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LISA MCQUEEN

A 1301595

vs.

MILTON R DOHONEY JR

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**COURT OF COMMON PLEAS
HAMILTON COUNTY, OHIO**

LISA MCQUEEN, et al.,	:	Case No. A-13-01595
	:	
Plaintiffs,	:	Judge Robert Winkler
	:	
and	:	
	:	
CITY OF CINCINNATI ex rel.	:	MOTION FOR DECLARATORY
LISA McQUEEN,	:	JUDGMENT and PERMANENT
	:	INJUNCTION / TRIAL BRIEF
Relators,	:	
	:	
v.	:	
	:	
MILTON R. DOHONEY , JR., etc.,	:	
	:	
Defendants-Respondents.	:	

In light of the Court previously ordering, pursuant to Ohio R. Civ. P. 65(B)(2), the trial of the action on the merits to be advanced and consolidated with the hearing of the application for preliminary injunction (said trial to occur on Friday, March 15, 2013), Plaintiffs-Relators hereby formally move for declaratory judgment and permanent injunction. In light of the forthcoming trial, the memorandum herein may also serve as a trial brief setting forth the anticipated facts and legal issues/arguments arising therefrom.

MEMORANDUM IN SUPPORT

Pursuant to the Amended Complaint filed herein, Plaintiffs-Relators bring this action seeking to vindicate the public interest in challenging the divestiture of significant assets of the City of Cincinnati and the ability of the public to exercise their right to referendum all ordinances passed by the Cincinnati City Council. At the heart of this case is Cincinnati Ordinance No. 56-2013 which was recently passed by the City Council on March 6, 2013. Through seeking a

declaratory judgment concerning the ordinance, as well as an injunction against the implementation of the ordinance, Plaintiffs-Relators posit three basic contentions or challenges to the ordinance: (i) to the extent state law limits the ability of the voters of Cincinnati to referendum an ordinance, Ordinance No. 56-2013 did not pass with the requisite two-thirds vote required by R.C. 731.30 to exempt the ordinance from referendum; (ii) to the extent state law limits the ability of the voters of Cincinnati to referendum an ordinance, Ordinance No. 56-2013 failed to satisfy two of the statutory requisites by which an ordinance may be exempt from referendum under state law; and (iii) notwithstanding the foregoing, Ordinance No. 56-2013 fails to obtain the number of votes mandated by the City Charter by which the powers of any department or division of the City can be decreased or abolished.

Factual Overview

For the most part, the facts underlying the present action are not in dispute. Thus, this case raises predominately legal questions and issues for resolution by the Court. The following factual summary is offered to place in context such legal issues:

In October 2012, the City of Cincinnati put out a Request for Proposal (RFP) relative to the management of the City's parking services and facilities. The purpose of the RFP was to advance the City administration's interest "in transitioning the management of [the City's] parking services function" and "exploring the possibility of entering into a partnership for the operations of the City's parking system." (City Manager Memo dtd Oct. 26, 2012.)

Currently, the City of Cincinnati manages its parking assets through the Parking Facilities Division of the Department of Enterprise Services. But this proposed transition would result in the entity selected from the RFP "operat[ing] and maintain[ing] the City's garages, surface lots, and on-street meters." (City Manager Memo dtd Oct. 26, 2012) And such operations would

include taking over “enforcement and adjudication related to on-street parking meters.” (RFP, at B-2.) And such a transition would affect current employees of the City, but the entity selected to take over the parking operations would be required to “interview the current [City] employees of the parking system for positions in their company.” (City Manager Memo dtd Oct. 26, 2012; RFP, at B-2 (“Concessionaire to consider but will not be required to hire existing City parking staff”). As the foregoing demonstrates, as well as the City Manager acknowledged, the effort being undertaken will result in “a significant change in the way the City has historically operated and maintained parking.” (City Manager Memo dtd Oct. 26, 2012.)

Ultimately, on March 6, 2013, the Cincinnati city council adopted Ordinance No. 56-2013 whereby it authorized the City Manager to execute a Long-Term Lease and Modernization Agreement for the City of Cincinnati Parking System. This Lease would be with the Port of Greater Cincinnati Development Authority which, in turn, would contract with private entities to operate and maintain the City’s parking system generally consistent with the RFP. Included in the ordinance presented to the city council was a section declaring it was “an emergency measure necessary for the preservation of the public peace, health, safety and general welfare The reasons for the emergency is the immediate need to implement the budgetary measure contemplated during the December 2012 City of Cincinnati budget determinations in order to avoid significant personnel layoffs and budget cuts and resulting reductions in City services to Cincinnati residents related to the City’s General Fund, which administrative actions would be needed to balance the City’s FY 2013 and 2014 budgets in the absence of revenue generated by implementation of the modernizations of the City of Cincinnati parking system as described herein.”

