

ORIGINAL

In the  
Supreme Court of Ohio

STATE ex rel.  
BRIAN EBERSOLE  
215 Squires Court  
Powell, Ohio 43065

ORIGINAL ACTION  
IN MANDAMUS

14-1520

STATE ex rel.  
SHARON VALVONA  
225 Squires Court  
Powell, Ohio 43065

PEREMPTORY AND/OR  
ALTERNATIVE WRIT  
REQUESTED

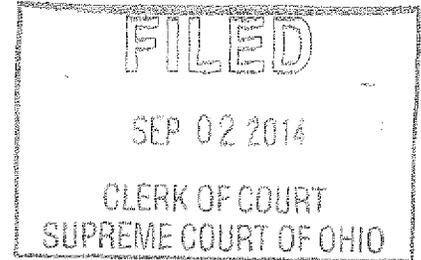
STATE ex rel.  
THOMAS HAPPENSACK  
127 Kellys Court  
Powell, Ohio 43065

EXPEDITED ELECTIONS  
MATTER PURSUANT TO  
S. CT. R. PRAC. 12.08

Relators,

v.

DELAWARE COUNTY  
BOARD OF ELECTIONS  
2079 U.S. Highway 23 N  
P.O. Box 8006  
Delaware, Ohio 43015-8006



Respondent.

---

**VERIFIED COMPLAINT FOR WRIT OF MANDAMUS**

---

CHRISTOPHER B. BURCH  
*Counsel of Record*  
Callender Law Group  
20 S. Third Street, Suite 261  
Columbus, OH 43215  
T: (614) 300-5300  
F: (614) 324-3201  
chris@callenderlawgroup.com

*Counsel for Relators*

CAROL O'BRIEN  
Delaware County Prosecutor  
CHRISTOPHER D. BETTS  
Assistant Prosecuting Attorney  
Delaware County Prosecutor's Office  
140 North Sandusky Street, 3d Floor  
Delaware, OH 43015  
T: (740) 833-2690  
F: (740) 833-2689  
cbetts@co.delaware.oh.us

*Counsel for Respondent*

Now come Relators, on relation to the State of Ohio, and state as follows:

**JURISDICTION AND PARTIES**

1. This Court has jurisdiction over the subject matter of this action and over Respondents pursuant to Section 2, Article IV of the Ohio Constitution and Chapter 2731 of the Ohio Revised Code.

2. This is an expedited election proceeding governed by the provisions of S.Ct. Prac.R. 12.08.

3. Relators Brian Ebersole, Sharon Valvona, and Thomas Happensack are residents, taxpayers, and qualified electors of the City of Powell, Ohio, situated in Delaware County, Ohio, and are the committee members named on a referendum petition and two initiative petitions as responsible for the circulation and filing of the petitions pursuant to Article VI of the Charter of the City of Powell, Ohio and the laws of Ohio.

4. Relators have standing because they are taxpayers of the City of Powell and the organizers and supporters of a referendum petition for Powell City Ordinance 2014-10 and an initiative petition for a proposed ordinance to repeal Ordinance 2014-10, and the petitions have been unlawfully withheld from the ballot for the November 4, 2014 election by the actions of Delaware County Board of Elections.

5. Respondent Delaware County Board of Elections is the Board of Elections for Delaware County, Ohio. Article VI of the Powell City Charter directs Respondent to perform the clear legal duties at issue in this case.

6. Relators affirmatively allege that they have acted with the utmost diligence in bringing the instant action within seven calendar days and four business days of Respondent Delaware County Board of Elections' August 26, 2014 hearing, that there has been no unreasonable delay or lapse of time in asserting their rights herein and,

further, there is no prejudice to Respondent. *See State ex rel. Meyers v. Columbus*, 71 Ohio St.3d 603, 605 (1995).

7. This is an original cause of action in mandamus to vindicate the rights of Relators Brian Ebersole, Sharon Valvona, and Thomas Happensack, the petition committees of which they are members, and the electors of Powell, Ohio.

