

IN THE SUPREME COURT OF OHIO

STATE OF OHIO *ex. rel*
KATHRYN WILEN, et al.

Case No. 2015-1456

Relators,

vs.

Mandamus-Expedited Election Case

CITY OF KENT, OHIO

Respondent.

MERIT BRIEF OF RESPONDENT

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I. STATEMENT OF FACTS

Relators submitted petitions to the Kent, Ohio City Council requesting that the following City Charter change proposal be placed upon the November 3, 2015 ballot:

“Kent Initiative Calling on Congress to Amend the U.S. Constitution to Establish That Corporations Are Not People and Money Is Not Speech.

WHEREAS, the rights protected by the Constitution of the United States are the rights of natural persons

WHEREAS, natural persons are defined as individual human beings that are born biologically and die

WHEREAS, corporations are not and have never been natural persons, and therefore are rightfully subservient to human beings and governments as legal creations

WHEREAS, money is property, not speech, and therefore the judicial interpretation of money as equivalent to political speech in effect contradicts the principle of one person, one vote by allowing unlimited spending by wealthy individuals and corporations to influence campaigns, elections, lawmaking and public policy decisions

WHEREAS, corporations are not mentioned in the Constitution, and We The People have never granted constitutional rights to corporations, nor have We The People decreed that corporations have authority that exceeds the authority of We The People of the United States

WHEREAS, the inalienable rights and privileges stated in the Constitution apply only to human beings

WHEREAS, corporations are entirely human-made artificial entities created by express permission of the We The People

WHEREAS, the privileges of artificial entities shall be determined by We The People, through Federal, State or local law, and shall not be construed to be inherent or inalienable

WHEREAS, free and fair elections are essential to democracy and effective self-governance

THEREFORE, BE IT ORDAINED by Initiative by the people of Kent, Ohio, that the City Charter be amended to enact a new Section 65(b) titled, “Democracy Day Public Hearing/Political Influence,” which shall read as follows:

Beginning in 2016, City Council shall designate one day a “Democracy Day” during the first week of October each year in which a local, state, or national election is held in Kent. On this day, the Mayor and City Council shall sponsor a

Public Hearing in a public space within the City. The public hearing shall be held during an evening or weekend time. The City will publicize the public hearing on its website and in area media at least one month in advance. The Public Hearing shall examine the impact on our City, our state and our nation of political influence resulting from campaign contributions by corporate entities. Corporate entities include business corporations, Political Action Committees, PACS, Super PACs, 501 c4 groups and unions. Members of the general public in attendance shall be afforded the opportunity to speak on these matters for up to five minutes per person. The City shall record the minutes of the hearing and make them available to the public no later than November 1 of each year in which it is held by posting them on the City's website.

Within one (1) week following the annual Public Hearing, the Clerk of City Council shall send a letter to every elected state-level representative of the citizens of the City, to the leaders of the Ohio House and Senate, to our U.S. Congressional Representative(s), and to both U.S. Senators from Ohio. The letter shall include a brief summary of the Public Hearing and will state that the citizens of Kent in November 2015 voted in support of a Citizens' Initiative calling for an amendment to the U.S. Constitution declaring the following principles:

1. Only human beings, not corporations, are legal persons with Constitutional rights, and
2. Money is not equivalent to speech, and therefore, regulating political contributions and spending does not equate to limiting political speech.

The annual Public Hearings will no longer be required if and when a Constitutional Amendment reflecting the principles set forth in Section 02 is ratified by three-quarters (3/4) of the state legislatures.”

The petitions were filed with the Clerk of the Kent, Ohio City Council on or about July 28, 2015. The City Clerk then submitted the petitions to the Portage County, Ohio Board of Elections for their determination of the number of valid signatures contained on the petitions.

The Board of Elections reported back to the Clerk of Council on August 17, 2015 that the petitions contained 621 valid signatures.

