

COURT OF COMMON PLEAS
HAMILTON COUNTY, OHIO

MAR 28 2013
ROBERT C. WINKLER

LISA McQUEEN, *et al.* : Case No. A1301595
Plaintiffs, :
and : Judge Robert C. Winkler
CITY OF CINCINNATI *ex rel.* :
LISA McQUEEN, *et al.* :
Relators, :
v. :
MILTON R. DOHONEY, JR., *et al.* :
Defendants-Respondents.

ORDER AND ENTRY GRANTING
MOTION FOR DECLARATORY
JUDGMENT AND PERMANENT
INJUNCTION

ENTERED
MAR 20 2013



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INTRODUCTION

On March 6, 2013, Cincinnati City Council passed and Mayor Mark Mallory signed Ordinance No. 56-2013, authorizing City Manager Milton Dohoney, Jr. to enter into an agreement under which the City would lease its on-street parking meters and City-owned parking lots and garages to the Port of Greater Cincinnati Development Authority. The Port Authority, in turn, would contract with private entities to operate and maintain those parking assets throughout the City and to enforce compliance with the City's parking ordinances and regulations. The Ordinance passed by a vote of 5 to 4; however, a provision declaring it to be an emergency measure passed by a 6 – 3 vote.

Immediately after Ordinance No. 56-2013 was adopted, Plaintiffs/Relators sought a Temporary Restraining Order prohibiting the City from taking any action to implement it. This Court granted the Temporary Restraining Order and set the matter for hearing on Plaintiffs/Relators' Motion for Declaratory Judgment and Permanent

Injunction on March 15, 2013. At the conclusion of the hearing, the matter was taken under submission for decision by this Court.

Plaintiffs/Relators contend – and Defendants/Respondents do not seriously dispute – that the emergency declaration was included to give the Ordinance immediate effect and thereby preclude any citizen-initiated referendum on it.

The essential issue in this case is whether the City's declaration of emergency in Ordinance No. 56-2013 precludes a referendum on the Ordinance. For the reasons that follow, the Court concludes that it does not, and so grants the request for declaratory judgment and permanent injunction prohibiting the City from taking any action to implement the Ordinance pending the outcome of any such referendum.

FACTS AND PROCEDURAL HISTORY

On October 26, 2012, the City of Cincinnati issued a Request for Proposals (“RFP”) with respect to a Concession Lease Agreement for Selected City-Owned Parking Assets. On November 26, 2012, the City received nine proposals in response to the RFP. After reviewing the proposals, the City invited three teams to Cincinnati for interviews and the City started negotiations with two teams.

As a result of these negotiations, the City selection team recommended a public/private partnership structure with the Port of Greater Cincinnati Development Authority (“Port Authority”) as lessee and a private entity to be known as “ParkCincy” serving as operator, asset manager, and underwriter. ParkCincy is a team made up of Guggenheim Securities LLC, (the underwriter for the issuance of bonds), AEW Capital Management, L.P. (the asset manager), Xerox State & Local Solutions (the on-street operator), Denison Parking, Inc. (the off-street operator), and its various subcontractors and vendors.

On February 27, 2013, City Manager Dohoney transmitted to the Mayor and members of the City Council a draft ordinance relating to a Parking Lease & Modernization Agreement. On March 4, 2013, the Budget and Finance Committee of the Cincinnati City Council considered the draft ordinance and directed that it be separated into two ordinances.

On March 6, 2013, City Manager Dohoney transmitted to the Mayor and members of the City Council a draft ordinance relating to a Long Term Lease & Modernization Agreement for City Parking System — B Version. The ordinance transmitted with the City Manager's memorandum was ultimately adopted by the City Council and was designated as Ordinance No. 56-2013. The City Council voted to adopt Ordinance No. 56-2013 by a vote of 5-to-4.

The Ordinance authorizes the City Manager to execute a lease with the Port Authority of Greater Cincinnati. The City would lease certain parking lots and garages and grant the Port Authority a franchise to operate the City's parking meters. In exchange, the Port Authority would pay the City approximately \$92 million up front and would make annual payments of approximately \$3 million for thirty years.