**ALLEGATIONS SUPPORTING CLAIM FOR RELIEF**

8. On June 17, 2014, Powell City Council (“Council”) approved a final development plan for the development of retail buildings and residential apartment units in Powell by passing Ordinance 2014-10.

9. The terms of Ordinance 2014-10 provide that it is “legislation . . . posted in accordance with the City Charter.”

10. On July 9, 2014, pursuant to the Powell City Charter and R.C. 731.32, Sharon Valvona, on behalf of the Relators, filed with Powell City Clerk Sue Ross (“Clerk Ross”) the following: (1) a copy of Ordinance 2014-10 certified by Clerk; (2) a certified copy of a proposed ordinance to repeal Ordinance 2014-10; and (3) a certified copy a proposed charter amendment.

11. The proposed charter amendment filed with Clerk Ross on July 9, 2014 requires Council to legislatively create a new comprehensive plan for land use and development in the City of Powell.

12. Together with the certified documents filed on July 9, 2014, Sharon Valvona, on behalf of Relators, filed blank draft copies of a referendum petition for Ordinance 2014-10, an initiative petition for a proposed ordinance to repeal Ordinance 2014-10, and an initiative petition for a proposed charter amendment to the Powell City Charter.

13. The cover letter accompanying the certified filings and three draft petitions filed on July 9, 2014 requested that Council and Clerk Ross review the petitions for infirmities or defects prior to circulation.

14. On July 10, 2014, Clerk Ross, acting on the advice of Powell Law Director Eugene Hollins, notified Relator Brian Ebersole that Council and Clerk Ross refused to review the petitions for infirmities or defects.

15. From July 11, 2014 through July 16, 2014, Relators organized the circulation to Powell electors of the following three petitions: (1) a referendum petition to repeal Ordinance 2014-10; (2) an initiative petition for a proposed ordinance to repeal Ordinance 2014-10; and (3) an initiative petition for a proposed charter amendment to the Powell City Charter.

16. On July 17, 2014, within thirty days after the date of passage of Ordinance 2014-10, Relators filed with Clerk Ross the following three petitions: the referendum petition; the petition for a proposed ordinance; and the petition for a proposed amendment to the Powell City Charter.

17. Each and every part petition for the two initiative petitions satisfies all applicable form requirements for initiative petitions under the Ohio Constitution, Powell City Charter, and other applicable laws.

18. Each and every part petition for the referendum petition satisfies all applicable form requirements for referendum petitions under the Ohio Constitution, Powell City Charter, and other applicable laws.

19. After accepting the initiative petition for a proposed charter amendment to the Powell City Charter on July 17, 2014, Clerk Ross held the petition for eleven days and then transmitted the petition to Respondent Delaware County Board of Elections on July

28, 2014, together with a certified copy of the proposed charter amendment to the Powell City Charter.

20. After accepting the initiative petition to repeal Ordinance 2014-10 on July 17, 2014, Clerk Ross held the petition for eleven days and then transmitted the petition to Respondent Board of Elections on July 28, 2014, together with a certified copy of the proposed ordinance to repeal Ordinance 2014-10.

21. After accepting the referendum petition on July 17, 2014, Clerk Ross held the petition for eight days and then transmitted it to Respondent Board of Elections on July 25, 2014, together with a certified copy of Ordinance 2014-10.

22. On July 28, 2014, The Center at Powell Crossing LLC and Donald R. Kenney Jr. (“the Developers”) filed a “Notice of Protest” with Respondent Board of Elections outside any applicable legal procedure but purportedly pursuant to R.C. 3501.39.

23. The Developers’ Notice of Protest wrongly argued that the signatures and petitions are invalid because roughly two-thirds of petition signers did not list their ward on the petitions.

24. The Developers’ Notice of Protest before the Board of Elections stated: “The part-petitions at issue fail to provide any place for an elector to provide his or her ward.”

25. There are no wards in Powell, Ohio.

26. In support of its unfounded “ward argument,” the Notice of Protest falsely stated that “more than one third of the electors provided their correct ward and precinct [when signing the petitions].”

