

**IN THE COURT OF COMMON PLEAS OF ATHENS COUNTY, OHIO
CIVIL DIVISION**

GREGORY SMITH et al,

Relators,

v.

GREG CLEMENT et al,

Respondents.

Case Number: 24CI0180

Judge: GEORGE P. MCCARTHY

PRELIMINARY INJUNCTION AND PERMANENT INJUNCTION ORDER

Now comes the Court this 30th day of July 2024 upon motion of the Relators. Present were Attorney Daniel Klos for Relators along with Gregory Smith and Vicki McDonald; Asst. Prosecutor T.L. Warren for the Athens County Board of Elections; and Nelsonville Law Director Jonathan Robe and Attorney Mrinali Sethi for Nelsonville City Council and the City of Nelsonville. Nelsonville City Council members were also present.

The Court finds that Relators have standing to bring the action in this matter and that the parties were given adequate notice of hearing. The initiative at issue in this case seeks to disband Nelsonville's current city charter form government and return to a statutory form of government. An ordinance needs passed by city council sending an initiative found to be valid to the Athens County Board of Elections by August 7, 2024 in order for it to be placed on the November 5, 2024 ballot. Therefore, time is short. Relators filed their petition for writ of mandamus on July 18, 2024 and on July 24, 2024 filed a subsequent motion for TRO, preliminary

and permanent injunction. This hearing on all matters is being held six days later on July 30, 2024.

The Court finds it could have issued a writ and/or a temporary restraining order, without the benefit of hearing from the parties. Instead, the Court choose to hold hearing on the matter to hear all from the parties involved before making a decision as the matters before the Court concerns important issues that will affect all the citizens of Nelsonville.

The Court heard testimony from Relators Gregory Smith and Vicki McDonald. The Court finds that both are citizens and electors of Nelsonville, Ohio and that Relator McDonald is the head of the committee that circulated the petition initiative to disband the charter form of government.

The Court further finds that the Nelsonville Clerk of Court received the initiative petition and contacted the Athens County Board of Elections which determined that 136 signatures were required to add the initiative to the election ballot for November 5, 2024. The Court further finds 180 signatures on the petition were validated and concludes the initiative contains a sufficient number of valid signatures to be considered by Nelsonville City Council. Further, the Court finds that on or about June 27, 2024 the Athens Board of Elections sent correspondence to the Nelsonville City Clerk advising enough valid signatures were obtained for the initiative to go forward. Relator McDonald testified that the clerk also contacted her and notified her that there were enough valid signatures obtained for the initiative to proceed.

As a result, the Court finds that the initiative contained the requisite number of valid signatures and was required to come before Nelsonville City Council for their consideration of passing an ordinance to send the initiative to the Athens County Board of Elections at the very

next city council meeting. A city ordinance containing the initiative is required to be submitted to the board of elections by August 7, 2024 so that the initiative can be placed on the November 5, 2024 ballot for the citizens of Nelsonville to consider.

The Court further finds that Relator McDonald took reasonable steps to make sure that the initiative would come before Nelsonville City Council on their next meeting held on July 8, 2024. The Court finds that July 8th was the very next council meeting that would take place after the City of Nelsonville was advised through their clerk that enough initiative petition signatures were validated by the Athens County Board of Elections for the matter to proceed to council. The Court finds the city charter required the initiative be considered by Nelsonville City Council on July 8, 2024 for the passing an ordinance to send the validated initiative to the Board of Elections. *See Nelsonville City Charter, Sec. 10:02.*

The Court further finds that Relator McDonald was at the Nelsonville City Council meeting on July 8, 2024 and Relator's petition initiative and communication from the Board of Elections verifying enough signatures were not addressed. As a result, the Court finds that the Nelsonville City Council, without cause, failed to carry out their duty pursuant to the city charter to consider a resolution adopting an ordinance to refer the initiative to the board of elections. *See Nelsonville City Charter, Sec. 10:02.*

Respondent Board of Elections objects relying on Nelsonville Ordinance 32:15 where a previously filed initiative was rejected by council. The Court finds Nelsonville Ordinance 32:15 denying the initiative applies only to one specific petition submitted in 2015 and did not otherwise affect the city charter. Additionally, the Court finds that ordinance did not reject that 2015 initiative based upon the failure of the city charter to provide a process to disband the city

charter form of government. It was rejected because it failed to provide for a transition period to return to a statutory form of government. Therefore, it does not prevent Relators' petition initiative herein from being approved.

All other objections by respondents not specifically addressed herein have been carefully considered and are overruled.

