



dmctigue@electionlawgroup.com  
ccolombo@electionlawgroup.com  
kstreet@electionlawgroup.com  
Tel: 614-263-7000 | Fax: 614-368-6961

*Counsel for Relators*

Susannah Muskovitz, Esq. (0011457)  
Thomas M. Steffas, Esq. (0102313)  
MUSKOVITZ & LEMMERBROCK, LLC  
1621 Euclid Avenue, Suite 1750  
Cleveland, Ohio 44115  
Phone: (216) 621-2020  
Fax: (216) 621-3200  
muskovitz@mllabor.com  
steffas@mllabor.com

*Counsel for Amicus Curiae Ohio  
Federation of Teachers, AFT,  
AFL-CIO*

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**I. TABLE OF AUTHORITIES**

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## II. SUMMARY OF ARGUMENT

*Amicus curiae* the Ohio Federation of Teachers, AFT, AFL-CIO (“OFT”) offer this brief in support of Relators One Person One Vote, Jeniece Brock, Brent Edwards, and Christopher Tavenor (collectively, “Relators”) and urge this Court to 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 (“SJR 2”) from the August 8, 2023, special election ballot and (ii) instruct county election officials not to proceed with the August special election. The OFT and its members have strong interests in these proceedings.

The OFT is opposed to SJR 2 on the basis that the amendment would make it more difficult for Ohioans, including the members of the OFT, to participate in self-government through Ohio’s citizen-led ballot initiative process. The OFT is also opposed to holding such a consequential vote during an August special election, when members of the public, including members of the OFT, are less likely to participate.

Most importantly, the OFT is disturbed that the Ohio Revised Code, which, among other rights, enshrines public sector collective bargaining rights in Ohio, can apparently be amended by the General Assembly simply through joint resolution. By attempting to schedule a statewide August election involving an amendment to the Ohio Constitution, SJR 2 has effectively amended the provisions of the Ohio Revised Code (O.R.C. §§3501.01, 3501.022, and 3501.02) which prohibit such an election. This Court’s holding in *State ex rel Attorney General v. Kinney* is clear that joint resolutions cannot so amend the Ohio Revised Code. The OFT strongly urges that the Court grant the writ of mandamus sought by the Relators.

### **III. STATEMENT OF INTEREST OF AMICUS CURIAE**

The OFT is a union of education professionals representing approximately 20,000 members, including teachers in traditional and charter schools, support staff, higher education faculty and staff, social workers, library employees, and other public employees across the state of Ohio. The OFT envisions an Ohio where all citizens have access to the high-quality public education and public services they need to develop to their full potential. The OFT supports the social and economic wellbeing of its members, Ohio's children, families, working people, and communities and is committed to advancing these principles through community engagement, legislative action, collective bargaining and political activism, and especially through the work of its members.

The members of the OFT strongly value their rights as Ohioans to participate in self-governance through the citizen-led ballot initiative process and recognize that SJR 2 would make it more difficult for Ohioans to participate in self-government through the citizen-led ballot initiative process. Additionally, the OFT, as a labor organization comprised of public employees, has an interest in this litigation as it relates to the actions of the General Assembly in amending the Ohio Revised Code improperly, through the passage of a joint resolution. The OFT is concerned by the legislative short-cut that the proponents of SJR 2 have resorted to, and urge the Court to uphold the rule of law by granting the writ of mandamus against SJR 2.

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

A. The changes that SJR 2 would bring to the citizen-led ballot initiative process would harm the OFT and its members.

Along with a multitude of labor unions, political advocacy groups, and individual citizens, the OFT mobilized in opposition to SJR 2. In its February board meeting, the OFT Executive Council, consisting of members of the OFT who identify as Independent, Democrat, and

Republican, unanimously passed a resolution to oppose SJR 2. The OFT Executive Council authorized the leadership and staff of the OFT to mobilize members in an effort to persuade lawmakers to vote against the passage of SJR 2.

The members of the OFT strongly value their rights as citizens of Ohio to directly participate in self-governance through citizen-led ballot initiatives. The OFT respects the current process that had been in place for over one hundred years and considers the citizen-led ballot initiative process to be a bedrock of Ohio democracy.

