

**IN THE SUPREME COURT OF OHIO**

**State of Ohio *ex rel.* One Person One Vote,  
*et al.*,**

**Relators,**

**v.**

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

**Respondent.**

**Case No. 2023-0630**

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

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**RELATORS' MERIT BRIEF**

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## INTRODUCTION

Just five months ago, the General Assembly amended Ohio law to prohibit statewide elections in August under any circumstances. Now, it has passed a joint resolution calling for just such an election, in open violation of the Revised Code. And instead of following Ohio law, Secretary LaRose is already taking steps to carry out the illegal election. This Court must intervene and uphold the rule of law by stopping the election.

The subject of the illegal election is a proposed constitutional amendment that would extinguish Ohioans' right to amend their Constitution by simple majority vote. Ohioans have held that right since 1913. But the joint resolution underlying this action, Amended Substitute Senate Joint Resolution Number 2 ("S.J.R. 2"), proposes an amendment that would increase the popular vote threshold to adopt constitutional amendments to a sixty percent supermajority ("the Amendment"). The Amendment would diminish Ohioans' power over their own Constitution and undermine a democratic order that has served Ohio well for over a century.

Apparently aware that Ohioans are unlikely to broadly agree to cede their power, the General Assembly is attempting to submit the Amendment to voters in a low-turnout August statewide special election, of the very sort that the General Assembly voted just five months ago to abolish. Such an election is now clearly 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 expressly prohibits statewide August elections for any purpose. And it expressly forbids public officials from conducting elections other than in the time, place, and manner prescribed by the Revised Code.

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. Allowing the election to proceed regardless would mean that the General Assembly may override enacted statutes governing elections with a mere joint resolution. That has never been the law.

This Court should not countenance the General Assembly’s cynical attempt to undermine a century-old pillar of Ohio’s democracy by means of an illegal election. For the reasons below, it should grant the writ.

### STATEMENT

**I. Just five months ago, the General Assembly passed, and the Governor signed, a bill ending statewide August special elections.**

In December 2022, the General Assembly passed Substitute House Bill 458 (“H.B. 458”), and Governor DeWine signed it soon after. H.B. 458 revised Section 3501.01(D) of the Revised Code to provide that special elections “may be held only on the first Tuesday after the first Monday in May [or, in presidential years, March] 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.” (RELATORS\_0013). H.B. 458 also created the new Section 3501.022, which specifies the only circumstances under which a special election may be held in August. That is:

A political subdivision or taxing authority may hold a special election on the first Tuesday after the first Monday in August for an office, question, or issue if the political subdivision is under a fiscal emergency under section 118.03 of the Revised Code, or the taxing authority that is a school district is under a fiscal emergency under division (B) of section 3316.03 of the Revised Code, at the time the board of elections certifies the office, question, or issue for placement on the ballot for that special election.

(RELATORS\_0017). H.B. 458 thus eliminated statewide August elections entirely, restricting special elections in August to local elections called by political subdivisions in fiscal emergencies.

(RELATORS\_0091, 0106).

Burdens on taxpayers and a long history of low turnout in August elections motivated H.B. 458's changes to Ohio's election calendar. Turnout in the August 2022 primary election was particularly feeble, at just 8.01% of registered electors—the lowest turnout for a primary election in the Secretary of State's modern records. (RELATORS\_0111). Secretary LaRose, a strong proponent of H.B. 458, criticized August elections in the run-up to that bill's passage, remarking that such elections “aren't good for taxpayers, election officials, voters or the civic health of our state.” (RELATORS\_0114). Low turnout, he explained, “means just a handful of voters end up making big decisions. ... This isn't how democracy is supposed to work.” (RELATORS\_0117).

## **II. The General Assembly tried but failed to reinstate statewide August special elections to facilitate passage of the Amendment.**

In March 2023, the General Assembly took up S.J.R. 2, the joint resolution proposing the Amendment. At the same time, legislators introduced new bills in both houses—Senate Bill 92 and House Bill 144—that, if passed, would have revised Section 3501.022 to permit August special elections for the purpose of submitting statewide ballot issues to the people. (RELATORS\_0119–26). 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. (RELATORS\_0120–22).

Current and former Ohio officials who opposed Senate Bill 92, House Bill 144, and S.J.R. 2 cited H.B. 458's recent passage to argue against the August election. They echoed the concerns Secretary LaRose had voiced just a few months prior. Former Republican Governor and Secretary of State Taft, for instance, 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.” (RELATORS\_0127). Former Governors Kasich, Strickland, and Celeste objected to the set of bills on similar grounds.

(RELATORS\_0129–35). Five of Ohio’s seven living former attorneys general—including Republican Attorneys General Montgomery and Petro, and Democratic Attorneys General Cordray, Fisher, and Rogers—took the same view, warning 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.” (RELATORS\_0142). 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.” (RELATORS\_0145).

This widespread, bipartisan chorus of opposition was effective in stopping the companion bills to S.J.R. 2. Senate Bill 92 passed the Senate but died in a House committee. And House Bill 144 never passed out of committee at all. As a consequence, the post-H.B. 458 provisions of the Revised Code governing special elections—including the prohibition on statewide August elections—remain law, and they may only be changed by duly enacted legislation. *See infra* Argument, Part II.

### **III. The General Assembly called an August 8 special election without identifying any statutory authorization.**

Though the General Assembly failed to pass legislation prescribing a statutory election date for S.J.R. 2, both houses adopted S.J.R. 2 itself. The Senate adopted S.J.R. 2 on April 19. (RELATORS\_0007). The House amended and adopted S.J.R. 2 on May 10. (RELATORS\_0007). The Senate then immediately concurred in the House amendments, and S.J.R. 2 was filed with Secretary LaRose that evening. (RELATORS\_0007).



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. If ratified, the Amendment would make three changes to Ohio’s constitutional processes governing future amendments. First, the Amendment would increase the threshold for ratification of future amendments by the people of Ohio from a simple majority to a sixty percent supermajority. 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. Third, the Amendment would eliminate amendment initiative petitioners’ opportunity to cure a petition found insufficient by filing additional signatures. S.J.R. 2 provides that upon ratification, the increased threshold shall go into force immediately, and the changes to the petition process shall apply to petitions filed on or after January 1, 2024.

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 provision of the Revised Code.

#### **IV. Secretary LaRose began preparations for the August election, and Relators sued.**

Secretary LaRose announced his intention to conduct the August 8 election called by S.J.R. 2 the same evening it passed. His office is engaged in ongoing preparations for that election, as are the county boards of elections under his authority. (RELATORS\_0147–48).