The Court finds: 1) there is a substantial likelihood that the Realtors will prevail on the merits, 2) Relators will suffer irreparable injury by missing the opportunity to place the measure on the ballot for November 5, 2024 which includes the election for President of the United States where there will be greater voter turnout, 3) No third parties will be harmed by the placement of the initiative on the ballot, and 4) the public interest is best served by placing the initiative on the Nelsonville ballot. Further, it appears Respondents will continue to permit the obstruction of council's consideration of passing an ordinance to send the initiative (attached) to the Athens County Board of Elections in a timely manner in violation of Relator's rights.

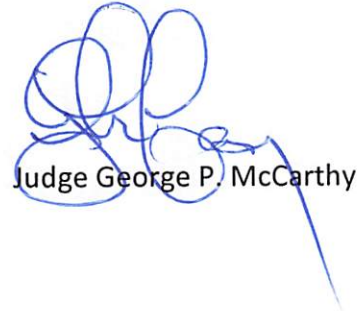
Therefore, upon motion of Relators, and pursuant to R.C. § 2727.02, the Ohio Constitution Arts. I Sec 2, XVII Sec 1, XVIII, §§ 5, 8, 9, and 14, Ohio Revised Code §731.28 to 731.41, and the Nelsonville City Charter, and for good cause shown, the Court orders a Preliminary Injunction and Permanent Injunction to all Respondents restraining them from preventing Nelsonville City Council from considering and passing an ordinance requiring the submission of petitioners' initiative to the Athens County Ohio Board of Elections by August 7, 2024 for placement on the November 5, 2024 ballot.

Respondents oral motion for stay is denied. No bond is required as the Respondents include a political subdivision and officers thereof. *Civ.R. 65(C)*. As a preliminary and permanent

injunction has been ordered after a hearing has been conducted, Relators motion for temporary restraining order is denied as it is now moot.

This is a final appealable order.

IT IS SO ORDERED.



Judge George P. McCarthy

TO THE CLERK:

Please provide a copy of the foregoing to all parties of record, via their attorney if represented, through the clerk's electronic filing case management system and if unable to do so then by regular U.S. Mail., proper postage prepaid.

**NOTICE TO CLERK OF NELSONVILLE CITY COUNCIL AND
NELSONVILLE CITY AUDITOR**

THE FOLLOWING FIVE QUALIFIED VOTERS ARE COMMENCING A INITIATIVE DEFINED IN FULL BELOW AND WILL CONSTITUTE THE PETITIONER'S COMMITTEE THAT WILL BE RESPONSIBLE FOR CIRCULATING AND FILING THE PETITIONS IN PROPER FORM AND COMPLIANCE WITH THE LAWS OF THE STATE OF OHIO. THE ADDRESS OF THE COMMITTEE SHALL BE 46 HARPER WAY, NELSONVILLE, OHIO 45764 IN CARE OF VICKI MCDONALD.

MCDONALD, VICKI LYNN 46 HARPER WAY, NELSONVILLE OH 45764
BISHOP, BARBARA LYNN 1080 BURR OAK BLVD, NELSONVILLE OH 45764
POTTS, LEEANNA JOE 1038 POPLAR ST, NELSONVILLE OH 45764
MCDONALD, WILMA J 373 POPLAR ST, NELSONVILLE OH 45764
MACCOMBS, PATRICIA ANN 1040 WALNUT ST, NELSONVILLE OH 45764

FULL PROPOSED INITIATIVE

AN INITIATIVE OF THE ELECTORS OF THE CITY OF NELSONVILLE, OHIO TO BE SUBMITTED TO THE ATHENS COUNTY OHIO BOARD OF ELECTIONS FOR NOVEMBER 5, 2024, GENERAL ELECTION IN ATHENS COUNTY OHIO.

"Shall the Charter of the City of Nelsonville, Ohio, submitted to the Electors of the City of Nelsonville on November 8, 1994, which became effective January 1, 1995, and it's subsequent amendments, be abolished and return to the same form of government as it had prior to and up to January 1, 1995, to be effective on Jan 1, 2026?

Upon approval of this initiative submitted to the electors of the City of Nelsonville at the general elections on November 5, 2024, the election of all city offices which were required by the form of government of Nelsonville Ohio prior to January 1, 1995, shall be elected during the municipal elections of 2025. Those elected shall take office on January 1, 2026.

EXHIBIT 1

CERTIFICATION

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This notice of initiative was served by personal service to Susan Harmony, Nelsonville Clerk of Council on the 28th day of May, 2024

Signed Vicki L. McDonald