

**IN THE SUPREME COURT OF OHIO**

<b>STATE OF OHIO ex rel. ONE</b>	)	
<b>PERSON ONE VOTE, et al.,</b>	)	<b>Case No. 2023-0630</b>
	)	
<i>Relators,</i>	)	<b>Original Action in Mandamus</b>
	)	<b>Expedited Elections Case</b>
v.	)	
	)	
<b>OHIO SECRETARY OF STATE</b>	)	
<b>FRANK LAROSE,</b>	)	
	)	
<i>Respondent.</i>	)	

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**BRIEF OF AMICUS CURIAE, WE ARE OHIO  
IN SUPPORT OF RELATORS**

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**I. TABLE OF AUTHORITIES**

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## II. STATEMENT OF AMICUS INTEREST

We Are Ohio (WAO) is a nonpartisan, citizen-driven, grassroots, education and advocacy organization formed to defend the rights of Ohio workers and their families. The mission of WAO includes protecting the voting rights of working families.

Ohio workers have a real and substantial interest in protecting their voice and their vote on issues important to them and their families. In fact, WAO came into existence in response to a legislature that was so out of step with the policy views of Ohio citizens that in 2011 it passed Senate Bill 5 which was ultimately overridden by a citizen's veto through a statewide referendum.

Sadly, the 135<sup>th</sup> General Assembly is again repeating the same mistake that was made with SB 5, pursuing an agenda so out of step with the will of Ohioans that legislators had to violate the Ohio Revised Code in an effort to place an unpopular and undemocratic initiative on the ballot. Their divisive attempt to create minority rule threatens Ohio's political and business climate that is vitally important to the future of Ohio workers. It also will deprive current and future generations of Ohio workers with the ability to protect and advance their interests.

As WAO Chair Chris Mabe said in testimony submitted to the House Constitutional Resolutions Committee, "because of our fight against SB 5, SJR 2 has hit a nerve with labor...[and] does much the same thing by silencing the people's voices and preventing them from fully participating in our democracy via citizen-led ballot initiatives."<sup>1</sup>

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<sup>1</sup> Chris Mabe testimony to the House Constitutional Resolutions Committee, May 2, 2023.

### **III. SUMMARY OF ARGUMENT**

Ohio is experiencing an unprecedented period of investment and economic growth led by labor-management cooperation and bipartisan, political collaboration. We stand on the precipice of future investments that can lift every corner of our state and our statewide economy. Now is the time for a calm and welcoming atmosphere, not for a divisive effort to upset Ohio's democratic norms that have been in place for over one hundred years. Now is certainly not the time for the chaos that will be inflicted by an unlawful attempt to introduce minority rule in Ohio's Constitution.

The General Assembly lacked the votes to lawfully place the Supermajority Resolution on the August ballot. The legislature is bound by the laws it enacts, and language in a joint resolution that conflicts with statutory law cannot stand.

If the Court allows this unlawful election and the legislature's scheme to take away majority constitutional rule from Ohioans, it will take years to recover the favorable political and investment climate that is drawing industry, and jobs, to Ohio today.

Theodore Roosevelt seems to have foretold this moment in our history in his speech to the 1912 Ohio Constitutional Convention which gave Ohioans direct access to the ballot:

"I am emphatically a believer in constitutionalism, and because of this fact I no less emphatically protest against any theory that would make of the constitution a means of thwarting instead of securing the absolute right of the people to rule themselves and to provide for their social and industrial well-being."

### **IV. STATEMENT OF FACTS**

The Jurisdiction and Facts presented in Relators' Brief accurately set forth the jurisdiction of this Court and the factual background of this case.

## V. ARGUMENT

**A Joint Resolution cannot amend or repeal statutory law, nor can a Joint Resolution set a special election date when setting such a date would conflict with statutory law.**

- 1) House Bill 458 approved by the 134<sup>th</sup> General Assembly in December 2022, prohibits August Special Elections, except in very specific circumstances. Statewide Special Elections are not authorized under any circumstance.**

*“August special elections are costly to taxpayers and fail to engage a meaningful amount of the electorate in the process. They should be eliminated from the elections calendar. Representative Thomas Hall on introducing HB 458.*

*“I’ve wanted to eliminate August elections for my entire time as a public official.” HJR 1 sponsor Representative Brian Stewart.<sup>2</sup>*

*“Eliminating August special elections – a costly, low-turnout, and unnecessary election for our county boards of elections to administer – unless it involves a political subdivision or school district that is in a state of fiscal emergency.” Secretary of State Frank LaRose<sup>3</sup>*

Eliminating August Special Elections was a popular issue in the 134<sup>th</sup> General Assembly. HB 458 passed the Ohio House on December 9, 2021, by a vote of 68 to 22.<sup>4</sup> Bill sponsor Thomas Hall in his floor speech that day cited as one of the rationales for the bill examples of shockingly low turnout in recent August Special Elections – 11.8% turnout in Hamilton County and 6.8% in Cuyahoga County.

