

ORIGINAL

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and

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and

PETE WITTE  
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and

EDWARD D. HYDE  
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and

JOHN BRANNOCK  
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and

DOUGLAS B. ROBINSON, JR.  
3621 Victoria Lane  
Cincinnati, OH 45208

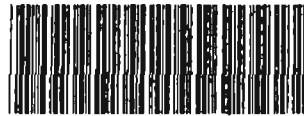
Plaintiffs,

-v-

Case No. A 1301595

(Judge Robert Winkler)

**VERIFIED COMPLAINT FOR  
TEMPORARY RESTRAINING ORDER,  
PRELIMINARY AND PERMANENT  
INJUNCTIVE RELIEF, AND  
DECLARATORY JUDGMENT**



D101220011

FILED

2013 MAR -6 P 4: 17

TRACY WINKLER  
CLERK OF COURTS  
HAMILTON COUNTY, OH

MILTON R. DOHONEY , JR.	)
City Manager	)
City of Cincinnati	)
801 Plum Street	)
Cincinnati OH 45202	)
	)
and	)
	)
CITY OF CINCINNATI	)
801 Plum Street	)
Cincinnati OH 45202	)
	)
Defendants.	)

Plaintiffs Lisa McQueen, Shirlene Britton, Pete Witte, Edward D. Hyde, John Brannock and Douglas R. Robinson (the "Plaintiffs") for their complaint against Defendants Milton R. Dohoney, Jr. and City of Cincinnati (the "Defendants") state as follows:

**Statement of Urgency**

1. This is an action of the most urgent nature. The Cincinnati City Council and Mayor enacted an ordinance today authorizing Defendant Dohoney to lease the City-owned street parking system to be operated by a private entity for the next 30 years, *i.e.*, until 2043. The ordinance also authorizes Dohoney to lease City-owned off street parking facilities for the next fifty years, *i.e.*, until 2063. This ordinance, if it becomes effective, will work a significant structural change to the operations of the City of Cincinnati for at least a half century.

2. The Ohio Constitution, the Ohio Revised Code, and the Charter of the City of Cincinnati all afford the citizens of this City the hallowed Right of Referendum. This precious right serves its highest calling when it provides the citizenry the ability to review monumental governmental decisions such as the instant ordinance.

3. Defendant City of Cincinnati, through its elected officials, has acted with the unconstitutional desire to thwart the citizens' Right of Referendum. It has attempted to do so by mislabeling the ordinance as an appropriation, by improperly labeling it an "emergency," and by

intentionally calling an unnecessary after hours special session of Council in an effort to deprive this Court and the Judicial Branch of its solemn duty to review legislative enactments.

4. In order for this Court to protect its jurisdiction over this case, an immediate *ex parte* TRO is necessary to enjoin the effectiveness of the ordinance; to enjoin Defendant Dohoney from executing the Long-Term Lease and Modernization Agreement for the City of Cincinnati Parking System, or substantially similar document; and to enjoin all defendants from taking any actions in furtherance of the Ordinance, until such time as this Court can hold a full hearing on this matter.

5. If a TRO is not granted immediately, Defendants will likely attempt to immediately implement the Ordinance with the express intent of depriving this Court of jurisdiction and depriving the voters of Cincinnati their right to be heard on this matter for the next fifty years.

#### **Parties, Jurisdiction & Venue**

6. Plaintiff Lisa McQueen is a resident of the City of Cincinnati and registered to vote at the address stated in the caption.

7. Plaintiff Pete Witte is a resident of the City of Cincinnati and registered to vote at the address stated in the caption.

8. Plaintiff Shirlene Britton is a resident of the City of Cincinnati and registered to vote at the address stated in the caption.

9. Plaintiff Edward D. Hyde is a resident of the City of Cincinnati and registered to vote at the address stated in the caption.

10. Plaintiff John Brannock is a resident of the City of Cincinnati and registered to vote at the address stated in the caption.

11. Plaintiff Douglas B. Robinson, Jr. is a resident of the City of Cincinnati and registered to vote at the address stated in the caption.

12. Plaintiffs desire to exercise their constitutional right to circulate referendum petitions to place the Ordinance on the ballot so that all Cincinnati voters may express their views on this critical issue at the ballot box.

13. Defendant Milton R. Dohoney, Jr., is the City Manager of the City of Cincinnati.

14. Defendant City of Cincinnati is a body corporate and politic in Hamilton County, Ohio.

15. This Court possesses jurisdiction over the parties and the subject matter of this complaint and is a proper venue therefor.

#### **Statement of Facts**

16. On February 27, 2013, Defendant City of Cincinnati released a copy of a draft ordinance to lease its off-street and on-street parking systems for periods of 30 and 50 years respectively ("Draft Ordinance"). (A true and accurate copy of the Draft Ordinance is attached hereto as Exhibit A).

