

ORIGINAL

Case No. 2014-1478

Supreme Court
of the State of Ohio

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.

Original Action in Mandamus / Expedited Election Matter

RELATORS' MERIT BRIEF

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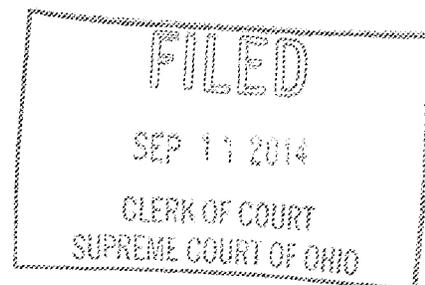
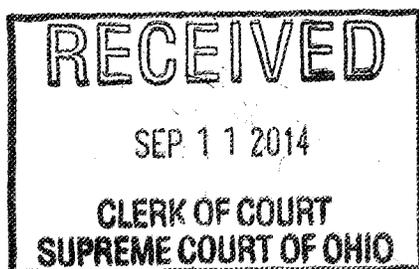


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I. INTRODUCTION

This is an original action for the issuance of a writ of mandamus to compel the Respondents – the City of Maple Heights, Ohio, and the individual members of its city council – to comply with the legal mandates imposed upon them by Article XVIII, Section 9 of the Ohio Constitution (which provides that “[a]mendments to any charter framed and adopted as herein provided may be submitted to the electors of a municipality ... upon petitions signed by ten per centum of the electors of the municipality setting forth any such proposed amendment, shall be submitted by such legislative authority”), by Article XVIII, Sections 8 and 9 of the Ohio Constitution (which provide that the submission of such proposed amendment to the electors of the municipality shall be at the next regular municipal election if one should occur not less than sixty nor more than one hundred and twenty days after such legislative authority provides for the submission of the proposed charter amendment) and the 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, 384, 1996-Ohio-303 (1995)(which provides 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”).

II. STATEMENT OF FACTS

On August 5, 2014, the Committee for Charter Amendment Petition to Limit the Use of Photo-Monitoring Devices filed with the Clerk of Council of the City of Maple Heights 56 petitions containing 910 signatures proposing an amendment to the Charter of the City of Maple Heights which would limit the use of photo-monitoring devices within the City of Maple Heights for the enforcement of traffic laws. (*Wilburn Affidavit* ¶4.) Ten days later, *i.e.*, August 15, 2014, the Law Director for the City of Maple Heights transmitted the foregoing petition to the Cuyahoga County Board of Elections, requesting the Board to “review and advise [regarding] the validity of the petitions and confirm the required notices, designations and the number of signatures of registered voters.” (Complaint ¶16; Answer ¶9; Hartman Aff. Exh. A thereto.)

On August 18, 2014, the Director of the Cuyahoga County Board of Elections certified that of the 910 signatures submitted on the petition in support of the foregoing initiative, “722 signatures were found valid in that those signers are duly registered voters in the City of Maple Heights.” (Complaint ¶17; Answer ¶9; Hartman Aff. Exh. B thereto.) The total number of votes cast in the last municipal election in Maple Heights, *i.e.*, the election held in November 2013, was 3,508. (Complaint ¶18; Answer ¶9; Hartman Aff. Exh. C thereto.) Thus, the submission by the Committee of 722 valid signatures on the petition in support of the foregoing initiative represented over 20% of the number of votes casted in the last municipal election. (Complaint ¶19; Answer ¶9.)

Having become aware that officials with the City of Maple Heights were not going to certify the proposed charter amendment to the board of elections for placement on the general election ballot at the forthcoming general election, *i.e.*, on November 4, 2014, Relator Celestine Wilburn tendered on August 18, 2014, and pursuant to R.C. 733.56 *et seq.*, a written demand to

John Montello, the Law Director for the City of Maple Heights, to commence an action in a court of competent jurisdiction for an order, *inter alia*, compelling the City Council of the City of Maple Heights “to enact the requisite enabling ordinance in order to place the proposed charter amendment on the ballot for consideration by the electorate.” (*Wilburn Affidavit* ¶¶5&6 & Exh. A thereto.) In response to Ms. Wilburn’s taxpayer-demand letter, John Montello, the Law Director for the City of Maple Heights, wrote to Relator in a letter dated August 21, 2014, indicating that he would not bring such an action because “there were not 1,200 signatures on said petition”, implying that the requisite number of signatures for an initiative petition was solely a matter of the City Charter of the City of Maple Heights. (*Wilburn Affidavit* ¶9 & Exh. B thereto.)

