

Case No. 15-2061

IN THE SUPREME COURT OF OHIO

STATE OF OHIO EX REL. LES CARRIER, ET AL.,

Relators,

v.

HILLIARD CITY COUNCIL,

Respondent.

Original Action in Mandamus

Expedited Election Matter Under S.CT.PRAC.R. 12.08

**EXHIBITS IN SUPPORT OF COMPLAINT FOR
WRIT OF MANDAMUS OF RELATOR**

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J. Corey Colombo (0072398)
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A	TRANSCRIPT OF DECEMBER 14, 2015 HILLIARD CITY COUNCIL MEETING
B	EXEMPLAR CHARTER AMENDMENT PETITION
C	NOVEMBER 18, 2015 LETTER FROM FRANKLIN COUNTY BOARD OF ELECTIONS
D	HILLIARD CITY COUNCIL, LEGISLATIVE BULLETIN, PUBLISHED DECEMBER 18, 2015
E	E-MAILS BETWEEN COUNSEL FOR RELATOR AND LAW DIRECTOR
F	AFFIDAVIT OF RELATOR LES CARRIER
G	AFFIDAVIT OF RELATOR PAUL LAMBERT
H	AFFIDAVIT OF MARK A. MCGINNIS

Respectfully submitted,



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CERTIFICATE OF SERVICE

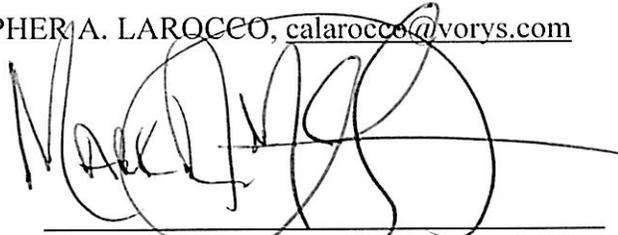
I hereby certify that the foregoing was sent via e-mail communication pursuant to S.Ct. Prac. R 12.08(C) to the following on this the

14th day of DECEMBER

JOSEPH R. MILLER, jrmiller@vorys.com

CHRISTOPHER L. INGRAM, clingram@vorys.com

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Attorney at Law

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EXHIBIT A: Transcript of December 14, 2015 Hilliard City Council Meeting

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C-E-R-T-I-F-I-C-A-T-E

I do hereby certify that the foregoing is a true, correct and complete written transcript of the proceedings in this matter, taken by me on this day of December 14, 2015, and transcribed from my stenographic notes.

Shana Graves

Shana Graves, Notary Public
in and for the State of Ohio
and Professional Reporter



My Commission expires May 22, 2019.

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CITY COUNCIL REGULAR MEETING

HILLIARD, OHIO

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TRANSCRIPT OF PROCEEDINGS

- - -

NATHAN PAINTER,

PRESIDENT

- - -

Monday, December 14, 2015
6:00 p.m.
City Hall Council Chambers
3800 Municipal Way
Hilliard, Ohio 43206

- - -

SHANA GRAVES
PROFESSIONAL REPORTER

- - -

ARMSTRONG & OKEY
222 East Town Street, 2nd Floor
Columbus, Ohio 43215
(614) 224-9481
FAX (614) 224-5724

- - -

1 P R O C E E D I N G S

2 - - -

3 PRESIDENT PAINTER: Call to order the
4 regular meeting of Hilliard City Council on
5 December 14, 2015. I'll start with the invocation
6 myself. I see everybody is here, and Councilman
7 Baker will lead us in the pledge.

8 (Pledge said.)

9 PRESIDENT PAINTER: Please call the roll.

10 THE CLERK: President Painter.

11 PRESIDENT PAINTER: Present.

12 THE CLERK: Vice President McGivern.

13 VICE PRESIDENT MCGIVERN: Here.

14 THE CLERK: Mr. Carrier.

15 MR. CARRIER: Here.

16 THE CLERK: Mr. Baker.

17 MR. BAKER: Here.

18 THE CLERK: Mr. Iosue. Mr. Iosue.

19 MR. IOSUE: Present.

20 THE CLERK: Mr. Erb.

21 MR. ERB: Here.

22 THE CLERK: Mr. Uttley.

23 MR. UTTLEY: Here.

24 THE CLERK: Quorum present.

1 PRESIDENT PAINTER: Thank you. Quorum
2 present.

3 First up is Commission and Board Reports.
4 I do not have any -- anything with respect to the
5 Board of Zoning Appeals, although --

6 THE CLERK: They meet this Thursday in
7 these chambers in the agenda that is online.

8 PRESIDENT PAINTER: Thank you. But
9 Brian --

10 THE CLERK: Katz.

11 PRESIDENT PAINTER: I called him Katz.

12 THE CLERK: Katz.

13 PRESIDENT PAINTER: It's Brian Katz. He
14 resigned, so there will be an opening; and we need to
15 advertise that for next year. So, if we can, get
16 that in the paper.

17 Mr. Baker with Destination Hilliard.

18 MR. BAKER: No report.

19 PRESIDENT PAINTER: Mr. Iosue.

20 MR. IOSUE: Thank you, Mr. President.

21 I have two reports for the Environmental
22 Sustainability Commission. First off, they have been
23 working very hard on the Old Hilliard recycling
24 program that we're working hard to implement. Also

1 looking towards applying for a grant from the Ohio
2 EPA for that.

3 Last week, over the course of
4 50 man-hours, they completed 58 door-to-door visits
5 to businesses in Old Hilliard to ask for
6 participation in the program. They have completed
7 all of their phone calls and follow-ups to 23 of
8 those businesses, and it appears we will have about
9 27 participating businesses in the recycling program
10 if we get approved for the grant for it. They have
11 put forth great effort. They have gone out
12 door-to-door to -- to explain to people what the
13 program will be for and how it will be beneficial to
14 our city, so they have been doing an excellent job
15 with that.

16 And then, secondly, they are working on
17 preparing a request for proposals for the
18 environmental energy sustainability initiative that
19 we talked about and to kind of walk us through some
20 of the things we can do to track our energy usage and
21 reduce energy in the city. They are hoping to get
22 that proposal out very soon and be able to work out a
23 contract. I know they are going to be working with
24 legal counsel, Ms. Bradford, if they are not already

1 doing that with the RP and hoping to get that out so
2 they can award it in 2016. That's our report. Thank
3 you.

4 PRESIDENT PAINTER: They were in my
5 building the other day and --

6 MR. IOSUE: Excellent.

7 PRESIDENT PAINTER: Mayor, anything with
8 MORPC?

9 MAYOR SCHONHARDT: No report.

10 PRESIDENT PAINTER: Mr. Uttley, P and Z.

11 MR. UTTLEY: Thank you.

12 Planning and Zoning met Thursday,
13 December 10th. There was a number of items on the
14 agenda. Excuse me. Case 1, at Charleston Meadows
15 out on Elliott Road was postponed until
16 February 11th, I believe. Otie's was in with a
17 presentation that received a lot of favorable
18 comments and also some feedback. They want to make
19 significant changes in a lot of outdoor dining
20 additions, so to speak, that would take advantage of
21 the new park. That was -- well, they were -- they
22 will be back on the agenda on January 14th. And
23 there were several cases that were approved as far as
24 the veterinary hospital that is right out here at

1 5125 Cemetery Road. They got an approval for a
2 967-square-foot building addition.

3 And another case of note was Case 5, which
4 was Hickory Chase and the approval of 492
5 multi-family units. That was postponed until
6 January 14th. The primary concern was a discrepancy
7 as to what the park manning fee would be -- the fee
8 would be in lieu of land dedication, what the amount
9 should be. So that's -- I believe they are still
10 negotiating the administration on that, and that's my
11 report.

12 PRESIDENT PAINTER: Thank you.

13 Ms. Fasone, anything with Recs and Park or
14 Shade Tree?

15 THE CLERK: No report on either.

16 PRESIDENT PAINTER: Thank you. I have
17 nothing else.

18 Ms. McGivern.

19 VICE PRESIDENT MCGIVERN: I have none.

20 PRESIDENT PAINTER: Okay. We will be
21 moving on. Next up is CPPS legislation, and I will
22 turn it over to Mr. Iosue.