Relators filed this original action in mandamus on May 12. Relator One Person One Vote is an Ohio corporation operating under Section 501(c)(4) of the Internal Revenue Code. Verified Compl. ¶ 16. It represents Ohio electors and taxpayers who oppose the Amendment. *Id.* One Person One Vote anticipates that it 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. *Id.* ¶ 17. Relators Jeniece Brock, Brent Edwards, and Christopher Tavenor are residents and qualified, registered electors of the State of Ohio who oppose the Amendment. (RELATORS\_0149–54). They intend to organize and vote against it. (RELATORS\_0149–54).

### LEGAL STANDARD

“A relator seeking a writ of mandamus must establish (1) a clear legal right to the requested relief, (2) a clear legal duty on the part of the respondent official or governmental unit to provide it, and (3) the lack of an adequate remedy in the ordinary course of the law.” *State ex rel. Manley v. Walsh*, 142 Ohio St.3d 384, 2014-Ohio-4563, 31 N.E.3d 608, ¶ 18.

### ARGUMENT

#### **I. Proposition of Law 1: The Revised Code does not authorize an August 8, 2023, special election to approve or reject the Amendment.**

Conducting an August 8 election on the Amendment violates the Revised Code. The General Assembly has enacted, and the Governor has signed, a comprehensive set of laws prescribing the state’s election calendar. Those laws unambiguously foreclose a statewide August 8 election on the Amendment in three ways. *First*, Sections 3501.01(D) and 3501.022 entirely prohibit statewide August special elections and allow August elections only for certain local governments in fiscal crisis. *Second*, Sections 3501.01 and 3501.02 expressly provide that constitutional amendments proposed by the General Assembly may be put to the people only in March, May, or November, rather than August. *Third*, Section 3501.40 prohibits public officials—including the Secretary and members of the General Assembly—from causing an election to be conducted other than in “the time, place, and manner prescribed by the Revised Code.”

#### **A. Sections 3501.01(D) and 3501.022 prohibit statewide August special elections of any sort.**

The Revised Code flatly prohibits holding a statewide election in August for any reason.

General elections are always held “on the first Tuesday after the first Monday in each November.” R.C. 3501.01(A). And as amended just five months ago by H.B. 458, Section 3501.01(D) provides that a special election “may be held *only* on”:

- the first Tuesday after the first Monday in November;
- the first Tuesday after the first Monday in March in non-presidential years or the third Tuesday after the first Monday in May in presidential years;
- “the first Tuesday after the first Monday in August in accordance with section 3501.022 of the Revised Code,” or;
- “the day authorized by a particular municipal or county charter for the holding of a primary election.”

(Emphasis added.)<sup>1</sup> Thus, an August special election may be held *only* “in accordance with Section 3501.022.”

Section 3501.022, in turn, authorizes August special elections only for “a political subdivision or taxing authority,” and only if the political subdivision is “under a fiscal emergency” or the taxing authority “is a school district ... under a fiscal emergency.”<sup>2</sup> Section 3501.022 makes

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<sup>1</sup> Section 3501.01(D) provides, in full:

“Special election” means any election other than those elections defined in other divisions of this section. 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 on the day authorized by a particular municipal or county charter for the holding of a primary election, except that in any year in which a presidential primary election is held, no special election shall be held in May, except as authorized by a municipal or county charter, but may be held on the third Tuesday after the first Monday in March.

<sup>2</sup> Section 3501.022 provides, in full:

(A) A political subdivision or taxing authority may hold a special election on the first Tuesday after the first Monday in August for an office, question, or issue if the political subdivision is under a fiscal emergency under section 118.03 of the Revised Code, or the taxing authority that is a school district is under a fiscal emergency under division (B) of section 3316.03 of the Revised Code, at the time the board of elections certifies the office, question, or issue for placement on the ballot for

no allowance for statewide elections.

“An unambiguous statute is to be applied, not interpreted.” *State v. Hairston*, 101 Ohio St.3d 308, 2004-Ohio-969, 804 N.E.2d 471, ¶ 13 (quoting *Sears v. Weimer*, 143 Ohio St. 312, 313, 55 N.E.2d 413 (1944)). Sections 3501.01(D) and 3501.022 are unambiguous and leave no interpretive room—the Revised Code prohibits statewide August elections, including the special election called by S.J.R. 2.

**B. Sections 3501.01 and 3501.02 authorize the submission of a proposed constitutional amendment to the people only in May or November, not August.**

Moreover, a separate provision of the Revised Code expressly governs when proposed constitutional amendments may be submitted to the people, and it does not allow submission in August. Section 3501.02(E) provides that the General Assembly may submit proposed constitutional amendments to the electors at one of two elections: either (i) “the general election” at least ninety 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.”<sup>3</sup> Section 3501.01 defines the key terms

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that special election.

(B) The deadlines applicable to a special election held by a political subdivision or taxing authority under division (A) of this section shall be the same as the deadlines specified to place the office, question, or issue on the ballot on the day of a primary or general election.

(C) The entire cost of a special election held under division (A) of this section shall be charged to the political subdivision or taxing authority in accordance with division (D) of section 3501.17 of the Revised Code.

<sup>3</sup> Section 3501.02(E) provides, in full:

General elections in the state and its political subdivisions shall be held as follows:

...

(E) Proposed constitutional amendments or proposed measures submitted by the general assembly

underlying both options. Specifically, Section 3501.01(A) provides that the general election is “the election held on the first Tuesday after the first Monday in each November.” And 3501.01(E) provides for a primary election that “shall be held on the first Tuesday after the first Monday in May of each year” except in presidential years, when it “shall be held on the third Tuesday after the first Monday in March.” The current year is not a presidential year, meaning Sections 3501.01 and 3501.02 authorize special elections to approve or reject constitutional amendments only in May or November 2023.