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<sup>2</sup> Quoted by Marilou Johaneck, *Save the date: Ohio’s Aug. 8 election puts nearly 175 years of majority voter authority on the line*, Ohio Capital Journal, May 16, 2023.

<sup>3</sup> Statement on signing of HB 458.

<sup>4</sup> The Senate later added more controversial voting provisions to the bill such as voter ID so later votes on HB 458 are more a reflection of those controversial provisions.

Representative Hall and Secretary of State Frank LaRose rightly referred to August Special Elections as costly. In fact, Secretary LaRose went farther, calling them a “waste of money.”<sup>5</sup>

**2) The 135<sup>th</sup> General Assembly failed this year to pass either SB 92 or HB 144 to authorize and appropriate funding for an August Special Election for a statewide ballot initiative.**

Proponents of raising the constitutional initiative threshold to 60% attempted to put their initiative on the ballot during the May 2023 primary, but failed to meet the deadline to do so, when they were unable to pass it in either the 2022 Lame Duck Session or at the beginning of the 135<sup>th</sup> General Assembly. With a goal of raising the constitutional vote threshold to 60% prior to November when a ballot initiative is expected to be considered, proponents determined that the August election was their only option.

Proponents of HJR 1/SJR 2 rightly recognized the necessity to authorize a special election for August 8, 2023, given that HB 458 had become law. They therefore introduced SB 92 and HB 144 which specifically authorized an August 8th Special Election for a statewide ballot initiative and appropriated the necessary funding to carry out the Special Election.

On April 19, 2023, the Senate adopted both SJR 2 and SB 92. The House Government Oversight Committee scheduled four separate hearings on SB 92 and its House companion measure (HB 144). SB 92 was starred for a possible vote on May 2,

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<sup>5</sup> Marilou Johaneck, *Save the date: Ohio's Aug. 8 election puts nearly 175 years of majority voter authority on the line*, Ohio Capital Journal, May 16, 2023.



2023, and May 3, 2023, but those plans were scrapped after it became apparent that there were not enough votes in Committee to pass the bill.<sup>6</sup> The May 3<sup>rd</sup> hearing never was convened and was pulled down twenty-one minutes after it was slated to begin. That was the last scheduled action on SB 92 in the House.

Given their inability to secure enough votes to legitimately pass SB 92/HB 144 and authorize an August Special Election according to law, the legislative leadership sought to bend the law to fit their political needs and are now presumably quietly plotting on how to secure funding for this unauthorized and unfunded election.

**3) This Court has long held that statutory law cannot be repealed or amended by a joint resolution of the General Assembly, nor can an election be set by joint resolution if doing so would conflict with statutory law.**

Following Senate passage of SJR 2 on April 19, 2023, the House struggled with SJR 2 and HJR 1. The House Committee on Constitutional Resolutions held five contentious days of hearings and had its Chairman replaced because of a conflict with the Speaker over the Supermajority resolutions.<sup>7</sup> During those hearings, it was revealed that an out of state billionaire from Illinois was bank rolling efforts to pass SJR 2, despite assertions of proponents that the purpose of SJR 2 was to keep out of state special interests from re-writing the Ohio Constitution.<sup>8</sup>

The House Committee heard testimony from concerned citizens from all walks of life and leaders of most all of Ohio's major labor organizations representing hundreds of

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<sup>6</sup> See Scheduling Notices of House Government Oversight Committee.

<sup>7</sup> See letters between Speaker Stephens and former Chairman Wiggam in Exhibits.

<sup>8</sup> Haley BeMiller, *GOP megadonor Richard Uihlein bankrolls push to make it harder to amend Ohio constitution*, Columbus Dispatch, April 27, 2023.

thousands of Ohio workers and retirees.<sup>9</sup> The Committee heard from members of the building trades unions that this ill-advised effort will cost jobs as evidenced by past bond issues that have brought income to Ohio families and revenue to Ohio communities but had not reached the 60% threshold when they were approved.

