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## INTRODUCTION

The Appellants object to the "immediate and dramatic" impact of the filing of a petition for dissolution under ORC §703.20. This case has proven that, due to the actions of village officials, the impact is neither immediate nor dramatic. The Realtor filed a Petition for Dissolution on May 31, 2006. The Village, on the advice of its' Solicitor, choose to reject the petition and ignore the law. This prompted the Realtor to file a Complaint/Petition for Writ of Mandamus in the Court of Appeals, Seventh Judicial District on June 23, 2006. The Court of Appeals held that Realtor had established its right to relief in mandamus, and ordered the mayor and the Village Council of New Waterford to canvas the petition and determine the sufficiency of the signatures. If the signatures are found to be sufficient and otherwise in compliance with ORC §703.20, the mayor and village council were ordered to fix a date for a special election concerning the surrender of corporate powers of the village.

The Village then chose to appeal that decision to this honorable Court; a decision which once again delayed any resolution by the voters as to the fate of the village. The truth is that the village could, and should, have followed the law; placed the issue on the ballot in 2006, and lived with the results. The "undeniable reality" is that the village officials have delayed and improperly deprived the citizens of their opportunity to choose how they wish to be governed.

## **STATEMENT OF THE FACTS**

This case is based upon the refusal of the Village of New Waterford to comply with the provisions of ORC § 703.20. The facts of the case are as set forth in the written Stipulations filed by the parties on November 6, 2006, and the Affidavit of Lois A. Gall, Director of the Columbiana County, Ohio, Board of Elections dated February 9, 2007, which was attached to Appellant's Supplemental Motion For Summary Judgment filed on February 9, 2007. Copies of said Stipulations and Affidavit are attached as the Appendix hereto.

## **STATEMENT OF THE CASE**

The Appellant agrees with the Statement Of The Case set forth in Appellee's Brief with one exception. . The Court of Appeals did not find that "R.C. § 703.20 was a unique type of petition exempt from the requirements of general election laws and statutes governing initiative and referendum". The petition filed in this case under ORC § 703.20 is absolutely unrelated to the requirements governing initiative or referendum petitions.

## ARGUMENT

### A. PROPOSITION OF LAW NO. 1

#### **THE APPELLEE IS CLEARLY ENTITLED TO A WRIT OF MANDUMUS, AS ORDERED BY THE COURT OF APPEALS, BASED UPON A PROPERLY FILED PETITION UNDER ORC §703.20**

In this case a Petition was filed under ORC §703.20 regarding the surrender of corporate powers by a Village. Ohio Revised Code §703.20 states:

Villages may surrender their corporate powers upon the petition to the legislative authority of the village of at least forty per cent of the electors thereof, to be determined by the number voting at the last regular municipal election [sic.], and by an affirmative vote of a majority of such electors at a special election, which shall be provided for by the legislative authority, and conducted, canvassed, and the result certified and made known as at regular municipal elections. If the result of the election is in favor of such surrender, the village clerk shall certify the result to the secretary of state and the county recorder, who shall record it in their respective offices, and thereupon the corporate powers of such village shall cease.

Upon the filing of a Petition under §703.20 the New Waterford Village Council had an absolute duty to canvas the Petition to determine whether the signatures were sufficient. Rather than performing their mandatory duty, The New Waterford Council chose to unilaterally reject the Petition. This was clearly an error and contrary to law.

A Petition filed under ORC §703.20 is not an "Initiative Petition" as is set forth in Ohio Revised Code §731.28 nor is it a "Referendum Petition" as is set forth in ORC §731.29. Therefore, the pre-circulation filing requirement for an "Initiative Petition" and/or a "Referendum Petition" as is set forth in ORC Section 731.32 is not applicable. There is not a single reported case in Ohio that links a Petition filed under ORC §703.20 to the pre-circulation filing requirements set forth in ORC §731.32.