The election calendar set out in Section 3501.02 is mandatory and comprehensive by its plain terms. Section 3501.02’s first clause states flatly that “[g]eneral elections in the state and its political subdivisions *shall* be held as follows[.]” (Emphasis added.) The word “shall,” this Court’s precedents instruct, “is mandatory.” *State ex rel. Howard v. Turner*, 156 Ohio St.3d 285, 2019-Ohio-759, 125 N.E.3d 875, ¶ 6. Where, as here, the introductory clause of a statute uses mandatory “shall” and a colon, and then a subdivision—here, Division (E)—creates two options each introduced with discretionary “may,” it follows that the body vested with discretion may choose either of the listed options *but no other*. To read the statute otherwise would deprive the mandatory *shall* of any effect. And such a reading would conflict with nearly half a century of practice: every single amendment election since 1967, when the option was added to designate a special election date other than the general election date, has been held on one of the two dates that Division (E)

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or by initiative or referendum petitions to the voters of the state at large may be submitted to the general election in any year occurring at least sixty days, in case of a referendum, and ninety days, in the case of an initiated measure, subsequent to the filing of the petitions therefor. Proposed constitutional amendments submitted by the general assembly to the voters of the state at large may be submitted 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.

expressly provides for.<sup>4</sup>

Moreover, the structure of Division (E) itself confirms that the two options it sets out are exhaustive. That Division uses a familiar default and alternative structure to constrain the General Assembly’s options for submitting a constitutional amendment to the electors. The first sentence of Division (E) sets out the default: submission at the next general election occurring at least ninety days after filing. The second sentence authorizes the alternative: submission at the annual primary election. And the second sentence provides the mechanism by which the General Assembly may elect this alternative: by designating the primary election date “in the resolution adopting the proposed constitutional amendment.” Under the negative-implication canon of statutory construction, which this Court often employs, it follows that the General Assembly may *not* designate some other date by the same mechanism. *See State v. Droste*, 83 Ohio St.3d 36, 39, 697 N.E.2d 620 (1998) (“Under the general rule of statutory construction *expressio unius est exclusio alterius*, the expression of one or more items of a class implies that those not identified are to be excluded.”); Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* § 10 (2012) (discussing the canon). As Scalia and Garner explain, the doctrine “properly applies” when “the thing specified[] can reasonably thought to be an expression of *all* that shares in the grant or prohibition involved.” Scalia & Garner § 10. Division (E) passes that test. It sets out the options for submitting a proposed amendment to the voters, appears in the context of a statute that sets out the overall election calendar, and expressly contemplates the General Assembly’s designating a special election date by joint resolution. Because Division (E) does not expressly authorize submission of constitutional amendments in August elections, it forbids such

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<sup>4</sup> The website Ballotpedia.org maintains comprehensive year-by-year lists of state ballot measures, election dates, and results. *See, e.g.*, 2023 ballot measures, Ballotpedia, [https://ballotpedia.org/2023\\_ballot\\_measures](https://ballotpedia.org/2023_ballot_measures) (last accessed May 18, 2023). A review of those lists indicates that every constitutional amendment submitted to the people of Ohio from 1967 to the present was submitted at one of the two elections expressly provided for in Section 3501.02(E).

submission.

Statutes allocating responsibility over routine election-administration matters further confirm that the two options provided by Division (E) are meant to be comprehensive. Section 3509.01, for instance, assigns the county boards of elections the responsibility to provide absentee ballots to absentee voters. It specifies that the boards “shall provide absent voter’s ballots for use at every primary and general election, or special election *to be held on the day specified by division (E) of section 3501.01 of the Revised Code for the holding of a primary election*, designated by the general assembly for the purpose of submitting constitutional amendments proposed by the general assembly to the voters of the state.” R.C. 3509.01(A) (emphasis added). It gives no guidance as to which officials are to provide absentee ballots when a day *other* than general or primary election day is designated for submission of an amendment—a strong indication that the Revised Code does not provide for that option.

Under Section 3501.02(E), the General Assembly has two options when it proposes an amendment: it can submit the amendment to the voters at the next general election, or it can choose instead to designate a primary election. It cannot choose an entirely different date. The calling of an August 8, 2023, special election to approve or reject the Amendment therefore violates the Revised Code.

**C. Section 3501.40 expressly prohibits the Secretary from conducting an August 8 special election because the Revised Code does not prescribe such an election.**

Section 3501.40 provides a third reason to hold the August 8, 2023, special election unlawful, by prohibiting election officials from holding elections except as scheduled in the Revised Code. Section 3501.40 provides that “no public official shall cause an election to be conducted other than in the time, place, and manner prescribed by the Revised Code,” and defines

“public official” to include “any elected or appointed officer ... of the state.” The only exception is for “an emergency resulting from enemy attack.” R.C. 161.09. By its plain terms, Section 3501.40 thus applies to both the Secretary and the legislators who voted in favor of S.J.R 2, who are “elected ... officer[s] ... of the state.” And it prohibits the Secretary from causing an election to occur at a time other than that “prescribed by the Revised Code.” R.C. 3501.40. As already explained, nothing in the Revised Code authorizes a special election to approve or reject the Amendment on August 8, 2023. Any actions the Secretary takes in furtherance of an August 8, 2023, election therefore violate Section 3501.40.

Moreover, Section 3501.40 confirms that Sections 3501.01 and 3501.02 are comprehensive and so foreclose an August election on the Amendment. By prohibiting elections other than as scheduled in the Revised Code, Section 3501.40 confirms that those timing provisions are mandatory and exclusive. Ohio elections may be held *only* at the “time, place, and manner prescribed by the Revised Code,” R.C. 3501.40, and nothing in the Revised Code allows a statewide August election on a proposed amendment.

**D. The *Foreman* majority’s holding does not refute the foregoing analysis.**

In defending an August special election, the Secretary will likely rely on this Court’s decision in *State ex rel. Foreman v. Brown*, 10 Ohio St.2d 139, 226 N.E.2d 116 (1967). But the substantial subsequent changes to Ohio’s statutory scheme governing election dates have abrogated that case’s holding. It was unclear when *Foreman* was decided whether the Revised Code prohibited the special election there at issue. It is entirely clear now that the Revised Code prohibits the August 8 special election.