The current ballot initiative process is stringent; it requires citizens to collect thousands of signatures in at least half of the counties in Ohio in order to place a constitutional amendment on the ballot. SJR 2 proposes to push the signature collecting requirement beyond stringent, by requiring citizens interested in participating in self-governance to collect signatures from all 88 counties in Ohio, an expensive and time consuming process which would pose a significant hurdle to citizen groups seeking to put issues directly before voters. This change to the ballot initiative process would have the effect of making efforts to amend the Ohio Constitution financially prohibitive to all but the most well-funded special interest groups, greatly disadvantaging the ability of labor unions like the OFT to participate in the ballot initiative process.

The current ballot initiative process is fair; it allows citizen groups the opportunity to cure a petition to place a constitutional amendment on the ballot found insufficient by allowing for the filing of additional signatures within 10 days of a determination that the initially-submitted signatures are insufficient. SJR 2 proposes to eliminate the ability of citizens to gather additional signatures, ending the “cure period” during which citizen groups can collect additional signatures if their first effort is found to be defective. This change to the ballot initiative process would have the effect of making constitutional amendments more difficult, because it only gives citizen groups

one chance to succeed at submitting the appropriate number of signatures. Practically, this will have the effect of requiring citizen groups to collect signatures well in excess of the required amount, as the groups will no longer be able to rely on the “cure period” to collect additional signatures. This increased burden will further hinder the ability of grassroots organizations like the OFT, who lack the financial resources of well-funded special interest groups, to successfully propose changes to the Ohio Constitution.

The current ballot initiative process is democratic; it allows Ohioans to amend their Constitution by a simple majority vote. By so doing, the ballot initiative process prevents a minority of Ohioans from frustrating popular will. SJR 2 proposes to alter the ballot initiative process by requiring constitutional amendments to clear 60% of the vote, effectively allowing a mere 40% plus 1 of Ohioans to dictate the terms of the Ohio Constitution. The proponents of SJR 2, more interested in frustrating popular will than consistency, do not seem to take issue with the fact that SJR 2, should it be placed before voters in August, would require only 50% plus 1 of Ohioans to approve it in order for it to amend the Ohio Constitution. As a labor union, the OFT believes in simple majority rule, and is fundamentally opposed to this change in the ballot initiative process.

The members of the OFT understand that SJR 2 has the potential not only to impact themselves as individuals on issues that they care about on a personal level, but also has the ability to impact their careers as education professionals. The members of the OFT care deeply about the students that they teach and the public schools – both traditional and charter – that they work in. It is entirely foreseeable that a constitutional amendment may someday be necessary in order to protect public education in Ohio. The same can be said for the right of Ohio public employees to collectively bargain. The OFT and its members need Ohio’s ballot initiative process to remain



unaltered; SJR 2 would render the already Herculean-task of amending Ohio's Constitution practically impossible for the OFT.

B. Holding an election in August to modify the Ohio Constitution harms the OFT and its members, particularly in light of the General Assembly improperly amending the Ohio Revised Code through joint resolution.

In addition to the OFT's opposition to the merits of SJR 2, the OFT is dismayed by the possibility that such a monumental change in Ohio's Constitution could occur during a lightly-attended August special election. Like the rest of the public, the members of the OFT do not participate in August special elections at the same rate as general elections in November or primary elections in March/May. Should the August special election go forward, the OFT will need to conduct significant outreach to its members, far in excess of what member outreach the OFT conducts for regularly scheduled elections. In particular, the fact that the election would be held in early August would considerably hinder the ability of the OFT to reach its members, as its members are most accessible to the OFT during the school year. Furthermore, many of the OFT's members will be out of state in August; some lack experience voting by mail, which will require the OFT to expend additional resources in educating those members to vote by mail.