Union leaders like Dorsey Hager of the Columbus Building Trades who worked arm-in-arm with the business community and state and local leaders to bring the multi-billion dollar Intel project to Ohio, warned that SJR 2 will “undermine efforts to put Ohio’s economy on the right track for jobs, development and prosperity.”<sup>10</sup> Tim Burga, President of the Ohio AFL-CIO, made the point in his testimony that, “With remarkable opportunities to move Ohio forward in our grasp, including huge job announcements in infrastructure, new energy and manufacturing, why risk the current atmosphere of cooperation with such an unnecessary, divisive policy...working Ohioans, especially trade unionists, are calling for more collaboration and less conflict.”<sup>11</sup>

Ultimately, the House Committee narrowly passed SJR 2 by a vote of 7 to 6 on May 2, 2023. SJR 2 was taken up by the House Rules and Reference Committee on May 9, 2023. Generally, this committee simply schedules bills to be heard on the House floor. In an unusual occurrence during the May 9<sup>th</sup> hearing, illustrating the highly

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<sup>9</sup> Labor organizations testifying before the Committee included: the Ohio AFL-CIO, the Ohio State Building and Construction Trades Council, the Ohio Federal of Police, the Ohio Association of Professional Fire Fighters, the Ohio Education Association, the Ohio Federation of Teachers, the Ohio State Association of Plumbers and Pipefitters, the Ohio Civil Service Employees Association, IBEW District 4, Communications Workers of America District 4, Ohio Nurses Association, AFSCME Council 8, SEIU 1199, UFCW Local 1059, Heat & Frost Insulators & Allied Workers Local Union 50, Columbus/Central Ohio Building & Construction Trades Council, Western Reserve Building Trades, Tri-County Building & Construction Trades Council, and the Lima Building & Construction Trades Council.

<sup>10</sup> Dorsey Hager testimony before the House Constitutional Resolutions Committee on SJR 2, May 2, 2023.

<sup>11</sup> Tim Burga testimony before the House Constitutional Resolutions Committee on HJR 1, April 19, 2023.

controversial nature of the August Special Election maneuver, Representative Sharon Ray successfully introduced an amendment stripping language from the bill that designated an August 8<sup>th</sup> Special Election.<sup>12</sup>

This language designating SJR 2 for an August 8<sup>th</sup> Special Election was added back into the resolution on the House floor the following day, on May 10<sup>th</sup>, by a vote of 56 to 42. Following a raucous session in which the Speaker ejected visitors from the gallery of the House Chamber, SJR 2 was ultimately passed with the necessary 60 votes to place it before voters, but only after two longstanding vacancies were filled by appointees who voted in favor of the resolution, which was passed by a vote of 62 to 37.<sup>13</sup> The Senate concurred with the House language that same day and it was filed with the Secretary of State that evening, purportedly meeting the May 10<sup>th</sup> deadline for the initiative to go before voters in August.

By relying on language included in SJR 2 designating an August Special Election, while failing to pass legislation authorizing such an election, the legislature lacks any statutory basis for its plans. 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 newly created Section 3501.022 which authorizes such elections **only** for political subdivisions or taxing authorities in fiscal distress. *Emphasis added.* The statute provides no authority for holding an August Special Election on a statewide ballot initiative.

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<sup>12</sup> See Ray Amendment No. AM\_135\_0854, to Sub. S.J.R. No. 2, As Reported by the House Constitutional Resolutions Committee.

<sup>13</sup> See *Constitutional Amendment Advances to August Ballot; Litigation Likely*, Gongwer News Service, May 10, 2023.

While the General Assembly may now find a law it enacted just five months prior inconvenient, it is nonetheless bound by the laws it enacts. “[S]tatute 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). Further, while the court allowed a special election to be called by joint resolution without statutory authorization, that was only in the circumstance where the special election did not conflict with existing statute. *State ex rel. Foreman v. Brown*, 10 Ohio St.2d 139, 142, 226 N.E.2d 116 (1967). In the present case, SJR 2’s designation of an August Special Election clearly conflicts with statutory law and the joint resolution’s unlawful provisions should be deemed void. *Kinney*, 56 Ohio St. at 724.

## VI. CONCLUSION

Accordingly, on behalf of working families across Ohio, Amicus We Are Ohio respectfully asks this Court to find that Respondents violated Section 3501.01(D) and Section 3501.022 of the Ohio Revised Code and should therefore grant the Relators Prayer for Relief.

Respectfully submitted,

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I hereby certify that on May 18, 2023, the foregoing was filed electronically using the Court's e-filing system, and that a copy of the forgoing was serviced via electronic mail upon the following:

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