A four-justice majority in *Foreman* held that an older version of Section 3501.02 did not preclude the General Assembly’s calling a special election on May 2, 1967, by joint resolution. *Id.*



at 143. At the time, Section 3501.02(E) provided that “[p]roposed constitutional amendments or proposed measures submitted by the general assembly ... to the voters of the state at large may be submitted at the general elections in any year occurring at least sixty days, in case of a referendum, and ninety days, in the case of an initiated measure, subsequent to the filing of the petitions therefor.”<sup>5</sup> The Court held that this language did not preclude submission at a May special election because the “mere statutory authorization for submission at a general election [in Division (E)] cannot be construed as a prohibition of submission at a special election.” *Id.* In contrast, the three-justice dissent would have held that, read as a coherent whole and given the use of “shall” in Section 3501.02’s opening clause, the statute authorized submission of such amendments *only* at

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<sup>5</sup> At the time *Foreman* was decided, Section 3501.02’s pertinent text, in full, was as follows:

General elections of the state of Ohio and its political subdivisions shall be held as follows:

(A) For the election of electors of president and vice-president of the United States, in the year 1932 and every four years thereafter;

(B) For the election of a member of the senate of the United States, in the years 1932 and 1934, and every six years after each of such years; except as otherwise provided for filling vacancies;

(C) For the election of Representatives in the congress of the United States and of elective state and county officers, in the even-numbered years; except as otherwise provided for filling vacancies;

(D) For municipal and township officers, members of boards of education, members of the state board of education, judges and clerks of police and municipal courts, in the odd-numbered years;

(E) Proposed constitutional amendments or proposed measures submitted by the general assembly or by initiative or referendum petitions to the voters of the state at large may be submitted at the general elections in any year occurring at least sixty days, in case of a referendum, and ninety days, in the case of an initiated measure, subsequent to the filing of the petitions therefor. Unless provision is made by law or charter for the submission of a question or issue to the voters of a county, township, city, village, or school district at a special election, no special election shall be called, and the question or issue shall be submitted at a general election.

*Foreman* held that the second sentence of Division (E) “obviously applies only to a submission ‘to the voters of a county, township, city, village, or school district’—not to what is referred to in the first sentence thereof as a submission ‘to the voters of the state at large.’” 10 Ohio St.2d at 143. *Foreman* therefore focused only on the first sentence of Division (E).

the general election. *Id.* at 157–59 (O’Neill, J., dissenting).

*Foreman* does not control the statutory analysis in this case because the relevant statutory provisions have been substantially amended in the half-century since *Foreman* was decided, and those provisions can no longer be construed as *Foreman* construed their predecessors. *Foreman* rested explicitly on the Court’s determination that there was at that time “no conflict between any statute and the action taken by the General Assembly ... in calling a special election.” *Id.* at 142. Now, however, the conflict is clear, and the Revised Code unambiguously prohibits a statewide special election on a constitutional amendment in August. *Supra* Part I.A.–I.C. While *Foreman* explained that Section 3501.02(E) then addressed the submission of constitutional amendments only at general elections and not at special elections, the current statute expressly addresses both. *See* R.C. 3501.02(E). It does so using language and a statutory structure that support construing the special election option provided in Division (E) as exclusive. *Supra* Part I.B. And Sections 3501.01(D) and 3501.022 together now prohibit holding a statewide special election in August under any circumstances, providing that such elections “may be held only” in November, March, or May. *Foreman*’s analysis of the Revised Code has therefore been abrogated by subsequent amendments clarifying that the Code’s election provisions comprehensively address when elections, including special elections on proposed constitutional amendments, may be held, and prohibiting such elections in August.

**II. Proposition of Law 2: Article XVI, Section 1 of the Ohio Constitution does not authorize the General Assembly to call an August 8, 2023, special election by joint resolution when that election would violate the Revised Code.**

That an August 8 special election would violate the Revised Code is dispositive, because the General Assembly cannot have repealed or amended the Revised Code by calling for an August 8, 2023, special election in S.J.R. 2. Article XVI, Section 1 of the Ohio Constitution authorizes the

General Assembly to propose constitutional amendments by joint resolution, and to prescribe the submission of such amendments to the people “at either a special or a general election as the General Assembly may prescribe.” It does not authorize the General Assembly to ignore, repeal, or amend governing statutes in doing so without passing a law.

Again, *Foreman* is not to the contrary. *Foreman* simply held that Article XVI, Section 1 “clearly authorize[s] the General Assembly to prescribe that an amendment to the Constitution, proposed by the General Assembly pursuant to that section, be submitted at a special election on a certain date.” *Foreman*, 10 Ohio St.2d at 141. At that time, nothing in the Revised Code governed when a special election on a constitutional amendment could be held—it allowed only for submission at a general election. *Id.* The *Foreman* majority expressly disclaimed the need to make any holding about the constitutionality of election statutes because, in that case, “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.” *Id.* at 142 (emphasis added). Now, in contrast, the General Assembly has prescribed in the current Revised Code that a legislatively proposed constitutional amendment may be submitted to the electors during special elections on dates that coincide with primary elections in March or May. R.C. 3501.02(E); *supra* Part I.B. Thus, unlike in *Foreman*, the question here is not whether the General Assembly may submit a proposed amendment at a special election when the Revised Code is silent; it is whether the General Assembly may do so when the Revised Code expressly prohibits it.

To be sure, *Foreman* also stated in dicta that that an “action, taken by the General Assembly pursuant to Section 1 of Article XVI and authorizing a special election on a certain day ... would require a holding that [an unrepealed existing] statute was unconstitutional so far as it conflicted with such action.” *Id.* at 142. But—unlike when *Foreman* was decided—there is now no possible

conflict between the text of Article XVI, Section 1 and the Revised Code’s provisions regarding election scheduling. The *Foreman* relators argued that the special election was invalid in part because “the only statute providing for submission of a constitutional amendment provides for submission thereof at a general election.” *Id.* at 140–41. That argument conflicted with Article XVI, Section 1’s provision that the General Assembly could submit a constitutional amendment “at *either* a special or a general election.” Ohio Constitution, Article XVI, Section 1 (emphasis added). But Relators’ argument here causes no such conflict, because Relators agree that the General Assembly may choose either a special or a general election. It just has to schedule such an election in accordance with the governing provisions of the Revised Code enacted by it: in November, March, or May. Article XVI, Section 1 authorizes the General Assembly to submit a proposed amendment at “either a special or a general election,” but nothing in that Section authorizes the General Assembly to choose whatever date it wishes for such an election, in violation of the Revised Code.