Ordinance No. 56-2013 was adopted by the city council on March 6, 2013, on a vote of 5-to-4. Even though the ordinance had already been adopted, the mayor, as the presiding officer of council, subsequently posited the question to council of whether the emergency clause should be retained; on this question, the vote of council was 6-to-3. After the vote on retention of the emergency clause was conducted, there was no further or final vote on the ordinance.

Declaratory Judgment / Permanent Injunction Standard

In this case, Plaintiffs-Relators seek the issuance of both a declaratory judgment concerning the validity of Ordinance No. 56-2013 and whether it is subject to referendum, as well as a permanent injunction prohibiting the implementation of Ordinance No. 56-2013 pending resolution of a referendum.

Pursuant to R.C. 2721.02(A), “courts of record may declare rights, status, and other legal relations whether or not further relief is or could be claimed.” And R.C. 2721.03, allows for “any person whose rights, status, or other legal relations are affected by a constitutional provision, statute, . . . municipal ordinance . . . may have determined any question of construction or validity arising under the . . . constitutional provision, statute, . . . [or] ordinance . . . and obtain a declaration of rights, status, or other legal relations under it.” Plaintiffs-Relators, as residents, taxpayers and electors in the City of Cincinnati, seek to have this Court, with respect to Ordinance No. 56-2013, adjudge and declare (i) its status vel non as a properly adopted emergency ordinance; (ii) the viability of any referendum on the ordinance; and (iii) the validity of the ordinance in its entirety as to whether it obtained the requisite number of votes in city council as mandated by the Cincinnati City Charter.

In addition to seeking the declaratory judgment, Plaintiffs-Relators further request the Court to permanently enjoin the effect or implementation of Ordinance No. 56-2013. See *Brown*

v. Town & Country Auto Sales, Inc., 43 Ohio App.2d 119, 124,334 N.E.2d 488 (8th Dist. 1974)(recognizing “the obvious differences between an injunction and a declaratory judgment”). “A permanent injunction is an equitable remedy that will be granted only where the act sought to be enjoined will cause immediate and irreparable injury to the complaining party and there is no adequate remedy at law.” Franklin Cty. Dist. Bd. of Health v. Paxson, 152 Ohio App.3d 193, 787 N.E.2d 59, 2003-Ohio-1331 ¶25. But in contrast to a preliminary injunction, “[a] permanent injunction is not considered an interim remedy. It is issued after a hearing on the merits in which a party has demonstrated a right to relief under the applicable substantive law.” Procter & Gamble Co. v. Stoneham, 140 Ohio App.3d 260, 267, 747 N.E.2d 268 (1st Dist. 2000).

The Cincinnati City Charter Explicitly Reserves, Without Exception, the Right of Referendum to the People of the City So that Any Declaration of an Ordinance as an Emergency is Illusory

The initial matter which this Court must consider is to determine what application state law has relative to initiatives and referenda, as well as putative emergency ordinances, in the City of Cincinnati. For while “R.C. 731.28 through 731.41 set forth a statutory procedure for municipal initiative and referendum,” State ex rel. Bogart v. Cuyahoga Cty. Bd. of Elections, 67 Ohio St.3d 554, 555, 621 N.E.2d 389 (1993), R.C. 731.41 provides for an exemption of those provisions in a certain, specific instance:

731.28 to 731.41, inclusive, of the Revised Code do not apply to any municipal corporation which adopts its own charter containing an initiative and referendum provision for its own ordinances and other legislative measures.

R.C. 731.41 is a “codification of the ‘home-rule’ provision of the Ohio Constitution (Article XVIII).” State ex rel. Ohio Nat’l Bank v. Lancione, 54 Ohio St.2d 416, 417, 377 N.E.2d 507 (1978). The City contends that, pursuant to R.C. 731.41, state law is completely inapplicable to the right of referendum in the City of Cincinnati. (See City Motion to Dissolve Temporary

Restraining Order, at 6-7.) In making this argument, the City mistakenly merges into a single concept two distinct concepts relating to referendum – the power of the people to exercise the right of referendum itself and the manner or procedure by which that right is exercised.

