

IN THE SUPREME COURT OF OHIO

STATE ex rel. BRIAN EBERSOLE, *et al.*, :
: Relators, :
: Case No. 2014-1469 :
v. :
: ORIGINAL ACTION IN MANDAMUS :
CITY COUNCIL OF POWELL, OHIO, *et al.*, :
: Respondents. :

**MEMORANDUM IN OPPOSITION OF RELATORS' MOTION TO COMPEL
COMPLIANCE *INSTANTER* BY INTERVENING RESPONDENT
THE CENTER AT POWELL CROSSING, LLC**

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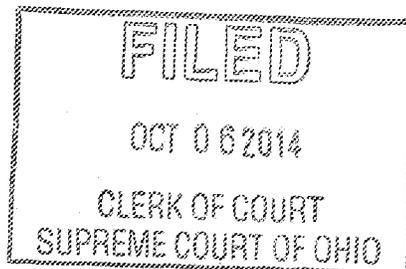
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MEMORANDUM IN OPPOSITION

Relators demand that this Court order that the Delaware County Board of Elections (not a party to this case) be bypassed in violation of Article 18, Section 14 of the Ohio Constitution. As set forth in the Ohio Constitution, “[a]ll ... submissions of questions provided for in this article shall be conducted by the election authorities prescribed by general law.” Ohio Constitution Art. XVIII, Sec. 14. In turn, the Ohio Revised Code broadly requires county boards of elections to review petitions for compliance with the applicable legal requirements. *See e.g.*, R.C. 3501.11(k) (requiring a county board of elections to “[r]eview, examine, and certify the sufficiency and validity of petitions ...”).

As this Court has previously observed, Ordinance 2014-10 is the subject of all three ballot measures that have come before this Court.¹ This Court held that *the charter initiative* “would, among other things, nullify Ordinance 2014-10.” *State ex rel. Ebersole v. Delaware Cty. Bd. of Elections*, Slip Op. No. 2014-Ohio-4077, ¶ 1. Article II, Section 1f of the Ohio Constitution does not permit an administrative decision to be put to a referendum or initiative. *Id.* at ¶ 36. This Court has also consistently held that boards of elections are the appropriate bodies to determine that a ballot measure violates Art. II, Sec. 1f. *See e.g.*, *State ex rel. Upper Arlington v. Franklin Cty. Bd. of Elections*, 119 Ohio St.3d 478, 2008-Ohio-5093, 895 N.E.2d 177, ¶ 20. Accordingly, this Court should not accept the Relators’ invitation to eliminate the Board of Elections from the election process.

Similarly, the Charter Initiative violates certain statutory requirements not in conflict with the Ohio Constitution or Powell’s Charter. As this Court explained, “statutory requirements governing referendum and initiative petitions also apply to charter amendments, insofar as those statutory requirements do not conflict with the Ohio Constitution or the city charter.” *State ex*

¹ Ohio Supreme Court Case Nos. 2014-1469 and 2014-1520.

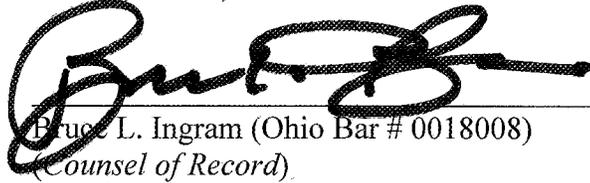
rel. Ebersole v. Delaware Cty. Bd. of Elections, Slip Op. No. 2014-Ohio-4078, ¶ 5 (citing *State ex rel. Hackworth v. Hughes*, 97 Ohio St.3d 110, 2002-Ohio-5334, 776 N.E.2d 1050, ¶ 31 and *State ex rel. Spadafora v. Toledo City Council*, 71 Ohio St.3d 546, 549, 644 N.E.2d 393 (1994)).

Here, the Charter Initiative violates R.C. 731.31 and 731.36 because the petition misled the petition signers by concealing that the Charter Initiative seeks to nullify Ordinance 2014-10 by among other things: requiring the Final Comprehensive Plan envisioned by the proposal to “not be compatible with Ordinance 2014-10 and/or the Final Development Plan for the Center at Powell Crossing LLC”; barring any party, public or private from taking any action including construction activity in reliance on Ordinance 2014-10; prohibiting development of high-density housing in the Downtown Business District; and restricting all future ordinances approved by the City to comply with the Final Comprehensive Plan. *See, State ex rel. Ebersole v. Delaware Cty. Bd. of Elections*, Slip Op. No. 2014-Ohio-4078, ¶ 29. None of these changes appear on the face of the Petition or in the proposal’s title. Rather, in violation of R.C. 731.36, Relators misrepresented the scope of the proposed measure in the proposal’s title. Furthermore, contrary to R.C. 731.31, Relators omitted the proposal’s title and text from the face of the Petition entirely. The Board of Elections cannot be divested of its obligation under R.C. 3501.11(k), arising out of Article 18, Section 14 of the Ohio Constitution, to determine whether the charter initiative is sufficient and valid.

Accordingly, following filing the Petition with the Delaware County Board of Elections, the Board must determine the validity and sufficiency of the charter amendment and Relators are not entitled to any relief that would usurp that role.

Respectfully submitted,

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CERTIFICATE OF SERVICE

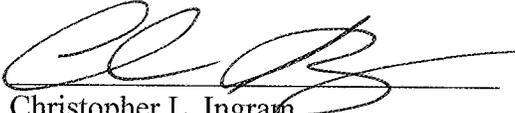
The undersigned certifies that a true and accurate copy of the foregoing was served via electronic mail to the following this 6th day of October, 2014:

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