

ORIGINAL

IN THE SUPREME COURT OF OHIO

State ex rel. Brian Ebersole, et al.,	:	
	:	
Relators,	:	Case No. 14-1469
	:	
v.	:	Original Action in Mandamus
	:	
City Council of Powell, Ohio, et al.,	:	Expedited Elections Action
	:	
Respondents.	:	

ANSWER OF RESPONDENTS CITY COUNCIL OF POWELL, OHIO
AND SUE ROSS, CITY CLERK OF POWELL, OHIO

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FILED
AUG 29 2014
CLERK OF COURT
SUPREME COURT OF OHIO

Now come Respondents, City Council of Powell, Ohio and Sue Ross, City Clerk of Powell, Ohio (hereinafter “Respondents”), by and through counsel, and for their Answer to Relators’ Complaint in the Original Action in Mandamus (hereinafter “Complaint”) state as follows:

FIRST DEFENSE

JURISDICTION AND PARTIES

1. State that paragraphs 1 and 2 of the Complaint contain legal conclusions or arguments to which no response is required. To the extent such are alleged as support for Relators’ claim(s), Respondents deny same.

2. Deny that the filing of the petitions are pursuant to Article IV of the Charter of the City of Powell, Ohio and the laws of Ohio as set forth in paragraph 3 of the Complaint as one of the initiatives was filed pursuant to the Ohio Constitution. Further answering, Respondents are without information or knowledge sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 3 of the Complaint and therefore, deny same.

3. Deny that the petition has been “unlawfully withheld” from the ballot for the November 4, 2014 election by the Powell City Council as set forth in paragraph 4 of the Complaint. Further answering, Respondents are without information or knowledge sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 4 of the Complaint and therefore, deny same.

4. Admit that Relators demanded Eugene Hollins as Law Director for the City of Powell file a mandamus action and that Eugene Hollins did not do so before Relators filed this action as set forth in paragraph 5 of the Complaint. Further answering, Respondents are without information or knowledge sufficient to form a belief as to the truth of the remaining allegations

set forth in paragraph 5 of the Complaint and therefore, deny all matters not specifically admitted herein.

5. State that footnote 1 to paragraph 5 of the Complaint contains legal conclusions or arguments to which no response is required. To the extent such are alleged as support for Relators' claim(s), Respondents deny same.

6. State that paragraph 6 of the Complaint contains legal conclusions or arguments to which no response is required insofar as the text of the cited Charter speaks for itself. To the extent such are alleged as support for Relators' claim(s), Respondents deny same.

7. Admit paragraph 7 of the Complaint.

8. State paragraph 8 of the Complaint contains legal conclusions or arguments to which no response is required. To the extent such are alleged as support for Relators' claim(s), Respondents deny same.

9. Deny paragraph 9 of the Complaint.

ALLEGATIONS SUPPORTING CLAIM FOR RELIEF

10. State that paragraph 10, footnote 2 of paragraph 10 and paragraph 11 of the Complaint contain no allegations and that no response is required insofar as the text of Exhibit A and its attachments, or lack thereof, speaks for itself. To the extent said paragraphs contain argument(s) or averment(s), Respondents deny same.

11. Admit receipt of Exhibit B set forth in paragraph 12 of the Complaint. Further answering, Respondents state that the remaining portion of paragraph 12 of the Complaint contains no allegations and no response is required as Exhibit B speaks for itself. To the extent said paragraph contains argument(s) or averment(s), Respondents deny all matters not specifically admitted herein.

12. Deny paragraphs 13, 14 and 15 of the Complaint.

13. State that Respondent is without information or knowledge sufficient to form a belief as to the truth of the allegations set forth in paragraph 16 of the Complaint as a “Final Comprehensive Plan” does not exist for comparison and therefore, deny same.

14. State that paragraphs 17 and 18 of the Complaint contain no allegations and that no response is required insofar as the text of the filing, Exhibit C, and Exhibit B speak for themselves. To the extent said paragraphs contain argument(s) or averment(s), Respondents deny same.

15. Deny that Respondent Clerk notified Relator Ebersole that Council refused to review the petition for infirmities or defects as set forth in paragraph 19 of the Complaint as it is not the role of the Clerk of Council to provide legal advice to Relators. Further answering, the remaining portion of paragraph 19 of the Complaint contains no allegations and no response is required as Exhibit D speaks for itself. To the extent said paragraph contains argument(s) or averment(s), Respondents deny same.

