5658 at ¶ 20. The

Court ruled that the validity of the Petition must be determined by election officials, not the Meigs County Commissioners, and this protest is filed in keeping with that ruling.<sup>1</sup>

**2. The petition does not “provide the form of government” for the County as required by the Ohio Constitution, and is therefore invalid.**

The Petition, proposing a County Charter for Meigs County, fails to conform to the requirements set forth in the Ohio Constitution and Ohio Revised Code, and therefore must be invalidated.

Article X, Section 3 of the Ohio Constitution provides that when a county adopts a charter through initiative, “[e]very such charter shall provide the form of government.” This requirement is “the sine qua non of a valid charter initiative,” and the absence of such provisions render the petition containing the proposed charter invalid. *State ex rel. Walker v. Husted*, 144 Ohio St.3d 361, 366, 2015-Ohio-3749, 43 N.E.3d 419, 425. The Petition under protest here does not meet this essential constitutional requirement, and is therefore invalid.

A county charter petition must satisfy three elements in order to sufficiently “provide the form of government” as required by the Ohio Constitution and the Ohio Revised Code. The proposed charter must (1) “provide for the exercise of all powers vested in, and the performance of all duties imposed upon counties and county officers by law,” Ohio Constitution. Art. X, § 3, (2) “determine which of its officers shall be elected and the manner of their election,” *Id.*, and the proposed charter must also (3) “include either an elective county

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<sup>1</sup> Alternatively, the Board of Elections may hear this protest pursuant to R.C. 3501.39(A)(1)-(2), which allows for boards of elections to entertain protests “in accordance with any section of the Revised Code providing a protest procedure” or where “the petition violates any requirements established by law.” As explained in Section 2 below, the Petition violates the requirements for county charter petitions provided in the Ohio Constitution.

executive \* \* \* or an appointive county executive." R.C. 302.02. See *Walker*, 144 Ohio St.3d at 366. The proposed charter for Meigs County does not satisfy any of the requirements, and is therefore invalid.

The Petition does not provide for the exercise of any of the powers or duties imposed on counties or county officers, nor does it provide for the manner of their election. Article IV, § 1 of the proposed charter states only that:

The offices and duties of those offices, as well as the manner of election to and removal from County offices, and every other aspect of county government not prescribed by this Charter, or by amendments to it, **shall be continued without interruption or change in accord with the Ohio Constitution and the laws of Ohio that are in force at the time of the adoption of this Charter** and as they may be subsequently be modified or amended.

On its face, the Petition says nothing about the form or operation of the government of Meigs County that it purports to establish. There are no county offices prescribed, let alone any description of the duties of those offices or how they are to be filled. Therefore, the Petition does not meet the constitutional requirement to "provide the form of government," Art. X § 3, because, "[o]ne must look to sources outside the proposed charters to determine the form of government [the charter] purport[s] to establish." *Walker*, 144 Ohio St.3d at 366.<sup>2</sup>

Neither does the Petition meet the requirement of R.C. 302.02 that a proposed county charter "shall include either an elective county executive \* \* \* or an appointive county executive." The Petition makes no provision for either an elective or appointive executive, and

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<sup>2</sup> See also *State ex rel. Jones v. Husted*, Slip Opinion No. 2016-Ohio-5681 (Pfeifer, J., concurring in the judgment) at ¶ 15 ("In my view, the charter petition at issue fails to even come close to being a legitimate effort to create a charter form of county government. For legitimate examples, relators could consult the Cuyahoga County and Summit County charters.").

therefore fails to satisfy this requirement of all proposed county charters. *See Walker*, 144 Ohio St.3d at 366.

The Ohio Supreme Court has held that those proposed county charters:

purporting to maintain the status quo on matters of county offices, officers, and their duties and manner of election do not "provide the form of government of the county" or "determine which of its officers shall be elected and the manner of their election" \* \* \*and therefore they do not satisfy the legal prerequisites

*Walker*, 144 Ohio St.3d at 366 (quoting Ohio Constitution, Art. X, § 3). Article IV, § 1 of the Petition proposing a County Charter for Meigs County is identical to the provision that was fatal to the charter petitions at issue in *Walker*. *See Id.* at 366. The Petition therefore must be invalidated, because it fails to meet the constitutional and statutory requirements of proposed charter petitions.