Then, on August 26, 2014, John Montello, the Law Director for the City of Maple Heights, issued a memorandum to, *inter alios*, city councilmembers, as well as the news media, which he characterized as a “response to the initiative petition of a proposed amendment to the Charter regarding photo-monitoring traffic devices filed with the Clerk of Council on August 5, 2014.” (*Second Hartman Affidavit* ¶3 & Exh. A thereto.) Within that memorandum, Mr. Montello acknowledged the foregoing numbers in terms of valid signatures on the petition, registered voters in the City, *etc.* He even stated therein that “the committee did obtain 15% of the total votes cast at the November 2013 election.” But he maintained that “the committee did not obtain signatures from 10% of the electorate as required by Article XX of the Charter”¹ and, thus, the petition should be treated simply as a proposed ordinance for consideration by the City Council.

¹ Section 1, Article XX of the Charter of the City of Maple Heights 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.”

In light of the failure or refusal of the officials with the City of Maple Heights to certify the proposed charter amendment to the board of elections for placement on the general election ballot at the forthcoming general election, as well as the failure or refusal of the City Law Director to bring an action to compel such action, Celestine Wilburn commenced this original action seeking, *inter alia*, the issuance of a peremptory writ of mandamus or, alternatively, an alternative writ of mandamus, compelling the Respondents, in their capacity as member of the City Council of the City of Maple Heights, Ohio, to forthwith provide by ordinance for the submission to the electors at the forthcoming general election the initiative-proposed charter amendment that seeks to restrict the use of photo-monitoring devices to enforce traffic laws in the City of Maple Heights.

III. LAW AND ARGUMENT

PROPOSITION OF LAW No. 1:

When a city council is timely presented with an initiative petition proposing a charter amendment that contains a sufficient number of valid signatures, a writ of mandamus to compel the placement of the proposed charter amendment on the ballot at the next regular election will issue.

“Section 7, Article XVIII of the Ohio Constitution authorizes municipal corporations to adopt and amend a home rule charter, and Sections 8 and 9 of Article XVIII prescribe the procedures for adopting and amending a charter. Section 9 of Article XVIII, which incorporates the requirements of Section 8, allows, and on petition by ten percent of the electors, requires, the legislative authority of any city, *e.g.*, city council, to ‘forthwith’ authorize by ordinance an election on the charter amendment issue.” *Morris v. Macedonia City Council*, 71 Ohio St.3d 52, 54, 641 N.E.2d 1075 (1994); *accord State ex rel. Committee for Charter Amendment Petition v. Avon*, 81 Ohio St.3d 590, 592, 693 N.E.2d 205, 1998-Ohio-598 (1998). And, thus, “[w]here a

municipal legislative authority erroneously either fails to submit a charter amendment when it is presented with a legally sufficient petition or fails to make a prompt determination on the sufficiency of the petition within the constitutional time period, this court has issued writs of mandamus to order placement on the next regular election ballot.” *State ex rel. Huebner v. W. Jefferson Village Council*, 75 Ohio St.3d 381, 662 N.E.2d 339 (1995).

When, as in the present case, a city council is timely presented with an initiative petition proposing a charter amendment that contains a sufficient number of valid signatures, this Court has repeatedly issued writs of mandamus to compel the placement of the proposed charter amendment on the ballot at the next regular election. *See, e.g., Morris*, 71 Ohio St.3d at 58 (“we allow the writ, compelling respondents to place the proposed charter amendment on the November 8, 1994 ballot”); *Avon*, 81 Ohio St.3d at 594 (“because respondents had the opportunity to adopt an ordinance to place the proposed charter amendment on the May 5 ballot, a writ of mandamus should issue to compel its submission to electors on that ballot instead of at a later special election”); *State ex rel. Citizens for a Better Portsmouth v. Sydnor*, 61 Ohio St.3d 49, 50, 572 N.E.2d 649 (1990)(“[o]n October 3, 1990, we granted the writ...and ordered the proposed amendment to be placed on the November 6 ballot at the general election”); *see State ex rel. Concerned Citizens for more Professional Govt. v. Zanesville City Council*, 70 Ohio St.3d 455, 460, 639 N.E.2d 421 (1994)(“relator is granted a writ of mandamus compelling respondents to immediately pass the ordinance placing the charter commission issue on the ballot for November 8, 1994”).

