

**In the  
Supreme Court of Ohio**

<b>State ex rel. WILLIAM DUDLEY, et al.,</b>	:	
	:	
<i>Relators,</i>	:	<b>Case No. 2024-0161</b>
	:	
<b>v.</b>	:	<b>Original Action in Mandamus</b>
	:	
<b>DAVE YOST.</b>	:	
	:	
<i>Respondent.</i>	:	

---

**MEMORANDUM IN OPPOSITION TO RELATORS' MOTION FOR EXPEDITED  
SCHEDULING ORDER**

---

DAVE YOST  
Ohio Attorney General

Donald J. McTigue (022849)  
McTigue & Colombo, LLC  
545 East Town Street  
Columbus, Ohio 43215  
(614) 263-7000  
dmctigue@electionlawgroup.com

Ben Stafford  
Elias Law Group LLP  
1700 Seventh Avenue, Suite 2100  
Seattle, WA 98101  
(206) 656-0176  
bstafford@elias.law

Jyoti Jasrasaria  
Qizhou Ge  
Elias Law Group LLP  
250 Massachusetts Avenue NW, Suite 400  
Washington, D.C. 20001  
(202) 968-4490  
Jjasrasaria@elias.law  
age@elias.law

*Counsel for Relator*

ANDREW D. McCARTNEY (0099853)\*  
*\*Counsel of Record*  
JULIE M. PFEIFFER (0069762)  
ANN YACKSHAW (0090623)  
Assistant Attorneys General  
Constitutional Offices Section  
30 East Broad Street, 16th Floor  
Columbus, Ohio 43215  
Tel: 614-466-2872 | Fax: 614-728-7592  
Andrew.McCartney@OhioAGO.gov  
Julie.Pfeiffer@OhioAGO.gov  
Ann.Yackshaw@OhioAGO.gov

*Counsel for Respondent*

**In the  
Supreme Court of Ohio**

<b>State ex rel. WILLIAM DUDLEY, et al.,</b>	:	
	:	
<i>Relators,</i>	:	<b>Case No. 2024-0161</b>
	:	
<b>v.</b>	:	<b>Original Action in Mandamus</b>
	:	
<b>DAVE YOST.</b>	:	
	:	
<i>Respondent.</i>	:	

---

**MEMORANDUM IN OPPOSITION TO RELATORS’ MOTION FOR EXPEDITED  
SCHEDULING ORDER**

---

Relators’ Motion for Expedited Scheduling Order should be denied because this case is not an expedited election case under S.Ct.Prac.R. 12.08 and because Relators cannot show that prompt disposition of this case is necessary to protect Relators’ constitutional right to engage in the petition process. In fact, Relators fail to show any likelihood that the proposed amendment will even qualify for the 2024 general election ballot.

Relators concede that their motion falls far outside S.Ct.Prac.R 12.08, which provides for expedited scheduling in an election case, “if the action is filed within ninety days prior to the election.” The purpose of this rule is twofold: “[b]ecause of the necessity of a prompt disposition of an original action relating to a pending election, and in order to give the Supreme Court adequate time for full consideration of the case.” Thus, an expedited schedule becomes necessary only when an election dispute arises within ninety days of an election. This action comes 274 days before the

November 5, 2024, general election. Thus, Relators are not entitled to have their dispute litigated as an expedited election case.<sup>1</sup>

Nor have Relators established any necessity for this case to be decided on an expedited schedule. Relators' request lies on their faulty notion that, apparently, all litigation involving the initiative process should be expedited no matter how far it falls from an election. Relators' Motion at 1. ("Likewise, when it becomes necessary for citizens to challenge actions of the Attorney General or the Ballot Board Under the Revised Code, litigation should not serve to unduly delay the initiative process.") Not only does it offend S.Ct.Prac.R. 12.08, but Relators ignore the inherent prejudice to respondents in expedited elections cases. In *State ex rel. Willke v. Taft*, 107 Ohio St.3d 1, 2005-Ohio-5303, 836 N.E.2d 536, ¶18, a group of taxpayers sought a writ of mandamus to strike a proposed constitutional amendment from the ballot 64 days before the election. Although the respondent's laches defense ultimately was unsuccessful, this Court recognized that expedited election cases are inherently prejudicial to respondents and a, "delay prejudices respondents by making the case an expedited elections case . . . which restricts respondents' time to prepare and defend against relators' claims." *Id.* This Court should protect the Attorney General's ability to prepare and defend his decision to reject Relators' summary of the proposed constitutional amendment.