27. The Developers did not serve Relators with the Board of Elections Notice of Protest, either directly or through counsel, even though Relators were clearly identified

on each of the part petitions as a committee of petitioners, together with their complete mailing addresses.

28. On July 31, 2014, Respondent Board of Elections forwarded a copy of the Notice of Protest to Relator Thomas Happensack via email.

29. At its August 1, 2014 meeting, Respondent Board of Elections determined that a minimum of 238 valid signatures were needed to satisfy the requirements of Article VI of the Powell City Charter.

30. On August 1, 2014, Respondent Board of Elections attested that the referendum petition for Ordinance 2014-10 contains 376 valid signatures.

31. On August 1, 2014, Respondent Board of Elections attested that the initiative petition for a charter amendment to the Powell City Charter contains 367 valid signatures.

32. On August 1, 2014, Respondent Board of Elections attested that the initiative petition for a proposed ordinance to repeal Ordinance 2014-10 contains 378 valid signatures.

33. At its August 1, 2014 meeting, Respondent Board of Elections passed motions to refer the three petitions to Powell City Council, together with a statement certifying the number of valid signatures on each petition.

34. Upon receipt of the petitions and the statement certifying valid signatures from Respondent Board of Elections, Powell City Council had a duty to determine the “sufficiency and validity” of the petitions at its “next regular meeting” pursuant Powell Charter §§ 6.02, 6.04, 6.05.

35. In addition, Ohio Const. Art. XVIII §§ 8, 9 requires the legislative authority of a municipality, *e.g.* city council, to “forthwith” provide for the submission of charter amendments proposed by initiative petition signed by ten percent of electors to municipal

electors. “Forthwith means immediately.” *State ex rel. Concerned Citizens for More Professional Govt. v. City of Zanesville City Council*, 70 Ohio St.3d 455, 459 (1994).

36. On August 1, 2014, the Developers filed a Notice of Protest with City Council arguing that each of the three petitions is invalid. The Developers did not provide notice to Relators on the day of filing, either directly or through counsel, even though Relators’ addresses are listed on each part petition and the undersigned counsel for Relators appeared on the Relators behalf at the August 1, 2014 Board of Elections meeting.

37. On August 4, 2014, at approximately 5:06 PM, counsel for the Developers electronically served the undersigned counsel for Relators with the Developers’ Notice of Protest to Council.

38. On the morning of August 4, 2014, Relator Sharon Valvona sent via email a one-page letter to Powell Law Director Eugene Hollins to notify him that City Council had a duty at its August 5, 2014 regular meeting to determine the sufficiency and validity of the three petitions and submit the proposed charter amendment to electors forthwith.

39. The letter further explained to Law Director Hollins that Council may only consider the form of the petitions when reviewing for sufficiency and validity and, further, that “the lawfulness of the proposed charter amendment and the proposed ordinance is *not* presently before City Council.”

40. On the morning of August 5, 2014, Relators, as a committee of petitioners, filed with Clerk Ross, by email and hand delivery, a Position Statement in response to the Developers’ unfounded objections to the petitions, just five days after July 31, 2014, when Relators first received notice of the Developers’ Notice of Protest filed with the Board of Elections.

41. The next regular meeting of Council following Council's receipt of the Board of Elections' statement attesting to the number of valid signatures fell on August 5, 2014.

42. On August 5, 2014, Council held its regularly scheduled meeting at 7:30 PM.

43. At the meeting, Council did not perform its clear legal duty to determine the sufficiency and validity of the petitions under Powell City Charter §§ 6.02, 6.04, 6.05.

44. Council likewise failed to perform its clear legal duty to "forthwith" provide for the submission of the proposed charter amendment to Powell electors pursuant to Ohio Const. Art. XVIII §§ 8, 9.

45. In failing to perform its clear legal duties, Council followed the advice of Law Director Eugene Hollins. Law Director Hollins publicly advised Council as follows at the August 5, 2014 regularly scheduled meeting:

One thing that we may want to consider as Council this evening is tabling the resolutions and taking all three pieces of legislation up on the 19th.