The City asserts that the Ordinance is necessary to balance the fiscal year 2014 budget, which begins in July, 2013. It explains that during the budget planning process, Council chose to use \$4.8 million from anticipated parking franchise revenues instead of eliminating income tax reciprocity for City residents. The City claims that if the parking franchise revenues are not available, its deficit will grow by that \$4.8 million. Additionally, the fiscal year 2013 budget has an \$11.2 million deficit, and the City posits that it will have to immediately begin cutting the budget by, *inter alia*, cutting 344 employees (269 of whom are police and fire department employees), reducing services,

and eliminating programs. Without the revenue generated by the parking arrangement, the City claims that it would need to close three recreation centers and six swimming pools, eliminate \$1.7 million in funding for human services organizations, \$494,000 in funding for the Neighborhood Support Fund and the Neighborhood Business District Fund, and \$50,000 for arts funding. The City claims that “it also would be deprived of the economic development and community improvement projects that the City intends to fund with lease revenue. The City plans to use the revenue to increase its contribution to the Cincinnati Retirement System, construct the Wasson Way bike trail, open the MLK interchange on I-71, and spur development of a 30-story mixed use building in downtown featuring a grocery store, among other items.”¹

Subsequent to adopting Ordinance No. 56-2013, the City Council voted to include an emergency declaration by a vote of 6-to-3. The emergency clause states:

That this ordinance shall be an emergency measure necessary for the preservation of the public peace, health, safety and general welfare and shall, subject to the terms of Article II, Section 6 of the Charter, be effective immediately. The reason for the emergency is the immediate need to implement the budgetary measures 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 modernization of the City of Cincinnati parking system as described herein.

On March 8, 2013, a certified copy of a referendum petition regarding Ordinance No. 56-2013 was filed with Reginald Zeno, the Finance Director for the City of Cincinnati. Plaintiffs are all either residents, voters or taxpayers within the City of Cincinnati. Some of the Plaintiffs are actively involved in circulating the referendum

¹ Defendants’ Memorandum in Opposition, pp. 13-14.

petition. Plaintiff Pete Witte is one of the four members of the committee designated on the petition.

In addition to their efforts to subject Ordinance No. 56-2013 to referendum, Plaintiffs also utilize the on-street and off-street parking facilities of the City and, in light of the changes to the City's parking system to be brought about through implementation of Ordinance No. 56-2013, Plaintiffs would be directly impacted by any change in the rates, hours and enforcement of the parking system.

Additionally, Plaintiff Pete Witte is a business owner some of whose patrons utilize the on-street or off-street parking facilities of the City. As a result of the changes to the City's parking system to be brought about by implementation of Ordinance No. 56-2013, those patrons and Mr. Witte's business would be directly impacted by any change in the rates, hours and enforcement of the parking system.

Through the petition effort, Plaintiffs are claiming the right to enforce and vindicate their alleged public right to referendum, notwithstanding the City's contention that Ordinance No. 56-2013 is not subject to referendum.

Immediately after Ordinance No. 56-2013 was adopted by the City Council, Plaintiffs sought and this Court issued a Temporary Restraining Order prohibiting the City from taking any action to implement it. The Court subsequently ordered that the hearing on the motion for preliminary injunction be consolidated with the trial on the merits of the case pursuant to ORCP 65(B)(2). At the conclusion of the March 15, 2013 hearing, the matter was taken under submission; on March 20, 2013, the Temporary Restraining Order was extended pending the Court's decision on the merits.

ISSUES

Plaintiffs/Relators have raised several issues in their First Amended Complaint and their Motion for Declaratory Judgment and Permanent Injunction. Their foremost claim is the request for a declaration from the Court that Ordinance 56-2013 is subject to referendum as provided by the Cincinnati City Charter. In its Answer and Memorandum in Opposition to Plaintiffs/Relators' Motion for Declaratory Judgment, the City of Cincinnati addresses those issues and raises the matter of Plaintiffs/Relators' standing to pursue their claims as alleged in the First Amended Complaint. In view of the dispositive nature of the Court's decision concerning Plaintiffs/Relators' right to a referendum in relation to Ordinance 56-2013, the remaining issues need not be addressed.

DISCUSSION

The standard for injunctive relief is well settled in Ohio law:

A party seeking a TRO or preliminary injunctive relief must show, by clear and convincing evidence, (1) a substantial likelihood that the party will prevail on the merits, (2) the party will suffer irreparable injury or harm if the requested injunctive relief is denied, (3) no unjustifiable harm to third parties will occur if the injunctive relief is granted, and (4) the injunctive relief requested will serve the public interest. *Cincinnati v. Harrison*, 1st Dist. No. C-090702, 2010-Ohio-3430, ¶8, citing *The Proctor & Gamble Co. v. Stoneham*, 140 Ohio App.3d 260, 267, 747 N.E.2d 268 (1st Dist. 2000). A court must balance all four factors in determining whether to grant or deny injunctive relief, and no one factor is determinative. *Toledo Police Patrolman's Assn., Local 10, IUPA, AFL-CIO-CLC, v. Toledo*, 127 Ohio App.3d 450, 469, 713 N.E.2d 78 (6th Dist.1998).