More fundamentally, the Constitution itself requires that when the General Assembly amends a law, it must repeal the section or sections amended. Ohio Constitution, Article II, Section 15(D) (“No law shall be revived or amended unless the new act contains the entire act revived, or the section or sections amended, and the section or sections amended shall be repealed.”). And notwithstanding *Foreman*’s dicta, the General Assembly cannot do so by joint resolution. *Cleveland Terminal & Valley R. Co. v. State ex rel. Atty. Gen.*, 85 Ohio St. 251, 294, 97 N.E. 967 (1912) (“It should not need the citation of authorities to establish the proposition that a joint resolution is not an act of legislation, and that it cannot be effective for any purpose for which an exercise of legislative power is necessary[.]”); *State v. Kinney*, 56 Ohio St. 721, 724, 47 N.E. 569 (1897) (“The statute law of the state can neither be repealed nor amended by a joint resolution of

the general assembly.”). The General Assembly’s own, albeit unsuccessful, attempts to amend the Revised Code to provide for an August 8, 2023, special election confirm that it, too, understood that it must amend the Revised Code to authorize such an election. *See supra* Statement, Part II. Absent any express conflict between the Revised Code and the constitutional text, there is no basis for allowing the General Assembly to set an election date that directly violates the Revised Code by a joint resolution, rather than by amending the statutory text. Deciding otherwise would entitle the General Assembly to ignore *any* statute that purports to constrain its authority to set amendment special election dates by joint resolution. Under such a holding, the General Assembly could call a special election on a holiday or a day proximate to another election, or even call elections on several consecutive days. Dire voter confusion and overwhelming burdens on elections workers could result. That cannot be the law.

### **III. Proposition of Law 3: Relators are entitled to a writ of mandamus.**

Mandamus relief is appropriate here because Respondent Secretary LaRose has thus far acted in clear disregard of applicable law by refusing to adhere to the clear dictates of the Revised Code and prevent the illegal election. Instead, he has taken affirmative steps to implement it. *See supra* Statement, Part IV. 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 Revised Code. *See supra* Part I. Respondent Secretary LaRose has a clear legal duty to provide the requested relief because he is the state’s chief election officer, R.C. 3501.04, and is charged with determining and prescribing “the forms of ballots ... required by law” and compelling “the observance by election officers in the several counties of the requirements of the election laws,” R.C. 3501.05(G), (H), (M). 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. *See State ex rel. Evans v. Blackwell*, 111 Ohio St.3d 437, 2006-Ohio-5439, 857 N.E.2d 88, ¶¶ 25–26 (explaining that the Ohio Supreme Court has repeatedly “granted writs of mandamus to compel the Secretary of State to strike proposed constitutional amendments from the ballot” in cases that “involved challenges to constitutional amendments proposed by joint resolution of the General Assembly to be submitted to electors” because the Ohio Supreme Court has “exclusive, original jurisdiction” to “determine the propriety of the placement on the ballot of the constitutional amendment proposed by joint legislative resolution”); *see also State ex rel. Minus v. Brown*, 30 Ohio St.2d 75, 283 N.E.2d 131 (1972) (granting a writ of mandamus to compel the Secretary of State to strike a legislatively proposed constitutional amendment from the ballot); *State ex rel. Roahrig v. Brown*, 30 Ohio St.2d 82, 282 N.E.2d 584 (1972) (same).

### CONCLUSION

For the foregoing reasons, Relators request that this Court issue a 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 the Amendment.

Dated: May 18, 2023

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that the foregoing was sent via email this 18th day of May 2023 to the following:

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**APPENDIX  
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED**

**Ohio Constitution, Article II**

**Section 1: In whom power vested**

The legislative power of the state shall be vested in a general assembly consisting of a senate and house of representatives but the people reserve to themselves the power to propose to the general assembly laws and amendments to the constitution, and to adopt or reject the same at the polls on a referendum vote as hereinafter provided. They also reserve the power to adopt or reject any law, section of any law or any item in any law appropriating money passed by the general assembly, except as hereinafter provided; and independent of the general assembly to propose amendments to the constitution and to adopt or reject the same at the polls. The limitations expressed in the constitution, on the power of the general assembly to enact laws, shall be deemed limitations on the power of the people to enact laws.

**Section 1a: Initiative and referendum to amend constitution**

The first aforesaid power reserved by the people is designated the initiative, and the signatures of ten per centum of the electors shall be required upon a petition to propose an amendment to the constitution. When a petition signed by the aforesaid required number of electors, shall have been filed with the secretary of state, and verified as herein provided, proposing an amendment to the constitution, the full text of which shall have been set forth in such petition, the secretary of state shall submit for the approval or rejection of the electors, the proposed amendment, in the manner hereinafter provided, at the next succeeding regular or general election in any year occurring subsequent to one hundred twenty-five days after the filing of such petition. The initiative petitions, above described, shall have printed across the top thereof: "Amendment to the Constitution Proposed by Initiative Petition to be Submitted Directly to the Electors."

**Section 1b: Initiative and referendum to enact laws**

When at any time, not less than ten days prior to the commencement of any session of the general assembly, there shall have been filed with the secretary of state a petition signed by three per centum of the electors and verified as herein provided, proposing a law, the full text of which shall have been set forth in such petition, the secretary of state shall transmit the same to the general assembly as soon as it convenes. If said proposed law shall be passed by the general assembly, either as petitioned for or in an amended form, it shall be subject to the referendum. If it shall not be passed, or if it shall be passed in an amended form, or if no action shall be taken thereon within four months from the time it is received by the general assembly, it shall be submitted by the secretary of state to the electors for their approval or rejection, if such submission shall be demanded by supplementary petition verified as herein provided and signed by not less than three per centum of the electors in addition to those signing the original petition, which supplementary petition must be signed and filed with the secretary of state within ninety days after the proposed law shall have been rejected by the general assembly or after the expiration of such term of four months, if no action has been taken thereon, or after the law as passed by the general assembly

shall have been filed by the governor in the office of the secretary of state. The proposed law shall be submitted at the next regular or general election occurring subsequent to one hundred twenty-five days after the supplementary petition is filed in the form demanded by such supplementary petition, which form shall be either as first petitioned for or with any amendment or amendments which may have been incorporated therein by either branch or by both branches, of the general assembly. If a proposed law so submitted is approved by a majority of the electors voting thereon, it shall be the law and shall go into effect as herein provided in lieu of any amended form of said law which may have been passed by the general assembly, and such amended law passed by the general assembly shall not go into effect until and unless the law proposed by supplementary petition shall have been rejected by the electors. All such initiative petitions, last above described, shall have printed across the top thereof, in case of proposed laws: "Law Proposed by Initiative Petition First to be Submitted to the General Assembly." Ballots shall be so printed as to permit an affirmative or negative vote upon each measure submitted to the electors. Any proposed law or amendment to the constitution submitted to the electors as provided in 1a and 1b, if approved by a majority of the electors voting thereon, shall take effect thirty days after the election at which it was approved and shall be published by the secretary of state. If conflicting proposed laws or conflicting proposed amendments to the constitution shall be approved at the same election by a majority of the total number of votes cast for and against the same, the one receiving the highest number of affirmative votes shall be the law, or in the case of amendments to the constitution shall be the amendment to the constitution. No law proposed by initiative petition and approved by the electors shall be subject to the veto of the governor.