23 MR. IOSUE: Mr. President, don't go
24 anywhere. I'm going to turn it right back over to

1 you, as everything on our agenda has been held over
2 to January 11th.

3 PRESIDENT PAINTER: With that, I will turn
4 it over to Ms. McGivern --

5 VICE PRESIDENT MCGIVERN: Thank you.

6 PRESIDENT PAINTER: -- with Finance. It's
7 been a long day.

8 VICE PRESIDENT MCGIVERN: We have one more
9 that was tabled last week to -- to this evening.
10 Would the Clerk please read Ordinance 15-57 by title
11 only.

12 THE CLERK: Amending Section 185.02 of the
13 City's codified ordinances pertaining to the
14 allocation of the hotel/motel excise tax.

15 VICE PRESIDENT MCGIVERN: Thank you.

16 I know there was some questions at the
17 last meeting that President Painter and I met with
18 Destination Hilliard for today. It was a great
19 meeting. We think that they are going to be off to a
20 great start for 2016, and we both support moving
21 forward with the ordinance at this time. Any
22 questions? Any further comments from the
23 administration?

24 Will the Clerk please call the roll.

1 THE CLERK: President Painter.

2 PRESIDENT PAINTER: Yes.

3 THE CLERK: Mr. Uttley.

4 MR. UTTLEY: Yes.

5 THE CLERK: Vice President McGivern.

6 VICE PRESIDENT MCGIVERN: Yes.

7 THE CLERK: Mr. Erb.

8 MR. ERB: Yes.

9 THE CLERK: Mr. Carrier.

10 MR. CARRIER: Yes.

11 THE CLERK: Mr. Baker.

12 MR. BAKER: Yes.

13 THE CLERK: Mr. Iosue.

14 MR. IOSUE: Yes.

15 THE CLERK: 7-0.

16 VICE PRESIDENT MCGIVERN: I'll turn it
17 back to you. I'm sorry. President Painter, I will
18 turn it back over to you.

19 PRESIDENT PAINTER: Thank you. Just for
20 the record, Ordinance 15-57 has passed and will take
21 effect as provided for by law.

22 VICE PRESIDENT MCGIVERN: Thank you.

23 PRESIDENT PAINTER: Next up is Legislation
24 Not Referred From Committee. Will the Clerk please

1 read that by title only.

2 THE CLERK: To provide for the submission
3 of a proposed charter amendment to the electors of
4 the City of Hilliard, Ohio, pursuant to Section 12.06
5 of the City's charter and declaring an emergency.

6 PRESIDENT PAINTER: Thank you.

7 And before we proceed any further, I just
8 want to make some comments with respect to Council.
9 As I understand our rules, City Council's review of
10 the petition circulated among our residents is to
11 determine that the form of the petition meets Ohio's
12 election laws. In making this decision, City Council
13 must not look into the substantive merits of what is
14 being proposed, rather our charge tonight is to
15 evaluate whether the form of the petition strictly
16 complies with Ohio law.

17 Having said that, for our third reading,
18 any final comments or questions from the
19 administration?

20 MS. BRADFORD: I believe there was some
21 correspondence sent to Ms. Fasone that she wanted to
22 read into the record and share with Council members.

23 THE CLERK: There's one e-mail in the drop
24 box from Mr. Bob Coenig, C-O-E-N-I-G:

1 "I have taken some time since signing the
2 petition for the charter amendment to better
3 understand the ramifications the amendment would have
4 on our community. Knowing what I know now, I would
5 not have signed the petition; and I will not support
6 its passage."

7 That is the only e-mail I received.

8 PRESIDENT PAINTER: Thank you.

9 MS. BRADFORD: In our review of the
10 petition, because it's of such a technical nature and
11 there's variance -- variance of the law that you will
12 need to look at pertaining to the Ohio Constitution
13 and the Ohio Revised Code, we have retained an
14 outside law firm to guide us in this matter.

15 There are a couple attorneys here.
16 Joe Miller and Chris Ingram from Vorys, Sater,
17 Seymour and Pease law firm will be helping you to
18 speak to this matter and answering questions that you
19 may have.

20 PRESIDENT PAINTER: Thank you.

21 Mr. Miller, will you state your full name
22 and address for the record.

23 MR. MILLER: Thank you. I'm
24 Joseph R. Miller with Vorys, Sater, Seymour, Pease,

1 52 East Gay Street, Columbus. Thank you for your
2 time tonight, members of Council.

3 President Painter, I'm here with my
4 colleague, Chris Ingram. We have indeed done what
5 Ms. Bradford charged us with, that is to review the
6 form of the petitions and advise Council here tonight
7 on their content as far as the requirements of this
8 Council and Ohio law.

9 Namely, as President Painter alluded to at
10 the outset, this City Council has an affirmative duty
11 under law to determine whether these petitions are
12 valid. The petitions came in to Ms. Fasone. She
13 sent them on, as she was allowed to do by Ohio law,
14 to the Board of Elections. The Board of Elections
15 has acted upon the sufficiency of the signatures,
16 reviewed the signatures, as is their charge under
17 law, and provided those petitions, along with the
18 signature count, back to this Council to now
19 determine if these petitions are valid on their face.

20 We are not, as President Painter alluded
21 to, evaluating the substance of the charter
22 amendment, whether it's a sound policy. That's not
23 the Council's job here tonight at all. Instead, it
24 is to look at the form of the petition to determine

1 whether they meet Ohio's Election Law requirements.

2 However, it is very important, and I can't
3 stress enough to Council tonight, to remember that
4 these petitions must strictly comply with Ohio's
5 Election Law requirements. The Supreme Court of Ohio
6 has repeatedly found that election laws are mandatory
7 and require strict compliance, so substantial
8 compliance is not acceptable. It is only acceptable
9 when the Election Provision says that it is.
10 Instead, the standard that has to guide you in your
11 review is strict compliance with each of the
12 requirements in the Ohio Constitution and the Ohio
13 Revised Code.

14 We have undertaken a review of the form of
15 these petitions and have identified three distinct
16 defects. First, the petition fails to identify a
17 title for the proposed measure. Ohio Revised Code
18 731.31 expressly requires petitions to include a
19 title for the proposal. The measure is required to
20 have a title under State election law, and this would
21 be one of those provisions where strict compliance is
22 required.

23 That is not simply my advice to you. That
24 is the law of the Supreme Court of Ohio, which has

1 been asked to determine whether that provision, the
2 title requirement, requires strict compliance. In
3 the Ash case, the Supreme Court found that, indeed,
4 it did. It was argued that omitting the title was
5 simply a technical defect; and the Supreme Court
6 rejected that argument and said, "No. Strict
7 compliance is required."

8 In that case, the Supreme Court held that,
9 quote, "More so than the text, the title immediately
10 alerts the signers to the nature of the proposed
11 legislation." Without that here, that is very
12 problematic. This requirement from the Revised Code
13 applies equally to this City's charter amendments,
14 because your charter does nothing to displace those
15 requirements.

16 In fact, the petitioners themselves
17 incorporated Revised Code 731.28 through 41 and all
18 of its requirements in the face of the petition
19 itself; and, likewise, the Hilliard City Charter is
20 very sparse on this topic. It does nothing to
21 displace Ohio law, so that title requirement applies
22 fully. Strict compliance with it is necessary, and
23 it has not been met. There is no title on this
24 petition. The petition only includes text that the

1 circulators hope to include two new sections to the
2 charter's content.

3 Instead, looking at the heart of the
4 petition, you will see there was clearly room to
5 include a title to describe these two amendments
6 proposed to the charter. They could have said -- for
7 example, you could expect in here the petition
8 saying, "An amendment to add two new charters" --
9 "two new amendments to the City charter," addressing
10 and then describing the topics set forth in these two
11 sections. That doesn't exist here at all.