Brookville Equipment Corp. v. Cincinnati, 2012-Ohio-3648 (1st App. Dist.), at ¶11.

"The test for the granting or denial of a permanent injunction is substantially the same as that for a preliminary injunction, except instead of the plaintiff proving a 'substantial likelihood' of prevailing on the merits, the plaintiff must prove that he *has*

prevailed on the merits.” *Miller v. Miller*, 2005-Ohio-5120 (11th App. Dist.), ¶10-11, citing *Ellinos, Inc. v. Austintown Twp.*, 203 F.Supp.2d 875, 886 (N.D. Ohio 2002); *Edinburg Restaurant, Inc. v. Edinburg Twp.*, 203 F.Supp.2d 865, 873 (N.D. Ohio 2002).

“Irreparable injury means a harm for which no plain, adequate, or complete remedy at law exists. *Cleveland v. Cleveland Elec. Illum. Co.*, 115 Ohio App.3d 1, 14, 684 N.E.2d 343 (8th Dist. 1996). A party does not have to demonstrate actual harm — threatened harm is sufficient. *Convergys Corp. v. Tackman*, 169 Ohio App.3d 665, 2006-Ohio-6616, 864 N.E.2d 145, ¶ 9 (1st Dist.)” *Brookville Equipment Corp. v. Cincinnati*, *supra*, at ¶23.

STANDING

The City of Cincinnati challenges Plaintiffs/Relators’ standing to pursue the claims in their Amended Complaint both individually and in their capacity as statutory taxpayers. The City argues that Plaintiffs/Relators lack standing to bring an action for declaratory judgment because there is no justiciable controversy. The City further asserts that Plaintiffs/Relators have failed to adhere to the specific statutory requirements required to maintain a taxpayer suit. For the reasons that follow, the Court finds that Plaintiffs/Relators have sufficiently demonstrated standing to pursue their claims individually and in a taxpayer suit.

The City of Cincinnati correctly states the law of standing in relation to declaratory judgment actions as summarized in *Mallory v. Cincinnati*, 2012-Ohio-2861 (1st Dist. App.). In *Mallory*, the First District Court of Appeals analyzed the issue of standing as it relates to actions for declaratory judgment. The Court stated:

The Ohio Constitution, Article IV, Section 4(B), limits the subject matter jurisdiction of common pleas courts to “justiciable matters,” which the Ohio Supreme Court has interpreted to mean an actual controversy between the parties. *State ex rel. Barclays Bank PLC v. Hamilton Cty. Court of Common Pleas*, 74 Ohio St. 3d 536, 542, 660 N.E.2d 458 (1996). This is true even in an action for a declaratory judgment. *Mid-Am. Fire & Cas. Co. v. Heasley*, 113 Ohio St. 3d 133, 2007-Ohio-1248, 863 N.E.2d 142, ¶ 9. “A ‘controversy’ exists for purposes of a declaratory judgment when there is a genuine dispute between parties having adverse legal interests of sufficient immediacy and reality to warrant the issuance of a declaratory judgment.” *Wagner v. Cleveland*, 62 Ohio App. 3d 8, 13, 574 N.E.2d 533 (8th Dist.1988), citing *Burger Brewing Co. v. Liquor Control Comm.*, 34 Ohio St. 2d 93, 296 N.E.2d 261 (1973); see also *Kincaid v. Erie Ins. Co.*, 128 Ohio St. 3d 322, 2010-Ohio-6036, 944 N.E.2d 207, ¶10 (internal citations omitted) (an actual controversy is “more than a disagreement; the parties must have adverse legal interests.”). In other words, the plaintiff must seek the “protection of the law” from the “adverse conduct or adverse property interest” of a party. *State ex rel. Barclays Bank PLC* at 542.

Ohio’s Declaratory Judgment Act is a statutory scheme created in derogation of the common law; the existence of jurisdiction in a declaratory judgment action must be evident from the allegations in the complaint. See *Van Stone v. Van Stone*, 95 Ohio App. 406, 411, 120 N.E.2d 154 (6th Dist. 1952). If the complaint fails to show the existence of a real, present dispute, then any opinion by a court would be merely advisory — and it is a well-established principle of law that courts should not issue advisory opinions. See *Scott v. Houk*, 127 Ohio St. 3d 317, 2010-Ohio-5805, ¶22, 939 N.E.2d 835.

