

IN THE SUPREME COURT OF OHIO

State of Ohio *ex rel.* One Person One Vote

545 East Town Street
Columbus, OH 43215

State of Ohio *ex rel.* Jeniece Brock

1463 Apple Court
Akron, OH 44306

State of Ohio *ex rel.* Brent Edwards

4504 Whetsel Avenue
Cincinnati, OH 45227

and

State of Ohio *ex rel.* Christopher Tavenor

1137 King Avenue
Columbus, OH 43212

Relators,

v.

**Frank LaRose, in his official capacity as
Ohio Secretary of State**

22 North Fourth St., 16th Floor
Columbus, OH 43215

Respondent.

Case No. _____

Original Action in Mandamus Pursuant to
Article XVI, Section 1 of the Ohio
Constitution

Expedited Election Case
Pursuant to Supreme Court Rule of
Practice 12.08

Peremptory and Alternative Writs
Requested

**VERIFIED COMPLAINT UNDER ARTICLE XVI, SECTION 1 OF THE OHIO
CONSTITUTION AND FOR WRIT OF MANDAMUS**

David R. Fox (Pro Hac Vice Pending)
Emma Olson Sharkey (Pro Hac Vice Pending)
Jyoti Jasrasaria (Pro Hac Vice Pending)
Samuel T. Ward-Packard (Pro Hac Vice Pending)
ELIAS LAW GROUP LLP
250 Massachusetts Ave. NW, Ste. 400
Washington, DC 20002
dfox@elias.law
eolsonsharkey@elias.law
jjasrasaria@elias.law
swardpackard@elias.law
T: (202) 968-4490
F: (202) 968-4498

Donald J. McTigue (0022849)
Counsel of Record
J. Corey Colombo (0072398)
Katie I. Street (0102134)
MCTIGUE & COLOMBO LLC
545 East Town Street
Columbus, OH 43215
dmctigue@electionlawgroup.com
ccolombo@electionlawgroup.com
kstreet@electionlawgroup.com
T: (614) 263-7000
F: (614) 368-6961

Counsel for Relators

Dave Yost (0056290)
OHIO ATTORNEY GENERAL
30 E. Broad Street
Columbus, OH 43215
Dave.Yost@ohioago.gov
T: (614) 466-2872
F: (614) 728-7592

Counsel for Respondent

This original action under Article XVI, Section 1 of the Ohio Constitution and in mandamus is brought in the name of the State of Ohio on the relation of One Person One Vote, Jeniece Brock, Brent Edwards, and Christopher Tavenor (collectively, “Relators”). Amended Substitute Senate Joint Resolution Number 2’s setting of an August 8, 2023, special election is contrary to law. Relators request that the Court issue a writ of mandamus directing Respondent Ohio Secretary of State Frank LaRose to (i) remove the constitutional amendment proposed by Amended Substitute Senate Joint Resolution Number 2 from the August 8, 2023, special election ballot and (ii) instruct county election officials not to proceed with the special election.

INTRODUCTION

1. “All political power is inherent in the people.” Ohio Constitution, Article I, Section 2. And in their Constitution, the people of Ohio have “reserve[d] to themselves the power ... independent of the general assembly to propose amendments to the constitution and to adopt or reject the same at the polls.” *Id.*, Article II, Section 1.

2. For more than a century, the people have exercised that reserved power by simple majority vote.

3. The joint resolution underlying this action, Amended Substitute Senate Joint Resolution Number 2 (“S.J.R. 2”), seeks to hamstring Ohio’s democracy by amending the Constitution to increase the popular vote threshold to adopt constitutional amendments from a simple majority to a sixty percent supermajority (“the Amendment”). [Exhibit 1.]

4. Such changes are unpopular with voters. Similar measures failed in South Dakota and Arkansas when voters rejected them during primary and general elections in 2022.

5. In an apparent effort to avoid a similar fate for the Amendment, S.J.R. 2 purports to submit the Amendment to the voters at an August 8, 2023, special election.

6. Turnout in August special elections is typically anemic. It was particularly low last

summer, when just 8.01% of registered electors cast ballots in the 2022 statewide August primary—the lowest turnout for a primary election in the Secretary of State’s modern records. [Exhibit 2.]

7. In response to that abysmal turnout and the extraordinary burdens August elections impose on Ohio’s election workers, the General Assembly voted just five months ago to abolish statewide August elections entirely. The Revised Code now permits only local August elections, and only in localities that are under a fiscal emergency.