12 Meanwhile, these headings here cannot
13 satisfy Ohio's title requirement because the title
14 should cover the -- excuse me -- entire measure. The
15 section heading only addresses each separate section.
16 And, in any event, at least one of these headings
17 does nothing to, as the Supreme Court has asked,
18 alert the signer to the substance of the proposed
19 measure.

20 Referendum and effective date on some of
21 the ordinances, for instance. What that means to the
22 signer, I don't know. Instead, if the circulators
23 had followed the clear requirement under Ohio law to
24 describe these measures in one title, that would have

1 been satisfied. This would pass go.

2 Failure to identify a title leads to a
3 second defect in the petition. The petition fails to
4 specify how this proposal is even existing -- is even
5 revising or modifying existing law. The language of
6 the petition only suggests that it is, quote, "A
7 proposed amendment to the charter." But looking at
8 the text of the petition, it looks as though it is
9 existing law.

10 An amendment could mean different things:
11 existing law could be deleted, it could be replaced,
12 it could be modified. Here, the signer would have no
13 way to know that this is entirely a new law without
14 taking it and comparing it side by side to the
15 existing charter. There's no indication anywhere --
16 which probably could have been satisfied with a
17 title -- that this is, in fact, adding two entirely
18 new sections to the City's Charter.

19 And, third, the petitioners intentionally
20 modify the prescribed petition from the Secretary of
21 State in a way that is not permitted by the form or
22 contemplated by the law. If you look at each of
23 these petitions at the top of Page 2, it's been
24 inserted the name "Keep Hilliard Beautiful

1 Committee." At the top of Page 2 of the petition
2 form circulated by the Secretary of State, it says,
3 quote, "We hereby designate the following persons as
4 a committee to represent the petitioners in all
5 matters relating to the petition or its circulators,"
6 end quote.

7 And then the form, as well as Ohio Revised
8 Code 731.34, only addresses committee members' names
9 and residential addresses. That's filled in, but the
10 circulators took the extra step of adding in "Keep
11 Hilliard Beautiful Committee" to every single
12 petition. This is significant for a couple of
13 reasons. First, the form of the petition has been
14 materially altered, and this alteration was made
15 directly above where the signers were asked to place
16 their names in support of this.

17 Now, the name of the committee seemingly
18 has nothing to do with the actual proposal. It is
19 not a beautification project, for instance; and I
20 submit to you, who doesn't want to keep Hilliard
21 beautiful? And a key tenet in Ohio Election Law and
22 a big reason why these requirements exist under the
23 Ohio Revised Code is the goal that the electorate not
24 be misled; so all of these requirements that have

1 not been met, individually or collectively, are
2 significant.

3 It may very well go to whether the
4 petitions themselves are misleading, which what was
5 read into the record earlier may indicate, or fails
6 to inform the voters on the actual substance on which
7 they are voting. Were these requirements met, we
8 likely have much to talk about tonight; but since
9 these requirements have not been met, these petitions
10 may be found by this Council not to be valid.

11 PRESIDENT PAINTER: Thank you. Any
12 questions or comments from administration or for
13 anybody else?

14 MR. CARRIER: I have a question.

15 PRESIDENT PAINTER: Sure. Mr. Carrier.

16 MR. CARRIER: Thank you.

17 Mr. Miller, one of the questions I have
18 is, you had said there right at the end, "Modifying
19 of the existing petition by using the heading Keep
20 Hilliard Beautiful." All three of your tenets -- or
21 all three of your arguments go to the nature of the
22 form itself, but is there anything in the petition
23 itself and the language of the petition if a person
24 reads it that's misleading?

1 MR. MILLER: The -- the text of the
2 amendment, Councilman Carrier, is set forth; however,
3 what wasn't met was the absolute requirement in the
4 Ohio Revised Code that entitled it so that the voters
5 could be informed.

6 MR. CARRIER: And what section of the Code
7 are you referencing?

8 MR. MILLER: I believe that's 731.31, but
9 I'll find it here in a moment and give that to you
10 where a title is required. And then, likewise, as it
11 relates to Keep Hilliard Beautiful, your other
12 question there, 731.34 addresses what should be on
13 the form. It's the names and addresses of the
14 members. There was no need, no requirement, in fact,
15 no allowance under Ohio law to modify the petition to
16 add a title, such as Keep Hilliard Beautiful, right
17 above where a person signed.

18 MR. CARRIER: So by --

19 MR. MILLER: And I apologize for
20 interrupting, but just to finish that thought, it is
21 731.31 which contains the title requirement.

22 MR. CARRIER: The title requirement. So
23 the title Keep Hilliard Beautiful, while it was
24 added, what's -- that alteration to the form is what

1 you are saying is the defect?

2 MR. MILLER: Yes. That is a defect, and
3 that's material; because it could very well mislead
4 those who signed below.

5 MR. CARRIER: Wouldn't you want full
6 disclosure of your petition circulators to let them
7 know their affiliation with the group that is
8 circulating the petition?

9 MR. MILLER: That is already provided.
10 The circulator has to identify themselves and sign
11 attesting to each of the signatures, but there is no
12 need to insert a title characterizing what the
13 initiative is, "Keep Hilliard Beautiful."

14 MR. CARRIER: But if they were to say that
15 verbally, it wouldn't be a problem, correct?

16 MR. MILLER: Well -- no. Actually, it
17 could be a problem; because 731.36 requires that you
18 cannot directly or indirectly misrepresent contents
19 of a position -- of a petition. Whatever the
20 circulator said orally is also to remain as to
21 whether this was obtained validly. I am simply
22 commenting for Council tonight; but on the face of
23 this petition on this form, there are three distinct
24 defects that advises this Council it is not valid.

1 MR. CARRIER: Thank you.

2 PRESIDENT PAINTER: Anybody else?

3 Mr. Uttley.

4 MR. UTTLEY: I just want to express that
5 I'm concerned about what you have -- what you have
6 said as far as if we were to -- to pass this that
7 we're -- I mean, I'm not qualified to judge whether
8 this petition is valid or not. It would make sense
9 to me that -- that -- that we not pass this and allow
10 the -- the appropriate bodies or authorities of the
11 State of Ohio, or whatever that would be, to -- to
12 rule on the validity of this -- of this petition and
13 not put something forward that may be defective.
14 Thank you.

15 PRESIDENT PAINTER: Anybody else?

16 Mr Iosue.

17 MR. IOSUE: Thank you, Mr. President.

18 Thank you very much for being here. From
19 what I have heard this evening from legal counsel, I
20 have heard that there are three defects that are
21 evident from the face of the petition; and from what
22 you have told us, those are that the petition fails
23 to include a title for the proposed measure even
24 though the Revised Code 731.31 expressly requires

1 one.

2 MR. MILLER: Correct.

3 MR. IOSUE: Secondly, is that there is no
4 indication anywhere on the petition that the text
5 specified in the petition would be entirely new
6 provisions to our charter. Anyone who signs the
7 petition would need to have a copy of our current
8 charter in order to know that the petition is
9 proposing to add two new section to the City Charter.

10 MR. MILLER: Right.

11 MR. IOSUE: And then, third, the
12 petitioners altered the prescribed petition form and
13 added a reference to Keep Hilliard Beautiful
14 Committee where no committee name is permitted on the
15 form. It is also concerning that the alteration was
16 made on the form just above where people were asked
17 to sign it.

18 And worse, last week, we heard right here
19 in Council chambers, I think, Vice President McGivern
20 asked the question that Keep Hilliard Beautiful
21 Committee was not even a formal committee name, nor
22 is the proposed amendment a beautification project,
23 as the committee name implies.

24 I think these defects tell us two things:

1 One is that, as you have already stated, that the
2 petition fails to comply with Ohio Election Law; and,
3 two, people were misled when they were asked to sign
4 the petition. With those two concerns of mine, I
5 personally cannot, in good conscious, vote to approve
6 this petition as being valid under Ohio; and I would
7 urge my fellow Council members to vote no tonight on
8 Ordinance 15-61. Thank you.