As to what constitutes a sufficient number of valid signatures on a petition proposing an amendment to a city charter, this Court in *Huebner* expressly held 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, Sections 5, 8, 9, and 14, Article XVIII of the Ohio Constitution must be construed *in pari materia*. Accordingly, 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 (emphasis added). In so holding, this Court adhered to the principle that “municipal charters may not be construed so as to overrule rights guaranteed to the citizens of Ohio by the Ohio Constitution.” *Id.* at 383. Thus, the requisite number of signatures by which residents of a municipality may propose a charter amendment is a matter dictated by the Ohio Constitution and not, as the City of Maple Heights apparently believes even after *Huebner*, by city charter. With respect to the initiative petition proposing an amendment to the Charter of the City of Maple Heights to limit the use of photo-monitoring devices for the enforcement of traffic laws, the petitioners therein undisputedly submitted a sufficient number of signatures and, accordingly, are entitled to the issuance of the writ to compel the Respondents – the City of Maple Heights, Ohio, and the individual members of its city council – to comply with their legal duty to “forthwith: authorize by ordinance an election on the proposed charter amendment.

PROPOSITION OF LAW No. 2:

An award of attorney fees is warranted when a mandamus action is commenced after city officials fail or refuse to comply with their constitutional duty to “forthwith” authorize by ordinance an election on the charter amendment issue.

As Relators set forth in their Motion to Establish Security for Costs (filed concomitantly with the commencement of this action), in other taxpayer actions similar to that brought in the present case, this Court found that the posting of the deposit provided for by S. Ct. Prac R. 3.05 (which is in addition to the filing fee required by S. Ct. Prac R. 3.04) was sufficient to satisfy the requirement of R.C. § 733.59 of posting additional security for costs. For example, in *Avon*, this

Court expressly concluded “Relators...gave security for costs, as required by R.C. 733.59,” *Avon*, 81 Ohio St.3d 590 at 595, and a review of the docket in that case (Case No. 98-519) confirms that the relator therein only posted the required \$100 security for additional costs as required by the predecessor to S. Ct. Prac R. 3.05; and in *Morris*, this Court similarly concluded the relator “has provided security for costs, as required by R.C. 733.59,” 71 Ohio St.3d at 58, and the docket in that case (Case No. 1994-1996) also indicated only the posting of the \$100 security as required by the predecessor to S. Ct. Prac R. 3.05. Thus, the precedent of this Court confirms the posting of the additional security required by S. Ct. Prac R. 3.05 satisfies the requirement of R.C. § 731.59.

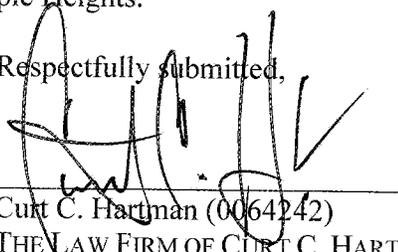
In the present case, a sufficient public benefit exists to warrant an award of attorney fees as this action seeks to vindicate and protect which this Court has described as “one of the most essential safeguards to representative government,” *State ex rel. Nolan v. Clendenning*, 93 Ohio.St. 264, 277-278, 112 N.E. 1029 (1915), as well as to ensure that submission of the proposed charter amendment at the already-scheduled forthcoming general election, as opposed to necessitating the City to incur the expense of providing for a special election. *See 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 ¶46 (2002)(“[w]e award attorney fees because relators' action saved Westlake and its residents the expense of a special election following the regularly scheduled election on November 5, 2002, respondents did not have any reasonable basis for failing to place the charter amendment issue on that ballot, and relators gave security for costs, as required by R.C. 733.59”).