46. Rather than determine the sufficiency and validity of the three petitions at the August 5, 2014 meeting and provide for the submission of the proposed measures to Powell electors, Council: (1) tabled Resolution 2014-16 proposing to determine the sufficiency and validity of the referendum petition; (2) tabled Resolution 2014-17 proposing to determine the sufficiency and validity of the initiative petition to repeal Ordinance 2014-10; and (3) held a "first reading" of Ordinance 2014-41 proposing to submit the initiative petition for the proposed charter amendment to Powell electors.

47. At the Council meeting on August 5, 2014, Relators Brian Ebersole and Thomas Happensack gave separate public testimony that Council may consider only the form, not content, of the three petitions (when determining the sufficiency and validity of the petitions).

48. At the Council meeting on August 5, 2014, Law Director Hollins promised Relators and all other Powell citizens that Council would determine whether to submit the proposed charter amendment to Powell electors at the next regularly scheduled Council meeting on August 19, 2014.

49. At approximately 12:31 PM on August 11, 2014, Relators sent a taxpayer demand letter via email to Law Director Hollins notifying him that, at the August 5, 2014 meeting, Council: (1) violated its clear legal duty to determine the sufficiency and validity of the three petitions; and (2) violated its clear legal duty to forthwith provide for the submission of the proposed charter amendment to Powell electors.

50. Through the letter, Relators further notified Law Director Hollins that Council's failure to fulfill its duties at the August 5, 2014 meeting triggered clear legal duties under Powell City Charter §§ 6.02, 6.04 for Clerk Ross to provide for the submission of the proposed ordinance to repeal Ordinance 2014-10 to electors and provide for the submission of Ordinance 2014-10 to Powell electors for their approval or disapproval as a referendum measure. The letter ultimately demanded that Law Director Hollins bring a suit in mandamus to compel Council and Clerk Ross to perform their clear legal duties pursuant to Ohio Const. Art. XVIII §§ 8, 9 and the Powell City Charter.

51. On the evening of August 11, 2014, Law Director Hollins and the undersigned counsel exchanged emails disputing the legal duties of Council and Clerk Ross.

52. On August 15, 2014, the undersigned counsel sent an email to Law Director Hollins rebutting Law Director Hollins flawed reasoning for failing to bring suit against Council and Clerk Ross and reiterating the Relators' demand that Law Director Hollins bring a suit in mandamus against Council and Clerk Ross to compel them to perform their clear legal duties.

53. At approximately 4:12 PM on August 15, 2014, the Developers filed a “Reply Brief” with Council in support of their Notice of Protest filed on August 1, 2014.

54. At the regular Council meeting on August 19, 2014, the undersigned counsel urged Council to “stay in your lane” to consider only the form, rather than the substance, of the three petitions when reviewing them for sufficiency and validity.

55. At the regular Council meeting on August 19, 2014, Council unanimously passed Resolution 2014-16 to determine that the referendum petition for Ordinance 2014-10 is sufficient and valid.

56. At the regular Council meeting on August 19, 2014, Council unanimously passed Resolution 2014-17 to determine that the initiative petition for an ordinance to repeal Ordinance 2014-10 is sufficient and valid.

57. At the regular Council meeting on August 19, 2014, Council unanimously rejected Ordinance 2014-41 and, in doing so, decided *not* to provide for the submission of the proposed charter amendment to the electors of Powell.

58. Council illegally, unlawfully, in plain disregard of the law, and in an abuse of discretion refused to submit the proposed charter amendment to electors on the basis that the *content* of the proposed charter amendment. *State ex rel. Citizens for a Better Portsmouth v. Sydnor*, 61 Ohio St.3d 49, 53 (1991) (“council's authority is limited to approving the form of the petition, *not its content*.”) (emphasis added).

59. Council specifically refused to submit the proposed charter amendment to electors because it wrongly believed that the proposed charter amendment constitutes an unconstitutional delegation of legislative authority.