Thus, the Court must determine whether Plaintiffs/Relators have demonstrated an actual controversy between themselves and the City of Cincinnati. The City premises its argument, among other things, on the speculative nature of Plaintiffs/Relators’ claim that the City’s signing the Parking System Lease might impair Plaintiffs/Relators’ ability to seek a referendum on Ordinance 56-2013. The City suggests that if it were to sign the

Parking System Lease, it could not prevent a referendum on the ordinance if one were required by Ohio law, but rather would be proceeding at its own risk.

Relying on *Middletown v. Ferguson*, 25 Ohio St. 3d 71, 76, 495 N.E.2d 280 (1986), Plaintiffs/Relators assert that the signing of the Parking System Lease would destroy any meaningful relief by means of a referendum on the Ordinance. In *Middletown*, the City Council passed an emergency ordinance directing the city manager to enter into contracts with the Ohio Department of Transportation for certain road improvements. ODOT accepted bids for the improvements and awarded a contract for the construction project, and construction began shortly thereafter. Just three days prior to the contract being awarded, the Board of Elections validated sufficient signatures to have an initiative placed on the November ballot. The voters approved the initiative ordinance repealing the enabling legislation and all commitments for the road project. At the time the initiative passed, construction was nearly sixty percent complete. The effect of the initiative would have halted the completion of the project.

The City of Middletown believed the initiative to be an unconstitutional impairment of a contract and allowed the project to continue to the point of completion. The Ohio Supreme Court agreed that the initiative as passed impaired the obligations of the contract between the City and ODOT in violation of Article I, Section 10 of the United States Constitution and therefore, the initiative ordinance was void *ab initio*. *Id.*, 25 Ohio St. 3d at 383. The Court went on to state that “once 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.” *Id.* at 385 [quoting *Continental Illinois Nat’l Bank v. Washington*, 696 F.2d 692, 700 (9th Cir.

1983)]. The Court explained that “had the initiative had been brought at an earlier time, *before there was an executed contract*, and before construction had begun, this controversy likely would not be before us today.” *Id.* at 383 (emphasis added).

The City’s argument that it would be proceeding at its own risk if it were to sign the Parking System Lease misses the mark. Had Plaintiffs/Relators not obtained a temporary restraining order in this matter, this case would likely be at an end. The City has it backwards. If the City had signed the Parking System Lease, it would have been at Plaintiffs/Relators’ “risk.” Plaintiffs/Relators would be deprived of any meaningful relief even if they were to succeed with the referendum on Ordinance 56-2013.

Based on the foregoing, Plaintiffs/Relators have sufficiently demonstrated an actual controversy between themselves and the City of Cincinnati. Accordingly, Plaintiffs/Relators have standing to proceed with their action for declaratory judgment.

The City also challenges Plaintiffs/Relators’ standing to pursue their taxpayer claims under R.C. 733.59 for declaratory judgment. The Ohio Legislature has conferred standing upon municipal taxpayers to vindicate a public right when a city or its officials refuse to apply for an injunction or to restrain an abuse of corporate power. A taxpayer demand letter is a jurisdictional prerequisite to a statutory taxpayer action and the failure to send the required demand is fatal to statutory taxpayer standing. As of the date of the hearing on Plaintiffs/Relators’ Motion for Declaratory Judgment and Permanent Injunction, a demand letter as described in R.C. 733.59 had not been served upon Cincinnati City Solicitor John P. Curp.

The City has directed the Court’s attention to *Fisher v. Cleveland*, 109 Ohio St. 3d 33, 2006-Ohio-1827, wherein the Ohio Supreme Court stated that a “jurisdictional analysis of a statutory taxpayer action begins with R.C. 733.56, which requires a city law

director to apply in the city's name 'to a court of competent jurisdiction for an order of injunction to restrain the abuse of corporate powers.'”