For the starting point relative to the right, within the City of Cincinnati, of the right of the people to referendum ordinances is Article II, Section 3 of the Cincinnati City Charter which simply provides that:

The initiative and referendum powers are reserved to the people of the city on all questions which the council is authorized to control by legislative action; such powers shall be exercised in the manner provided by the laws of the state of Ohio.

Nothing else within the City Charter references or provides for the referendum of any ordinance. And a review of this portion of Article II, Section 3 reveals it contains two separate and distinct provision: (i) a declaration that the people reserve the right of referendum “on all questions,” i.e., on all ordinances, passed by city council; and (ii) deferring to state law for the manner in which that reserved right or power is exercised (but not whether the right or power is actually reserved or exists in the first place).

As noted above, pursuant to the express language of the City Charter, the power of referendum is “reserved to the people of the city on all questions” – there are no restrictions, limitations or exceptions to the right of the people to referendum any ordinance passed by the city council. For the City Charter does not limit the power of referendum on all questions “with the exception of those questions adopted as emergency ordinances”; instead, the Charter is quite clear and unequivocal – the right and power of referendum applies to “all question”, period. Yet, the City essentially argues that this Court should, through judicial legislation, add to the City Charter a restriction that restricts and takes the right and power of referendum away from the people in certain instances. Specifically, the City contends that whenever the City Council

adopts an emergency ordinance that, in and of itself, takes the right of referendum away from the people. But City Charter does not so provide. Thus, the Cincinnati City Council, through emergency ordinance or otherwise, cannot take that reserved right and power away from the people. See *State ex rel. Bramblette v. Yordy*, 24 Ohio St.2d 147, 150, 265 N.E.2d 273 (1970) (“[i]n providing for referendum, however, a municipal charter is not restricted to the adoption of the same provisions enacted by the General Assembly. It may be less restrictive as to use of the referendum, as was the Charter of the city of Toledo which authorized referendum on all ordinances”). So in the first instance, it does not matter whether Ordinance No. 56-2013 was properly passed as an emergency ordinance; for regardless of whether the ordinance is or is not a properly adopted emergency ordinance, the Cincinnati City Charter expressly reserves the right of referendum to the people of “all” ordinances without exception. And Plaintiffs-Relators are entitled to a declaration of that legal construction of Article II, Section 3 of the Cincinnati City Charter.

Emergency Ordinances are Excluded From Being Subject To Referendum Only as a Matter of State Law and Ordinance No. 56-2013 Has Not Even Satisfied the Requirements of State Law By Which It Could Even Be Excluded From Referendum

Failing to appreciate the foregoing, though, the City attempts to focus exclusively upon the method or procedure by which the unequivocal referendum rights are exercised when it contends that state law is not even applicable pursuant to R.C. 731.41. For the Ohio Supreme Court has recognized that R.C. 731.41 operates to allow city charters to preempt state law on referendum methods only when such a charter “contains comprehensive provisions relating to referendum procedure.” *State ex rel. Ohio Nat’l Bank v. Lancione*, 54 Ohio St.2d 416, 417, 377 N.E.2d 507 (1978). But again, the Cincinnati City Charter expressly defaults to state law for the manner by which referendum rights are actually exercised (not the scope of the right itself). For

“[t]he statutory procedure governing municipal initiative and referendum in R.C. 731.28 through 731.41 applies to municipalities where the charter incorporates general law by reference, except where the statutory procedure conflicts with other charter provisions.” *State ex rel. Ditmars v. McSweeney*, 94 Ohio St.3d 472, 477, 764 N.E.2d 971 (2002); see *State ex rel. Finkbeiner v. Lucas Cty. Bd. of Elections*, 122 Ohio St.3d 462, 912 N.E.2d 573, 2009-Ohio-3657 ¶37 (R.C. 731.41 is inapplicable where the charter incorporates general laws). But as noted above, the Cincinnati City Charter contains no substantive provisions relating to the referendum process and procedure and, in fact, incorporates state with respect to process and procedure (but not the right of referendum itself).