60. Notably, Council did not identify any defects with the *form* of the petition for a proposed charter amendment.

61. Council determined that there are a sufficient number of valid signatures on the three petitions, including the referendum petition for Ordinance 2014-10 and the initiative petition for an ordinance to repeal Ordinance 2014-10, to satisfy the number of signatures requirement under the Ohio Constitution and Powell City Charter.

62. On August 20, 2014, Relators sent Law Director Hollins a letter demanding that he bring a suit in mandamus to compel Council and Clerk Ross to perform their duties to submit the proposed charter amendment to the electors of Powell. The letter further explained that the proposed charter amendment does not constitute an unconstitutional delegation of legislative authority and, more fundamentally, that issue a substantive issue that Council may not consider when determining the sufficiency and validity of the petitions.

63. On August 21, 2014, the Developers filed a Notice of Protest with Respondent Board of Elections to contest the submission of the referendum for Ordinance 2014-10 and proposed ordinance to repeal Ordinance 2014-10 to Powell electors at the November 4, 2014 general election.

64. On August 22, 2014, Relators instituted an action in mandamus in the Ohio Supreme Court against Respondents therein Powell City Council and Clerk of Council Sue Ross to compel the submission of the proposed charter amendment to the electors of Powell at the November 4, 2014 general election.

65. On August 25, 2014, Relators filed a Memorandum in Response to the Developers' Notice of Protest with Respondent Board of Elections, with regard to the referendum petition for Ordinance 2014-10 and the initiative petition for an ordinance to repeal Ordinance 2014-10.

66. On August 26, 2014, Respondent Board of Elections held a hearing to determine whether to submit the referendum for Ordinance 2014-10 and the proposed ordinance to repeal Ordinance 2014-10 to Powell electors at the November 4, 2014 general election.

67. At the August 26, 2014 hearing before Respondent Board of Elections, the Developers did not establish that The Center at Powell Crossing, LLC complied with all procedural and substantive requirements under the Powell zoning code for the development project identified in Ordinance 2014-10, including but not limited to the requirements under Powell zoning code § 1143.11.

68. At the August 26, 2014 hearing before Respondent Board of Elections, Powell Director of Development David M. Betz did not identify any evidence of financing that The Center at Powell Crossing, LLC provided to the City of Powell regarding the development project and/or Final Development Plan identified in Ordinance 2014-10 when he was questioned about the requirement to provide such evidence under Powell zoning code § 1143.11(c)(9). Instead, Mr. Betz stated that, as City of Powell Director of Development, he does not require landowners to provide evidence of financing when he considers the landowner to be an “established developer.”

69. According the Ohio Secretary of State records, The Center at Powell Crossing, LLC was organized in 2012.

70. At the August 26, 2014 hearing before Respondent Board of Elections, the Developers did not show that The Center at Powell Crossing, LLC had provided the City of Powell with evidence of its ability to post bond for the development project identified in Ordinance 2014-10, as required pursuant to Powell zoning code § 1143.11(c)(10).

71. At the August 26, 2014 hearing before Respondent Board of Elections, the Developers did not show that The Center at Powell Crossing, LLC had sufficiently and

adequately verified that the information contained in The Center at Powell Crossing, LLC's application for the development project identified in Ordinance 2014-10 is true and correct, as required pursuant to Powell zoning code § 1143.11(c)(11).

72. At the August 26, 2014 hearing before Respondent Board of Elections, the Developers failed to show that The Center at Powell Crossing, LLC signed and attested to the truth and exactness of the Final Development Plan identified in Ordinance 2014-10, as required pursuant to Powell zoning code § 1143.11(i).

73. At the August 26, 2014 hearing before Respondent Board of Elections, Respondent determined, illegally, unlawfully, in plain disregard of the law, and in an abuse of discretion, that Ordinance 2014-10 and the proposed ordinance to repeal Ordinance 2014-10 are administrative actions that are not subject to popular referendum under the Ohio Constitution and the Powell City Charter.