The OFT was particularly dismayed by certain members of the General Assembly's complete reversal on the concept of August elections. Substitute House Bill 458, which dramatically curtailed the instances in which an August special election could legally be held, was signed into law mere months ago and went into effect on April 7, 2023. Codified into the Ohio Revised Code as §3501.022, the statute states that only "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." The OFT did not support Substitute House Bill 458;

O.R.C. §3501.022 hinders the ability of political subdivisions and school districts to pass school levies by only allowing political subdivisions and school districts to hold August elections if they are under a state of fiscal emergency.<sup>1</sup>

The OFT understood that, if the proponents of SJR 2 were to be successful in placing SJR 2 on the ballot in August (in a transparent attempt to out-manuever, rather than persuade, Ohio voters in advance of the reproductive rights citizen-initiated ballot likely to be placed on the November 2023 ballot), the proponents of SJR 2 would have to convince enough lawmakers to again amend the Ohio Revised Code in order to, as they had a few months prior, alter the statutory scheme regarding under what circumstances an August election can take place. Specifically, O.R.C. §3501.022, with its narrow allowance for the circumstances under which an August election can be held, would have to be amended before the backers of SJR 2 could pass a joint resolution calling for a statewide August election.

The OFT, along with other labor unions and political advocacy organizations, mobilized its members and engaged in an outreach campaign in order to persuade enough lawmakers to oppose SJR 2 and the placement of SJR 2 before voters through a special August election. Members of the OFT gave testimony at the General Assembly, participated in lobbying efforts alongside other labor unions, and marched in protest against SJR 2.

In the lead-up to the May 10, 2023 deadline imposed by Secretary LaRose, it appeared that the OFT's efforts to oppose SJR 2 would be successful. Two bills advanced by proponents of SJR 2, Senate Bill 92 and House Bill 144, would have amended O.R.C. §3501.022 in order to permit

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<sup>1</sup> When the OFT became aware of the proposal to amend O.R.C. §3501.022 to allow for SJR 2 to be placed on an August ballot, the OFT was frustrated that the General Assembly was attempting to create its own exception to O.R.C. §3501.022 while at the same time effectively denying political subdivisions and school districts the ability to hold their own elections in August.

the submission of a statewide ballot issue in an August election. Both bills had stalled. Senate Bill 92 died in a House committee; similarly, House Bill 144 never made it out of committee.

Facing certain defeat, and up against the deadline to organize an August special election, on May 10, 2023, the proponents of SJR 2 decided to attempt to change Ohio’s Revised Code through joint resolution, a last-ditch maneuver that flies in the face of this Court’s long standing precedent 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). Lacking the political will to change the law legally, the proponents of SJR 2 sought to change the law illegally, by circumventing the legal process by which Ohio Revised Code is amended. This maneuver is deeply concerning to the OFT, which is alarmed not only about the anti-democratic nature of SJR 2, but also the disregard for the rule of law that the proponents of SJR 2 displayed by attempting to pass SJR 2 without first amending the Ohio Revised Code. Many members of the OFT are civics and government teachers, and educate Ohio students about good government and the rule of law; it is disconcerting that certain Ohio lawmakers are willing to disregard the rule of law in favor of self-serving political interests.

## V. ARGUMENT

**Amicus Proposition of Law:** The Ohio Revised Code is unambiguous; elections regarding constitutional amendments may only be held during general elections in November or primary elections in May or March. As the General Assembly is not entitled to amend the Ohio Revised Code through joint resolution, the Relators’ writ of mandamus should be granted.

At its core, the legal question at the heart of this case is simple—is the General Assembly required to follow its own rules? The Ohio Constitution and the Ohio Revised Code establish a comprehensive and exclusive statutory scheme by which constitutional amendments proposed by the General Assembly can be submitted to the public for approval. Article XVI of the Ohio

Constitution authorizes the General Assembly to propose amendments to the Constitution through joint resolution, by vote of “three-fifths of the members elected to each house.” The General Assembly is authorized to submit such amendments to the ballot box “at either a special or general election as the General Assembly *may prescribe*.” (emphasis added). The General Assembly has already prescribed the comprehensive statutory scheme governing when elections may be held, and when those elections may involve constitutional amendments; the statutory scheme simply does not allow for an August special election involving an amendment to the Ohio Constitution.