9 PRESIDENT PAINTER: Anybody else?

10 Please call the roll.

11 THE CLERK: Vice President McGivern.

12 VICE PRESIDENT MCGIVERN: No.

13 THE CLERK: President Painter.

14 PRESIDENT PAINTER: No.

15 THE CLERK: Mr. Iosue.

16 MR. IOSUE: No.

17 THE CLERK: Mr. Uttley.

18 MR. UTTLEY: No.

19 THE CLERK: Mr. Erb.

20 MR. ERB: No.

21 THE CLERK: Mr. Baker.

22 MR. BAKER: Yes.

23 THE CLERK: Mr. Carrier.

24 MR. CARRIER: Yes.

1 THE CLERK: Two yeas and five nays.

2 PRESIDENT PAINTER: Thank you.

3 Ordinance 15-61 has -- has been voted
4 down -- has failed. Thank you. And it -- we will
5 move on.

6 Next up is Postponed Legislation. That is
7 the one hanging over January 11th, 2016. Anybody
8 signed in?

9 THE CLERK: I have no one signed in.

10 PRESIDENT PAINTER: Thank you.

11 President's Communications: I hope you all
12 have a very, very, very merry Christmas. I really
13 do. It has been a long couple of months. Enjoy this
14 break, and we will see you back here on January 4th.

15 Mayor, anything?

16 MAYOR SCHONHARDT: I wish to all of you
17 the merriest of Christmas. Have a safe holiday, and
18 we will see you in the new year. Thank you.

19 PRESIDENT PAINTER: David.

20 MR. DELANDE: Happy holidays.

21 PRESIDENT PAINTER: Tracy.

22 MS. BRADFORD: Merry Christmas.

23 PRESIDENT PAINTER: And happy birthday to
24 you.

1 MS. BRADFORD: Yeah.

2 PRESIDENT PAINTER: And thank you very
3 much.

4 MR. CARRIER: December birthdays get
5 robbed.

6 PRESIDENT PAINTER: Mr. Mazer.

7 MR. MAZER: No report. Just have -- just
8 have a merry Christmas.

9 PRESIDENT PAINTER: Butch.

10 MR. SEIDLE: I want to let Council know
11 that we can pick up this week, and we start doing the
12 curbing work before close up; and then we will be on
13 an as-needed basis. If somebody still needs
14 something, we will be able to call and dispatch them
15 as needed.

16 PRESIDENT PAINTER: Doug.

17 MR. FRANCIS: I have no report. Have a
18 good holiday.

19 PRESIDENT PAINTER: Mr. Meeks.

20 MR. MEEKS: Merry Christmas, and I will
21 make sure to send you all pictures from the ballgame.

22 PRESIDENT PAINTER: I take back my merry
23 Christmas. Enjoy it.

24 MR. EDWARDS: No report.

1 PRESIDENT PAINTER: Thank you,
2 Mr. Edwards.

3 Chief.

4 CHIEF FISHER: No report. Merry Christmas
5 to you.

6 PRESIDENT PAINTER: And while we're here,
7 thank you very much to your office. That was
8 wonderful and positive feedback, and thank you to all
9 your officers for taking their time out. That was
10 great, I'm sure, for those kids.

11 Mr. Iosue.

12 MR. IOSUE: Chief, can I ask you to give
13 us a 15-second summary of that, how many children
14 went to Target and how many officers participated?
15 It's a wonderful program, and I'm glad we did it.

16 CHIEF FISHER: I was actually hoping to
17 wait until I had some photos to share with you.

18 MR. IOSUE: You can sit back down.

19 CHIEF FISHER: No, no. I would be happy
20 to share a little bit today. You know, it was
21 extremely rewarding to those of us that participated
22 in addition to the kids. Sergeant Morocco, just as
23 an example, said that the little girl that she had
24 with her Saturday morning made a statement very early

1 in the day that this was the best day of her life.
2 And just to see the -- the joy on the faces of the
3 kids was extremely rewarding to us, just a fantastic
4 day.

5 We even had one of the shoppers -- I had a
6 number of the shoppers at Target that thanked us, but
7 we had one lady that came up and wanted to buy an
8 extra gift for one of the kids as well that she had
9 been kind of watching in the aisle; so it is very
10 neat to see, and very, very, very humbling to be a
11 part of. Had a great time.

12 And I -- we do have a number of photos
13 that we would like to share with you. We -- they're
14 all right now on a -- on a flash drive. Heidi was
15 out today, had some family issues; and so when she
16 gets back, I'll have some -- some photos I can share
17 with you so you can see what we actually got to do.
18 A great day, very great, great day.

19 I think next year we are going to try to
20 make it even a little bit bigger and try to do a
21 little bit more, but I think Saturday was very --
22 very good for us.

23 MR. IOSUE: Well, again, thank you; and
24 thanks to all of your staff for doing that. It's a

1 great thing to do for your community. Thank you,
2 very much.

3 CHIEF FISHER: I appreciate, again, all
4 the support from you; because that really helped us
5 in reaching that goal we needed to be able to sponsor
6 the 11 children.

7 PRESIDENT PAINTER: Was it four
8 originally, or was it 11?

9 CHIEF FISHER: No. We originally had
10 sought at least to do four, and we were fortunate
11 enough to have enough funds to do 11. One of the
12 things we did as well for those that needed coats or
13 gloves or boots or something like that, we spoke with
14 the parents in advance and, you know, did some
15 shopping for clothing as well while we were there.
16 So a number of the kids came out with a nice new
17 winter coat, and so they were very proud of that. A
18 few of them had some new shoes too, so a great day.

19 PRESIDENT PAINTER: One last thing. We
20 have a couple new officers?

21 CHIEF FISHER: We do. We do. I know a
22 number of you were able to join us today, but welcome
23 to our HPD family. Johnathan Kitching is here today,
24 so they will be with us this week and start the

1 Academy next week. A fun-filled six months for them.

2 PRESIDENT PAINTER: I apologize some of us
3 didn't get there. I know we were tied up, but please
4 welcome them on our behalf.

5 CHIEF FISHER: Absolutely. Thank you.

6 PRESIDENT PAINTER: Thank you very much.

7 We have one last issue, and that is the
8 adoption of the 2016 City Council meeting dates. Has
9 anybody had an opportunity to look at that?

10 VICE PRESIDENT MCGIVERN: I move for the
11 approval of the meeting dates.

12 MR. IOSUE: Second.

13 PRESIDENT PAINTER: All in favor, say aye.

14 (Multiple speakers say "Aye.")

15 PRESIDENT PAINTER: The meeting dates are
16 approved. And I will note for the record, our
17 organizational meeting is January 4th at 6:30.

18 THE CLERK: Correct.

19 PRESIDENT PAINTER: I remembered that.

20 So, with that --

21 MR. EDWARDS: Sorry. President Painter, I
22 forgot to mention, tomorrow is our office Christmas
23 party. Council members are invited. Starts at
24 11:30, goes to 2, with the exception of Dave Delande,

1 who it's all day long up to 5 o'clock.

2 PRESIDENT PAINTER: Well, merry Christmas,
3 everybody. Happy New Year. Is there a motion to
4 adjourn?

5 MR. IOSUE: So moved.

6 PRESIDENT PAINTER: Is there a second?

7 VICE PRESIDENT MCGIVERN: Second.

8 PRESIDENT PAINTER: Thank you,
9 Ms. McGivern. All in favor?

10 (Multiple speakers say "Aye.")

11 PRESIDENT PAINTER: Thank you.

12 - - -

13 And, thereupon, the meeting was concluded
14 at approximately 6:58 p.m.

15 - - -

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C-E-R-T-I-F-I-C-A-T-E

I do hereby certify that the foregoing is a true, correct and complete written transcript of the proceedings in this matter, taken by me on this day of December 14, 2015, and transcribed from my stenographic notes.

Shana Graves, Notary Public
in and for the State of Ohio
and Professional Reporter.

My Commission expires May 22, 2019.

Case No. 15-2061

IN THE SUPREME COURT OF OHIO

STATE OF OHIO EX REL. LES CARRIER, ET AL.,

Relators,

v.