8. The General Assembly’s attempt to put the Amendment before the people in a low-turnout August special election is unlawful. The Revised Code prescribes an unambiguous schedule for elections. It expressly limits special elections on constitutional amendments to November, March (coinciding with presidential primaries), or May. It does not permit statewide August elections for any purpose.

9. The Amendment’s proponents in the General Assembly recognized this fatal flaw in their scheme. They made several attempts to amend the Revised Code to reauthorize August special elections on constitutional amendments. But all those efforts failed, leaving no legal basis for submission of the Amendment to the voters in an August election.

10. This Court should not countenance this cynical attempt to undermine a century-old pillar of Ohio’s democracy by means of an illegal election. It should grant the writ.

NATURE OF THE ACTION AND JURISDICTION

11. This is an original action commenced under Article XVI, Section 1 and Article IV, Section 2(B)(1)(b) of the Ohio Constitution and Chapter 2731 of the Ohio Revised Code.

12. S.J.R. 2’s setting of an August special election is contrary to law. Accordingly, Relators seek a writ of mandamus directing Respondent Ohio Secretary of State Frank LaRose to (i) remove the Amendment proposed in S.J.R. 2 from the August 8, 2023, ballot, and (ii) instruct

the county election officials under his supervision not to proceed with the special election on that Amendment.

13. This Court has jurisdiction over this action under Article IV, Section 2(B)(1)(b), which gives the Court original jurisdiction in mandamus actions, and under Article XVI, Section 1, which gives the Court original and exclusive jurisdiction in all cases “challenging the adoption or submission of a proposed constitutional amendment to the electors.”

14. Relators affirmatively allege that they have acted with the utmost diligence, that there has been no unreasonable delay or lapse of time in asserting their rights, and that there is no prejudice to Respondent. Specifically, the General Assembly enacted S.J.R. 2 on the evening of May 10, 2023, the Secretary announced that he had instructed the county election boards to begin immediate preparations for an August 8 election that night, and this action is being filed on May 12.

15. Because this action is being filed fewer than 90 days before August 8, 2023, it is an expedited election case subject to the schedule set out in Supreme Court Rule of Practice 12.08.

PARTIES

16. Relator One Person One Vote is an Ohio corporation operating under Section 501(c)(4) of the Internal Revenue Code. It comprises Ohio electors and taxpayers who oppose the Amendment.

17. One Person One Vote will be injured if the Amendment is on the ballot in an August 8 special election. Specifically, One Person One Vote will have to expend additional resources to motivate voters to turn out in opposition to the Amendment in August, when most electors will have no other motivation to vote.

18. Relators Jeniece Brock, Brent Edwards, and Christopher Tavenor are residents and qualified electors of the State of Ohio who oppose the Amendment.

19. Relators Jeniece Brock, Brent Edwards, and Christopher Tavenor will be injured if the Amendment is submitted to the people on August 8, both as individual Ohio electors and taxpayers and as organizers who support turnout efforts for citizen-led initiatives.

20. Respondent Frank LaRose is the Ohio Secretary of State and the State's chief election officer.

21. Under Sections 3501.05(G) and (H) of the Ohio Revised Code, Secretary LaRose is charged with determining and prescribing "the forms of ballots ... required by law" for use in elections and with preparing "the ballot title or statement to be placed on the ballot for any proposed ... amendment to the constitution to be submitted to the voters of the state."

22. In addition, under Section 3501.05(M), Secretary LaRose is charged with compelling "the observance by election officers in the several counties of the requirements of the election laws." Pursuant to that authority, Secretary LaRose has already directed election officials to "begin preparations immediately" for an August 8 special election. [Exhibit 3.]

23. Secretary LaRose is not vested with authority to determine the constitutionality of any law. Secretary LaRose's election administration duties with respect to S.J.R. 2 are purely ministerial.

LEGAL BACKGROUND

24. The Ohio Constitution and the Revised Code operate together to authorize elections to approve or reject constitutional amendments proposed by the General Assembly only on the date of the annual general election in November or on the date of the annual primary election in either March or May.

25. Article XVI of the Ohio Constitution authorizes the General Assembly to propose amendments to the Constitution by vote of "three-fifths of the members elected to each house."