O.R.C. §3501.02(E) provides that proposed constitutional amendments submitted by the General Assembly to the voters of the state may be submitted only 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.”

O.R.C. §3501.01(A) defines the general election as “the election held on the first Tuesday after the first Monday in each November.”

O.R.C. §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.”

Based on the foregoing, the only two options that the General Assembly has prescribed in the Ohio Revised Code for submission of a constitutional amendment from the General Assembly to the voters are (i) the general election in November or (ii) a primary election in May or (in presidential years) March.

The Ohio Revised Code does not allow for statewide special elections to be held 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.

O.R.C. §3501.022 provides very narrow and exclusive grounds for holding an August special election. “[A] political subdivision or taxing authority may hold a special election on the first Tuesday after the first Monday in August,” only if the political subdivision is “under a fiscal emergency” or the taxing authority “is a school district” and is “under a fiscal emergency.” O.R.C. §3501.022 does not authorize a statewide August special election under any circumstances, let alone an election to amend Ohio’s Constitution. A holding that O.R.C. §3501.022 does not provide the exclusive circumstances under which an August election can be held would be particularly offensive to the OFT, which was opposed to the passage of O.R.C. §3501.022 and views the General Assembly’s actions in this regard as a self-serving manipulation of O.R.C. §3501.022.

It is well-established that the General Assembly cannot amend or replace statutory law through the passage of a joint resolution. *See State ex rel Attorney General v. Kinney*, 56 Ohio St. 721, 724, 47 N.E. 569 (1897) (“statute law of the state can neither be repealed nor amended by a joint resolution of the general assembly.”) As SJR 2 calls for a statewide August election concerning a proposed constitutional amendment, it conflicts with the statutory scheme established by the Ohio Revised Code, which forecloses such an election. Without first amending the statutory scheme as established by O.R.C. §§3501.01, 3501.022, and 3501.02, the General Assembly lacked

authority to pass SJR 2. Consequently, in order to protect Ohio's Constitution and the rule of law, the Relators' writ of mandamus must be granted.

## VI. CONCLUSION

For the reasons set forth above and for those described in Relators' merit brief, amicus curae the Ohio Federation of Teachers, AFT, AFL-CIO respectfully request this Court grant the writ of mandamus sought by the Relators. The Court should direct Respondent Secretary LaRose to remove SJR 2 from the August 8, 2023 ballot and direct Secretary LaRose to instruct the county election officials under his authority not to proceed with the August special election.

Respectfully submitted,



Susannah Muskovitz, Esq. (0011457)  
Thomas M. Steffas, Esq. (0102313)  
MUSKOVITZ & LEMMERBROCK, LLC  
1621 Euclid Avenue, Suite 1750  
Cleveland, Ohio 44115  
Phone: (216) 621-2020  
Fax: (216) 621-3200  
muskovitz@mllabor.com  
steffas@mllabor.com

*Counsel for Amicus Curiae Ohio Federation  
of Teachers, AFT, AFL-CIO*

**CERTIFICATE OF SERVICE**

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 served via electronic mail upon the following:

David R. Fox  
Emma Olson Sharkey  
Jyoti Jasrasaria  
Samuel T. Ward-Packard  
ELIAS LAW GROUP LLC  
dfox@elias.law  
eolsonsharkey@elias.law  
jjasrasaria@elias.law  
swardpackard@elias.law

Donald J. McTigue  
K. Corey Colombo  
Katie I. Street  
dmctigue@electionlawgroup.com  
ccolombo@electionlawgroup.com  
kstreet@electionlawgroup.com

*Counsel for Relators*

Julie M. Pfeiffer  
Amanda L. Narog  
Michael A. Walton  
Elizabeth H. Smith  
Phillip T. Kelly  
Julie.Pfeiffer@OhioAGO.gov  
Amanda.Narog@OhioAGO.gov  
Michael.Walton@OhioAGO.gov  
Elizabeth.Smith@OhioAGO.gov  
Phillip.Kelly@OhioAGO.gov

*Counsel for Respondent*



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Thomas M. Steffas (0102313)