Plaintiffs/Relators argue that the demand letter required by R.C. 733.59 would have been a futile or vain act, given that Mr. Curp, in fulfilling his obligations as City Solicitor and chief legal counsel for the City of Cincinnati, advised the City Council that the emergency language contained in Ordinance 56-2013 would prohibit a referendum on the Ordinance. Under R.C. 733.59, Mr. Curp would be placed in the untenable position of having advised the City Council on how to make the Ordinance referendum-proof, and then, at the request of a taxpayer, applying to a court for an injunction or declaration as to the taxpayers' right to a referendum on that same Ordinance. In determining whether or not a taxpayer demand letter would be a vain act, “the substantial question comes down to this: Did the circumstances here show that it would have been unavailing to have made a request upon the solicitor.” *State ex rel. White v. Cleveland*, 34 Ohio St. 2d 37 (1973). In this instance, given Mr. Curp's advice to City Council and his close involvement with the process which ultimately led to the passage of Ordinance 56-2013 as emergency legislation, the statutory demand letter would have been in vain and to no avail. Thus, despite the lack of a statutory demand letter, Plaintiffs/Relators have demonstrated sufficient standing to proceed in a statutory taxpayer action.

EMERGENCY LEGISLATION

The Cincinnati City Council adopted Ordinance 56-2013 as emergency legislation in accordance with the City Charter. The City argues that Article II, Section 3 of its Charter provides that such emergency legislation goes in to effect immediately and therefore is not subject to referendum. The significance of designating an ordinance as

emergency legislation and whether such emergency legislation is subject to referendum is not specifically addressed in the Charter.

The City urges the Court to give all the words contained in the Charter their plain and ordinary meaning, and in so doing, conclude that emergency Ordinance 56-2013 is not subject to referendum.

Plaintiffs/Relators interpret Article II, Section 3 of the Charter to allow for referendum on all ordinances passed by the City Council, and the reference in that Section to the laws of the State of Ohio relates solely to the mechanics or procedures of the referendum process itself (*i.e.*, gathering signatures, circulating petitions, filing requirements, deadlines, etc).

As a matter of statutory construction, the Court is not permitted to add language exempting emergency legislation from referendum where no such language exists in the Charter provision. The First District Court of Appeals recently so held in *Brookville Equipment Corp. v. Cincinnati*, 2012-Ohio-3648, at ¶ 20:

Because council chose not to include language in the ordinance, a court will not add that language when undertaking an interpretation of such ordinance. *See, e.g., State ex rel. Lorain v. Stewart*, 119 Ohio St. 3d 222, 2008-Ohio-4062, 893 N.E.2d 184 (refusing to add language to a statute when engaging in statutory interpretation).

The Ohio Supreme Court has for many years instructed the lower courts that when interpreting provisions for municipal initiative or referendum, those provisions are to be liberally construed so as to permit rather than preclude the exercise of the powers of referendum and initiative:

This conclusion is consistent with our duty 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.

State ex rel. Julnes v. S. Euclid City Council, 130 Ohio St. 3d 6, 2011-Ohio-4485, ¶ 28 (citing *State ex rel. Oster v. Lorain Cty. Bd. of Elections* (2001), 93 Ohio St.3d 480, 486, 756 N.E.2d 649).

It is generally presumed in Ohio that emergency legislation is not subject to referendum. To be sure, in cases where the Ohio Revised Code's referendum provisions apply – with respect to non-charter municipalities, for example -- R.C. 731.29 -30 make clear that emergency legislation is not subject to referendum. R.C. 731.29 states, in pertinent 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.” R.C. 731.30 refers to emergency ordinances, appropriations for current expenses and street improvements. See *State ex rel. Laughlin v. James*, 115 Ohio St.3d 231, 2007-Ohio-4811, 874 N.E.2d 1145 (non-charter village council ordinance not subject to referendum due to emergency declaration). However, the Ohio Supreme Court recently found an emergency ordinance subject to referendum where the city charter provided for referendum on emergency ordinances. *State ex rel. Julnes v. S. Euclid City Council*, 130 Ohio St. 3d 6, 2011-Ohio-4485.

The City of Cincinnati derives its powers as a home rule city from the Ohio Constitution. The First District Court of Appeals recently reaffirmed that view. In *State ex rel. Phillips Supply Co. v. Cincinnati*, 2012-Ohio-6096, ¶53, the Court stated, “The city of Cincinnati is a charter municipality which derives its powers of local self-government from Ohio Constitution, Article XVIII, Section 3. Thus, the City's power to enact legislation is conferred by the City Charter, not the Ohio Revised Code.”

The City of Cincinnati as a charter municipality may enact legislation as provided by its Charter. Article II, Section 3 of the City Charter, which governs citizens'

referendum powers, was adopted as a charter amendment in 1994 by the voters of Cincinnati.