74. At the August 26, 2014 hearing before Respondent Board of Elections, Respondent determined, illegally, unlawfully, in plain disregard of the law, in an abuse of discretion, and contrary to the finding of Council, that the referendum petition for Ordinance 2014-10 and the initiative petition for a proposed ordinance to repeal Ordinance 2014-10 does not satisfy all form requirements under the Powell City Charter.

75. Specifically, Respondent Board of Elections illegally, unlawfully, in plain disregard of the law, and in an abuse of discretion determined that the initiative and referendum petitions do not comply with the requirement under Powell City Charter § 6.05 that: all initiative petitions "shall contain a full and correct copy of the title and text" of the proposed measure; and that all referendum petitions "shall contain the number, a full and correct copy of the title and date of passage of the ordinance or other measure sought to be referred."

76. Respondent Board of Elections sustained the Developers' objections, illegally, unlawfully, in plain disregard of the law, and in an abuse of discretion to find that the referendum petition for Ordinance 2014-10 and initiative petition for a proposed ordinance to repeal Ordinance 2014-10 are insufficient and invalid.

77. As a consequence, Respondent Board of Elections illegally, unlawfully, in plain disregard of the law, and in an abuse of discretion failed to submit the referendum and proposed ordinance to Powell electors at the November 4, 2014 general election.

**COUNT I: PETITION FOR WRIT OF MANDAMUS TO COMPEL  
RESPONDENT BOARD OF ELECTIONS TO SUBMIT THE REFERENDUM  
FOR ORDINANCE 2014-10 AND PROPOSED ORDINANCE TO REPEAL  
ORDINANCE 2014-10 TO POWELL ELECTORS**

78. Relators hereby adopt and incorporate by reference each and every statement in numbered paragraphs 1 through 77 above.

79. The referendum petition for Ordinance 2014-10 and the initiative petition for a proposed ordinance to repeal Ordinance 2014-10 filed with Respondent Clerk on July 17, 2014 contains a sufficient number of valid signatures to place the measure on the November 4, 2011 ballot and is sufficient and valid in all respects.

80. Respondent Board of Elections illegally, unlawfully, in plain disregard of the law, and in an abuse of discretion determined that it had jurisdiction under the Powell City Charter and the Ohio Constitution to determine whether the referendum petition for Ordinance 2014-10 and the initiative petition for a proposed ordinance to repeal Ordinance 2014-10 are sufficient and valid. *State ex rel. Semik v. Board of Elections of Cuyahoga County*, 67 Ohio St.3d 334, 336 (1993) ("The board of elections is not in any sense a municipal functionary. It is strictly a board and an arm of the state government. It would be anomalous indeed that an agency of the state government could impose upon

a municipality a special election in a matter in which the municipality alone was affected.”)

81. Respondent Board of Elections has illegally, unlawfully, in plain disregard of the law, and in an abuse of discretion determined that Ordinance 2014-10 and the proposed ordinance to repeal Ordinance 2014-10 constitute administrative actions that is not subject to referendum.

82. To the extent that *Buckeye Community Hope v. City of Cuyahoga Falls*, 82 Ohio St.3d 539 (1998) is applicable to the present matter, and Relators submit that it is not, the case should be overruled under *Westfield Insurance Co. v. Galatis*, 100 Ohio St.3d 216 (2003). *First, Buckeye Hope* was wrongly decided because the people may reserve the power of initiative and referendum under Ohio Const. Art. II § 1f and Ohio Const. Art. XVIII §§ 7, 8, 9. *Second, Buckeye Hope* defies practical workability because it is premature to determine the substantive issue of whether a law is administrative or legislative prior to voter approval and enactment. *Third, abandoning Buckeye Hope* does not give rise to undue hardship, among other reasons, because the Developers and other landowners do not have a reasonable reliance interest in the case.

