

IN THE SUPREME COURT OF OHIO

STATE OF OHIO, *EX REL.* : Case No. 2015-1456  
KATHRYN WILEN, *ET AL.* :  
 :  
 : ORIGINAL ACTION IN  
Relators, : MANDAMUS  
 :  
v. : PEREMPTORY AND/OR  
 : ALTERNATIVE WRIT REQUESTED  
CITY OF KENT, OHIO :  
 : EXPEDITED ELECTIONS MATTER  
Respondent. : PURSUANT TO S. CT. R. PRAC. 12.08  
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MERIT BRIEF OF AMICUS CURIAE THE OHIO MUNICIPAL LEAGUE IN  
SUPPORT OF RESPONDENT CITY OF KENT, OHIO

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**STATEMENT OF THE FACTS**

The Ohio Municipal League hereby adopts, in its entirety, and incorporates by reference, the statement of the facts contained within the Brief of Respondent, City of Kent, Ohio.

## ARGUMENT

### **Proposition of Law No. 1: Section 9, Article XVIII of the Ohio Constitution Controls the Process by Which a Municipal Charter May be Amended.**

The Ohio Municipal League (the “League”) respectfully urges this Court to adopt its original decision in *State ex rel. Huebner v. W. Jefferson Village Council*, 72 Ohio St. 3d 589, 651 N.E.2d 1001 (1995), in which this Court held that an initiative petition for a charter amendment required signatures of at least ten percent of *all* registered voters in a municipality.<sup>1</sup>

The Home Rule Amendment to the Ohio Constitution authorizes municipalities “to exercise all powers of local self-government and to adopt and enforce within their limits such local police, sanitary and other similar regulations as are not in conflict with general laws.” Section 3, Article XVIII, Ohio Constitution. Home rule municipalities exercise this power of local self-government through the framing and adoption of a municipal charter. *See* Section 7, Article XVII, Ohio Constitution. Indeed, this Court has consistently held that the charter of a city is comparable to a local constitution. *See State ex rel. Bednar v. N. Canton*, 69 Ohio St. 3d 278, 281, 631 N.E.2d 621, 624 (1994); *see also State ex rel. Hipp v. N. Canton*, 75 Ohio St.3d 221, 224, 661 N.E.2d 1090, 1093 (1996).

Pertinent to the present matter, municipal elections, including amendments of a charter by initiative petition, are undoubtedly matters of local self-government, and therefore, may be the subject of a charter provision. *State, ex rel. Bedford v. Cuyahoga Cty. Bd. of Elections*, 62 Ohio St. 3d 17, 19, 577 N.E.2d 645, 647 (1991). To that end, home rule charter municipalities are authorized to control municipal elections procedures through their charters. *See, e.g.*, Section 1, Article XVII of the Ohio Constitution (stating that “[t]he term of office of all elective county, township, municipal, and school officers shall be such even number of years not exceeding four

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<sup>1</sup> This decision was reversed on reconsideration by a 4-3 decision in *State ex rel. Huebner v. W. Jefferson Vill. Council*, 75 Ohio St. 3d 381, 662 N.E.2d 339 (1995).

as may be prescribed by law *or such even number of years as may be provided in municipal or county charters.*”)

In the present matter, the City of Kent (the “City”) is a home rule charter municipality that adopted a process by which its charter may be amended by an initiative petition. Section 7A of the City charter states in pertinent part that, “[a]t least 10 percent of the qualified electors of the City registered to vote at the next preceding regular Municipal election must sign the initiative petitions for Charter change prior to submission to the Clerk of the City Council.” Notably, this charter provision is consistent with Section 9, Article XVIII of the Ohio Constitution. Yet, the Relators in the present case argue, and this Court has previously held, that Section 14, Article XVIII of the Ohio Constitution is controlling in this matter. *State ex rel. Huebner v. W. Jefferson Vill. Council*, 75 Ohio St. 3d 381, 662 N.E.2d 339 (1995). Section 14 provides in pertinent part that, “[t]he percentage of electors require to sign any petition provided for herein shall be based upon the total vote cast at the last preceding general municipal election.” However, for the reasons set forth below, Section 9, which is specific to charter amendments, must prevail over the general provisions of Section 14.

Only two sections in the Ohio Constitution specifically contemplate amending a city charter. Section 7, Article XVIII of the Ohio Constitution, which is the home rule provision of the Ohio Constitution, provides that “[a]ny municipality *may frame and adopt or amend* a charter for its government and may, subject to the provisions of section 3 of this article, exercise thereunder all powers of local self-government.” (Emphasis added.) Section 9, Article XVII of the Ohio Constitution specifically sets forth the procedure to be used in *amending* a charter created in accordance with Section 7. Section 9 provides, in pertinent part, that “[a]mendments 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.” (Emphasis added.) These are the only two sections in the Ohio Constitution that specifically apply to amending a charter.

