

IN THE SUPREME COURT OF OHIO

STATE EX REL. JONATHAN C. BEARD

1112 East Main Street
Columbus, OH 43204,

and

STATE EX REL. WILLIS E. BROWN

164 North Monroe Avenue
Columbus, OH 43203,

and

STATE EX REL. SUZANNE M. PATZER

1021 East Broad Street
Columbus, OH 43205,

and

STATE EX REL. WALTER M. PENN

358 Linwood Avenue
Columbus, OH 43205,

and

STATE EX REL. JOSEPH C. SOMMER

5672 Great Hall Court
Columbus, OH 43203,

and

STATE EX REL. ASAD Z. SHABAZZ

1332 Smith Road
Columbus, OH 43207.

and

**STATE EX REL. EVERYDAY PEOPLE FOR
POSITIVE CHANGE**

1112 East Main Street
Columbus, OH 43204.

Relators,

V.

and

**FRANKLIN COUNTY BOARD OF
ELECTIONS**

1700 Morse Road
Columbus, OH 43229,

Respondents. :

**RELATORS' AMENDED COMPLAINT IN MANDAMUS
TO COMPEL VOTER CONSIDERATION OF PROPOSED
AMENDMENTS TO COLUMBUS CITY CHARTER**

<p>Robert J. Fitrakis (0076796) FITRAKIS & GADELL-NEWTON, LLC 1021 East Broad Street Columbus, OH 43205 Phone: (614) 307-9783 Fax: (614) 929-3513 E-Mail: fgnlegal@gmail.com</p> <p><i>Attorney for Relators</i></p>	<p>Richard N. Coglianese (0066830)* <i>*Counsel of Record</i> Joshua T. Cox (0029860) Chief Counsel Charles P. Campisano (0095201) Assistant City Attorney 77 North Front Street, 4th Floor Columbus, OH 43215 Phone: (614) 645-7385 Fax: (614) 645-6949 E-Mail: rncoglianese@columbus.gov jtcox@columbus.gov jtcampisano@columbus.gov</p> <p><i>Attorneys for Respondents Shannon G. Hardin, Michael Stinziano, Elizabeth Brown, Mitchell J. Brown, Jaiza Page, Emmanuel V. Remy, and Priscilla R. Tyson</i></p> <p>Harold J. Anderson, III (0059777) Assistant Franklin County Prosecutor 373 South High Street, 13th Floor Columbus, OH 43215 Phone: 614-525-3520 Fax: 614-525-6102 E-Mail: handerson@franklincounty.gov</p> <p><i>Attorney for Respondent Franklin County Board of Elections</i></p>
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This action is brought in the name of the State of Ohio, on the relation of Jonathan C. Beard and Everyday People for Positive Change (“Relators”), who petition this Court for a writ of mandamus compelling the Respondents to submit Relators’ proposed amendment to the Columbus City Charter for a vote of the electors in the May 8, 2018 Primary Election.

NATURE OF THIS ACTION AND JURISDICTION

1. Relators invoke the jurisdiction of this Court under Article IV, Section 2(B) of the Ohio Constitution to hear original actions in mandamus.
2. Relators also invoke the jurisdiction of this Court under R.C. 2731.02, which provides that “[t]he writ of mandamus may be allowed by the supreme court . . . and shall be issued by the clerk of the court in which the application is made . . . on the information of the party beneficially interested.”
3. This is an expedited election proceeding under Sup. Ct. Prac. R. 12.08 for “prompt disposition of an original action relating to a pending election”.
4. Relators seek a writ of mandamus from this Court compelling the Respondents to submit Relators’ proposed amendment to the Columbus City Charter on the ballot for consideration by the electors in the May 8, 2018 Primary Election, which amends Sections 3, 4, 5, 6, 14, 17, 18, 20, 22, 41, and 46 of the Columbus City Charter to create ten city council districts, establish nomination requirements for candidates from districts, provide for election of council members from districts, reduce the number of council members elected at-large to three, regulate growth in council staffing, change the process for mid-term appointments to vacant council seats, create term limits, establish contribution limits for council elections, and provide public access television for

council elections. Relators also seek a judgment from this Court that the proposed charter amendment does not violate the “one-subject” rule.

5. Relators affirmatively state that they have acted with the utmost diligence in bringing this action, there has been no unreasonable delay or lapse of time in asserting their rights herein, and there is no prejudice to Respondents. (*See, e.g., State ex rel. Polo v. Cuyahoga Cty. Bd. of Elections*, 74 Ohio St.3d 143, 656 N.E.2d 1277 (1995).)