With the Cincinnati City Charter lacking comprehensive provisions relating to referendum procedures, R.C. 731.28 through 731.41 are thus applicable procedurally to referendum efforts. And this includes the requirements of R.C. 731.29, which provides, in part:

Any ordinance or other measure passed by the legislative authority of a municipal corporation shall be subject to the referendum except as provided by section 731.30 of the Revised Code. No ordinance or other measure shall go into effect until thirty days after it is filed with the mayor of a city or passed by the legislative authority in a village, except as provided by such section.

Of course, because the Cincinnati City Charter reserves to the people, without exception, the right of referendum “on all questions which the council is authorized to control by legislative action,” the exceptions within R.C. 731.30 are not even applicable with respect to the City of Cincinnati – all ordinances passed by the Cincinnati City Council are subject to referendum without exception regardless of whether the council declares them to be emergency measures or not.

But if the Court should conclude that the exception provision of R.C. 731.29 is applicable, consideration must then be given to the exemptions contained in R.C. 731.30.

Specifically, R.C. 731.30 exempts from those ordinance which can be subject to referendum pursuant to R.C. 731.29 the following:

Ordinances or other measures providing for appropriations for the current expenses of any municipal corporation . . . and emergency ordinances or measures necessary for the immediate preservation of the public peace, health, or safety in such municipal corporation, shall go into immediate effect. Such emergency ordinances or measures must, upon a yea and nay vote, receive a two-thirds vote of all the members elected to the legislative authority, and the reasons for such necessity shall be set forth in one section of the ordinance or other measure.

Thus, in order for an ordinance to not be subject to referendum pursuant to R.C. 731.29, it must meet and satisfy the requirements of R.C. 731.30. Stated otherwise, if R.C. 731.29 is applicable to the referendum of a municipal ordinance, then, by the express terms of R.C. 731.29, only those ordinances satisfying the requirements and description in R.C. 731.30 are not subject to referendum (again, ignoring arguendo the fact that the Cincinnati City Charter provides for referendum on all ordinances, emergency or otherwise).

The City of Cincinnati fails to appreciate that R.C. 731.30 simply defines and limits the exceptions to those ordinances which are subject to referendum pursuant to R.C. 731.29. Instead and to the extent it even acknowledges that application of state law to referenda, the City would have this Court limit itself to R.C. 731.30 while ignoring R.C. 731.29; but to do so is putting the proverbial cart before the horse. For R.C. 731.30 only comes into play so as to set forth which ordinances which are not subject to referendum pursuant to R.C. 731.29.

And in this case, Ordinance No. 56-2013 did not meet the requirements of R.C. 731.30 by which it might not be subject to referendum (under state law). As noted above, R.C. 731.30 sets forth what is required in order to constitute an “emergency ordinance or measure” pursuant to that section (so that it is excluded from those ordinances subject to referendum pursuant to R.C. 731.29):

emergency ordinances or measures necessary for the immediate preservation of the public peace, health, or safety in such municipal corporation, shall go into immediate effect. Such emergency ordinances or measures must, upon a ye and nay vote, receive a two-thirds vote of all the members elected to the legislative authority, and the reasons for such necessity shall be set forth in one section of the ordinance or other measure.

Thus, by the express terms of R.C. 731.30, it is the “ordinance” (not the “clause within the ordinance”) which must receive the two-thirds vote in order to constitute an “emergency ordinance” under R.C. 731.30 in order for it to be excluded from referendum under R.C. 731.29. Yet, the City relies exclusively upon the 6-to-3 vote to maintain the emergency clause within Ordinance No. 56-2013 after the ordinance had already been adopted by a vote of 5-to-4. Furthermore, a clause is simply a subdivision or part of the ordinance, it is not the ordinance itself.. See Black’s Law Dict. (6th ed. 1990), at 249 (“clause” defined as “[a] single paragraph or subdivision of a pleading or legal document”). And, per the express terms of R.C. 731.30, it is the ordinance (not the clause) which must receive a two-thirds vote. Thus, as a matter of law, Ordinance No. 56-2013 does not fall within the ambit of the ordinances listed in R.C. 731.30 by which it would not be subject to referendum (in the event that the City Charter declaration that the people’s right of referendum is reserved to the people “on all questions,” i.e., on all ordinances, passed by city council does not somehow apply to all ordinances, including those declared to be emergency ordinances).