“Electors” is not defined in the Ohio Constitution; however, it is defined in the Ohio Revised Code. An “elector”<sup>2</sup> is defined under Ohio law as “person[s] having the qualifications provided by law to be entitled to vote.” R.C. 3501.01(N). The definition of “elector” is separate and distinct from the definition of “voter.” “Voter” is defined as “an elector who votes at an election.” R.C. 3501.01(O). Stated otherwise, “electors” are those people registered to vote, while “voters” are those electors who actually vote in a given election. This distinction is significant.

The Relators’ argument and this Court’s previous holding in *State ex rel. Huebner v. W. Jefferson Vill. Council*, appear to use these terms interchangeably, *i.e.*, that the use of the term “electors” in Section 9, Article XVIII of the Ohio Constitution actually means “voters.” This Court’s holding in *Huebner* derived this interpretation from Section 14, Article XVIII of the Ohio Constitution.

Respectfully, however, this interpretation creates a direct conflict between Section 14 and the plain language of Section 9. As previously stated, Section 9 requires signatures from ten percent of the electors, *i.e.*, all registered voters, while Section 14 calls for signatures from ten percent of voters, *i.e.*, electors who voted at the last general municipal election. It is well settled that in cases of conflict, a special provision prevails over a general provision. R.C. 1.51 (“If the conflict between the provisions is irreconcilable, the special or local provision prevails as an exception to the generally provision. . . .”). While the preferred method to resolve conflict is to

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<sup>2</sup> The terms “elector” and “qualified elector” are interchangeable terms under Ohio law. R.C. 3501.01(N).

harmonize the conflicting provisions, sometimes, harmony is not possible. *State ex rel. Huebner*, 75 Ohio St.3d at 388 (Douglas, J., dissenting). That is precisely the case in the present matter. Here, the provision of Section 9 that specifically governs amendments to a municipal charter prevails over the general provisions of Section 14.

Moreover, the attempted harmonization of Section 9 and Section 14 creates an internal inconsistency in Section 9. Section 9 states, in full, the following:

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. (Emphasis added.)

The term “electors” is used five times in Section 9. If this Court accepts the term “electors” to essentially mean “voters,” as it has previously held, then that definition should be applied to all instances where the term “electors” is used. *Taniguchi v. Kan Pac. Saipan, Ltd.*, 132 S. Ct. 1997, 2004-05, 182 L. Ed. 2d 903 (2012) (citing *Gustafson v. Alloyd Co.*, 513 U.S. 561, 570, 115 S.Ct. 1061, 131 L.Ed.2d 1 (1995) (quoting *Department of Revenue of Ore. v. ACF Industries, Inc.*, 510 U.S. 332, 342, 114 S.Ct. 843, 127 L.Ed.2d 165 (1994)))(stating that “it is a normal rule of statutory construction that identical words used in different parts of the same act are intended to have the same meaning.”). Under this interpretation, amendments to any charter will only be submitted to the electors that voted at the last preceding election. Stated otherwise, electors who did not vote at the last preceding municipal election would not be permitted to vote

on the charter amendment. Similarly, the proposed amendments to the charter would only be mailed to the electors who voted at the last preceding municipal election. This would create an absurd result in which electors in a municipality would be prohibited from voting on a charter amendment.

Alternatively, if this Court accepts the term “electors” to essentially mean “voters” only with regard to the percentage of electors required to sign an initiative petition, then *identical terms* within the *same section* of the Ohio Constitution would have completely different meanings. This does not comport with rules of statutory construction or established law. *Id.*

In either instance, the Relators are attempting to fit a square peg into a round hole. The attempt to harmonize Section 9 with Section 14 creates greater conflict, and inevitably conflicts with established rules of statutory construction. Since Sections 9 and 14 are irreconcilably in conflict, Section 9 must control. Notably, Section 7A of the City of Kent Charter is consistent with Section 9.

### **CONCLUSION**

The Relators’ position has the potential to set dangerous precedent to the detriment of Ohio municipalities and established rules of statutory construction. This case implicates all matters related to municipal home rule power, citizen initiative petitions, and established processes by which a municipal charter may be amended. The League is interested in ensuring that proper procedure is followed with regards to citizen-initiated charter amendments, and that such an important document as is a municipal charter, is not so easily manipulated. For the foregoing reasons, the League respectfully requests this Court to reject Relators’ requested relief. The League further respectfully requests this Court to reverse its decision in *State ex rel. Huebner v. W. Jefferson Vill. Council*, 75 Ohio St. 3d 381, 662 N.E.2d 339 (1995), and to adopt

its original analysis and holding in *State ex rel. Huebner v. W. Jefferson Village Council*, 72 Ohio St. 3d 589, 651 N.E.2d 1001 (1995).

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

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