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MOTION TO COMPEL COMPLIANCE INSTANTER

On September 29, 2014, this Court issued a clear mandate for Respondents to submit the proposed charter amendment to the electors of Powell, as follows:

It is ordered by the court that the motion for reconsideration in this case is granted and a writ of mandamus is granted. The city council and the city clerk are hereby ordered to take all steps necessary to place the proposed charter amendment on the November 4, 2014 ballot and to submit the question to those voters who have already secured absentee voter ballots, consistent with the opinion rendered herein. Costs assessed to respondents.

This three sentence order is clear and unambiguous: Respondents must “take all steps necessary” to submit the charter amendment to the Powell electorate **at the November 4, 2014 election.**

Now, seven days after this Court’s order, Powell City Council refuses to call a special or emergency meeting for today, October 6, 2014, which may be the last day for the Delaware County Board of Elections to modify the November 4th, 2014 ballot. Per the communications of the Powell Law Director, City Council is refusing to call a City Council meeting today on the incorrect basis that the Powell Charter allows a meeting to be held only “with 24 hours notice.” Exhibit A, email from Powell Law Director Hollins.

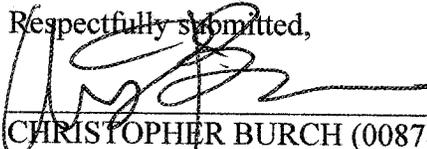
The Court’s order is clear – and Council cannot delay, and then attempt to justify its delay, with citations to technical requirements. *State ex rel. Citizens for a Better Portsmouth v. Sydnor*, 61 Ohio St.3d 49, 53 (1991); *State ex rel. Committee for Charter Amendment Petition v. Avon*, 81 Ohio St.3d 590, 594 (1998); *Morris v. Macedonia City Council*, 71 Ohio St.3d 52, 58 (1994); *State ex rel. Concerned Citizens for more Professional Govt. v. Zanesville City Council*, 70 Ohio St.3d 455, 459 (1994); *State ex rel. Jurcisin v. Cotner*, 10 Ohio St.3d 171, 173 (1984).

Failure of Council to act immediately will cause significant prejudice to the Relators. Tomorrow (October 7th) may be too late to modify ballots issued by the Delaware County Board of Elections, forcing the issue onto a special election. City Council has admitted that there may be another attempt at the Board of Elections to question the sufficiency and validity, which would prejudice Relators with the legal expenses of potentially bringing another extraordinary writ.

A "special election" was not ordered by this Court, yet a failure to order immediate compliance with the Court's September 29th Order could reward City Council's unjustified delay with exactly that. This Court should immediately compel Council to submit the charter amendment question to the Board of Elections **today, October 6th.**

In the alternative, given Council's refusal to follow the Court's prior order, this Court should order the Board of Elections today, October 6th, to place the charter amendment question on the November 4th ballot.

Respectfully submitted,



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Brian Ebersole, Sharon Valvona,

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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was served by email delivery this 6th day of October, 2014, upon the following counsel:

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CHRISTOPHER B. BURCH
Counsel for Relators

Ex. A

Subject: RE: Compliance with the Court's orders

From: Hollins, Eugene L. - To: Christopher Burch, Esq. - Date: October 6, 2014 at 11:26 AM

Chris,

We have consulted with our client. Pursuant to Section 4.08 of the Charter, special meetings of Council may be held with 24 hours notice to all Council members, media and the public, and the purpose of the meeting must be stated in the notice. Since the first opportunity for a special meeting would be tomorrow, we will pass the ordinance at the regular meeting tomorrow. I will forward a copy of the final draft of the ordinance that will be presented to Council at my earliest convenience to ensure your clients that the Charter Amendment petition will be forwarded to the Board of Elections.

Thank you for your attention and cooperation with regard to this matter.

Gene

Eugene L. Hollins

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From: Christopher Burch, Esq. [<mailto:chris@callenderlawgroup.com>]

Sent: Monday, October 06, 2014 11:08 AM

To: Hollins, Eugene L.

Cc: cbetts@co.delaware.oh.us; King, Andrew; Croghan, Jennifer B.

Subject: Compliance with the Court's orders

Dear Gene:

This morning, your clients' motion for clarification and/or reconsideration was denied by the Court. I have attached a copy of the Court's Order to this email.

As you know, given the short timeframe before voting begins, time is of the essence. Please let me know immediately of your clients' intentions concerning compliance with the Court's order, issued last Monday, September 29th, directing City Council and the Clerk to take "all steps necessary" to place the charter amendment issue on the November 4, 2014 ballot. Please also provide your intentions to the Delaware County Board of Elections, whose counsel I have CC'ed herein.

All best,

Chris

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