Supreme Court of Ohio Clerk of Court - Filed December 22, 2015 - Case No. 2015-2061

IN THE SUPREME COURT OF OHIO

STATE EX REL. LES CARRIER
4394 Shire Creek Court
Hilliard, Ohio 43026

STATE EX REL. ANDREW TEATER
3837 Dayspring Drive
Hilliard, Ohio 43026

STATE EX REL. PAUL LAMBERT
4697 Prestige Lane
Hilliard, Ohio 43026

STATE EX REL. TRACY KOVALCHIK
3940 Kul Circle North
Hilliard, Ohio 43026

STATE EX REL. LARRY EARMAN
4369 Shire creek Court
Hilliard, Ohio 43026

Relators,

-v-

HILLIARD CITY COUNCIL
3800 Municipal Way
Hilliard, Ohio 43026

Respondent.

CASE NO.

ORIGINAL ACTION IN MANDAMUS

ALTERNATIVE AND PEREMPTORY WRITS REQUESTED

EXPEDITED ELECTIONS CASE PURSUANT TO S.CT. PRAC. R. 12.08

Donald J. McTigue (0022849) Mark A. McGinnis (0076275) J. Corey Colombo (0072398) Derek Clinger (0092075) MCTIGUE MCGINNIS & COLOMBO LLC 545 East Town Street Columbus, Ohio 43215 Phone: (614) 263-7000 Facsimile: (614) 263-7078 dmctigue@electionlawgroup.com mmcginnis@electionlawgroup.com ccolombo@electionlawgroup.com dclinger@electionlawgroup.com *Counsel for Relators*		Tracy Bradford (0058566) Law Director, City of Hilliard 3800 Municipal Way Hilliard, Ohio 43026 Phone: (614) 334-2445 Facsimile: (614) 529-6038 tbradford@hilliardohio.gov *Counsel for Respondents*

NOW COME THE RELATORS, and hereby aver as follows:

NATURE OF THE ACTION AND JURISDICTION

1. This is an action in mandamus due to the Hilliard City Council's refusal to fulfill its clear statutory obligations under Ohio Constitution Article XVIII, § 9, in response to a petition filed by City of Hilliard electors, to amend the Charter of the City of Hilliard concerning the use of emergency rezonings and tax-increment-financing districts for residential uses.

2. As provided in Ohio Constitution Article XVIII, § 9, a sufficient number of the electors of the City of Hilliard have requested that the Hilliard City Council submit the proposed charter amendment for the approval or rejection of the electors of the City of Hilliard. Despite the unequivocal provisions of Ohio Constitution Article XVIII, § 9 requiring the Hilliard City Council to submit the charter amendment question to the electors, the Hilliard City Council refuses to so act in accordance with the Ohio Constitution.

3. Accordingly, Relators seek an order and/or judgment from this Court that Respondent Members of the Hilliard City Council submit the proposed charter amendment for the approval or rejection of the electors of the City of Hilliard at the March 15, 2016 election. Relators alternatively seek an order from this Court submitting the proposed charter amendment for the approval or rejection of the electors of the City of Hilliard at the March 15, 2016 election.

4. Relators affirmatively allege that they have acted with the utmost diligence in bringing the instant action, that there has been no unreasonable delay or lapse of time in asserting their rights herein and, further, there is no prejudice to Respondent. [See, e.g., *State ex rel. Polo v. Cuyahoga Cty. Bd. of Elections* (1995), 74 Ohio St.3d 143, 145, 656 N.E.2d 1277.]

5. Relator lacks an adequate remedy at law.

PARTIES

6. Relators Les Carrier, Andrew Teater, Paul Lambert, Tracy Kovalchik, and Larry Earman are electors in the City of Hilliard. They are the five individuals designated on the face of the petition seeking the proposed charter amendment to represent the petitioners in all matters relating to the petition or its circulation.

7. Respondent Hilliard City Council, is the legislative authority of the City of Hilliard.

ALLEGATIONS SUPPORTING CLAIMS FOR RELIEF

The Charter Amendment Provisions Set Forth in the Ohio Constitution

8. Pursuant to Ohio Constitution Article XVIII, § 9, the resident electors of an Ohio municipality may submit to the municipal legislative authority a petition proposing an amendment to the charter.

