

IN THE SUPREME COURT OF OHIO

STATE EX REL. LES CARRIER, et al., :
: Case No. 2015-2061
Relators, :
: ORIGINAL ACTION IN MANDAMUS
v. :
: EXPEDITED ELECTIONS MATTER
HILLIARD CITY COUNCIL, : PURSUANT TO S. CT. R. PRAC. 12.08
: Respondent. :

ANSWER OF RESPONDENT HILLIARD CITY COUNCIL

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Counsel for Respondent

Now comes respondent, Hilliard City Council (the “Respondent”), by and through counsel, and for its Answer to Relators’ Complaint in the Original Action in Mandamus (the “Complaint”), states as follows:

FIRST DEFENSE

1. Paragraph 1 constitutes a legal conclusion to which no response is required. To the extent a response is necessary, Respondent denies the allegations contained in paragraph 1.

2. Paragraph 2 constitutes a legal conclusion to which no response is required. To the extent a response is necessary, Respondent denies the allegations contained in paragraph 2.

3. Paragraph 3 constitutes a legal conclusion to which no response is required. To the extent a response is necessary, Respondent denies the allegations contained in paragraph 3.

4. In response to the allegations in paragraph 4, Respondent denies that Relators have acted with the utmost diligence in filing this action. Further responding, the remaining allegations in paragraph 4 constitute a legal conclusion to which no response is required; to the extent a response is necessary, Respondent denies the remaining allegations contained in paragraph 4.

5. Paragraph 5 constitutes a legal conclusion to which no response is required. To the extent a response is necessary, Respondent denies the allegations contained in paragraph 5.

6. In response to the allegations in paragraph 6, Respondent states that Relator Les Carrier is a member of Hilliard City Council and is an elector in the City of Hilliard. Further responding, the petition speaks for itself. Further, Respondent is without information or knowledge sufficient to form a belief as to the truth of the remaining allegations set forth in paragraph 6 and therefore denies same.

7. Respondent admits the allegations in paragraph 7.

8. In response to the allegations in paragraph 8, Respondent states that the Ohio Constitution speaks for itself. Further responding, the remaining allegations in paragraph 8 constitute a legal conclusion to which no response is required; to the extent a response is necessary, Respondent denies the remaining allegations contained in paragraph 8.

9. Respondent admits the allegations in paragraph 9.

10. Paragraph 10 constitutes a legal conclusion to which no response is required. To the extent a response is necessary, Respondent denies the allegations contained in paragraph 10.

11. In response to the allegations in paragraph 11, Respondent states that the total number of voters/electors who participated in the 2013 general municipal election in Hilliard, Ohio was 2,509. Further responding, the remaining allegations in paragraph 11 constitute a legal conclusion to which no response is required; to the extent a response is necessary, Respondent denies the remaining allegations contained in paragraph 11.

12. In response to the allegations in paragraph 12, Respondent states that a petition was filed with the Clerk of the Hilliard City Council on the afternoon of November 2, 2015 (the "Petition") and that the Petition speaks for itself.

13. In response to the allegations in paragraph 13, Respondent states that the Petition was submitted to the Franklin County Board of Elections on November 13, 2015.

14. In response to the allegations in paragraph 14, Respondent states that it received a letter dated November 18, 2015 from the Franklin County Board of Elections and that the letter speaks for itself. Further responding, the remaining allegations in paragraph 14 constitute a legal conclusion to which no response is required; to the extent a response is necessary, Respondent denies the remaining allegations contained in paragraph 14.

15. In response to the allegations in paragraph 15, Respondent states that the Hilliard City Council held a third reading on Ordinance No. 15-61 in which Relator Carrier and another member of Council voted in support of the ordinance and five members voted against it. Further responding, Ordinance No. 15-61 speaks for itself.

16. In response to the allegations in paragraph 16, Respondent states that during the third reading on Ordinance No. 15-61, evidence was provided to City Council that the Petition contained defects, including: (1) the 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 Petition that the proposed measure would enact new provisions in Hilliard's municipal Charter rather than modify existing law; and (3) Relators inserted on the second page of each part petition just above where electors were requested to sign the Petition the text "Keep Hilliard Beautiful Committee", where no committee name is permitted on the form.

17. In response to the allegations in paragraph 17, Respondent states that the Petition speaks for itself. Further responding, the remaining allegations in paragraph 17 constitute a legal conclusion to which no response is required; to the extent a response is necessary, Respondent denies the remaining allegations contained in paragraph 17.

18. Paragraph 18 constitutes a legal conclusion to which no response is required. To the extent a response is necessary, Respondent denies the allegations contained in paragraph 18.

19. In response to the allegations in paragraph 19, Respondent states that during the third reading on Ordinance No. 15-61, evidence was provided to City Council that the Petition contained defects, including but not limited to the defect that Relators inserted on the second page of each part petition just above where electors were requested to sign the Petition the text

“Keep Hilliard Beautiful Committee”, where no committee name is permitted on the form. Further responding, Respondent denies the remaining allegations in paragraph 19.

20. Paragraph 20 constitutes a legal conclusion to which no response is required. To the extent a response is necessary, Respondent denies the allegations contained in paragraph 20.

21. In response to paragraph 21, Respondent restates and fully incorporates herein its answers to paragraphs 1 to 20 of the Complaint as if fully set forth herein.

22. Paragraph 22 constitutes a legal conclusion to which no response is required. To the extent a response is necessary, Respondent denies the allegations contained in paragraph 22.

23. Paragraph 23 constitutes a legal conclusion to which no response is required. To the extent a response is necessary, Respondent denies the allegations contained in paragraph 23.

24. Paragraph 24 constitutes a legal conclusion to which no response is required. To the extent a response is necessary, Respondent denies the allegations contained in paragraph 24.

25. Paragraph 25 constitutes a legal conclusion to which no response is required. To the extent a response is necessary, Respondent denies the allegations contained in paragraph 25.

26. Paragraph 26 constitutes a legal conclusion to which no response is required. To the extent a response is necessary, Respondent denies the allegations contained in paragraph 26.

27. Respondent denies the allegations in paragraph 27.

28. In response to the allegations in paragraph 28, Respondent states that Relators’ counsel sent an e-mail to the City of Hilliard’s law director on Sunday, December 20, 2015, that the law director and Relators’ counsel exchanged e-mail correspondence on Monday, December 21, 2015, and that the e-mail correspondence speaks for itself.

29. Respondent denies each allegation in the Complaint that is not specifically admitted herein.

SECOND DEFENSE

30. The Complaint fails to state a claim upon which relief can be granted.

THIRD DEFENSE

31. Relators' claim for relief is barred because Relators' lack a clear legal right to obtain the relief requested.

FOURTH DEFENSE

32. Relators' claim for relief is barred because Respondent does not have a clear legal duty to perform the actions sought in the Complaint.

FIFTH DEFENSE

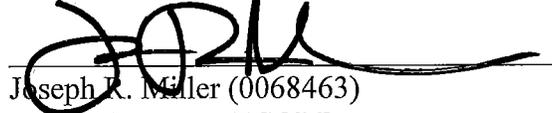
33. Relators' claim for relief is barred because Relators have an adequate remedy at law.

SIXTH DEFENSE

34. Relators' claim for relief is barred by waiver and laches.

WHEREFORE, Respondent Hilliard City Council prays the Complaint be dismissed with prejudice and that it be awarded costs, reasonable attorney fees and such other and further relief as it may be entitled to in law or in equity.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing *Answer of Respondent Hilliard City Council* was served via e-mail pursuant to S.Ct.Prac.R. 12.08(C) on this 24th day of December 2015, upon the following:

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