HILLIARD CITY COUNCIL,

Respondent.

Original Action in Mandamus

Expedited Election Matter Under S.CT.PRAC.R. 12.08

EXHIBIT B: Exemplar Charter Amendment Petition

PETITION FOR SUBMISSION OF PROPOSED AMENDMENT TO CHARTER

Constitution of Ohio, Art. XVIII, Section 9 and 14; Revised Code 731.28 - .41, 3503.06

To be signed by ten percent of the electors, based upon the total vote cast at the last preceding general municipal election.

(NOTE – The below notice must be printed in red.)

NOTICE – Whoever knowingly signs this petition more than once, signs a name other than his own, or signs when not a legal voter, is liable to prosecution.

To the Council, the legislative authority of the City _____ of
(City or Village)
Hilliard _____, Ohio:

We, the undersigned, qualified electors of the City _____ of
(City or Village)
Hilliard _____, Ohio respectfully petition the legislative authority to forthwith provide by Ordinance, for the submission to the electors of said city or village, the following proposed amendment to the Charter of said city or village to-wit:

ARTICLE XII, SECTION 12.09 – REFERENDUM AND EFFECTIVE DATE ON ZONING ORDINANCES

Notwithstanding any other provision of this Charter, a referendum petition on any Zoning Ordinance may be filed within sixty (60) days after passage by the Council of the Zoning Ordinance, in order to afford an opportunity during that period for the filing of referendum petitions thereon. Notwithstanding any other provision of this Charter, a Zoning Ordinance shall not become effective prior to sixty (60) days following its passage by the Council, in order to afford an opportunity during that period for the filing of referendum petitions thereon. Notwithstanding any other provision of this Charter, no Zoning Ordinance shall be passed by Council on an emergency basis. "Zoning Ordinance" for purposes of this Section, means any ordinance or other measure passed by the Council that modifies the City's zoning code or modifies the application of the City's zoning code to any property in the City.

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 TO BE A PUBLIC PURPOSE

Notwithstanding any other provision of this Charter or Ohio law, the Council shall not:

(a) declare an improvement to any parcel in the City to be a "public purpose," pursuant to section 5709.40(B) of the Revised Code, or any other provision of Revised Code Chapter 5709, as now exists or hereafter amended, if the improvement includes the construction or creation of one or more Dwelling Units; or

(b) create an "incentive district," pursuant to section 5709.40(C) of the Revised Code, or any other provision of Revised Code Chapter 5709, as now exists or hereafter amended, unless the Council limits the improvements in the "incentive district" so as to exclude the construction or creation of one or more Dwelling Units in the "incentive district."

"Dwelling Unit" for purposes of Section 12.10, means any permanent building or portion thereof which is designated or used exclusively for residential occupancy containing sleeping, cooking and sanitary facilities, including, but not limited to, apartments, houses, town houses, row houses, retirement communities or condominiums.

We hereby designate the following persons as a committee to represent the petitioners in all matters relating to this petition or its circulation:

Keep Hilliard Beautiful Committee

NAME	RESIDENCE
Les Carrier	4394 Shire Creek Court, Hilliard OH 43026
Andrew Teater	3837 Dayspring Drive, Hilliard, OH 43026
Paul Lambert	4697 Prestige Lane, Hilliard, OH 43026
Tracy Kovalchik	3940 Kul Circle North, Hilliard, OH 43026
Larry Earman	4369 Shire Creek Court, Hilliard, OH 43026

Signatures on this petition must be from only one county and must be written in ink.

	SIGNATURE	VOTING RESIDENCE ADDRESS STREET AND NUMBER	CITY, VILLAGE OR TOWNSHIP	COUNTY	DATE OF SIGNING
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CIRCULATOR STATEMENT – Must be completed and signed by circulator.

I, _____, declare under penalty of election falsification that I
 (Printed Name of Circulator)
 reside at the address appearing below my signature; that I am the circulator of the foregoing petition
 containing _____ signatures; that I witnessed the affixing of every signature; that all signers were to
 (Number)
 the best of my knowledge and belief qualified to sign; and that every signature is to the best of my
 knowledge and belief the signature of the person whose signature it purports to be or of an attorney in fact
 acting pursuant to section 3501.382 of the Revised Code.

 (Signature of Circulator)

 (Permanent residence address)

 City or Village, State and Zip Code)

**WHOEVER COMMITS ELECTION
 FALSIFICATION IS GUILTY OF A
 FELONY OF THE FIFTH DEGREE**

Ohio Form 6-B Petition for the submission of a proposed amendment to charter ===== Filed _____ City Auditor or Village Clerk
--

Case No. 15-2061

IN THE SUPREME COURT OF OHIO

STATE OF OHIO EX REL. LES CARRIER, ET AL.,

Relators,

v.

HILLIARD CITY COUNCIL,

Respondent.

Original Action in Mandamus

Expedited Election Matter Under S.CT.PRAC.R. 12.08

**EXHIBIT C: November 18, 2015 Letter from Franklin County Board of
Elections**



1700 Morse Road
Columbus, Ohio 43229

<http://Vote.FranklinCountyOhio.gov>

(614) 525-3100
(614) 525-3489 FAX

BOARD MEMBERS: Douglas J. Preisse, Chairman ★ Bradley K. Sinnott, Esq. ★ Greg Haas ★ Kimberly E. Marinello

DIRECTOR: William A. Anthony, Jr. DEPUTY DIRECTOR: David Payne

November 18, 2015

Lynne Fasone, Clerk of Council
City of Hilliard
3800 Municipal Way
Hilliard, OH 43026

Ms. Fasone,

On behalf of the Franklin County Board of Elections, I hereby certify that the board has examined the part petitions for initiated charter amendment (zoning ordinances) received by our office from you on November 13, 2015. The numbers of valid and invalid signatures on the part petitions for the prospective initiative are as follows:

Total Signatures: 1,102

Valid Signatures: 946

Percentage of valid signatures submitted relative to the number of total raw signatures: 86%

The total number of voters/electors that participated in the 2013 general municipal election was 2,509. The number of electors who represent ten percent of the total electors is 251.

Please let us know if we may be of further assistance.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeff Mackey", with a long horizontal flourish extending to the right.

Jeff Mackey, Manager

Election Operations

614.525.3893

jomackey@vote.franklincountyohio.gov

Case No. 15-2061

IN THE SUPREME COURT OF OHIO

STATE OF OHIO EX REL. LES CARRIER, ET AL.,

Relators,

v.

HILLIARD CITY COUNCIL,

Respondent.

Original Action in Mandamus

Expedited Election Matter Under S.CT.PRAC.R. 12.08

**EXHIBIT D: Hilliard City Council, Legislative Bulletin, Published December
18, 2015**



Real People. Real Possibilities.

City
Council

Legislative Bulletin

An Official Publication of the Hilliard City Council

Publication Date: December 18, 2015

Published under the authority of the City of Hilliard Charter and direction of the Clerk of Council. The City of Hilliard Legislative Bulletin contains ordinances and resolutions acted upon by Council. If noted within ordinance text, supplemental and supporting documents, such as exhibits, are available upon request to the Clerk of Council's office, 3800 Municipal Way, Hilliard, Ohio 43026, at 614.876.7361, Ext. 789. Past issues are available by logging onto hilliardohio.gov

ORDINANCES

The following Ordinance was passed by Hilliard City Council on December 14, 2015.

15-57 AMENDING SECTION 185.02 OF THE CITY'S CODIFIED ORDINANCES PERTAINING TO THE ALLOCATION OF THE HOTEL/MOTEL EXCISE TAX.