The petitions were discussed by the Kent City Council on or about August 19, 2015. City Council was advised by the Law Director for the City of Kent, Ohio that the Kent City Charter requires ten percent (10%) of the “qualified electors” in the City of Kent, as of the next

preceding municipal election (2013) to sign an initiative petition to change the Kent City Charter in order to get the petition placed on the ballot. The section of the Charter in question reads as follows:

“Section 7A. Amending the Charter by Initiative Petition

Initiative petitions for Charter changes may be circulated by any elector or electors of the City in accordance with the Constitution of Ohio and under the jurisdiction of the Ohio Revised Code. City Council shall not pass any ordinance or resolution to impair the circulation and submission to the voters of any initiative petitions for Charter changes. At 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. City Council shall immediately follow procedures set forth in the Ohio Revised Code for placement on the ballot at the next regular or special election. (Added 11-7-95)”

According to the Portage County, Ohio Board of Elections, there were 17,076 “qualified electors” at the time of the next preceding municipal election (November, 2013). Doing the math, (10%) of the “qualified electors” equals 1,707 signatures required on the petitions in order for the issue to be placed upon the ballot.

The Kent City Council on August 19, 2015, declined to put the issue on the ballot because the petitions only contained 621 signatures, well short of the 1,707 signatures required by the City Charter.

The Kent City Council never discussed the content of the proposed Charter Amendment prior to finding the petitions did not contain the required number of signatures. The content of the proposed Charter change had no bearing on the decision to keep the issue off of the ballot.

Relators filed the within Complaint for a writ of mandamus with the Ohio Supreme Court on September 3, 2015. The City of Kent, Ohio received copies of the Complaint on Tuesday, September 8, 2015. Respondent City of Kent, Ohio filed its Answer and Counterclaim for

Injunctive Relief on September 10, 2015. The Counterclaim does raise the issue of the content of the proposed Charter amendment, as it is appropriate for a court to review content.

Briefs have been filed on the expedited schedule.

II. ARGUMENT AND LAW

Proposition of Law #1: Does An Initiative Petition, Submitted To Change Charter Language In The City Of Kent, Ohio Charter Require Signatures From 10% Of The “Electors” Of The City (Pursuant to the Ohio Constitution) Or 10% Of The “Qualified Electors” Of The City (Pursuant to the Kent City Charter)?

The City Charter for Kent, Ohio requires signatures from 10% of the “qualified electors” of the City as of the next preceding municipal election in order for a Charter change proposed by petition to be placed upon the ballot at the next election.

Clearly, in this case, the Kent City Council followed its Charter and declined to put a proposed Charter change on the ballot when the petitions supporting the Charter change only contained 621 signatures as opposed to the 1,707 signatures required by the Charter. The City Council did not discuss the content of the petition, nor did it base its decision to not forward the ballot language to the Board of Elections on the content. The decision was based solely on the number of signatures.

It is also undisputed that there were 17,067 “qualified electors” in the City of Kent as of the next preceding municipal election. Relators in this case have argued that Kent City Charter Section 7(A) is not applicable to this situation. Relators argue that Ohio Constitution Article XVIII, Section 9 controls the number of signatures required. The cases cited by Relators in support of their proposition, have one thing in common. The City Charters reviewed in those cases all referred to needing signatures from 10% of the “Electors” of the City or Village on a

petition to place a charter change on the ballot. The Courts have held that the term “Elector” refers to people who actually voted (normally at the next preceding municipal electors).

The City of Kent Charter is different from the Charters explained in these cases. Section 7(A) of the Kent City Charter requires signatures from 10% of the “Qualified Electors.”

A qualified elector has been defined by the Ohio Constitution as a person who is qualified to vote at an election. In essence, it means that they are registered to vote. *Ohio Constitution Article V Section 1*, and *Ohio Revised Code Section 3501.01*. The cases cited by Relators do state that an “elector” has been defined as a person who voted at the next preceding municipal election. Respondent does not argue with the definition of “electors.”

The City of Kent, Ohio is a Charter city, having adopted its Charter on May 7, 1963. Article O XVIII, Section 3 of the Ohio Constitution reads as follows:

O Const XVIII Sec. 3 Municipal powers of local self-government.
Municipalities shall have authority 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. (1912 constitutional convention, adopted eff. 11-15-12)

Interpretation of this section of the Ohio Constitution has come from the Courts of Ohio. In *Mullen v. City of Akron* (Summit 1962) 116 Ohio App. 417, 188 N.E.2d 607, 22 O.O.2d 251, the Court stated

The words “as are not in conflict with the general laws,” found in O Const Art XVIII §3, modify the words “local police, sanitary and other similar regulations,” but do not modify the words “powers of local self-government.”
Also see *State ex rel. Minor v. Eschen* (Ohio 1995) 74 Ohio St.3d 134, 656 N.E.2d 940, and *Chovra v. Cleveland*, 44 Misc 39, 336 N.E.2d 467 and *State ex rel. Bindas v. Andrish* (Ohio 1956) 165 Ohio St.441, 136 N.E.2d 43, 60 O.O. 92.