CONCLUSION

Relators have demonstrated that case law clearly establishes their entitlement to the issuance of a writ of mandamus compelling Respondents to comply with their legal duty to “forthwith” authorize by ordinance an election on the proposed charter amendment at the forthcoming general election. And those same cases demonstrate a complete lack of justification for the Respondents’ refusal to comply with their legal duties relative to the petition proposing the charter amendment such that a public benefit will inure by the issue of the requested writ, entitling Relators to the requested attorney fees.

Based upon the foregoing, Relators are entitled to the issuance of a writ of mandamus compelling the Respondents – the City of Maple Heights, Ohio, and the individual members of its city council – to comply with the legal mandates imposed upon them to forthwith to certify to the board of elections for placement on the general election ballot at the forthcoming general election the proposed charter amendment to limit the use of photo-monitoring devices for the enforcement of traffic laws in the City of Maple Heights.

Respectfully submitted,



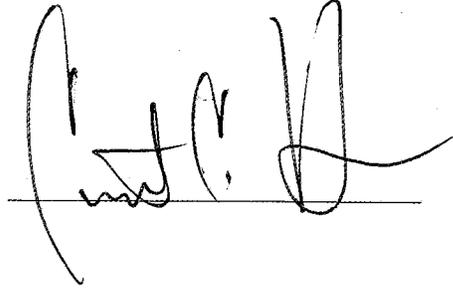
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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing will be served upon the following counsel for the Respondents via e-mail on the 11th of September 2014:

James A. Climer (jclimer@mrrlaw.com)
Jeffrey T. Kay (jkay@mrrlaw.com)
Frank H. Scialdone (fscialdone@mrrlaw.com)
John Montello (jmontello@bedfordlawyers.com)

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

APPENDIX

Ohio Constitution, Article XVIII, Section 8	v
Ohio Constitution, Article XVIII, Section 9	v
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Ohio Constitution, Article XVIII, Section 8

The legislative authority of any city or village may by a two-thirds vote of its members, and upon petition of ten per centum of the electors shall forthwith, provide by ordinance for the submission to the electors, of the question, "Shall a commission be chosen to frame a charter." The ordinance providing for the submission of such question shall require that it be submitted to the electors at the next regular municipal election if one shall occur not less than sixty nor more than one hundred and twenty days after its passage; otherwise it shall provide for the submission of the question at a special election to be called and held within the time aforesaid. The ballot containing such question shall bear no party designation, and provision shall be made thereon for the election from the municipality at large of fifteen electors who shall constitute a commission to frame a charter; provided that a majority of the electors voting on such question shall have voted in the affirmative. Any charter so framed shall be submitted to the electors of the municipality at an election to be held at a time fixed by the charter commission and within one year from the date of its election, provision for which shall be made by the legislative authority of the municipality in so far as not prescribed by general law. Not less than thirty days prior to such election the clerk of the municipality shall mail a copy of the proposed charter to each elector whose name appears upon the poll or registration books of the last regular or general election held therein. If such proposed charter is approved by a majority of the electors voting thereon it shall become the charter of such municipality at the time fixed therein.

Ohio Constitution, Article XVIII, Section 9

Amendments to any charter framed and adopted as herein provided may be submitted to the electors of a municipality by a two-thirds vote of the legislative authority thereof, and, upon petitions signed by ten per centum of the electors of the municipality setting forth any such proposed amendment, shall be submitted by such legislative authority. The submission of proposed amendments to the electors shall be governed by the requirements of section 8 as to the submission of the question of choosing a charter commission; and copies of proposed amendments may be mailed to the electors as hereinbefore provided for copies of a proposed charter, or pursuant to laws passed by the general assembly, notice of proposed amendments may be given by newspaper advertising. If any such amendment is approved by a majority of the electors voting thereon, it shall become a part of the charter of the municipality. A copy of said charter or any amendment thereto shall be certified to the secretary of state, within thirty days after adoption by a referendum vote.

Ohio Constitution, Article XVIII, Section 14

All elections and submissions of questions provided for in this article shall be conducted by the election authorities prescribed by general law. The percentage of electors required to sign any petition provided for herein shall be based upon the total vote cast at the last preceding general municipal election.