83. Respondent Board of Elections illegally, unlawfully, in plain disregard of the law, and in an abuse of discretion determined that the referendum petition and the initiative petition do not comply with all requirements under the Powell City Charter for initiative and referendum petitions, including but not limited to the requirements under Powell City Charter § 6.05 that: all initiative petitions “shall contain a full and correct copy of the title and text” of the proposed measure; and that all referendum petitions “shall contain the number, a full and correct copy of the title and date of passage of the ordinance or other measure sought to be referred.”

84. Respondent Board of Elections sustained the Developers' objections, illegally, unlawfully, in plain disregard of the law, and in an abuse of discretion to find that the referendum petition for Ordinance 2014-10 and initiative petition to repeal Ordinance 2014-10 are insufficient and invalid.

85. In order to be entitled to a writ of mandamus, relators must establish a clear legal right, a clear legal duty, and the lack of an adequate remedy in the ordinary course of law. *State ex rel. Citizen Action for a Livable Montgomery v. Hamilton Cty. Bd. of Elections*, 115 Ohio St.3d 437 (2007).

86. “[I]f the pertinent facts are uncontroverted and it appears beyond doubt that [the relator] is entitled to the requested writ, [the Supreme Court] will issue a peremptory writ of mandamus.” *State ex rel. Union Cty. Veterans Serv. Comm. v. Parrott*, 108 Ohio St.3d 302 (2006).

#### **Clear Legal Right**

87. Relators have submitted a sufficient and valid referendum petition for Ordinance 2014-10 signed by a sufficient number of Powell electors and therefore have a clear legal right to have the referendum on Ordinance 2014-10 submitted to Powell electors at the November 4, 2014 general election. Ohio Const. Art. II § 1f; Powell City Charter § 6.04.

88. Relators have submitted a sufficient and valid initiative petition for a proposed ordinance to repeal Ordinance 2014-10 signed by a sufficient number of Powell electors and therefore have a clear legal right to have the proposed ordinance to repeal Ordinance 2014-10 submitted to Powell electors at the November 4, 2014 general election. Ohio Const. Art. II § 1f; Powell City Charter § 6.02.

### **Clear Legal Duty**

89. Respondent Board of Elections has a duty pursuant to Powell City Charter § 6.04 to submit the referendum petition for Ordinance 2014-10 to Powell electors at the November 4, 2014 general election.

90. Respondent Board of Elections has a duty pursuant to Powell City Charter § 6.02 to submit the initiative petition for an ordinance to repeal Ordinance 2014-10 to Powell electors at the November 4, 2014 general election.

91. “Any claims alleging the unconstitutionality or illegality of the substance of the proposed ordinance, or actions to be taken pursuant to the ordinance when enacted, are premature before its approval by the electorate.” *State ex rel. DeBrosse v. Cool*, 87 Ohio St. 1, 6 (1999). Thus, it was premature for the Board of Elections to address whether Ordinance 2014-10 and the proposed ordinance 2014-10 to repeal Ordinance 2014-10 constitute administrative actions or legislation.

92. Respondent Board of Elections has unlawfully, illegally, in plain disregard of the law, and in an abuse of discretion, refused to perform its clear legal duty to submit the referendum for Ordinance 2014-10 and the proposed ordinance to repeal Ordinance 2014-10 to the electors of Powell.

### **No Adequate Remedy**

93. Due to the proximity of the November 4, 2014 election, Relators lack an adequate remedy in the ordinary course of law. *See, e.g., State ex rel. Greene v. Montgomery Cty. Bd. of Elections*, 121 Ohio St.3d 631, 2009-Ohio-1716, ¶ 10.

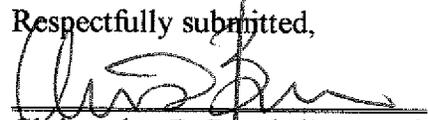
## PRAYER FOR RELIEF

WHEREFORE, Relators pray for the following relief from this Court:

- A. Issue a peremptory writ, alternative writ, or a writ of mandamus compelling Respondent Board of Elections to submit the referendum on Ordinance 2014-10 to a vote of the electors of Powell at the November 4, 2014 general election pursuant to Powell City Charter §§ 6.04, 6.05.
- B. Issue a peremptory writ, alternative writ, or a writ of mandamus compelling Respondent Board of Elections to submit the proposed ordinance to repeal Ordinance 2014-10 to a vote of the electors of Powell at the November 4, 2014 general election pursuant to Powell City Charter §§ 6.02, 6.05.
- C. In the alternative to the relief sought above under Parts A and B of this “PRAYER FOR RELIEF,” Relators pray that this Court issue a peremptory writ, alternative writ, or a writ of mandamus compelling Respondent Board of Elections to determine that the referendum petition for Ordinance 2014-10 and the initiative petition for an ordinance to repeal Ordinance 2014-10 are sufficient and valid in all respects.
- D. If this Court does not grant the relief sought above under Subheadings A, B, or C of this “PRAYER FOR RELIEF,” Relators alternatively pray that this Court issue a peremptory writ, alternative writ, or a writ of mandamus compelling the Respondent Board of Elections to show cause for their unlawful and illegal determination that the referendum petition for Ordinance 2014-10 and the initiative petition for an ordinance to repeal Ordinance 2014-10 are invalid.

- E. Assess the costs of this action against the Respondent, including an award to Relators of their reasonable attorneys' fees and expenses under any applicable laws; and
- F. Any such other relief as may be appropriate.

Respectfully submitted,



Christopher B. Burch (0087852)

Callender Law Group LLC

20 S. Third St. Suite 261

Columbus, OH 43215

(614) 300-5300

*Counsel for Relators*

**AFFIDAVIT**

IN THE STATE OF OHIO :  
: :  
COUNTY OF FRANKLIN :

I, Brian Ebersole, first being duly cautioned and sworn, depose and state that I have read the foregoing Complaint, that the statements of fact contained in the Complaint, which are incorporated and made a part of this Affidavit as if completely rewritten herein, are true based on my personal knowledge, and that I am competent to testify to the same.

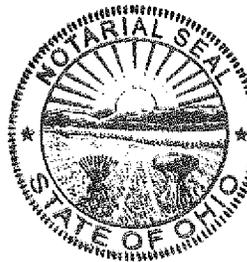
  
Relator Brian Ebersole

**FURTHER THE AFFIANT SAYETH NAUGHT.**

Sworn and subscribed before me on the 2nd of September, 2014.

My commission does not expire.

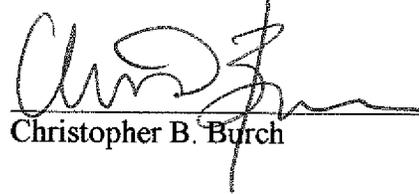
  
Christopher B. Burch  
Notary Public



Christopher B. Burch, Attorney At Law  
NOTARY PUBLIC - STATE OF OHIO  
My commission has no expiration date  
Sec. 147.03 R.C.

**PRAECIPE TO CLERK**

Please issue a summons along with a copy of the Verified Complaint for Writ of Mandamus to the Respondents identified in the caption of the Complaint by certified mail.



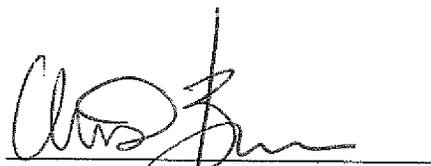
Christopher B. Burch

**CERTIFICATE OF SERVICE**

On this 22nd day of August 2014, a copy of the foregoing *Verified Complaint for Writ of Mandamus* was served, by email delivery, upon the following:

CAROL O'BRIEN  
Delaware County Prosecutor  
CHRISTOPHER D. BETTS  
Assistant Prosecuting Attorney  
Delaware County Prosecutor's Office  
140 North Sandusky Street, 3d Floor  
Delaware, OH 43015  
cbetts@co.delaware.oh.us

*Counsel for Respondent  
Delaware County Board of Elections*



Christopher B. Burch (0087852)  
Callender Law Group LLC  
20 S. Third St. Suite 261  
Columbus, OH 43215  
(614) 300-5300  
Chris@callenderlawgroup.com

*Counsel for Relators*