The issue before this Court in this case is an issue of the powers of self-government. It does not concern “local police, sanitary and other similar regulations.” As applied to the facts of this case, the Mullin Court would follow the City of Kent Charter language, not state law.

Article XVIII, Section 3 of the Ohio Constitution is known as the Home Rule amendment. Home Rule grants municipalities the power of local self-government. Municipal elections are matters of local self-government and may be the subject of a Charter provision. *State ex rel. Bedford v. Cuyahoga County Board of Elections* (1991), 62 Ohio St.3d 17, 19, 577 N.E.2d at 645, 646.

In general, John Gotherman has explained Home Rule as follows in the November/December 2004 issue of *Ohio Cities and Villages*:

“Section 2 of Article XVIII (of the Ohio Constitution) provides that “general laws shall be passed to provide for the incorporation and government of cities and villages...” Section 3 grants municipalities authority “to exercise all powers of local self-government...”, Section 7 authorized the adoption of municipal Charters and the exercise thereunder of local self-government powers. To reconcile these provisions the Ohio Supreme Court has adopted a charter vs. non-charter dichotomy with respect to powers of local self-government (clause 1 in §3.01 above). It may be summarized this way:

1) If a non-charter municipality is involved, you look to Section 2 of Article XVIII and the statutes enacted by the General Assembly with respect to “the government” of the municipality. In other words, powers of local self-government which are procedural (form or structure of government and procedures) are controlled by Sections 2 and 3 of Article XVIII and the state law prevails as to those procedural powers of local self-government granted to non-charter municipalities by Section 3 of Article XVIII. See *Morris v. Roseman* (1954), 162 Ohio St.447.

2) On the other hand, if a charter municipality is involved, it is the charter adopted pursuant to Section 7 of Article XVIII, rather than the statutes that prevails with respect to procedural power of local self-government (structure and form of government and procedures). See *Morris v. Roseman* (1954), 162 Ohio St.447.

3) If a substantive power of local self-government is involved (not a matter of procedure or form of government), then regardless of whether a charter or non-charter municipality is involved, the municipal exercise of “substantive” powers

of local self-government prevails over the state laws. See *Benevolent Assn. v. Parma* (1980), 61 Ohio St.2d 375.”

Other courts have set out general interpretations of Home Rule that follow Mr. Gotherman’s summary. The Court in *Reisig v. Camarato* (Cuyahoga 1996) 111 Ohio App.3d 7, 675 N.E.2d 594 explained it this way:

“Municipal charter provisions will prevail if a portion of municipality’s charter expressly conflicts with a parallel state law; however, charter provisions supersede state law only where municipality clearly and explicitly states areas where it intends to supersede and override general state statutes.”

That brings us to the discrepancy in language between the City of Kent Charter and Article XVIII, Section 9 of the Ohio Constitution. What is the base number of people to consider when looking at signatures needed for a petition to amend a Charter? 10% of “qualified electors” or 10% of “electors”? The Kent City Council followed its Charter and required signatures from 1,707 people, which is 10% of the “qualified electors” at the next preceding Municipal election.

Relators argue for 10% of “electors” and cite *The State, ex rel Committee for the Charter Amendment, City Trash Collection, et al, v. City of Westlake* (2002) 97 Ohio St.3d 100, 776 N.E.2d 1041, 2002-Ohio-5301 in support of their stance.

The case involves a Charter which requires signatures from 10% of the “Electors” of Westlake on a petition for a Charter change to be placed on the ballot. The same language as in Article XVIII, Section 9. The issue in the *Westlake* case was what election should be used to set the number of “Electors” needed. The Court determined that absent other specific language in the Charter, the Court would follow the Ohio Constitution and used the “last preceding general election” as the election used to set the number of electors from which the 10% number could be

pulled. However, if there had been specific interpretation language in the City of Westlake Charter, the Court would have considered said language. Specifically, the Westlake Court stated:

“Absent any provision in the Westlake Charter regarding the interpretive issues involved, the Court may apply the general laws regarding statutory interpretation as in *State ex rel. Youngstown v. Mahoning County Board of Elections* (1995) 72 Ohio St., 3d 69, 73, 647 N.E.2d 769.”