26. Article XVI further authorizes the General Assembly to submit such amendments

to the people “at either a special or a general election as the General Assembly may prescribe.”

27. The General Assembly has prescribed a comprehensive statutory scheme governing when elections may be held, including elections on constitutional amendments it proposes.

28. Revised Code Section 3501.02 provides that proposed constitutional amendments submitted by the general assembly to the voters of the state may be submitted at one of two elections: (i) at “the general election” at least 90 days after filing, or (ii) “at a special election occurring on the day in any year specified by division (E) of section 3501.01 of the Revised Code for the holding of a primary election, when a special election on that date is designated by the general assembly in the resolution adopting the proposed constitutional amendment.”

29. Revised Code Section 3501.01(A) defines the general election to mean “the election held on the first Tuesday after the first Monday in each November.”

30. Revised Code Section 3501.01(E) provides for primary elections that “shall be held on the first Tuesday after the first Monday in May of each year” except in presidential years, when they “shall be held on the third Tuesday after the first Monday in March.”

31. Thus, the two options that the Revised Code provides for submission of a constitutional amendment to the voters are (i) the general election in November or (ii) a primary election in May or (in presidential years) March.

32. The Revised Code prohibits holding a statewide special election in August. Section 3501.01(D) provides that “[a] special election may be held *only* on the first Tuesday after the first Monday in May or November, on the first Tuesday after the first Monday in August *in accordance with section 3501.022 of the Revised Code,*” or in accordance with “a particular municipal or county charter,” except in presidential years when it may be held in March instead of May. (Emphasis added.)

33. Revised Code Section 3501.022, in turn, provides only that “a *political subdivision or taxing authority* may hold a special election on the first Tuesday after the first Monday in August,” and then only if the political subdivision is “under a fiscal emergency” or the taxing authority “is a school district” and is “under a fiscal emergency.” Section 3501.022 does not authorize a statewide August special election under any circumstances.

34. The restrictions on August elections in Sections 3501.01(D) and 3501.022 were enacted less than five months ago, in December 2022 in Substitute House Bill 458. [Exhibit 4.] Substitute House Bill 458 took effect on April 7, 2023. [Exhibit 5.]

35. Secretary LaRose supported Substitute House Bill 458 on the grounds that August special elections “aren’t good for taxpayers, election officials, voters or the civic health of our state.” [Exhibit 6.]

36. Together, Sections 3501.01, 3501.022, and 3501.02 establish a complete and exclusive set of criteria for calling special elections to approve or reject constitutional amendments proposed by the General Assembly. Such elections may be called on three dates: (i) the date of the November general election; (ii) the date of the May primary in a non-presidential year; or (iii) the date of the March primary in a presidential year.

37. This Court has long held that the “statute law of the state can neither be repealed nor amended by a joint resolution of the general assembly.” *State ex rel Attorney General v. Kinney*, 56 Ohio St. 721, 724, 47 N.E. 569 (1897). And although the Court previously allowed the General Assembly to call a special election by joint resolution without statutory authorization, it did so under a different statutory regime—one that did not conflict with the language of the joint resolution. *State ex rel. Foreman v. Brown*, 10 Ohio St.2d 139, 142, 226 N.E.2d 116 (1967).

38. The General Assembly has amended Revised Code Chapter 3501 several times

since *Foreman* was decided: first in the year following the *Foreman* decision, and most recently just five months ago. In doing so, the General Assembly has made clear that the election calendar in Section 3501.02 is exclusive and exhaustive.

FACTS

1. The General Assembly unsuccessfully attempted to reinstate a statutory August special election to facilitate passage of the Amendment.

39. In March 2023, the General Assembly began to consider S.J.R. 2, the joint resolution proposing the Amendment. In connection with that consideration, both houses of the General Assembly introduced new bills undermining Substitute House Bill 458's recently enacted prohibition on August special elections, in an effort to allow the Amendment to be submitted to the voters at precisely the sort of low-turnout August special election that the General Assembly had just outlawed.

40. If passed, Senate Bill 92 or House Bill 144 would have revised Section 3501.022 to permit August special elections for the purpose of submitting statewide ballot issues to the people. [Exhibits 7, 8.] One version of Senate Bill 92 also would have called an election on August 8, 2023, specifically for the purpose of submitting the Amendment, and appropriated funds for that election. [Exhibit 7.]