In light of the foregoing, Plaintiffs-Relators are entitled to a declaratory judgment that: (i) all ordinances passed by Cincinnati City Council, including Ordinance No. 56-2013, are subject to referendum regardless of whether the city council has declared such ordinance to be an emergency; and/or (ii) Ordinance No. 56-2013 was not passed or adopted with the requisite two-thirds vote of all the members of city council as required by R.C. 731.30 so as to exempt it from the referendum provisions of R.C. 731.29.

The Emergency Declaration Exceeded the Scope of and Is Not Consistent With State Law

In addition to Ordinance 56-2013 not satisfying the requirements of R.C. 731.30 so as to exempt the ordinance from the referendum provisions of R.C. 731.29 (again, presuming *arguendo* such exemptions are even applicable in light of the City Charter reserving to the people the power to referendum all ordinances adopted by city council), the statutory requisites for the ordinance to even be considered an emergency ordinance have not been met. As noted above, R.C. 731.30 specifically provides that emergency ordinances are those that are “necessary for the immediate preservation of the public peace, health, or safety in [the] municipal corporation.” Yet, in this case, Ordinance 56-2013 fails to satisfy two of the requirements therein: (i) the ordinance does not even declare that it “necessary for the immediate preservation” of the public peace, etc., but, instead, simply declares that it is “necessary for the preservation” of the public peace, etc.; and (ii) while the ordinance cites the necessity to preserve (but not immediately preserve) the public peace, etc., it also declares and incorporates the extra-statutory necessity of “public welfare”.

“A court must interpret a statute so as to give effect to every word in it.” *Naylor v. Cardinal Local School Dist. Bd. of Ed.*, 69 Ohio St.3d 162, 170, 630 N.E.2d 725, 1994-Ohio-22 (1994); accord *State v. Moore*, 99 Ohio App.3d 748, 751, 651 N.E.2d 1319 (1 Dist. 1994)(“[e]very word in a statute is designed to have some legal effect”). And R.C. 731.30 exempts from being subject to referendum, *inter alia*, those ordinances determined to be “necessary for the immediate preservation of the public peace, health, or safety.” Yet, in enacting Ordinance No. 56-2013, the Cincinnati City Council simply declared it was “necessary for the preservation” of the public peace, etc. Thus, the ordinance does not rise to the level to even meeting the statutory requirement to not be subject to referendum, less this Court ignore

and fail to give effect to the statutory requirement of “immediate preservation” (which the council did not find present).

By failing to declare that Ordinance No. 56-2013 was “necessary for the immediate preservation”, the City has further failed to comply with the statutory requirement of R.C. 731.30 by which it might, arguably, fall within the ambit of being an emergency ordinance. Similarly, the inclusion of “public welfare” (as that is the only possible definition under which the stated “emergency” could possibly fall) as the basis for the putative emergency similarly takes Ordinance No. 56-2013 outside the status by which it could not be subject to referendum pursuant to R.C. 731.29.

Ordinance No. 56-2013 Fails to Satisfy the Three-Fourths Vote Required by City Charter In Order to Alter or Abolish the Powers of Any City Division or Department

Regardless of whether the City Charter reserves to the people the power to referendum all ordinances adopted by city council or the application of state law to the emergency declaration of Ordinance 56-2013, a separate and independent basis exists for this Court to declare the ordinance void in its entirety. Specifically, Article II, Section 7 of the Cincinnati City Charter provides that:

The existing departments, divisions and boards of the city government are continued unless changed by the provisions of this charter or by ordinance of the council. Within six months after the adoption of this charter, the council shall by ordinance adopt an administrative code providing for a complete plan of administrative organization of the city government. Thereafter, except as established by the provisions of this charter, the council may change, abolish, combine and re-arrange the departments, divisions and boards of the city government provided for in said administrative code, but an ordinance creating, combining, abolishing or decreasing the powers of any department, division or board, shall require a vote of three-fourths of the members elected to the council, except the ordinance adopting an administrative code.

Through Ordinance No. 56-2013, the City is clearly abolishing or decreasing the powers of the Parking Facilities Division of the Department of Enterprise Services – as the City Manager previously declared, such an effort is resulting in “a significant change in the way the City has historically operated and maintained parking.” (City Manager Memo dtd Oct. 26, 2012.) For while the management and operations of the City’s parking assets are currently being provided by the Parking Facilities Division, said services will be operated by a private entity pursuant to Lease Agreement to be executed pursuant to Ordinance No. 56-2013. Such effort through adoption of Ordinance No. 56-2013, in order to be in conformity with Article II, Section 7 of the City Charter, needed to be approved by a vote of three-fourths of the elected members of city council, i.e., with at least 7 votes in favor of passage.

