

Publications

Oil and Gas Alert: Ohio Secretary of State Refuses to Place Proposed County Charter Petitions Banning Oil and Gas Activities on the November Ballot

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On Thursday, August 13, Secretary of State John Husted issued a decision finding that the proposed charter petitions for Athens, Fulton and Medina counties are invalid. The secretary's decision tracked analysis provided by Vorys' attorneys Jonathan Airey, Gregory Russell, Lisa Babish Forbes and Aaron Williams in an amicus brief submitted on behalf of the Ohio Oil and Gas Association and the Ohio Gas Association. The secretary determined that the proposed county charter petitions violate Ohio statutory and constitutional law and, therefore, should not be placed on the November ballots.

The proposed charter petitions impermissibly attempt to regulate and even prohibit elements of oil and gas production operations within the counties. The secretary reasoned that "a county charter may not grant to a county *more* authority than a municipality in Ohio can have pursuant to the Ohio Constitution." Citing the recent decisions of *Morrison v. Beck Energy* and *Bass Energy v. Broadview Heights*, the secretary observed: "The courts in Ohio have spoken: a municipality may not 'discriminate against, unfairly impede, or obstruct' the operation of oil and gas wells in Ohio." Because the petitions contain charter provisions that are preempted by R.C. 1509.02 *et seq.*, the secretary concluded that the petitions are not valid.

In addition, the proposed county charters fail to comply with the statutory requirements for establishing an alternative form of government. In the same breathe, the county charter petitions claim to create an alternative form of county government while maintaining their current system of government. By doing so, the charters fail to provide for the election or appointment of a county executive as required by Ohio law. The secretary concluded that: "The unavoidable truth is that the Athens, Fulton, and Medina petitions simply fail to adhere to the Revised Code's clear requirements for a legally constituted 'alternative form of government.'"

This latest unsuccessful effort by localities to try to get around the state's comprehensive regulatory scheme for oil and gas drilling and operations found in R.C. 1509.02 *et seq* and the regulations promulgated under it recognizes and further strengthens the preemptive effect of the state law. If you have any questions about the secretary of state's decision, please contact: Jonathan Airey (614.464.6346), Greg Russell (614.464.5468), Lisa Babish Forbes (216.479.6105), Aaron Williams (216.479.6180), or your Vorys lawyer.