Without qualifying language in the Westlake Charter, the Court defined “Electors” as set out in Ohio law and allowed petitions to be filed and a ballot issue to go forward with signatures from 10% of electors of the last preceding Municipal election.

In the case at hand, the City of Kent, Ohio has a provision in Section 7(A) with a clear and concise interpretive word for how many signatures are required on a petition for a Charter amendment to be placed on the ballot. It requires signatures of 10% of the “Qualified Electors” of the last preceding municipal language. The language is clear, concise and interpretive. None of the cases presented deal with the language found in the City of Kent, Ohio Charter.

One final note, the section of the Kent City Charter found at Section 7(A) only concerns and affects citizens of Kent. It does not affect people located outside of the Kent City boundaries.

The Charter language should prevail. The mandamus action should be dismissed and the proposed Charter amendment should not go on the ballot.

Proposition of Law No. #2: Does A Proposed Charter Change To The City Of Kent, Ohio Charter Need To Be Placed Upon The Ballot When The Contents Of The Proposed Change Do Not Deal With Administration Of The Local Government, But Does Request That The Federal Government Change Its Laws, Thereby Affecting Citizens Outside Of The Kent Ohio City Limits?

First Question Presented for Review:

Is a municipal Charter amendment proposed for the City of Kent, Ohio, appropriate if it tries to effect change to the Federal laws, but does not affect the local governing of the City of Kent, Ohio?

There is a fairly basic premise found in the Ohio Constitution and in Ohio case law that, in essence, states a Charter municipality may adopt laws and rules and regulations as long as the laws only affect the citizens of that municipality. Article XVIII, Section 3 and Section 7 of the Ohio Constitution, *Bazell v. Cincinnati* (1968), 13 Ohio St.2d 63, 42 O.O.2d 137, 233 N.E.2d 864, paragraph one of the syllabus; *Buckeye Community Hope Found v. Cuyahoga Falls* (1998), 82 Ohio St.3d 539, 541-542, 697 N.E.2d 181.

The Home Rule provisions of Ohio Constitution Article XVIII, do not confer any extraterritorial authority. 1928 OAG 2195, *Silvey v. Commissioners of Montgomery County, Ohio* (S.D. Ohio 1921) 273 F, 202.

“In matters of statewide concern, the State is supreme over its municipalities...” *City of Cincinnati v. Gamble* (Ohio 1941) 138 Ohio St. 220, 34 N.E.2d 226, 20 O.O. 273). This concept has been extended to federal laws. Ohio municipal laws do not and cannot supersede federal regulations *U.S. v. City of Blue Ash, Ohio* (S.D. Ohio 1978) 487 F. Supp 135, affirmed 621 F.2d 227.

The language proposed by Relators in the Charter amendment calls for changes in the laws of the Federal government. It clearly attempts to effect people outside the City of Kent, Ohio. There is no authority which gives the City of Kent, Ohio power to change the Federal

laws in this country. The proposed amendment is unconstitutional and should not be placed on the ballot this November.

Second Question Presented for Review:

Is an injunction the proper method to initiate Court review of the contract of a proposed municipal Charter amendment petition in Ohio?

Respondent is well aware that City Council cannot keep the proposed Charter amendment off of the ballot because of the content of the proposed amendment. That is why the content of the proposed amendment was never discussed at the City Council meeting where Council failed to put the issue on the ballot. City Council simply followed Kent's Charter language and only looked at the number of signatures required. However, Courts do have the authority to look at the content of a proposed Charter amendment to see if the content is constitutional. *State ex rel. Hackley v. Edmonds* (1948) 150 Ohio St. 203, 80 N.E.2d 769, *City of Twinsburg v. State Employment Relations Board* (1988) 39 Ohio St.3d 226, 530 N.E.2d 26, 1988 SERB 4-105, *State ex rel. Polcyn et al. Appellees v. Burkhart*, 33 Ohio St.2d 7, 292 N.E.2d 883, 62 O.O.2d 202. In addition a request for injunctive relief is a proper way to bring an issue before the Courts that needs to be decided by the Courts.