#### **Section 1e: Powers; limitation of use:**

(A) The powers defined herein as the "initiative" and "referendum" shall not be used to pass a law authorizing any classification of property for the purpose of levying different rates of taxation thereon or of authorizing the levy of any single tax on land or land values or land sites at a higher rate or by a different rule than is or may be applied to improvements thereon or to personal property.

(B)

(1) Restraint of trade or commerce being injurious to this state and its citizens, the power of the initiative shall not be used to pass an amendment to this constitution that would grant or create a monopoly, oligopoly, or cartel, specify or determine a tax rate, or confer a commercial interest, commercial right, or commercial license to any person, nonpublic entity, or group of persons or nonpublic entities, or any combination thereof, however organized, that is not then available to other similarly situated persons or nonpublic entities.

(2) If a constitutional amendment proposed by initiative petition is certified to appear on the ballot and, in the opinion of the Ohio ballot board, the amendment would conflict with division (B)(1) of this section, the board shall prescribe two separate questions to appear on the ballot, as follows:

(a) The first question shall be as follows: "Shall the petitioner, in violation of division (B)(1) of Section 1e of Article II of the Ohio Constitution, be

authorized to initiate a constitutional amendment that grants or creates a monopoly, oligopoly, or cartel, specifies or determines a tax rate, or confers a commercial interest, commercial right, or commercial license that is not available to other similarly situated persons?”

(b) The second question shall describe the proposed constitutional amendment.

(c) If both questions are approved or affirmed by a majority of the electors voting on them, then the constitutional amendment shall take effect. If only one question is approved or affirmed by a majority of the electors voting on it, then the constitutional amendment shall not take effect.

(3) If, at the general election held on November 3, 2015, the electors approve a proposed constitutional amendment that conflicts with division (B)(1) of this section with regard to the creation of a monopoly, oligopoly, or cartel for the sale, distribution, or other use of any federal Schedule I controlled substance, then notwithstanding any severability provision to the contrary, that entire proposed constitutional amendment shall not take effect. If, at any subsequent election, the electors approve a proposed constitutional amendment that was proposed by an initiative petition, that conflicts with division (B)(1) of this section, and that was not subject to the procedure described in division (B)(2) of this section, then notwithstanding any severability provision to the contrary, that entire proposed constitutional amendment shall not take effect.

(C) The supreme court of Ohio shall have original, exclusive jurisdiction in any action that relates to this section.

### **Section 1g: Petition requirements and preparation; submission; ballot language; by Ohio ballot board**

Any initiative, supplementary, or referendum petition may be presented in separate parts but each part shall contain a full and correct copy of the title, and text of the law, section or item thereof sought to be referred, or the proposed law or proposed amendment to the constitution. Each signer of any initiative, supplementary, or referendum petition must be an elector of the state and shall place on such petition after his name the date of signing and his place of residence. A signer residing outside of a municipality shall state the county and the rural route number, post office address, or township of his residence. A resident of a municipality shall state the street and number, if any, of his residence and the name of the municipality or post office address. The names of all signers to such petitions shall be written in ink, each signer for himself. To each part of such petition shall be attached the statement of the circulator, as may be required by law, that he witnessed the affixing of every signature. The secretary of state shall determine the sufficiency of the signatures not later than one hundred five days before the election.

The Ohio supreme court shall have original, exclusive jurisdiction over all challenges made to petitions and signatures upon such petitions under this section. Any challenge to a petition or

signature on a petition shall be filed not later than ninety-five days before the day of the election. The court shall hear and rule on any challenges made to petitions and signatures not later than eighty-five days before the election. If no ruling determining the petition or signatures to be insufficient is issued at least eighty-five days before the election, the petition and signatures upon such petitions shall be presumed to be in all respects sufficient.

If the petitions or signatures are determined to be insufficient, ten additional days shall be allowed for the filing of additional signatures to such petition. If additional signatures are filed, the secretary of state shall determine the sufficiency of those additional signatures not later than sixty-five days before the election. Any challenge to the additional signatures shall be filed not later than fifty-five days before the day of the election. The court shall hear and rule on any challenges made to the additional signatures not later than forty-five days before the election. If no ruling determining the additional signatures to be insufficient is issued at least forty-five days before the election, the petition and signatures shall be presumed to be in all respects sufficient.

No law or amendment to the constitution submitted to the electors by initiative and supplementary petition and receiving an affirmative majority of the votes cast thereon, shall be held unconstitutional or void on account of the insufficiency of the petitions by which such submission of the same was procured; nor shall the rejection of any law submitted by referendum petition be held invalid for such insufficiency. Upon all initiative, supplementary, and referendum petitions provided for in any of the sections of this article, it shall be necessary to file from each of one-half of the counties of the state, petitions bearing the signatures of not less than one-half of the designated percentage of the electors of such county. A true copy of all laws or proposed laws or proposed amendments to the constitution, together with an argument or explanation, or both, for, and also an argument or explanation, or both, against the same, shall be prepared. The person or persons who prepare the argument or explanation, or both, against any law, section, or item, submitted to the electors by referendum petition, may be named in such petition and the persons who prepare the argument or explanation, or both, for any proposed law or proposed amendment to the constitution may be named in the petition proposing the same. The person or persons who prepare the argument or explanation, or both, for the law, section, or item, submitted to the electors by referendum petition, or against any proposed law submitted by supplementary petition, shall be named by the general assembly, if in session, and if not in session then by the governor. The law, or proposed law, or proposed amendment to the constitution, together with the arguments and explanations, not exceeding a total of three hundred words for each, and also the arguments and explanations, not exceeding a total of three hundred words against each, shall be published once a week for three consecutive weeks preceding the election, in at least one newspaper of general circulation in each county of the state, where a newspaper is published. The secretary of state shall cause to be placed upon the ballots, the ballot language for any such law, or proposed law, or proposed amendment to the constitution, to be submitted. The ballot language shall be prescribed by the Ohio ballot board in the same manner, and subject to the same terms and conditions, as apply to issues submitted by the general assembly pursuant to Section 1 of Article XVI of this constitution. The ballot language shall be so prescribed and the secretary of state shall cause the ballots so to be printed as to permit an affirmative or negative vote upon each law, section of law, or item in a law appropriating money, or proposed law, or proposed amendment to the constitution. The style of all laws submitted by initiative and supplementary petition shall be: "Be it Enacted by the People of the State of Ohio," and of all constitutional amendments: "Be it Resolved by the

People of the State of Ohio.” The basis upon which the required number of petitioners in any case shall be determined shall be the total number of votes cast for the office of governor at the last preceding election therefor. The foregoing provisions of this section shall be self-executing, except as herein otherwise provided. Laws may be passed to facilitate their operation, but in no way limiting or restricting either such provisions or the powers herein reserved.