ORC §703.20 was analyzed by the 7<sup>th</sup> District Court of Appeals in the case of State ex rel. Christopher v. Gaia, 138 Ohio App 3d 527 (7th District 2000). In the

Christopher case, the Craig Beach Village Council canvassed the Petition through the Mahoning County Board of Elections (which determined that the Petition contained sufficient signatures), and then refused to call a special election. The Court wrote:

The Ohio Revised Code details the affirmative duties placed upon Village officials when petitioned by the electorate concerning surrender of its corporate powers. The Village council must canvas the Petitions to determine whether the signatures are sufficient. Upon presentation of a Petition to the Council for such election, it is the duty of the Council, before taking action thereon, to satisfy itself that it contains the names of the requisite number of qualified petitioners, and for that purpose it may refer the same to a committee to make the necessary examination. Dutton v. Hanover (1884), 42 Ohio Street 215, 1884 WL 230. Where a Petition calling for a special election bears the requisite number of signatures, it is the mandatory duty of the Mayor and Council to fix a date for special election.

The Court in Christopher concluded that the Village was required to canvas the Petition without any reference to the unrelated pre-circulation filing requirements set forth in ORC §731.32:

In order to comply with R.C. 703.20 the legislative authority of Craig Beach Village *must* canvas the Petition and determine whether the requisite number of signatures have been collected. See State ex rel. Hinchliffe v. Gibbons (1927), 116 Ohio Street 390, 396, 156 N.E. 455,457.

In a pleading filed June 12, 2000, by the Mayor, there is a paragraph-by-paragraph answer to the Complaint, reflecting discussions in executive session. There was a return to open session and a vote was taken whether to hold a special election on August 8, 2000. The Motion failed by a vote of three to two. The record does not reflect that the vote failed on the basis of insufficient signatures or that the Petition was canvassed as required by law.

Based on the pleadings before this Court, there has not been compliance with the statute and the Village Council has failed to follow the law with

regards to calling a special election. There is no discretion in the law for Council to refuse a special election if the petition is insufficient.

Construing the June 12, 2000 filing as an answer leads to the inescapable conclusion that a peremptory writ must issue. This Court finds the rationale of *Morgan* persuasive, and thus, the Mayor and Village Council of Craig Beach are under a clear legal duty to canvas the Petitions, which have already been verified through a submission to the Board of Elections, and then fix a date and question for special election.

Again, it must be pointed out that there is no reference to any requirement of a pre-circulating filing in Christopher case or any of the cases cited therein.

ORC §703.20 was also interpreted in the case of State ex rel. Morgan v. Hodge, 83 NE 2d 824 (Greene County Court of Appeals, 1948). In Morgan, the Mayor and Council of Wrightview, Ohio attempted to avoid the plain meaning of ORC §703.20 by requesting the appointment of a Master Commissioner to determine the validity of the signatures on the petition. This argument was rejected as the court wrote:

The respondents urged upon the trial judge, and in this court by brief, the advisability of naming a Master Commissioner to investigate the validity of the signatures to the petition. Manifestly, this was not the appropriate procedure. The appellants were in court under the obligation either to show compliance with the alternative writ or to make it appear that they were not required to act upon it.

Full compliance with the statute appearing to have been observed by the relator and the requisite number of petitioners having signed the petition, at least prima facie, it was the positive duty of the Mayor and council to fix a date and at that time to canvass the petition and to determine the question whether or not it bore enough valid signatures to require the calling of an election. If it did, the respondents had no choice but to call the election. If it did not, such determination should have been made and refusal to conform to the request of the petitioners ordered. In no view of the situation could respondents refuse to act as the law enjoined them to do. Dutten v. Village of Hanover, 42 Ohio St. 215, 217, and serious consequences might result to the village by such proceeding. See the controlling section, G.C. § 3514.

There is no error in the action of the trial judge in granting the writ. No other order could properly have been made under the law.

Again, in the Morgan case, there was no mention of a pre-petition filing requirement, and that court seemed to understand the difference between a petition filed under ORC §703.20 as opposed to an initiative or referendum petition.

The Appellee clearly was not exercising legislative power when he filed his petition under ORC §703.20. The Court of Appeals found that the filing of a petition under ORC §703.20 involves the execution or administration of laws already in existence rather than the creation of new law. (Opinion and Journal Entry filed on January 31, 2007; Paragraphs 14-16). The filing of the petition was merely the trigger that created the duty, on the part of the village, to canvass the signatures and initiate the legislative process.