41. Although Senate Bill 92 passed the Senate, it died in a House committee. And House Bill 144 never passed out of committee at all.

42. Current and former Ohio officials opposed to Senate Bill 92 and House Bill 144 cited Substitute House Bill 458 and made arguments against an August election similar to those that Secretary LaRose and others had made mere months earlier.

43. Former Republican Governor and Secretary of State Taft sent a letter to the General Assembly opposing both Senate Bill 92 and S.J.R. 2, remarking that as a former Secretary of State

he “was all too aware that August special elections are too costly for the very low voter turnout that they attract.” [Exhibit 9.] Former Governors Kasich, Strickland, and Celeste also objected to the set of bills. [Exhibit 10.]

44. Five of Ohio’s seven living former attorneys general—including two Republicans and three Democrats—warned in a letter to the General Assembly that “changes in fundamental constitutional arrangements should not be made ... without the opportunity for participation of those most intimately affected by the constitution—the people. Clearly, that has not happened in this rush to revise our constitution.” [Exhibit 11.]

45. And the Ohio Association of Election Officials, the bipartisan organization that represents the interests of the hardworking local officials who run Ohio’s elections, took the extraordinary step of voting to formally oppose the August election. The Association’s spokesperson decried the burden an August election would impose on taxpayers and warned that an August special election would make “for a very hectic schedule and a very difficult operation.” [Exhibit 12.]

2. After failing to set an August 2023 special election by statute, the General Assembly passed S.J.R. 2 without any statutory basis for its purported August election date.

46. Although the General Assembly failed to pass legislation setting an election date for S.J.R. 2, both houses adopted S.J.R. 2 itself.

47. The Senate adopted S.J.R. 2 on April 19, 2023. [Exhibit 1.]

48. The House adopted S.J.R. 2 on May 10, 2023. [Exhibit 1.] The Senate immediately concurred in amendments made by the House, and S.J.R. 2 was filed that evening with Secretary LaRose. [Exhibit 1.]

49. S.R.J. 2 submits to the electors of the state an amendment to Sections 1b, 1e, and 1g of Article II and Sections 1 and 3 of Article XVI of the Ohio Constitution.

50. If ratified, the Amendment would make three changes to Ohio’s constitutional processes governing future amendments.

51. First, the Amendment would increase the threshold for ratification of future amendments by the people of Ohio from a simple majority to sixty percent.

52. Second, the Amendment would increase the number of counties from which signatures must be collected upon a constitutional amendment initiative petition from one-half of the state’s counties to all counties.

53. Third, the Amendment would eliminate amendment initiative petitioners’ opportunity to cure a petition found insufficient by filing additional signatures.

54. S.J.R. 2 provides that upon ratification, the increased threshold shall go into force immediately.

55. S.J.R. 2 provides that the proposed Amendment shall be submitted to the electors at a special election on August 8, 2023, and purports to call such an election “pursuant to the authority provided by Section 1 of Article XVI.” But it does not assert any statutory basis for such an election or purport to repeal or amend any aspect of Revised Code Sections 3501.01, 3501.022, or 3501.02.

COUNT I – ARTICLE XVI AND MANDAMUS

56. Relators restate and incorporate by reference all prior paragraphs as though fully set forth in this paragraph.

57. Submitting the Amendment to the people in an August 8, 2023, special election would violate the Constitution and the laws of the State of Ohio.

58. The Ohio Constitution, Article XVI, Section 1, authorizes the General Assembly to propose constitutional amendments, and to prescribe the submission of such amendments to the people at general or special elections.

59. The General Assembly has exercised its authority to prescribe the manner in which constitutional amendments are submitted to the people by enacting a statutory scheme that provides for a comprehensive and exclusive annual election calendar.

60. Submitting the Amendment on the ballot on August 8, 2023, would violate the statutory scheme governing Ohio elections in two separate ways.

61. First, because of the statutory amendments enacted by the General Assembly and signed by the Governor *just five months ago*, Section 3501.01(D) provides that a special election may be held on the first Tuesday after the first Monday in August *only* in accordance with the newly created Section 3501.022. And Section 3501.022 authorizes such elections *only* when called by a political subdivision or taxing authority in a fiscal emergency.

62. The General Assembly's attempt to call a statewide special election on August 8 violates Sections 3501.01(D) and 3501.022 because the State of Ohio is not a political subdivision or taxing authority as defined in Section 3501.022 and is not in a fiscal emergency as there defined either.