WHEREAS, Chapter 185 of the Codified Ordinances of the City of Hilliard provides for the imposition of a hotel/motel excise tax; and

WHEREAS, a total excise tax of six percent (6%) is levied on transactions by which lodging by a hotel or transient accommodation is or is to be furnished to transient guests, pursuant to Sections 5739.08(A), 5739.08(B) and 5739.09(B) of the Ohio Revised Code (the "bed tax"); and

WHEREAS, in Ordinance 14-35, adopted December 8, 2014, this Council amended Section 185.02 of the City's Codified Ordinances to state that funding contributed to Destination Hilliard would be \$150,000 per year, derived from the three percent (3%) excise tax levied and collected pursuant to Sections 5739.08(B) and 5739.09(B) of the Ohio Revised Code; and

WHEREAS, Council desires to amend Section 185.02 of the City's Codified Ordinances to state that funding contributed to the Hilliard Development Corporation ("HDC") is established to be \$88,000 per year, which contribution shall be derived from the three percent (3%) excise tax levied and collected pursuant to Sections 5739.08(A); and

WHEREAS, in order to effectuate the above changes, City Council desires to amend Section 185.02 of the City's Codified Ordinances.

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Hilliard that:

SECTION 1. Section 185.02(e) of Chapter 185 of the Codified Ordinances of Hilliard, Ohio is amended and shall hereafter read as stated in **Exhibit "A"** attached hereto and incorporated as if fully rewritten herein. City Council adopts Section 185.02(e) as amended in Exhibit "A", with deletions to the Section stricken and new language in nonblack typeface.

SECTION 2. The distributions identified in Exhibit "A" are effective January 1, 2016. Distributions to Destination Hilliard and to the Hilliard Development Corporation may be provided by the City to each organization on a monthly basis, with payment to each organization due within thirty days of such tax funds being deposited with the City.

SECTION 3. This Ordinance is effective from and after the earliest time provided for by law.

City of Hilliard Legislative Bulletin
an Official Publication of the Hilliard City Council

ORDINANCES

*The following Ordinance **failed** on December 14, 2015.*

15-61 TO PROVIDE FOR THE SUBMISSION OF A PROPOSED CHARTER AMENDMENT TO THE ELECTORS OF THE CITY OF HILLIARD, OHIO PURSUANT TO SECTION 12.06 OF THE CITY'S CHARTER; AND DECLARING AN EMERGENCY.

WHEREAS, Section 12.06 of the City Charter states: "Any provision of this Charter may be amended, as provided in Article XVIII, Section 9 of the Ohio Constitution, by submission of a proposed amendment to the voters of the City. Such amendment may be initiated either by a two-thirds (2/3) vote of the Council or by petition to the Council signed by ten percent (10%) of the electors"; and

WHEREAS, pursuant to Section 12.06 of the City Charter and Article XVIII, Section 9 of the Ohio Constitution, a proposed amendment to the Charter of the City of Hilliard, Ohio (the "Proposed Charter Amendment"), has been submitted by a petition of the electors (the "Petition") according to law; and

WHEREAS, Article XVIII, Section 9 of the Ohio Constitution provides that "[a]mendments to any charter framed and adopted 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 (10%) of the electors of the municipality setting forth any such proposed amendment, shall be submitted by such legislative authority; and

WHEREAS, Article XVIII, Section 14 of the Ohio Constitution provides that the "percentage of electors required to sign any petition provided for herein shall be based upon the total vote cast at the last preceding general municipal election"; and

WHEREAS, Article XVIII, Section 8 of the Ohio Constitution provides that "the ordinance providing for the submission of such question shall require that it be submitted to the electors at the next regular municipal election if one shall occur not less than sixty (60) nor more than one hundred and twenty (120) days after its passage; otherwise it shall provide for the submission of the question at a special election to be called and held within the time aforesaid"; and

WHEREAS, the Petition declares that it is governed by Ohio Revised Code Section 731.31; and

WHEREAS, the Petition contains an amendment to the Charter of the City of Hilliard, Ohio that includes two sections to Article XII of the Charter, which shall be one ballot issue before the voters; and

WHEREAS, the Franklin County Board of Elections has advised that the total number of electors who participated in the 2013 general municipal election in Hilliard, Ohio was 2,509; and

WHEREAS, according to the Franklin County Board of Elections, ten per centum (10%) of the electors of the vote cast at the 2013 general municipal election in Hilliard, Ohio was 251 electors; and

WHEREAS, the Franklin County Board of Elections has also advised on November 18, 2015, that it has examined the signatures on the Petition and determined that it contains nine hundred forty-six (946) valid signatures; and

WHEREAS, while the City is undertaking review of the petitions submitted for strict compliance with the law, at the appropriate time the City will requests that this Ordinance be passed as an emergency because Council must vote on this piece of legislation "forthwith" as provided by Article XVIII, Section 8 of the Ohio Constitution.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL of the City of Hilliard, Ohio that:

SECTION 1. That, mindful of its legal duties and obligations under Sections 8 and 9 of Article XVIII of the Ohio Constitution, Council hereby determines to submit the Proposed Charter Amendment to the electors at a special election to be held on March 15, 2016.

SECTION 2. That, mindful of its legal duties and obligations under Sections 8 and 9 of Article XVIII of the Ohio Constitution, Council hereby authorizes and directs the Franklin County Board of Elections to place the Proposed Charter Amendment on the special election ballot as follows:

PROPOSED CHARTER AMENDMENT
CITY OF HILLIARD
FRANKLIN COUNTY, OHIO

To add Sections 12.09 and 12.10 to the Charter of the City of Hilliard, Ohio:

A majority affirmative vote is necessary for passage

City of Hilliard Legislative Bulletin
an Official Publication of the Hilliard City Council

ORDINANCES

15-61 (continued)

ARTICLE XII, SECTION 12.09 – REFERENDUM AND EFFECTIVE DATE ON ZONING ORDINANCES.

Notwithstanding any other provision of this Charter, a referendum petition on any Zoning Ordinance may be filed within sixty (60) days after passage by the Council of the Zoning Ordinance, in order to afford an opportunity during that period for the filing of referendum petitions thereon. Notwithstanding any other provision in this Charter, a Zoning Ordinance shall not become effective prior to sixty (60) days following its passage by the Council, in order to afford an opportunity during that period for the filing of referendum petitions thereon. Notwithstanding any other provision of this Charter, no Zoning Ordinance shall be passed by Council on an emergency basis. "Zoning Ordinance" for purposes of this Section, means any ordinance or other measure passed by the Council that modifies the City's zoning code or modifies the application of the City's zoning code to any property in the City.

ARTICLE XII, SECTION 12.10 – PROHIBITION OF CREATION OF TAX INCREMENT FINANCING INCENTIVE DISTRICTS FOR DWELLING UNIT IMPROVEMENTS AND PROHIBITION OF DWELLING UNIT IMPROVEMENTS TO BE A PUBLIC PURPOSE.

Notwithstanding any other provision of this Charter or Ohio law, the Council shall not:

- (a) declare an improvement to any parcel in the City to be a "public purpose," pursuant to section 5709.40(B) of the Revised Code, or any other provision of the Revised Code Chapter 5709, as now exists or hereafter amended, if the improvement includes the construction or creation of one or more Dwelling Units; or
- (b) create an "incentive district," pursuant to section 5709.40(C) of the Revised Code, or any other provision of Revised Code Chapter 5709, as now exists or hereafter amended, unless the Council limits the improvements in the "incentive district" so as to exclude the construction or creation of one or more Dwelling Units in the "incentive district."

"Dwelling Unit" for purposes of Section 12.10, means any permanent building or portion thereof which is designated or used exclusively for residential occupancy containing sleeping, cooking and sanitary facilities, including but not limited to, apartments, houses, town houses, row houses, retirement communities or condominiums.

Shall the proposed amendment to the Charter for the City of Hilliard, Ohio be adopted?

YES
NO

SECTION 3. That, mindful of its legal duties and obligations under Sections 8 and 9 of Article XVIII of the Ohio Constitution, Council hereby authorizes and directs the Clerk of Council to determine the potential cost and expense to the City to either: (a) mail a copy of the Proposed Charter Amendment, as set forth in Section 2 herein, to each City elector whose name appears upon the poll or registration books of the 2015 General Election; or (b) to give notice by appropriate newspaper advertising pursuant to state law and to utilize the most economic and efficient alternative to provide such notice not less than thirty (30) days prior to March 15, 2016.

