

# Charter advocates pursue appeals

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MEDINA — The denial of a Medina County citizens group's bid to place a charter government issue on the November ballot is being appealed on two fronts.

A Northeast Ohio leader of the Community Environmental Legal Defense Fund said Thursday that one appeal has been filed with the Ohio Supreme Court and another is pending with the 9th District Court of Appeals.

"What we have to consider as people when seeing this is that the (Ohio) General Assembly does not have the right to sneak language like this into a foreclosure bill that strips the people of their constitutional right to propose a county charter by initiative," said Tish O'Dell, a Broadview Heights organizer who works with the Pennsylvania-based environmental group.

O'Dell was referring to House Bill 463, which the Legislature passed in December 2016 and has been cited as giving local boards of elections the authority to block petition initiatives.

"In other words," O'Dell said, "the Legislature cannot simply pass a law that changes the (Ohio) constitution." Athens County also is named in Thursday's filings as a complainant.

In order for the issue to still appear on the Nov. 7 ballot, O'Dell said the courts must make a decision before Sept. 23, when absentee ballots must be ready.

Two previous legal challenges by charter initiative proponents failed — in 2016 and 2015.

### **Signatures valid**

More than 60 members of the county citizens group Sustainable Medina County gathered 6,494 signatures and met a June 30 deadline to place a charter government issue on the Nov. 7 ballot.

It marked the third year in a row the group sought to give voters a say in the county government's makeup. Leaders of Sustainable Medina County have said a goal of the charter would be to allow voters to have local control over environmental issues concerning land, air, water and private property.

The charter language would be structured with a "community bill of rights" that would cover projects such as the proposed \$2 billion NEXUS Gas Transmission pipeline.

At a public meeting July 10, the Medina County Board of Elections voted 3-1 against certifying the ballot issue, although the board did confirm the number of signatures on the petitions met the legal requirements necessary for certification.

The 28-page appeal filed with the Ohio Supreme Court said, "The Board found the petition to be invalid. The proposed county charter does not adequately provide for an alternative form of county government, and it contains provisions that are outside the initiative power because they are not within a county's authority to enact."

In the appeal, attorney Terry Lodge of Toledo, working for Sustainable Medina County, argues the "board of election (is) not authorized to decide what the law is, and

whether the county charter proposals conform to that interpretation; they may only review the sufficiency of the petitions and signature validity.”

Therefore, the election board’s “ ‘invalidation’ of the petitions is unconstitutional, arbitrary, illegal and an abuse of their legal authority.”

After the elections board’s ruling, Sustainable Medina County appealed to Medina County Common Pleas Court. Both county judges — Christopher J. Collier and Joyce V. Kimbler — recused themselves, and the Ohio Supreme Court referred the case to a retired judge from Toledo, Peter Handwork, who also denied ballot certification in a one-day hearing July 18.

Handwork said while the charter provided “a detailed list” of duties for county officers under its proposed language, it did “not include all duties of those offices enumerated in the Ohio Revised Code and there is no language in the charter that attempts to incorporate all duties imposed by general law.”

A second reason Handwork cited for upholding the elections board decision concerned the charter’s bid “to enact controls over the administration of existing state and federal law.”

Arguments have been raised on both sides about whether eminent domain and federal law supersede local authority over projects such as the NEXUS pipeline.

The project was proposed in August 2014 and is awaiting certification from the Federal Energy Regulatory Commission to begin construction. It would travel about 255 miles from eastern Ohio through Medina and Lorain counties and then west to Toledo and into Michigan and Canada to an energy hub.

Of the rulings by the board of elections and Handwork, O’Dell said, “Funny that our own government passes

unconstitutional laws and then tries to use those unconstitutional laws to keep people's initiatives off the ballot, which is their constitutional right."

O'Dell said her group believes that House Bill 463 expanded the powers of county boards of elections too broadly.

"What happens when the people begin adopting laws to govern the places where they live? The corporate state comes in to stop them," said Sharon Township resident Kathie Jones, a leader of Sustainable Medina County.

"The oil and gas industry wants to kill citizen initiative in Ohio, because our rights-based organizing to ban fracking and pipelines is growing.

"Their minions in the state Legislature obliged — and now we have House Bill 463. It's unconstitutional, violating our right to initiative and violating separation of powers. This is a threat to all citizen initiatives, and we're fighting it."

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