### **Ohio Constitution, Article IV**

#### **Section 2: Organization and jurisdiction of Supreme Court**

...

(B)

(1) The Supreme Court shall have original jurisdiction in the following:

(a) Quo warranto;

(b) Mandamus;

(c) Habeas corpus;

(d) Prohibition;

(e) Procedendo;

(f) In any cause on review as may be necessary to its complete determination;

(g) Admission to the practice of law, the discipline of persons so admitted, and all other matters relating to the practice of law.

...

### **Ohio Constitution, Article XVI**

#### **Section 1: Constitutional amendment proposed by joint resolution of General Assembly; procedure**

Either branch of the General Assembly may propose amendments to this constitution; and, if the same shall be agreed to by three-fifths of the members elected to each house, such proposed amendments shall be entered on the journals, with the yeas and nays, and shall be filed with the secretary of state at least ninety days before the date of the election at which they are to be submitted to the electors, for their approval or rejection. They shall be submitted on a separate ballot without party designation of any kind, at either a special or a general election as the General

Assembly may prescribe.

The ballot language for such proposed amendments shall be prescribed by a majority of the Ohio ballot board, consisting of the secretary of state and four other members, who shall be designated in a manner prescribed by law and not more than two of whom shall be members of the same political party. The ballot language shall properly identify the substance of the proposal to be voted upon. The ballot need not contain the full text nor a condensed text of the proposal. The board shall also prepare an explanation of the proposal, which may include its purpose and effects, and shall certify the ballot language and the explanation to the secretary of state not later than seventy-five days before the election. The ballot language and the explanation shall be available for public inspection in the office of the secretary of state.

The Supreme Court shall have exclusive, original jurisdiction in all cases challenging the adoption or submission of a proposed constitutional amendment to the electors. No such case challenging the ballot language, the explanation, or the actions or procedures of the General Assembly in adopting and submitting a constitutional amendment shall be filed later than sixty-four days before the election. The ballot language shall not be held invalid unless it is such as to mislead, deceive, or defraud the voters.

Unless the General Assembly otherwise provides by law for the preparation of arguments for and, if any, against a proposed amendment, the board may prepare such arguments.

Such proposed amendments, the ballot language, the explanations, and the arguments, if any, shall be published once a week for three consecutive weeks preceding such election, in at least one newspaper of general circulation in each county of the state, where a newspaper is published. The General Assembly shall provide by law for other dissemination of information in order to inform the electors concerning proposed amendments. An election on a proposed constitutional amendment submitted by the general assembly shall not be enjoined nor invalidated because the explanation, arguments, or other information is faulty in any way. If the majority of the electors voting on the same shall adopt such amendments the same shall become a part of the constitution. When more than one amendment shall be submitted at the same time, they shall be so submitted as to enable the electors to vote on each amendment, separately.

### **Section 3: Question of constitutional convention to be submitted periodically**

At the general election to be held in the year one thousand nine hundred and thirty-two, and in each twentieth year thereafter, the question: "Shall there be a convention to revise, alter, or amend the constitution[.]" shall be submitted to the electors of the state; and in case a majority of the electors, voting for and against the calling of a convention, shall decide in favor of a convention, the General Assembly, at its next session, shall provide, by law, for the election of delegates, and the assembling of such convention, as is provided in the preceding section; but no amendment of this constitution, agreed upon by any convention assembled in pursuance of this article, shall take effect, until the same shall have been submitted to the electors of the state, and adopted by a majority of those voting thereon.

## Ohio Revised Code, Title 27

### **Section 2731.01: Mandamus defined**

Mandamus is a writ, issued in the name of the state to an inferior tribunal, a corporation, board, or person, commanding the performance of an act which the law specially enjoins as a duty resulting from an office, trust, or station.

### **Section 2731.02: Courts authorized to issue writ – contents**

The writ of mandamus may be allowed by the supreme court, the court of appeals, or the court of common pleas and shall be issued by the clerk of the court in which the application is made. Such writ may issue on the information of the party beneficially interested.

Such writ shall contain a copy of the petition, verification, and order of allowance.

### **Section 2731.04: Application for writ**

Application for the writ of mandamus must be by petition, in the name of the state on the relation of the person applying, and verified by affidavit. The court may require notice of it to be given to the defendant, or grant an order to show cause why it should not be allowed, or allow the writ without notice.

### **Section 2731.05: Adequacy of law remedy bar to writ**

The writ of mandamus must not be issued when there is a plain and adequate remedy in the ordinary course of the law.

### **Section 2731.06: Peremptory writ in first instance**

When the right to require the performance of an act is clear and it is apparent that no valid excuse can be given for not doing it, a court, in the first instance, may allow a peremptory mandamus. In all other cases an alternative writ must first be issued on the allowance of the court, or a judge thereof.

## Ohio Revised Code, Title 35

### **Section 3501.01: Election procedure – election officials definitions**

As used in the sections of the Revised Code relating to elections and political communications:

(A) “General election” means the election held on the first Tuesday after the first Monday in each November.

(B) “Regular municipal election” means the election held on the first Tuesday after the first Monday in November in each odd-numbered year.

(C) “Regular state election” means the election held on the first Tuesday after the first Monday in November in each even-numbered year.

(D) “Special election” means any election other than those elections defined in other divisions of this section. 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 on the day authorized by a particular municipal or county charter for the holding of a primary election, except that in any year in which a presidential primary election is held, no special election shall be held in May, except as authorized by a municipal or county charter, but may be held on the third Tuesday after the first Monday in March.

(E)

(1) “Primary” or “primary election” means an election held for the purpose of nominating persons as candidates of political parties for election to offices, and for the purpose of electing persons as members of the controlling committees of political parties and as delegates and alternates to the conventions of political parties. Primary elections shall be held on the first Tuesday after the first Monday in May of each year except in years in which a presidential primary election is held.

(2) “Presidential primary election” means a primary election as defined by division (E)(1) of this section at which an election is held for the purpose of choosing delegates and alternates to the national conventions of the major political parties pursuant to section 3513.12 of the Revised Code. Unless otherwise specified, presidential primary elections are included in references to primary elections. In years in which a presidential primary election is held, all primary elections shall be held on the third Tuesday after the first Monday in March except as otherwise authorized by a municipal or county charter.