9. Ohio Constitution Article XVIII, § 9, provides:

> 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.

10. Accordingly, pursuant to the Ohio Constitution, if the requisite number of electors present a petition to the municipal legislative authority, and the Board of Elections issues a certificate verifying that the electors' petition includes the sufficient number of signatures, the legislative authority of the municipality *shall* submit the proposal to the electors of the municipal corporation.

11. The total number of electors that participated in the 2013 municipal general election in the City of Hilliard was 2,509. Accordingly, the Charter Amendment Petition would need 251 valid signatures for the issue to be submitted to the electors for their approval or rejection.

The Petitions Filed with the Hilliard City Council

12. On November 2, 2015, a petition seeking the submission of a proposed amendment to the charter of the City of Hilliard (the "Charter Amendment Petition") was filed with the Clerk of the Hilliard City Council.

13. On November 13, 2015, the Charter Amendment Petition was transmitted to the Franklin County Board of Elections.

14. On November 18, 2015, the Franklin County Board of Elections returned the petition to the City together with a certification attesting that it contained 946 valid signatures of electors of the municipality, well over the 251 valid signatures needed to submit the Charter Amendment Petition to the electors for their approval or rejection.

15. On December 14, 2015, Respondent Hilliard City Council voted 5-2 against an ordinance that would have placed the proposed charter amendment on the March 15, 2016 ballot.

The Rejection of the Charter Amendment Petition by the Hilliard City Council

16. At its December 14, 2015, meeting, Respondent Hilliard City Council cited three alleged defects in the Charter Amendment Petition that formed the basis for its failure to pass the ordinance that would have placed the proposed charter amendment on the March 15, 2016, to wit: (1) the Charter Amendment Petition fails to include a title for the proposed measure even though R.C. 731.31 expressly requires one; (2) there is no indication on the Charter Amendment Petition that the text specified would be entirely new provisions to the City Charter; and, (3) the petitioners altered the prescribed petition form to add a reference to a "Keep

Hilliard Beautiful Committee" where no committee name is permitted on the form.

The Proposed Charter Amendment Petition Does Include a Title

17. The Charter Amendment Petition plainly does include titles to the proposed sections, to wit: "**ARTICLE XII, SECTION 12.09 – REFERENDUM AND EFFECTIVE DATE ON ZONING ORDINANCES,**" and, "**ARTICLE XII, SECTION 12.10 – PROHIBITION OF CREATION OF TAX INCREMENT FINANCING INCENTIVE DISTRICTS FOR DWELLING UNIT IMPROVEMENTS AND PROHIBITION OF DECLARATION OF DWELLING UNIT IMPROVEMENTS AND PROHIBITION OF DECLARATION OF DWELLING UNIT IMPROVEMENTS TO BE A PUBLIC PURPOSE.**" (Emphasis and capitalization in original.) These statements, bolded, capitalized, and set apart from the text of the proposed amendments are titles of the sections of proposed text that they modify.

There is No Legal Requirement That a Proposed Charter Amendment Must Indicate Whether the Proposed Provisions Would Be New Provisions

18. There is no requirement that a proposed charter amendment contain a statement as to whether the text proposes new provisions to the city charter; nor is there a requirement that the petitioners append a copy of the existing city charter to the part-petitions. To the contrary, the petition, by its terms is for "submission of

proposed amendment to charter." Thus, by its nature, the title and text contained on the face of the petition is "proposed," that is, not presently part of the charter.

The Proposed Charter Amendment is in Sufficient Form to be Presented to the Electors

19. Finally, Respondent Hilliard City Counsel asserted that it is not required to submit the proposed charter amendment to the electors because the petitioners added a reference to "Keep Hilliard Beautiful Committee" immediately above where the name of the five committee members appear.

20. There is no requirement that that the petition be submitted on the form prescribed by the Secretary of State (Form 6-B). Nor is there any prohibition on the inclusion of the committee name which was made in this instance. The form of the Charter Amendment Petition is sufficient and in compliance with applicable law.