16. State that Respondents are without information or knowledge sufficient to form a belief as to the truth of the allegation that from July 11, 2014 to July 16, 2014 Relators organized the circulation to Powell electors of the three petitions listed in paragraph 20 of the Complaint and therefore, deny same. Further answering, the remaining portion of paragraph 20 of the Complaint contains no allegations and no response is required as Exhibit E speaks for itself. To the extent said paragraph contains argument(s) or averment(s), Respondents deny same.

17. State that Respondents are without information or knowledge sufficient to form a belief as to whether the twelve part petitions for a proposed charter amendment were circulated with a complete certified copy of Ordinance 2014-10 as set forth in the first paragraph of

footnote 3 to paragraph 20. Further answering, the remaining portion of paragraph 20 of the Complaint contains no allegations and no response is required as Exhibit A speaks for itself. To the extent said paragraph contains argument(s) or averment(s), Respondents deny same.

18. Deny Exhibit F is “a black and white copy of all twelve part petitions” as stated in the second paragraph of footnote 3 of paragraph 20 to the Complaint. Further answering, the second paragraph of footnote 3 of paragraph 20 contains no allegations and that no response is required insofar as Exhibit F speaks for itself. To the extent said paragraph contains argument(s) or averment(s), Respondents deny same.

19. State that paragraph 21 of the Complaint contains no allegations and that no response is required insofar as the texted of Exhibit F speaks for itself. To the extent said paragraph contains argument(s) or averment(s), Respondents deny same.

20. State that paragraphs 22 and 23 of the Complaint contain legal conclusions or arguments to which no response is required. To the extent such are alleged as support for Relators’ claim(s), Respondents deny same.

21. Admit receipt of the initiative petition for a proposed Charter and forwarding of the initiative petition pursuant to Powell City Charter § 6.02 as set forth in paragraph 24 of the Complaint. Further answering, Respondents deny the remaining allegations set forth in paragraph 24 of the Complaint not specifically admitted herein.

22. Admit receipt of the initiative petition to repeal Ordinance 2014-10 and forwarding of the initiative petition pursuant to Powell City Charter § 6.02 as set forth in paragraph 25 of the Complaint. Further answering, Respondents deny the remaining allegations set forth in paragraph 25 of the Complaint not specifically admitted herein. Further answering, Respondents state the initiative petition does not relate to this action.

23. Admit receipt of the referendum petition and forwarding of the referendum petition pursuant to Powell City Charter § 6.04 as set forth in paragraph 26 of the Complaint. Further answering, Respondents deny the remaining allegations set forth in paragraph 26 of the Complaint not specifically admitted herein. Further answering, Respondents state the referendum petition does not relate to this action.

24. State that Respondents are without information or knowledge sufficient to form a belief as to allegations set forth in paragraph 27 of the Complaint and therefore, deny same. Further answering, Respondents state the remaining allegations of paragraph 27 of the Complaint contain no allegations and no response is required insofar as Exhibit G speaks for itself. To the extent said paragraph contains argument(s) or averment(s), Respondents deny same.

25. State that paragraph 28 of the Complaint contains legal conclusions or arguments to which no response is required. To the extent such are alleged as support for Relators' claim(s), Respondents deny same.

26. State that the quote from Exhibit G contained in paragraph 29 of the Complaint speaks for itself and Respondents specifically deny that said quote constitutes concessions.

27. Admit paragraph 30 of the Complaint.

28. State that paragraph 31 of the Complaint contains legal conclusions or arguments to which no response is required. To the extent such are alleged as support for Relators' claim(s), Respondents deny same.

29. State that Respondents are without information or knowledge sufficient to form a belief as to the allegations set forth in paragraphs 32 and 33 of the Complaint and therefore, deny same.

30. State that paragraph 34 of the Complaint contains no allegations and that no response is required insofar as the text of Exhibits H and I speaks for itself. To the extent said paragraph contains argument(s) or averment(s), Respondents deny same.

31. State that paragraphs 35, 36, 37 and 38 of the Complaint contain no allegations and that no response is required insofar as the text of Exhibit H speaks for itself. To the extent said paragraphs contain argument(s) or averment(s), Respondents deny same.