17. The Draft Ordinance contained multiple subjects. The first subject was the Long-Term Lease and Modernization Agreement for the City of Cincinnati Parking System ("Parking System Lease"). (A true and accurate copy of the draft Parking System Lease is attached hereto as Exhibit B).

18. Additional subjects of the Draft Ordinance included the appropriation and expenditure of \$92 million of proceeds the City anticipates receiving-at-the-beginning of the 50 year lease.

19. On Friday March 1, 2013, Defendant Dohoney circulated a 42-page memo to the Mayor and City Council entitled "Parking Lease & Modernization Questions & Answers." (the

"Dohoney Memo") (A true and accurate copy of the Dohoney Memo is attached hereto as Exhibit C).

20. The Dohoney Memo indicated on page 19 that the appropriations were included in the Draft Ordinance so as to prevent voters from exercising their referendum rights.

21. The Draft Ordinance was introduced as Item 2-201300257 at a March 4, 2013 hearing of the Budget and Finance Committee.

22. At the committee hearing, Dohoney and City Solicitor John P. Curp repeated that the purpose of combining the lease ordinance with the appropriations ordinance was to prevent a referendum.

23. Councilman Christopher Smitherman moved to separate Section 1 of the Draft Ordinance into a separate ordinance. After multiple procedural votes, the Smitherman motion passed and Section 1 was severed.

24. After Section 1 was severed, Committee Chairwoman Qualls announced that the Committee was finished with the Parking System Lease and encouraged the public and media in attendance to leave. The Committee proceeded to complete the rest of its agenda. After the rest of the agenda was completed, Qualls orally called a vote to reconsider the Smitherman motion, which passed over the dissents of Smitherman and Winburn. Qualls then moved to sever Sections 1, 2, 3 and 11, which passed. No mention was made of how the preamble would be divided.

25. The revised March 4, 2013 committee agenda shows two proposed ordinances, items 2-201300257 and 2-201300291, with the identical title but different dates of introduction. Upon information and belief, one of the identically titled ordinances contains Sections 1, 2, 3, and 11 of the Draft Ordinance, and the other contains the remaining sections.

26. On the evening of March 4, 2013, an announcement was made that a special Council Meeting had been called for 7:00 pm on March 5, 2013—presumably to consider the Draft Ordinance and/or the severed ordinances.

27. On the evening of March 5, 2013, City Council held its special meeting.

28. At the special meeting, neither item 2-201300257 nor item 2-201300291 appeared on the agenda. They were replaced with items 201300315 and 201300316. (True and accurate copies of items 201300315 and 201300316 are attached hereto as Exhibits D and E). Items 201300315 and 201300316 separated sections as finally voted on March 4.

29. At the March 5<sup>th</sup> Council meeting, Smitherman and Qualls reprimanded Curp for continuing to include an appropriation item (the original Section 11) in the draft lease ordinance. Curp stated that he did so in spite of the Committee's instructions so that the lease ordinance would contain an appropriation so as to avoid referendum.

30. For the first time and not upon the instructions of the Committee, Items 201300315 and 201300316 contained sections declaring an emergency. Curp stated that these sections were also included to avoid a referendum.

31. Prior to the regular Council meeting scheduled for March 6, 2013, Dohoney circulated revisions to Items 201300315 and 201300316 moving the appropriation from Item 201300316 to Item 201300315. (True and accurate copies of Revised Items 201300315 and 201300316 are attached hereto as Exhibits F and G).

32. At the regular Council meeting on March 6, 2013, Council passed Revised Item 201300316 by a vote of 5-4. (the "Ordinance")

33. Plaintiffs are residents and registered voters of Cincinnati who oppose the long term leasing of the City's on-street and off-street parking systems.

34. Plaintiffs desire to exercise their right to circulate and/or support the referendum of the Ordinance.

35. The City's attempt to suppress the constitutional right of referendum is unlawful.

36. Upon information and belief, the City will likely act to execute and begin performance on the Parking System Lease as soon as practicable. Such actions might impair Plaintiffs' ability to seek referendum of the Ordinance.

37. Because of the time sensitive nature of this complaint, many of the allegations and claims in this complaint are based upon what Plaintiffs understood to be the most likely actions of City Council when this complaint was being drafted. Accordingly, Plaintiffs reserve their right to amend this complaint as the factual record develops.

## COUNT I

### DECLARATORY JUDGMENT –

#### R.C. §731.30 (TWO-THIRDS MAJORITY REQUIREMENT)

38. Plaintiffs incorporate the above paragraphs as if fully rewritten herein.

39. Under R.C. §731.30, Plaintiffs seek a judgment that the Ordinance and the City Charter violate Ohio's requirement that emergency legislation be passed by a supermajority.

40. R.C. 731.30 allows "emergency ordinances or measures necessary for the immediate preservation of the public peace, health, or safety" to "go into immediate effect."