Prejudice to the Attorney General is even more so here because Relators challenge the scope of the Attorney General's authority to ensure that summaries of petitions seeking to change the Ohio Constitution are fair and truthful under R.C. 3519.01. This is no small matter. The sole

---

<sup>1</sup> *DeBlase v. Ohio Ballot Bd.*, 169 Ohio St.3d 1477, 2023-Ohio-997, cited by the Relators for the proposition that, "cases related to proposed constitutional amendments typically proceed in a highly expedited manner" is unavailing. See Relators' Motion at 1-2. The Relators' motion for an expedited schedule in that case was unopposed by the Ohio Ballot Board and was granted without opinion. *Id.*

purpose of a summary is to inform voters of the scope and effect of the proposed amendment. The importance of the Attorney General's scope and authority to ensure that the summaries provided to voters are fair and truthful cannot be understated. This Court should deny the Relators' attempt to expedite the litigation over the Attorney General's ability to ensure that voters receive fair and truthful summaries of proposed constitutional amendments.

Nor is an expedited schedule necessary to protect Relators' rights. Relators are correct that the statutory time limits imposed on the Attorney General's review of the summaries appended to proposed laws or constitutional amendments (R.C. 3519.01) and the Ballot Board's review of whether the petitions propose one or more law or constitutional amendments (R.C. 3505.062) prevent undue delay in the initiative process. However, these statutory stop gaps do not support a blanket rule that all disputes involving petitions for constitutional amendments must be litigated by rapid fire. For one, it is prejudicial to respondents and to this Court. *See Willke*. And, for two, it is unnecessary because petitioners have free rein when they decide to submit a petition summary to the Attorney General under R.C. 3519.01 and for which general election ballot the proposed amendment would appear. In other words, petitioners may submit proposed amendments and their summaries any time and, once they have successfully completed the constitutional hurdles, including obtaining more than 400,000 signatures from 44 different counties, they can submit the amendments for inclusion on *any* general election ballot so long as it is 125 days *before* that particular election. Ohio Constitution, Article II, Section 1a. Petitioners frequently submit petition summaries to the Attorney General under R.C. 3519.01 at all times throughout the calendar year. *See* "List of petitions submitted to the Attorney General's Office," <https://www.ohioattorneygeneral.gov/Legal/Ballot-Initiatives/Petitions-Submitted-to-the-Attorney-General-s-Offi>. What is more, the majority of proposed petitions, even when the

Attorney General certifies the truthfulness of their petition summaries, don't ever see a general election ballot. *Id.* Indeed, Relators' petition is in its infancy and they offer no support for their blanket assertion that their petition will survive the constitutional hurdles in time for the 2024 general election. In any event, the July 3 filing deadline for this year's general election does not represent Relators' only chance to have their proposed amendment decided by the voters. They retain the ability to submit their petition in subsequent elections, should it ever clear the constitutional hurdles that all petitions for constitutional amendments face. Thus, as expedited schedule is not necessary to protect the Relators' constitutional right to engage in the petition process.

For the foregoing reasons, Relators' Motion for Expedited Scheduling Order should be denied.

Respectfully submitted,

DAVE YOST  
Ohio Attorney General

*/s/ Andrew D. McCartney*

---

ANDREW D. McCARTNEY (0099853)\*

*\*Counsel of Record*

JULIE M. PFEIFFER (0069762)

ANN YACKSHAW (0090623)

Assistant Attorneys General

Constitutional Offices Section

30 East Broad Street, 16th Floor

Columbus, Ohio 43215

Tel: 614-466-2872 | Fax: 614-728-7592

Andrew.McCartney@OhioAGO.gov

Julie.Pfeiffer@OhioAGO.gov

Ann.Yackshaw@OhioAGO.gov

*Counsel for Respondent*

**CERTIFICATE OF SERVICE**

I hereby certify that on February 5, 2024, the foregoing was filed electronically. Notice of this filing was sent via electronic mail to the following:

Donald J. McTigue  
Ben Stafford  
Jyoti Jasrasaria  
Qizhou Ge  
dmctigue@electionlawgroup.com  
bstafford@elias.law  
jjasrasaria@elias.law  
age@elias.law

*Counsel for Relators*

*/s/ Andrew D. McCartney*

\_\_\_\_\_  
ANDREW D. McCARTNEY (0099853)

Assistant Attorney General