The proposed Ordinance which was submitted to the Village of New Waterford along with the nine (9) page Petition was intended by the undersigned to serve two purposes. First, it was submitted as a courtesy to the Solicitor for the Village of New Waterford. Proceedings under Ohio Revised Code Section 703.20 are fairly rare and the undersigned was able to locate a form Ordinance which might be useful to Appellant's Counsel. Secondly, as is the case with all election related issues, timing was of the essence. The proposed form Ordinance was submitted to expedite this matter so that the issue could be placed before the voters of the Village of New Waterford on a timely basis. Unfortunately, that has still not occurred. The Court of Appeals correctly held that the fact that the Appellant attached a proposed ordinance to the petition did not turn the petition into an initiative petition. (Opinion and Journal Entry filed on January 31, 2007; Paragraph 15)

While Appellant claims that there is only one case interpreting ORC §703.20, there are absolutely NO cases cited for the proposition that a petition filed under ORC §703.20 is subject to the requirements of the initiative or referendum laws. The

Appellee is clearly entitled to a Writ of Mandamus compelling the New Waterford Village Council to canvas the petition filed under ORC §703.20 to determine whether the signatures are sufficient. If the signatures are sufficient, the Village Council is further obligated, and it should be accordingly ordered, to forthwith fix a date for a special election based upon the petition.

#### B. PROPOSITION OF LAW NO. 2

##### **THE APPELLANT'S DELAY IN CANVASSING THE PETITION AND CALLING FOR A SPECIAL ELECTION DOES NOT MAKE THE PETITION MOOT.**

The last regular Municipal election in the Village of New Waterford prior to the time that the petition was filed in this case was held on November 8, 2005. Appellee is now asking the Court to consider the November 7, 2006 election (or perhaps the November 6, 2007 election) in making a determination regarding the number of required signatures. The November 6, 2006 election obviously occurred **AFTER** the petition was filed with the Village. It would be almost absurd to judge the Petition based upon an election that occurred after the Petition was filed, particularly when it is the Appellants who have improperly delayed the process set forth in the Ohio Revised Code.

The Appellant's evidence submitted in response to the January 31, 2007 Opinion of the Court of Appeals clearly establishes the requisite number of signatures that were submitted to the Village. It is the duty of the Village to determine if the signatures are valid. This is this duty that the Village has delayed and/or ignored, and it is the very basis of this litigation.

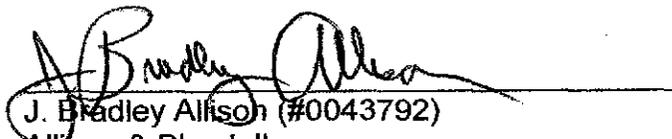
As to the issue of mootness, again, the proposed Ordinance was submitted as a courtesy, as outlined above. If the Village had simply followed the law the special election could have occurred in 2006. The delay tactics used by the Village do not

make the issues moot. The citizens of New Waterford are still entitled to vote on the issue of the continued existence of the Village.

## CONCLUSION

The arguments and authorities herein establish that the Court of Appeals correctly interpreted the plain language of ORC §703.20, and correctly granted a Writ of Mandamus. This Court must affirm of the Court of Appeals decision in order to preserve the citizens of New Waterford right to self-determination.

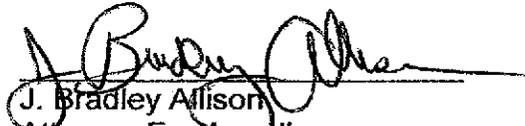
Respectfully submitted,

A handwritten signature in black ink, appearing to read "J. Bradley Allison", is written over a horizontal line. The signature is stylized and cursive.

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## CERTIFICATE OF SERVICE

A copy of the foregoing Merit Brief of Appellee was served upon Judith A. Carlin,  
Attorney for Village of New Waterford, P.O. Box 287, New Waterford, Ohio 44445, by  
way of Ordinary U. S. Mail on the 30<sup>th</sup> day of August, 2007.

  
J. Bradley Allison  
Attorney For Appellee