41. R.C. §731.30 requires that: "[E]mergency ordinances or measures must, upon a ye or nay vote, receive a two-thirds vote of vote of all the members elected to the legislative authority . . ."

42. Upon information and belief, the City Council, upon voting on the Ordinance, voted 5-4 in favor of the Ordinance.

43. A vote of 5-4 constitutes a simple majority, but not the two-third vote required by R.C. §731.30.

44. The City Council subsequently voted to add an emergency clause for the purposes of §731.30, which passed by a vote of 6-3.

45. Plaintiffs seek a judgment that R.C. §731.30 does not permit Defendants to sever the “emergency” provision from the Ordinance and vote on it separately from the merits of the Ordinance and that, therefore, the emergency provision later voted upon after passage of the Ordinance is a nullity.

46. Plaintiffs seek further judgment that because Defendants only passed by the Ordinance by a simple majority, Defendants have failed to satisfy the two-thirds vote requirement of R.C. §731.30 and passage of the Ordinance cannot constitute an emergency under Ohio law and is not immediately effective.

47. A real and justiciable controversy exists between Plaintiffs and Defendants concerning the validity of the emergency provisions of the Ordinance and the City Charter provision that authorized it.

48. Speedy relief is necessary to secure and preserve the rights of Plaintiffs with regard to whether Defendants have satisfied the requirements of an emergency under Ohio law and whether the Ordinance is immediately effective.

## **COUNT II**

### **DECLARATORY JUDGMENT – R.C. §731.30 (REASONS FOR EMERGENCY)**

49. Plaintiffs seek a judgment that the Ordinance neither qualifies as an emergency by its subject matter, nor does it sufficiently set forth an emergency as required to invoke the provisions of R.C. 731.30.



50. Revised Code Section 731.30 provides that an emergency shall be for the “immediate preservation of the public peace, health, or safety in [a] municipal corporation” and that “the necessity shall be set forth in one section of the ordinance or other measure.”

51. Plaintiffs seek judgment that the reasons set forth for emergency in the Ordinance are conclusory, tautological, and/or illusory, that Defendants have failed to set forth sufficient and adequate reasons explaining the reason for an emergency in the Ordinance as required by R.C. §731.30, and that, therefore, the Ordinance is not immediately effective under R.C. §731.30.

52. Plaintiffs seek judgment that the long term lease of the City’s on-street and off street parking systems is not the type of ordinance that can qualify as an emergency because it has no impact upon public peace, health or safety, and that, therefore, the Ordinance is not immediately effective under R.C. §731.30

### **COUNT III**

#### **INJUNCTIVE RELIEF**

53. Plaintiffs incorporate the above paragraphs as if fully rewritten herein.

54. Plaintiffs will suffer irreparable harm for which there is no adequate remedy at law, including, but not limited to, the ability to exercise their right of referendum. Specifically, Plaintiffs risk losing their constitutional right to petition for referendum.

55. Plaintiffs have a substantial likelihood and probability of success on the merits on the underlying claims in this action. The Ordinance is clearly subject to referendum. The City is improperly attempting to thwart the rights of Plaintiffs and all Cincinnatians of their right to seek a referendum of this monumental ordinance.

56. Issuance of injunctive relief to Plaintiff based on the facts as set forth in this Complaint will not unjustifiably harm Defendants or third parties. On the contrary, the public interest would be served by issuance of injunctive relief that Plaintiffs seek in this Complaint.

57. Plaintiffs are entitled to a temporary restraining order, preliminary and permanent injunctive relief enjoining Defendants Dohoney and the City of Cincinnati from implementing the Ordinance and executing the Parking System Lease during the statutorily allotted time for referendum.

#### **COUNT IV**

##### **42 U.S.C. §§1983 & 1988**

58. Plaintiffs incorporate the above allegations as if fully rewritten herein.

59. Defendants have deprived Plaintiffs of their constitutional rights under the color of state law.

60. The deprivation of Plaintiffs' due process, and civil rights is compensable under 42 U.S.C. §1983.

61. Plaintiffs are entitled to an award of attorneys' fees under 42 U.S.C. §1988.

WHEREFORE, Plaintiffs request relief from this Court as follows:

- (a) The Court declare the Ordinance void;
- (b) The Court declare the Parking System Lease void;
- (c) The Court allow Plaintiffs the Right of Referendum as to any portion of the Ordinance that is not severed and survives;
- (d) Enjoin Defendants from implementing the Ordinance;
- (e) Enjoin Defendants from executing the Parking System Lease;

- (f) Award Plaintiffs their costs, expenses, and attorney fees associated with this matter, and;
- (g) Such further and additional relief as is necessary and appropriate.

Respectfully submitted,



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#### **NOTICE TO CLERK**

Please serve the Defendants at the addresses listed in the caption of the Complaint by certified mail, return receipt requested, returnable according to law.