SECTION 4. That, mindful of Section 3501.01(D) of the Ohio Revised Code stating that in any year in which a presidential primary election is held, no special election shall be held in May, but may be held on the second Tuesday after the first Monday in March, this Council determines that the proposed Charter Amendment be voted upon at the Primary Election to be held on March 15, 2016, at the regular places and times of voting in the City.

SECTION 5. That it is hereby found and determined that all formal actions of this Council concerning and relating to the passage of this Ordinance were adopted in an open meeting of the Council and that all deliberations of the Council and any of the decision making bodies of the City of Hilliard which resulted in such formal actions were in meetings open to the public in compliance with all legal requirements of the City of Hilliard, Franklin County, Ohio.

SECTION 6. That this Ordinance is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health, and safety of the City and for the further reason that Council must act "forthwith" under Article XVIII, Section 8 of the Ohio Constitution. This Ordinance shall take effect and be in full force and effect immediately upon its passage.

RESOLUTIONS

None

hilliardohio.gov

Case No. 15-2061

IN THE SUPREME COURT OF OHIO

STATE OF OHIO EX REL. LES CARRIER, ET AL.,

Relators,

v.

HILLIARD CITY COUNCIL,

Respondent.

Original Action in Mandamus

Expedited Election Matter Under S.CT.PRAC.R. 12.08

**EXHIBIT E: E-Mail Communications Between Counsel for Relator and Law
Director**



Mark McGinnis <mmcginnis@electionlawgroup.com>

Request to institute mandamus action

Don McTigue <dmctigue@electionlawgroup.com>
To: Tracy Bradford <tbradford@hilliardohio.gov>
Cc: Mark McGinnis <mmcginnis@electionlawgroup.com>

Sun, Dec 20, 2015 at 10:44 AM

Ms. Bradford,

My firm represents the committee known as Keep Hilliard Beautiful and the five committee members and Hilliard City taxpayers (Les Carrier, Andrew Teater, Paul Lambert, Tracy Kovalchik and Larry Earman) that filed the initiative petition with the City of Hilliard proposing to amend the City Charter by adding Sections 12.09 and 12.10. As you are aware, the Franklin County Board of Elections has determined that there are more than sufficient signatures to meet the requirement for submission to the voters. As you are also aware, on 12/14/15, City Council voted not to submit the proposal to the voters based on three alleged defects. Each of those alleged defects are without merit as a matter of law.

My understanding is that there is not a written legal opinion from the special counsel hired by the City regarding his opinion as to the validity or invalidity of the petition. Apparently, there were only oral communications so as not to have a document that would be have to be provided to council members and might become public. However, from prepared talking points used at the 12/14/15 council meeting, it appears that the city council is alleging three defects. 1) The two sections proposed to be added to the Charter have titles following the section numbers and thus are clearly different from the facts in the State ex rel Becker v. City of Eastlake case, which I presume is what the city is relying upon. 2) There is no legal requirement that the petition specify that the proposed amendments are entirely new provisions and no authority is cited in the talking points. The full text of the proposed amendments are on the petition which is what is required. Therefore signers had the full text proposed to be added to the charter. 3) Typing the committee name "Keep Hilliard Beautiful" immediately above where the names of the 5 committee members appear is not an alteration of the petition form. First, there is no legal requirement to use the form. Second there is no law that prohibits this and again the talking points do not cite to any authority.

I am hereby requesting on behalf of my clients that you immediately institute a mandamus action in court pursuant to R. C. 733.58 seeking an order ordering City Council to perform its duty under Art. XVIII, section 9 of the Ohio Constitution and submit the proposed amendment to the Franklin County Board of Elections for placement on the ballot. I also request that you include my five individual clients as parties pursuant to R. C. 733.581. Please advise me no later than 4:00 pm, Monday, December 21, 2015 if you will or will not do so. Thank you for your consideration.

Donald J. McTigue

Donald J. McTigue
Attorney at Law
McTIGUE MCGINNIS & COLOMBO LLC
545 E. Town Street
Columbus, Ohio 43215
Tel: 614-263-7000
Cell: 614-832-5984
Fax: 614-263-7078
dmctigue@electionlawgroup.com

Unless otherwise evident from the nature of the communication, the information contained in this email message is attorney-client privileged and/or confidential information intended for the use of the individual or entity to whom/which it is addressed. If the reader of this message is not the intended recipient, or the employee or agent responsible to deliver it to the intended recipient, you are hereby notified that any dissemination, distribution, or copying of this communication is strictly prohibited. See 18 U.S.C. §§ 2510-2521, the Electronic Communications Privacy Act. If you have received this email in error, please immediately notify us by telephone, and delete the original.



Mark McGinnis <mmcginnis@electionlawgroup.com>

Request to institute mandamus action

Tracy Bradford <tbradford@hilliardohio.gov>
To: Don McTigue <dmctigue@electionlawgroup.com>
Cc: Mark McGinnis <mmcginnis@electionlawgroup.com>

Mon, Dec 21, 2015 at 3:31 PM

Mr. McTigue,

I received the email that you sent to me yesterday (Sunday, December 20, 2015), demanding that I institute a suit in mandamus by 4 p.m. today regarding action taken by Hilliard City Council on December 14, 2015 when it voted on Ordinance No. 15-61 (which pertained to the Petition proposing to amend the City's Charter). I am reviewing your request; however, providing me with less than one business day to respond to such a request is simply not reasonable. Understand that I am reviewing the request and will respond once I have had sufficient time to undertake my legal analysis of the same.

Cordially,

Tracy L. Bradford

Tracy L. Bradford

Law Director

3800 Municipal Way

Hilliard, Ohio 43026

(614) 334-2445

(614) 529-6038 fax

From: Don McTigue [mailto:dmctigue@electionlawgroup.com]
Sent: Sunday, December 20, 2015 10:44 AM
To: Tracy Bradford
Cc: Mark McGinnis
Subject: Request to institute mandamus action

Ms. Bradford,

[Quoted text hidden]

[Quoted text hidden]

[Quoted text hidden]



Mark McGinnis <mmcginnis@electionlawgroup.com>

Request to institute mandamus action

Mark McGinnis <mmcginnis@electionlawgroup.com>

Mon, Dec 21, 2015 at 4:08 PM

To: Tracy Bradford <tbradford@hilliardohio.gov>

Cc: Don McTigue <dmctigue@electionlawgroup.com>

Ms. Bradford:

We appreciate your getting back to us. We have conferred with our clients and will hold off filing until 4:00 p.m. tomorrow. Hopefully this will provide you sufficient time to undertake your legal analysis and make a determination on your end.

Best -

Mark

[Quoted text hidden]

--

MARK A. McGINNIS, ESQ.
McTigue McGinnis & Colombo LLC
545 East Town Street
Columbus, Ohio 43215
Tel: (614) 263-7000
Fax: (614) 263-7078
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Election, Campaign Finance,
Political & Public Law

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Case No. 15-2061

IN THE SUPREME COURT OF OHIO

STATE OF OHIO EX REL. LES CARRIER, ET AL.,

Relators,

v.

HILLIARD CITY COUNCIL,

Respondent.

Original Action in Mandamus

Expedited Election Matter Under S.CT.PRAC.R. 12.08

EXHIBIT F: Affidavit of Relator Les Carrier

use of emergency rezonings and tax-increment-financing districts for residential uses.

3. 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. 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.
4. Relators 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.
5. Relator lacks an adequate remedy at law.
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.
8. According to the Franklin County Board of Elections, 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.

9. 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.
10. On November 13, 2015, the Charter Amendment Petition was transmitted to the Franklin County Board of Elections.
11. 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.
12. 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.
13. 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.

14. 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.

15. 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

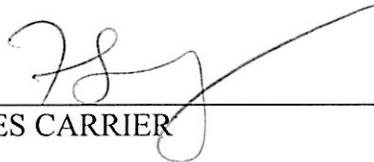
- petition, by its terms is for “submission of proposed amendment to charter.” Thus, by its nature, the title and text contained on the face of the petition is “proposed,” that is, not presently part of the charter.
16. Finally, Respondent Hilliard City Counsel asserted that it is not required to submit 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.
17. There is no requirement 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.
18. 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.
19. 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.
20. 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.