Pursuant to Rule 13(A) of the Ohio Rules of Civil Procedure, a compulsory counterclaim is discussed as follows:

“(A) Compulsory counterclaims

A pleading shall state as a counterclaim any claim which at the time of serving the pleading the pleader has against any opposing party, if it arises out of the transaction or occurrence that is the subject matter of the opposing party's claim and does not require for its adjudication the presence of third parties of whom the court cannot acquire jurisdiction. But the pleader need not state the claim if (1) at the time the action was commenced the claim was the subject of another pending action, or (2) the opposing party brought suit upon his claim by attachment or

other process by which the court did not acquire jurisdiction to render a personal judgment on that claim, and the pleader is not stating any counterclaim under this Rule 13.”

The Counterclaim filed by Respondent does arise out of the transaction or occurrence that is the subject matter of the opposing parties Complaint and it does not require the addition of any additional parties. Respondent does not want to lose the ability to have a Court review the content to see if it is appropriate for a City Charter amendment by failing to raise the issue now if it is a compulsory counterclaim.

Based upon the above Ohio law, Respondent does believe that a Court of law has the authority to review the content of a proposed Charter amendment to see if the proposal is constitutional. The Counterclaim appears to be mandatory based upon Civil Rule 13(A).

Finally, there is also some judicial economy in having this Court review the content now. It will be a duplication of effort and resources to have another court review the matter at a later time.

The Counterclaim is appropriate in this matter. The Court should hear the counterclaim, and upon review, find that the petition as submitted is unconstitutional as it does not address an issue of local governance, and therefore does not belong in the Kent City Charter.

III. CONCLUSION

Based upon the facts and law in this matter, Respondent asks that this Court find that Relators did not have enough signatures on their petitions for a Charter change. Respondent also asks that the Court find the contents of the proposed Charter change to be unconstitutional.

The proposed Charter change submitted by Relators should not be placed upon the ballot in November for the above reasons.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Merit Brief of Respondent has been forwarded by e-filing this 12th day of September, 2015, to:

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IN THE SUPREME COURT OF OHIO

STATE OF OHIO *ex. rel*
KATHRYN WILEN, et al.

CASE NO. 2015-1456

Relators,

vs.

AFFIDAVIT OF
LINDA M. JORDAN

CITY OF KENT, OHIO

Respondent.

Now comes Linda M. Jordan, who, being duly sworn, states the following:

- 1) That she is and has been the Clerk of the Kent, Ohio City Council since 1990.
- 2) That on or about July 28, 2015 she received petitions proposing a Kent, Ohio City Charter change styled "Kent Initiative Calling on Congress to Amend the U.S. Constitution to Establish that Corporations Are Not People and Money Is Not Speech."
- 3) Said petitions were delivered to the Portage County, Ohio Board of Elections so that the Board of Elections could determine the number of valid signatures on the petitions.
- 4) On or about the 17th day of August, 2015, the Portage County, Ohio Board of Elections advised that there were 621 valid signatures on the petitions and that there were 17,067 registered voters living in the City of Kent, Ohio at the time of the November, 2013 municipal elections.
- 5) On or about August 19, 2015, the Kent City Council met, determined that the petitions as submitted by the Relators in Ohio Supreme Court case number 2015-1456 did not contain signatures of 10% of the qualified electors of the City of Kent as of the time of the November, 2013 election, and therefore, declined to put the issue on the ballot for the November 2015 election.
- 6) The content of the petitions was not discussed at the August 19, 2015 City Council meeting, nor was it discussed at any other City Council meeting.
- 7) A true and accurate copy of Kent City Charter section 7(A) is attached hereto as Exhibit "1" and made a part hereof.

FURTHER AFFIANT SAYETH NAUGHT.


Linda M. Jordan

STATE OF OHIO)
) SS
PORTAGE COUNTY)

BEFORE ME, a Notary Public in and for said County and State, personally appeared LINDA M. JORDAN, the Clerk of Council, who acknowledges that she has executed the foregoing instrument and the same is her free act and deed, this 11th day of September, 2015.



SANDRA L. LANCE
NOTARY PUBLIC, STATE OF OHIO
2003 NT 67
MY COMMISSION EXPIRES MARCH 10, 2018

NOTARY PUBLIC