63. Second, Section 3501.02 sets the "time for holding" elections and provides that elections "shall be held" according to the schedule set out in that Section's individual divisions.

64. Division (E) of Section 3501.02 provides two options for elections to approve or reject constitutional amendments proposed by the General Assembly.

65. The first option is for the amendment election to be held on the same date as the November "general election."

66. The second option is for the amendment election to be held on the same date as the annual primary election (in either March or May), "when a special election on that date is designated by the general assembly in the resolution adopting the proposed constitutional

amendment.”

67. Section 3501.02 thus specifically contemplates whether and when the General Assembly may designate by joint resolution a date other than the general election date for a constitutional amendment special election and provides only one option—the date of the annual primary election.

68. Because August 8, 2023, is neither the date of the 2023 general election nor the date of the 2023 primary election, submitting the Amendment to the voters on that date violates Section 3501.02(E)’s mandatory criteria for the General Assembly’s designation of elections.

69. Having enacted these statutes, the General Assembly is bound by them unless and until they are amended using any of the several mechanisms the Ohio Constitution provides.

70. A joint resolution may not repeal or amend a statute. *Kinney*, 56 Ohio St. at 724. When a joint resolution and a statute conflict, this Court’s precedents instruct that the joint resolution’s unlawful provisions are void. *Id.*; *cf. Foreman*, 10 Ohio St.2d at 142 (holding that General Assembly could call special election without statute where “there [wa]s no conflict between any statute and the action taken by the General Assembly in [the joint resolution] in calling a special election”).

71. The General Assembly’s calling of an August 8, 2023, special election and its submission of the Amendment at that election are void because those actions violate the Revised Code’s express terms.

72. This Court will grant a writ of mandamus when a relator establishes (i) a clear legal right to the requested relief, (ii) a clear legal duty on the part of the respondent to provide it, and (iii) the lack of an adequate remedy in the ordinary course of law.

73. Relators have a clear legal right to the requested relief because submission of the

Amendment to the people on August 8, 2023, would violate the express requirements of the above provisions of the Revised Code.

74. Respondent Secretary LaRose has a clear legal duty to provide the requested relief because he is charged with determining and prescribing “the forms of ballots ... required by law” and with compelling “the observance by election officers in the several counties of the requirements of the election laws.” R.C. 3501.05(G), (H), (M).

75. Relators lack an adequate remedy at law because this Court has original and exclusive jurisdiction of the subject matter of the action and has long treated mandamus as the only available remedy when an elector seeks to strike an unlawfully submitted constitutional amendment from the ballot.

PRAYER FOR RELIEF

Accordingly, Relators respectfully request that this Court:

A. Issue a peremptory writ of mandamus directing Respondent Secretary LaRose to remove the Amendment from the August 8, 2023, ballot and further directing the Secretary to rescind Directive 2023-07 and instruct the county election officials under his authority not to proceed with the special election on that amendment;

B. In the alternative, if the Court requires further evidence or briefing, issue an alternative writ of mandamus and order an expedited briefing schedule on the same;

C. Retain jurisdiction of this action to render any and all further orders that the Court may from time to time deem appropriate; and

D. Grant such other or further relief the Court deems appropriate, including, but not limited to, an award of Relators’ reasonable costs.

Respectfully submitted,

/s/ Donald J. McTigue
Donald J. McTigue (0022849)
Counsel of Record
J. Corey Colombo (0072398)
Katie I. Street (0102134)
MCTIGUE & COLOMBO LLC
545 East Town Street
Columbus, OH 43215
dmctigue@electionlawgroup.com
ccolombo@electionlawgroup.com
kstreet@electionlawgroup.com
T: (614) 263-7000
F: (614) 368-6961

David R. Fox (Pro Hac Vice Pending)
Emma Olson Sharkey (Pro Hac Vice Pending)
Jyoti Jasrasaria (Pro Hac Vice Pending)
Samuel T. Ward-Packard (Pro Hac Vice Pending)
ELIAS LAW GROUP LLP
250 Massachusetts Ave. NW, Ste. 400
Washington, DC 20002
dfox@elias.law
eolsonsharkey@elias.law
jjasrasaria@elias.law
swardpackard@elias.law
T: (202) 968-4490
F: (202) 968-4498

Counsel for Relators