

ORIGINAL

Case No. 14-1478

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**Supreme Court  
of the State of Ohio**

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**STATE OF OHIO *ex rel.* COMMITTEE FOR CHARTER AMENDMENT  
PETITION TO LIMIT THE USE OF PHOTO-MONITORING DEVICES  
IN THE CITY OF MAPLE HEIGHTS, OHIO, *et al.*,**

**Relators,**

**v.**

**CITY OF MAPLE HEIGHTS, OHIO, *et al.*,**

**Respondents.**

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*Original Action in Mandamus / Expedited Election Matter*

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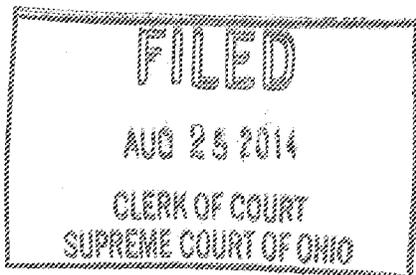
**RELATORS' MEMORANDUM IN SUPPORT  
OF COMPLAINT FOR WRIT OF MANDAMUS**

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# Supreme Court of the State of Ohio

STATE OF OHIO *ex rel.* : Case No. \_\_\_\_\_  
COMMITTEE FOR CHARTER AMENDMENT :  
PETITION TO LIMIT THE USE OF :  
PHOTO-MONITORING DEVICES IN :  
THE CITY OF MAPLE HEIGHTS, OHIO, *et al.*, :  
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Relators, :  
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v. : RELATORS' MEMORANDUM  
 : IN SUPPORT OF COMPLAINT  
 : FOR WRIT OF MANDAMUS  
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CITY OF MAPLE HEIGHTS, OHIO, *et al.*, :  
 :  
Respondents. :

The State of Ohio and the City of Maple Heights, Ohio, by and through the Committee for Charter Amendment Petition to Limit the Use of Photo-Monitoring Devices and Celestine Wilburn (“Relators”), hereby tender the following Memorandum in Support of the Complaint for Writ of Mandamus. In this action, Realtors seek the issuance of a peremptory writ of mandamus, or, alternatively, an alternative writ of mandamus, compelling the Respondents to comply with their legal duty to certify a charter amendment proposed by initiative petition to the board of elections for placement on the general election ballot to be presented to the electorate of Maple Heights at the forthcoming general election, *i.e.*, on November 4, 2014. Relators simply address herein the request for a peremptory writ, reserving the right to further address the merits should this Court, instead, issue an alternative writ.

## MEMORANDUM IN SUPPORT

This action arises from the failure of the Respondents to recognize and apply the clear legal precedent established by this Court in *State ex rel. Huebner v. W. Jefferson Village Council*, 75 Ohio St.3d 381, 662 N.E.2d 339, 1996-Ohio-303 (1995), and its progeny, that “in

determining the number of valid part-petition signatures necessary to establish a right to the placement of a proposed amendment of a municipal charter before the voters... the percentage of electors required to sign such part-petitions is ten percent of the electors of the municipality based upon the total number of votes cast at the last preceding general municipal election.” *Id.* at 384; accord *State ex rel. Comm. for the Charter Amendment, City Trash Collection v. Westlake*, 97 Ohio St.3d 100, 776 N.E.2d 1041, 2002-Ohio-5302 ¶34 (2002)(“in accordance with Sections 8, 9, and 14 of Article XVIII of the Ohio Constitution, ...the committee’s petition required the number of valid signatures equal to *ten percent of the number of votes cast at the last preceding general municipal election*” (emphasis in original)).

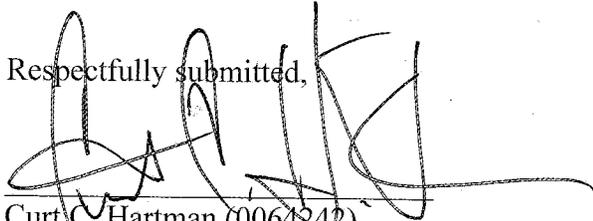
The present case involves an initiative petition to amend the Charter of the City of Maple Heights to limit the use of photo-monitoring devices for the enforcement of traffic laws. As already certified by the Cuyahoga County Board of Elections, the petition contained at least ten percent of the number of registered voters in Maple Heights that voted in the last municipal election. Yet, in response to the taxpayer demand of Relator Celestine Wilburn to bring an action to compel the placement of the initiative on the ballot, the City Law Director responded with the declaration that there were not enough signatures on the petition, condescendingly referencing the City Charter. (*See* Complaint, Exh. B.) Apparently, the City Law Director is referencing and relying upon Article XX, Section 1 of the Charter of the City of Maple Heights which provides that “Amendments to this Charter may be submitted to the electors of the Municipality ... upon petition signed by ten (10) percent of the electors of the Municipality, setting forth any such proposed amendment, submitted by the Council.” But, as noted above and as is now well-established by this Court, Sections 8, 9, and 14 of Article XVIII of the Ohio Constitution control and require that the requisite number of signatures be based upon the

number of votes cast at the last municipal election, not ten percent of the total number of registered voters in a municipality.

The pertinent and undisputed facts relative to the obligation of the Respondents to place forthwith the proposed charter amendment on the ballot has been established by the Complaint and the supporting affidavits thereto. Thus, this case involves a purely legal issue for which a peremptory writ can and should issue. *State ex rel. Sapp v. Franklin Cty. Court of Appeals*, 118 Ohio St.3d 368, 889 N.E.2d 500, 2008-Ohio-2637 ¶14 (“if the pertinent facts are uncontroverted and it appears beyond doubt that relators are entitled to the requested extraordinary writs, peremptory writs will be granted”). Instead of repeating under the guise of legal analysis that which this Court has already stated in *State ex rel. Huebner v. W. Jefferson Village Council*, 75 Ohio St.3d 381, 662 N.E.2d 339, 1996-Ohio-303 (1995), and its progeny, including *State ex rel. Comm. for the Charter Amendment, City Trash Collection v. Westlake*, 97 Ohio St.3d 100, 776 N.E.2d 1041, 2002-Ohio-5302 (2002), Relators would simply, at this stage and in the interest of judicial economy, reference those decisions as those cases are directly on point with the present case and clearly establish Relators’ entitlement to a peremptory writ of mandamus.

Thus, as developed in the Complaint, as well as above, Relators are entitled, at this stage of the proceedings, to the issuance of a peremptory writ of mandamus compelling the Respondents to comply with their legal duty to certify to the board of elections for placement on the general election ballot the proposed charter amendment that would limit the use of photo-monitoring devices in the City of Maple Heights.

Respectfully submitted,



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### **CERTIFICATE OF SERVICE**

I certify that a copy of the foregoing will be served as part of the service of the Complaint herein.