32. Deny paragraph 39 of the Complaint.

33. State that paragraph 40 of the Complaint contains legal conclusions or arguments to which no response is required. To the extent such are alleged as support for Relators' claim(s), Respondents deny same.

34. Admit receipt of the Notice of Protest from Developers as set forth in paragraph 41 of the Complaint. Further answering, Respondents are without information or knowledge sufficient to form a belief as to the truth of the remaining allegations set forth in paragraph 41 and therefore, deny same.

35. State that paragraph 42 of the Complaint contains no allegations and that no response is required insofar as the text of Exhibit H speaks for itself. To the extent said paragraph contains argument(s) or averment(s), Respondents deny same.

36. State that Respondents are without information or knowledge sufficient to form a belief as to the truth of the allegations set forth in paragraph 43 of the Complaint and therefore, deny same.

37. Deny paragraph 44 of the Complaint.

38. State that paragraph 45 of the Complaint contains no allegations and no response is required insofar as the text of Exhibit J speaks for itself. To the extent said paragraph contains argument(s) or averment(s), Respondents deny same.

39. State that paragraph 46 of the Complaint contains legal conclusions or arguments to which no response is required. To the extent such are alleged as support for Relators' claim(s), Respondents deny same.

40. Admit receipt of the Position Statement set forth in paragraph 47 of the Complaint. Further answering, Respondents state the remaining portion of paragraph 47 of the Complaint contains legal conclusions or arguments to which no response is required as the Exhibit K speaks for itself. To the extent said paragraph contain argument(s) or averment(s), Respondents deny same.

41. Admit August 5, 2014 was a regularly scheduled Council meeting but deny the remaining allegations set forth in paragraph 48 of the Complaint not specifically admitted herein.

42. Admit paragraph 49 of the Complaint.

43. Deny paragraphs 50 and 51 of the Complaint.

44. Deny paragraph 52 of the Complaint. Further answering, Respondents state the quote from Exhibit L speaks for itself and specifically deny that said quote constitutes a concession.

45. State that the quote from Exhibit L contained in paragraph 53 of the Complaint speaks for itself and specifically denies that said quote constitutes a concession.

46. Admit that on August 5, 2014, Resolutions 2014-16 and 2014-17 were tabled to the next scheduled meeting and a first reading was held on Ordinance 2014-41, but deny the remaining allegations of paragraph 54 of the Complaint not specifically admitted herein.

47. State the quote from Exhibit L contained in paragraph 55 of the Complaint speaks for itself and specifically deny that said quote constitutes a concession.

48. State that paragraph 56 contains no allegations and that no response is required insofar as the text of Exhibit L speaks for itself. To the extent said paragraph contains argument(s) or averment(s), Respondents deny same.

49. State the quotes from Exhibit L contained in paragraphs 57 and 58 of the Complaint speak for themselves and Respondent specifically denies that said quotes constitute concessions.

50. Deny paragraph 59 of the Complaint.

51. State that paragraph 60 of the Complaint contains legal conclusions or arguments to which no response is required. To the extent such are alleged as support for Relators' claim(s), Respondent denies same.

52. State that paragraphs 61, 62, 63, 64, 65 and 66 of the Complaint contain no allegations and that no response is required insofar as the text of Exhibits L, M and N speak for themselves. To the extent said paragraphs contain argument(s) or averment(s), Respondents deny same.

53. Admit receipt of the Developer's Reply Brief as set forth in paragraph 67 of the Complaint, but Respondents are without information or knowledge sufficient to form a belief as to the remaining allegations set forth in paragraph 67 and therefore, deny the remaining allegations not specifically admitted herein.

54. State that paragraphs 68, 69, 70 and 71 of the Complaint contain no allegations and that no response is required insofar as the text of Exhibit O speaks for itself. To the extent said paragraphs contain argument(s) or averment(s), Respondents deny same.

55. State that paragraph 72 contains legal conclusions or arguments to which no response is required. To the extent such are alleged as support for Relators' claim(s), Respondent deny same.

56. State that paragraph 73 of the Complaint contains no allegations and that no response is required insofar as the text of Exhibit O speaks for itself. To the extent said paragraph contains argument(s) or averment(s), Respondents deny same.