The City of Cincinnati's Charter provides:

Article II, Section 1: All legislative powers of the city shall be vested, subject to the terms of this charter and of the constitution of the state of Ohio, in the council. The laws of the state of Ohio not inconsistent with this charter, except those declared inoperative by ordinance of the council, shall have the same force and effect of ordinances of the city of Cincinnati; but in the event of conflict between any such law and any municipal ordinance or resolution the provisions of the ordinance or resolution shall prevail and control.

Article II, Section 2: All ordinances and resolutions in force at the time this charter takes effect, not inconsistent with its provisions, shall continue in force until amended or repealed by the council.

Article II, Section 3: 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. Emergency ordinances upon a yea and nay vote must receive the vote of a majority of the members elected to the council, and the declaration of an emergency and the reasons for the necessity of declaring said ordinances to be emergency measures shall be set forth in one section of the ordinance, which section shall be passed only upon a yea and nay vote of two-thirds of the members elected to the council upon a separate roll call thereon. If the emergency section fails of passage, the clerk shall strike it from the ordinance and the ordinance shall take effect at the earliest time allowed by law.

(Emphasis added.)

The citizens of Cincinnati have reserved the initiative and referendum power to themselves on all questions which the Council is authorized to control by legislative action. Those powers shall be *exercised* in the *manner* provided by the laws of the state of Ohio. The question is whether the initiative and referendum powers reserved to the people in the first clause of Article II, Section 3 are somehow diminished by the second clause which provides that those powers are to be exercised in the manner provided by Ohio law. The Court must decide if the citizens of Cincinnati chose to limit

their referendum rights in those instances where the City Council passes emergency legislation.

The City Charter does not specifically exempt emergency legislation from the powers reserved to the people. The Charter language is clear that it refers to all legislation passed by City Council with no exceptions. If the people of Cincinnati had intended to exempt emergency legislation from their referendum powers, they could have done so when adopting Article II, Section 3 of the City Charter.

Turning to the second clause of Article II, Section 3, the question of how those powers are to be exercised must be answered. The referendum powers are to be exercised in the manner provided by the laws of Ohio. This refers to the procedures to be employed when seeking a referendum, not to any limit on the right of referendum itself. Cincinnati's Charter does not provide any procedural mechanism for the conduct of initiative or referendum proceedings, but rather defaults to state law. Without the reference to Ohio law, the citizens of Cincinnati would have the right to referendum but no procedural method to implement the right. See *State ex rel. Ditmars v. McSweeney*, 94 Ohio St.3d 472, 477, 2002-Ohio-997, 764 N.E.2d 971:

The 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.

The City Charter's reference to Ohio law applies the procedures to be followed in **exercising** the people's right to initiative and referendum; it places no restraint or limitation on that right.

To be sure, the City Charter provisions at issue here are by no means free from ambiguity. However, the Supreme Court of Ohio has set forth the course to be followed

when a city charter provides its citizens with an unrestricted right to referendum followed by a reference to state law for the manner of its exercise:

Given the ambiguity of the charter language as well as our oft-cited mandate 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, we will not do so.

State ex rel. Julnes v. S. Euclid City Council, 130 Ohio St. 3d 6, 2011-Ohio-4485, ¶ 43 (citing *State ex rel. Oster v. Lorain County Bd. of Education* (2001), 93 Ohio St. 3d 480, 486, 756 N.E.2d 649. Neither will this Court do so.

CONCLUSION

The Court has considered the arguments of counsel, the law of Ohio, exhibits, precedent, and the rules of statutory construction, and has weighed the relevant factors required of Plaintiff/Relators in order for them to prevail on their claim for injunctive relief. For the reasons stated herein, the Court hereby grants Plaintiffs/Relators' Motion for Declaratory Judgment and Permanent Injunction.

Therefore, it is hereby ORDERED that, pending the outcome of the referendum process on Ordinance 56-2013, Defendants Milton Dohoney and the City of Cincinnati shall take no further action to implement Ordinance 56-2013, nor shall they execute or perform under the Long-Term Lease and Modernization Agreement for the City of Cincinnati Parking System. This is a final appealable order. There is no just cause for delay.

SO ORDERED.

3/28/13
Date

Robert C. Winkler
JUDGE ROBERT C. WINKLER
COURT OF COMMON PLEAS
ENTER
THE CLERK SHALL SERVE NOTICE
TO PARTIES PURSUANT TO CIVIL
RULE 58 WHICH SHALL BE TAXED
AS COSTS HEREIN.

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