CLAIM FOR RELIEF

Issuance of a Writ of Mandamus Directing Respondents to Comply with Their Statutory Obligations

21. Each and every allegation contained above is incorporated as if fully rewritten herein.

22. When a municipal legislative authority erroneously fails to submit a charter amendment when it is presented with a legally sufficient petition, extraordinary relief in mandamus is available to order placement on the pertinent election ballot.

[See, e.g., *State ex rel. Commt. For the Charter Amendment Petition v. Hamilton* (2001), 93 Ohio St.3d 508, 509.]

23. When presented with a charter amendment petition containing the signatures of ten percent of the electors of the municipality who voted at the last preceding municipal general election, the legislative authority of the municipality shall submit the proposed amendment to the electors of the municipality. Ohio Const. Art. XVIII, § 9.

24. Respondent has been presented with a valid and sufficient Charter Amendment Petition.

25. Accordingly, Respondent Hilliard City Council has a clear legal duty to submit the charter amendment question to the Franklin County Board of Elections for placement on the ballot.

26. Relators have a clear legal right to have Respondent Hilliard City Council pass an ordinance submitting the charter amendment question to the electors of the City of Hilliard.

27. Relators lack any other relief than an order or judgment from this Court ordering that Respondent Hilliard City Council pass an ordinance submitting the charter amendment question to the electors of the City of Hilliard.

28. On December 20, 2015, Relators Counsel transmitted an e-mail to Tracy Bradford, Law Director for the City of Hilliard requesting that she immediately institute the

mandamus action herein pursuant to Ohio Rev. Code §§ 733.58, 733.581, on or before 4:00 p.m. on December 21, 2015. On December 21, 2015, Ms. Bradford responded requesting additional time to review the request. Also on December, 21, 2015, Relators agreed to wait until 4:00 p.m. on December 22, 2015.

Prayer for Relief

WHEREFORE, Relators respectfully pray the Court to grant the following relief:

A. Issue a peremptory Writ of Mandamus ordering Respondent Hilliard City Council to submit the charter amendment question to the Franklin County Board of Elections for placement on the March 15, 2016 election ballot.

B. Issue a Writ of Mandamus ordering Respondent Hilliard City Council to submit the charter amendment question to the Franklin County Board of Elections for placement on the March 15, 2016 election ballot.

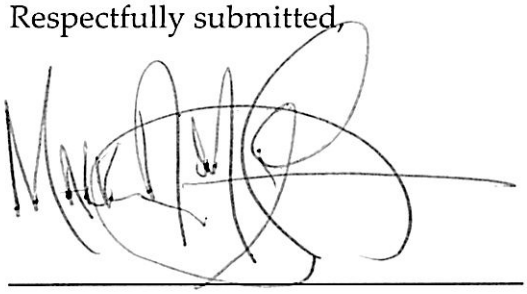
C. Issue an alternative writ or other Order submitting the charter amendment question to the Franklin County Board of Elections for placement on the March 15, 2016 election ballot.

D. Assess the costs of this action against Respondent;

E. Award Relators their attorneys' fees and expenses; and

F. Award such other relief as may be appropriate.

Respectfully submitted,



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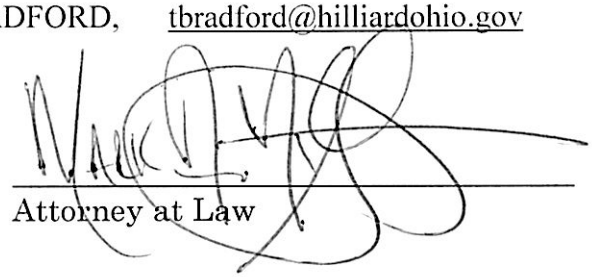
Counsel for Relators

CERTIFICATE OF SERVICE

I hereby certify that the foregoing was sent via e-mail communication pursuant to S.Ct. Prac. R 12.08(C) to the following on this the 22nd day of December, 2015:

TRACY BRADFORD, tbradford@hilliardohio.gov



Attorney at Law