Because Ordinance No. 56-2013 failed to obtain the vote mandated by Article II, Section 7 of the Cincinnati City Charter in order to abolish or decrease the powers of the Parking Facilities Division of the Department of Enterprise Services, the ordinance is ineffective. Accordingly, Plaintiffs-Relators are entitled to a declaratory judgment to that effect, together with an injunction precluding the enforcement or implementation of Ordinance No. 56-2013.

The Right to Referendum Directly Impacts Core Political Speech Rights of Plaintiffs and Others

As noted above, the Cincinnati City Charter expressly reserved the right of referendum to the people of the city on all questions which the council is authorized to control by legislative action. Thus, on March 8, 2013, a group of citizens of Cincinnati, including Plaintiff-Relator Pete Witte, filed a certified copy of a referendum petition with the finance director of the City in conformity with R.C. 731.32. And, this petition effort, in which the Plaintiffs-Relators are actively involved, implicates core First Amendment rights. For “[p]etition circulation is core

political speech because it involves interactive communication concerning political change.” Buckley v. American Const. Law Found., Inc., 525 U.S. 182, 186 (1999). And “the Supreme Court has held that the First Amendment places a high value on the right to engage freely ‘in discussions concerning the need for [political] change,’ including change accomplished through petitions and elections.” Citizens for Tax Reform v. Deters, 518 F.3d 375, 379 (6th Cir. 2008)(quoting Meyer v. Grant, 486 U.S. 414, 421 (1988)). Furthermore, the Ohio Supreme Court has recognized that “[t]he constitutional right of citizens to referendum is of paramount importance” such that courts liberally construe municipal referendum power so as to permit, rather than restrict or preclude the power of the people to exercise this inherent right. State ex rel. General Assembly v. Brunner, 114 Ohio St. 3d 386, 872 N.E.2d 913, 2007-Ohio-4460 ¶8; accord State ex rel. Julnes v. S. Euclid City Council, 130 Ohio St.3d 6, 955 N.E.2d 363, 2011-Ohio-4485 ¶28 (it is the duty of courts “to liberally construe municipal referendum provisions in favor of the power reserved to the people to permit rather than to preclude the exercise of the power and to promote rather than to prevent or obstruct the object sought to be attained”).

Conclusion

Based upon the foregoing the Plaintiffs are entitled to a declaratory judgment as set forth above, including a declaration of the rights, status, and other legal relations between the Plaintiffs and the Defendants as it relates to the validity of Ordinance No. 56-2013, including that the people of the City of Cincinnati retained the power of referendum on all ordinances (including Ordinance No. 56-2013); whether the invocation of the over-expansive emergency clause in Ordinance No. 56-2013 exceeded the scope of and was consistent with state law; and whether Ordinance No. 56-2013 satisfied the requirements of three-fourths in order to abolish or decrease the powers of the Parking Facilities Division of the Department of Enterprise Service.

And based upon such resolution, this Court should issue an appropriate injunction prohibiting, at a minimum, the City from moving forward with the implementation of Ordinance No. 56-2013 lest, notwithstanding the Court's declaratory judgment, the City proceeds in an effort to go beyond a point at which the City may then claim (as yet another legal dodge) such referendum may no longer be available.¹ See *Middletown v. Ferguson*, 25 Ohio St.3d 71, 76, 495 N.E.2d 280 (1985)("[o]nce having granted certain powers to a municipal corporation, which in turn enters into binding contracts with third parties who have relied on the existence of those powers, the legislature (or here, the electorate) is not free to alter the corporation's ability to perform"). For it is only through doing so that the Plaintiffs' fundamental rights of petitioning and referendum can be protected.

Respectfully submitted,

/s/ Curt C. Hartman

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¹ For other reasons unaddressed here, Plaintiffs would, if necessary, challenge at the appropriate time such a position or declaration by the City. But undoubtedly, efforts to undermine any declaratory judgment of this Court is surely within the quiver the City intends to launch in its scorched-earth effort relative to the ordinance.

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing will be served via e-mail regular mail on the 12th day of March 2013, upon:

Terry Nestor
Aaron Herzig
Office of the City Solicitor
801 Plum Street, Room 214
Cincinnati, OH 45202

/s/ Curt C. Hartman