57. State that the quote from Exhibit O set forth in paragraph 74 of the Complaint speaks for itself and specifically deny that said quote constitutes a concession.

58. State that paragraphs 75, 76 and 77 of the Complaint contain no allegations and that no response is required insofar as the text of Exhibits O and P speak for themselves. To the extent said paragraphs contain argument(s) or averment(s), Respondents deny same.

COUNT I: PETITION FOR WRIT OF MANDAMUS TO COMPEL RESPONDENT COUNCIL TO PROVIDE FOR THE SUBMISSION OF THE PROPOSED CHARTER AMENDMENT TO THE POWELL ELECTORS

59. Deny paragraphs 78 and 79 of the Complaint.

60. State that paragraphs 80, 81, 82, and 83 of the Complaint contain legal conclusions or arguments to which no response is required. To the extent such are alleged as support for Relators' claim(s), Respondents deny same.

61. Deny paragraph 84 of the Complaint.

62. State that paragraphs 85 and 86 of the Complaint contain no allegations and that no response is required insofar as the text of the cited sections of the Ohio Constitution speaks for itself. To the extent said paragraphs contain argument(s) or averment(s), Respondents deny same.

63. State that paragraphs 87, 88, 89 and 90 of the Complaint contain legal conclusions or arguments to which no response is required. To the extent such are alleged as support for Relators' claim(s), Respondents deny same.

64. Deny paragraph 91 of the Complaint.

65. State that paragraph 92 contains legal conclusions or arguments to which no response is required. To the extent such are alleged as support for Relators' claim(s), Respondents deny same.

66. Deny paragraph 93 of the Complaint. Further answering, Respondents state there is an adequate remedy in the ordinary course of law. Const. Art. XVIII §§ 8, 9 permit Council to provide for a special election and accordingly it is not imperative for the issue to appear on the November 4, 2014 ballot.

**COUNT II: IN THE ALTERNATIVE TO COUNT I, RELATORS REQUEST
A WRIT OF MANDAMUS TO COMPEL RESPONDENT COUNCIL TO
DETERMINE THAT THE PETITION FOR THE PROPOSED
CHARTER AMENDMENT IS SUFFICIENT AND VALID**

67. Deny paragraphs 94, 95, 96, 97, 98 and 99 of the Complaint.

68. Deny paragraph 100 of the Complaint. Further answering, Respondents state there is an adequate remedy in the ordinary course of law. Const. Art. XVIII §§ 8, 9 permit Council to provide for a special election and accordingly it is not imperative for the issue to appear on the November 4, 2014 ballot.

SECOND DEFENSE

69. Relators fail to state a claim upon which relief can be granted.

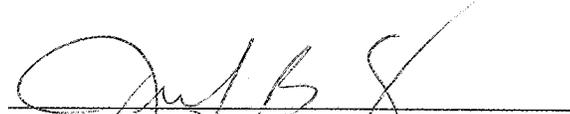
THIRD DEFENSE

70. Relators do not have a clear legal right to the requested relief as the proposed charter amendment contains an unlawful delegation of power on its face. *See, e.g., Forest City*

Enterprises v. City of Eastlake, 48 Ohio St.2d 47, 356 N.E.2d 499 (1976) on remand from *City of Eastlake v. Forest City Enterprises, Inc.*, 426 U.S. 668, 675-677, 96 S. Ct. 2358, 59 L.Ed.2d 132 (1976).

WHEREFORE, Respondents City Council of Powell, Ohio and Sue Ross City Clerk of Powell, Ohio prays the Complaint be dismissed with prejudice and that it be awarded costs, reasonable attorneys fees and such other and further relief as it may be entitled to in law or in equity.

Respectfully submitted,



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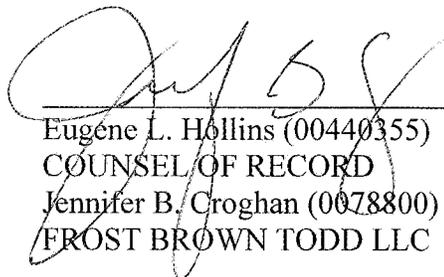
CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing *Answer* was served upon the following, this 29th day of August 2014, by electronic mail:

Christopher B. Burch
chris@callenderlawgroup.com
COUNSEL FOR RELATORS

Courtesy copy to:

Joseph R. Miller, Esq.
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