21. 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.

22. I have read the Complaint filed in this action and state that matters as alleged therein are true.

FURTHER AFFIANT SAYETH NAUGHT

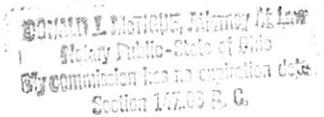


LES CARRIER

Sworn to and subscribed before me this 22 day of December, 2015.



Notary Public



Case No. 15-2061

IN THE SUPREME COURT OF OHIO

STATE OF OHIO EX REL. LES CARRIER, ET AL.,

Relators,

v.

HILLIARD CITY COUNCIL,

Respondent.

Original Action in Mandamus

Expedited Election Matter Under S.CT.PRAC.R. 12.08

EXHIBIT G: Affidavit of Relator Paul Lambert

petitioners in all matters relating to the petition or its circulation. The committee of five have named their committee "Keep Hilliard Beautiful." Said committee is also registered with the Franklin County Board of Elections as a ballot issue committee.

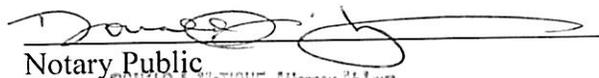
3. Relators' Exhibit A is a true and accurate copy of the transcript of the December 14, 2015 Hilliard City Council meeting.
4. Relators' Exhibit B is a true and accurate copy of an exemplar of the charter amendment petition.
5. Relators' Exhibit C is a true and accurate copy of the November 18, 2015 letter from the Franklin County Board of Elections to the Clerk of council.
6. Relators' Exhibit D is a true and accurate copy of the Legislative Bulletin of the Hilliard City Council published on December 18, 2015, which includes Ordinance 15-61.
7. I have read the Complaint filed in this action and state that matters as alleged therein are true.

FURTHER AFFIANT SAYETH NAUGHT



PAUL H. LAMBERT

Sworn to and subscribed before me this 24 day of December, 2015.



Notary Public

GERALD J. MOTTIGUE, Attorney At Law
Notary Public-State of Ohio
My commission has no expiration date.
Section 147.03 R. C.

Case No. 15-2061

IN THE SUPREME COURT OF OHIO

STATE OF OHIO EX REL. LES CARRIER, ET AL.,

Relators,

v.

HILLIARD CITY COUNCIL,

Respondent.

Original Action in Mandamus

Expedited Election Matter Under S.CT.PRAC.R. 12.08

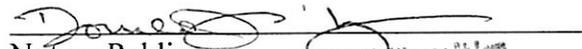
EXHIBIT H: Affidavit of Mark A. McGinnis

FURTHER AFFIANT SAYETH NAUGHT



MARK A. McGINNIS

Sworn to and subscribed before me this 24 day of December, 2015.



Notary Public

GONALD J. McQUE, Attorney At Law
Notary Public - State of Ohio
My commission has no expiration date.
Section 147.03 B. C.



Mark McGinnis <mmcginnis@electionlawgroup.com>

Request to institute mandamus action

Don McTigue <dmctigue@electionlawgroup.com>
To: Tracy Bradford <tbradford@hilliardohio.gov>
Cc: Mark McGinnis <mmcginnis@electionlawgroup.com>

Sun, Dec 20, 2015 at 10:44 AM

Ms. Bradford,

My firm represents the committee known as Keep Hilliard Beautiful and the five committee members and Hilliard City taxpayers (Les Carrier, Andrew Teater, Paul Lambert, Tracy Kovalchik and Larry Earman) that filed the initiative petition with the City of Hilliard proposing to amend the City Charter by adding Sections 12.09 and 12.10. As you are aware, the Franklin County Board of Elections has determined that there are more than sufficient signatures to meet the requirement for submission to the voters. As you are also aware, on 12/14/15, City Council voted not to submit the proposal to the voters based on three alleged defects. Each of those alleged defects are without merit as a matter of law.

My understanding is that there is not a written legal opinion from the special counsel hired by the City regarding his opinion as to the validity or invalidity of the petition. Apparently, there were only oral communications so as not to have a document that would be provided to council members and might become public. However, from prepared talking points used at the 12/14/15 council meeting, it appears that the city council is alleging three defects. 1) The two sections proposed to be added to the Charter have titles following the section numbers and thus are clearly different from the facts in the State ex rel Becker v. City of Eastlake case, which I presume is what the city is relying upon. 2) There is no legal requirement that the petition specify that the proposed amendments are entirely new provisions and no authority is cited in the talking points. The full text of the proposed amendments are on the petition which is what is required. Therefore signers had the full text proposed to be added to the charter. 3) Typing the committee name "Keep Hilliard Beautiful" immediately above where the names of the 5 committee members appear is not an alteration of the petition form. First, there is no legal requirement to use the form. Second there is no law that prohibits this and again the talking points do not cite to any authority.

I am hereby requesting on behalf of my clients that you immediately institute a mandamus action in court pursuant to R. C. 733.58 seeking an order ordering City Council to perform its duty under Art. XVIII, section 9 of the Ohio Constitution and submit the proposed amendment to the Franklin County Board of Elections for placement on the ballot. I also request that you include my five individual clients as parties pursuant to R. C. 733.581. Please advise me no later than 4:00 pm, Monday, December 21, 2015 if you will or will not do so. Thank you for your consideration.

Donald J. McTigue

Donald J. McTigue
Attorney at Law
McTIGUE MCGINNIS & COLOMBO LLC
545 E. Town Street
Columbus, Ohio 43215
Tel: 614-263-7000
Cell: 614-832-5984
Fax: 614-263-7078
dmctigue@electionlawgroup.com

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Mark McGinnis <mmcginnis@electionlawgroup.com>

Request to institute mandamus action

Tracy Bradford <tbradford@hilliardohio.gov>
To: Don McTigue <dmctigue@electionlawgroup.com>
Cc: Mark McGinnis <mmcginnis@electionlawgroup.com>

Mon, Dec 21, 2015 at 3:31 PM

Mr. McTigue,

I received the email that you sent to me yesterday (Sunday, December 20, 2015), demanding that I institute a suit in mandamus by 4 p.m. today regarding action taken by Hilliard City Council on December 14, 2015 when it voted on Ordinance No. 15-61 (which pertained to the Petition proposing to amend the City's Charter). I am reviewing your request; however, providing me with less than one business day to respond to such a request is simply not reasonable. Understand that I am reviewing the request and will respond once I have had sufficient time to undertake my legal analysis of the same.

Cordially,

Tracy L. Bradford

Tracy L. Bradford

Law Director

3800 Municipal Way

Hilliard, Ohio 43026

(614) 334-2445

(614) 529-6038 fax

From: Don McTigue [mailto:dmctigue@electionlawgroup.com]

Sent: Sunday, December 20, 2015 10:44 AM

To: Tracy Bradford

Cc: Mark McGinnis

Subject: Request to institute mandamus action

Ms. Bradford,

[Quoted text hidden]

[Quoted text hidden]

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Request to institute mandamus action

Mark McGinnis <mmcginnis@electionlawgroup.com>
To: Tracy Bradford <tbradford@hilliardohio.gov>
Cc: Don McTigue <dmctigue@electionlawgroup.com>

Mon, Dec 21, 2015 at 4:08 PM

Ms. Bradford:

We appreciate your getting back to us. We have conferred with our clients and will hold off filing until 4:00 p.m. tomorrow. Hopefully this will provide you sufficient time to undertake your legal analysis and make a determination on your end.

Best -

Mark

[Quoted text hidden]

--

MARK A. MCGINNIS, ESQ.
McTigue McGinnis & Colombo LLC
545 East Town Street
Columbus, Ohio 43215
Tel: (614) 263-7000
Fax: (614) 263-7078
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Linkedin: <https://www.linkedin.com/in/markamcginnis>

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