[Divisions (F) through (DD) omitted.]

### **Section 3501.02: General election – time for holding**

General elections in the state and its political subdivisions shall be held as follows:

(A) For the election of electors of president and vice-president of the United States, in the year of 1932 and every four years thereafter;

(B) For the election of a member of the senate of the United States, in the years 1932 and 1934, and every six years after each of such years; except as otherwise provided for filling vacancies;

(C) For the election of representatives in the congress of the United States and of elective state and county officers including elected members of the state board of education, in the even-numbered years; except as otherwise provided for filling vacancies;



(D) For municipal and township officers, members of boards of education, judges and clerks of municipal courts, in the odd-numbered years;

(E) Proposed constitutional amendments or proposed measures submitted by the general assembly or by initiative or referendum petitions to the voters of the state at large may be submitted to the general election in any year occurring at least sixty days, in case of a referendum, and ninety days, in the case of an initiated measure, subsequent to the filing of the petitions therefor. Proposed constitutional amendments submitted by the general assembly to the voters of the state at large may be submitted 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.

No special election shall be held on a day other than the day of a general election, unless a law or charter provides otherwise, regarding the submission of a question or issue to the voters of a county, township, city, village, or school district.

(F)

(1) Notwithstanding any provision of the Revised Code to the contrary, any question or issue, except a candidacy, to be voted upon at an election shall be certified, for placement upon the ballot, to the board of elections not later than four p.m. of the ninetieth day before the day of the election.

(2) Any question or issue that is certified for placement on a ballot on or after the effective date of this amendment shall be certified not later than the ninetieth day before the day of the applicable election, notwithstanding any deadlines appearing in any section of the Revised Code governing the placement of that question or issue on the ballot.

### **Section 3501.022: When August special election may be held**

(A) A political subdivision or taxing authority may hold a special election on the first Tuesday after the first Monday in August for an office, question, or issue if the political subdivision is under a fiscal emergency under section 118.03 of the Revised Code, or the taxing authority that is a school district is under a fiscal emergency under division (B) of section 3316.03 of the Revised Code, at the time the board of elections certifies the office, question, or issue for placement on the ballot for that special election.

(B) The deadlines applicable to a special election held by a political subdivision or taxing authority under division (A) of this section shall be the same as the deadlines specified to place the office, question, or issue on the ballot on the day of a primary or general election.

(C) The entire cost of a special election held under division (A) of this section shall be charged to the political subdivision or taxing authority in accordance with division (D) of section 3501.17 of the Revised Code.

**Section 3501.04: Secretary of state is chief election officer**

The secretary of state is the chief election officer of the state, with such powers and duties relating to the registration of voters and the conduct of elections as are prescribed in Title XXXV of the Revised Code. He shall perform these duties, in addition to other duties imposed upon him by law, without additional compensation.

**Section 3501.05: Election duties of secretary of state**

The secretary of state shall do all of the following:

- (A) Appoint all members of boards of elections;
  
- (B) Issue instructions by directives and advisories in accordance with section 3501.053 of the Revised Code to members of the boards as to the proper methods of conducting elections.
  
- (C) Prepare rules and instructions for the conduct of elections;
  
- ...
  
- (G) Determine and prescribe the forms of ballots and the forms of all blanks, cards of instructions, pollbooks, tally sheets, certificates of election, and forms and blanks required by law for use by candidates, committees, and boards;
  
- (H) Prepare the ballot title or statement to be placed on the ballot for any proposed law or amendment to the constitution to be submitted to the voters of the state;
  
- (I) Except as otherwise provided in section 3519.08 of the Revised Code, certify to the several boards the forms of ballots and names of candidates for state offices, and the form and wording of state referendum questions and issues, as they shall appear on the ballot;
  
- ...
  
- (M) Compel the observance by election officers in the several counties of the requirements of the election laws;

[Divisions (N) through (EE) omitted.]

**Section 3501.40: Public officials' orders concerning elections**

Except as permitted under section 161.09 of the Revised Code, and notwithstanding any other contrary provision of the Revised Code, no public official shall cause an election to be conducted other than in the time, place, and manner prescribed by the Revised Code.

As used in this section, "public official" means any elected or appointed officer, employee, or

agent of the state or any political subdivision, board, commission, bureau, or other public body established by law.

### **Section 3509.01: Absent voter's ballot procedures**

(A) The board of elections of each county shall provide absent voter's ballots for use at every primary and general election, or special election to be held on the day specified by division (E) of section 3501.01 of the Revised Code for the holding of a primary election, designated by the general assembly for the purpose of submitting constitutional amendments proposed by the general assembly to the voters of the state. Those ballots shall be the same size, shall be printed on the same kind of paper, and shall be in the same form as has been approved for use at the election for which those ballots are to be voted; except that, in counties using marking devices, ballot cards may be used for absent voter's ballots, and those absent voters shall be instructed to record the vote in the manner provided on the ballot cards.

(B) The rotation of names of candidates and questions and issues shall be substantially complied with on absent voter's ballots, within the limitation of time allotted. Those ballots shall be designated as "Absent Voter's Ballots." Except as otherwise provided in division (D) of this section, those ballots shall be printed and ready for use as follows:

(1) For overseas voters and absent uniformed services voters eligible to vote under the Uniformed and Overseas Citizens Absentee Voting Act, Pub. L. No. 99-410, 100 Stat. 924, 42 U.S.C. 1973ff, et seq., as amended, ballots shall be printed and ready for use other than in person on the forty-sixth day before the day of the election.

(2) For all other voters, ballots shall be printed and ready for use on the first day after the close of voter registration before the election.

(C) Absent voter's ballots provided for use at a general or primary election, or special election to be held on the day specified by division (E) of section 3501.01 of the Revised Code for the holding of a primary election, designated by the general assembly for the purpose of submitting constitutional amendments proposed by the general assembly to the voters of the state, shall include only those questions, issues, and candidacies that have been lawfully ordered submitted to the electors voting at that election.

(D) If the laws governing the holding of a special election on a day other than the day on which a primary or general election is held make it impossible for absent voter's ballots to be printed and ready for use by the deadlines established in division (B) of this section, absent voter's ballots for those special elections shall be ready for use as many days before the day of the election as reasonably possible under the laws governing the holding of that special election.

(E) A copy of the absent voter's ballots shall be forwarded by the director of the board in each county to the secretary of state at least twenty-five days before the election.