6. Due to the proximity of the May 8, 2018 Primary Election, where the Relators’ proposed amendment to the Columbus City Charter must appear on the ballot, the Relators lack an adequate remedy in the ordinary course of law. (*See, e.g., State ex rel. Greene v. Montgomery Cty. Bd. of Elections*, 121 Ohio St.3d 631, 2009-Ohio-1716, 907 N.E.2d 300.)

PARTIES

7. Relator Everyday People for Positive Change is an unincorporated association of individuals responsible for supervising, managing, and organizing the signature-gathering effort to certify the proposed charter amendment to the May 8, 2018 Primary Election ballot, forming a committee representing the petitioners of the proposed charter amendment, and supporting its passage by the electors.

8. Relators Jonathan C. Beard, Willis E. Brown, Suzanne M. Patzer, Walter M. Penn, Joseph C. Sommer, and Asad Z. Shabazz are residents and qualified electors of the City of Columbus, Ohio, and are residents and qualified electors of the State of Ohio. Relators are members of the committee formed by Everyday People for Positive Change under R.C. 3519.02 to represent petitioners of the proposed charter amendment, and authorized by Columbus City Charter Section 45-2 to represent the petitioners in all matters relating to such petitions.

9. Respondents Shannon G. Hardin, Michael Stinziano, Elizabeth Brown, Mitchell J. Brown, Jaiza Page, Emmanuel V. Remy, and Pricilla R. Tyson are the duly elected and acting members of the Columbus City Council and have the duty to submit proposed charter amendments that are legally sufficient to a vote of the electors of the city as prescribed by Columbus City Charter Section 45-1.

10. Respondent Franklin County Board of Elections is *sui juris*, is the duly established and acting election authority for Franklin County, Ohio under R.C. 3501.06, and has the legal duty to place proposed amendments to the Columbus City Charter that are legally sufficient on the ballot for a vote of the electors.

CLAIM FOR RELIEF

11. On February 6, 2018, the Relators filed a petition, including all separate part-petitions, with the Columbus City Clerk to place their proposed charter amendment on the May 8, 2018 Primary Election ballot. A true copy of the proposed charter amendment is filed herewith and incorporated herein as Exhibit A.

12. The process of amending the Columbus City Charter is prescribed by the Ohio Constitution and the Columbus City Charter itself. According to Article XVIII, Section 2 of the Ohio Constitution:

General laws shall be passed to provide for the . . . government of cities and villages; and additional laws may also be passed for the government of municipalities adopting the same; but no such additional law shall become operative in any municipality until it shall have been submitted to the electors thereof, and affirmed by a majority of those voting thereon . . .

13. Columbus City Charter Section 42-7 provides that “[a]ll separate part-petitions providing for a proposed . . . charter amendment shall be filed at the same time, as one instrument, with the city clerk. . . .”

14. Columbus City Charter Section 42-9 provides that:

Within ten days after filing, the city clerk shall cause copies of the petitions to be made, and shall forward the petitions to the elections authorities to validate the signatures on the petition and to the city attorney to advise on the legal sufficiency of the petition, based upon any applicable local, state or federal laws, rules or regulations . . . Validation of signatures shall be reported by the elections authority within ten days of their receipt of the petition. . . .

15. According to Columbus City Charter Section 45:

Proposed amendments to this charter may be submitted to the electors of the city by a two-thirds vote of the council and such submission shall be by ordinance. Proposed amendments to this charter shall be submitted by the council forthwith upon a petition signed by electors of the city equal to not less than ten percent of the total vote cast at the last preceding regular municipal election.

16. On February 13, 2018, Respondent Franklin County Board of Elections received Relators’ petition for their proposed charter amendment from the Columbus City Clerk.

17. On February 23, 2018, Respondent Franklin County Board of Elections certified that it examined the Relators’ petition for their proposed charter amendment and found that the petition contained 16,897 valid signatures. A true copy of the certification is filed herewith and incorporated herein as Exhibit B.

18. The petition filed by Relators with the Columbus City Clerk contained a sufficient number of valid signatures under Columbus City Charter Section 45 to place their proposed charter amendment on the May 8, 2018 Primary Election ballot.

19. According to Columbus City Charter Section 42-11, “Council action on a petition for any proposed ordinance, referendum, or charter amendment shall be by ordinance [upon] . . . determining the legal sufficiency thereof . . .”

20. According to Columbus City Charter Section 42-2:

Each petition for a proposal initiated by a citizen shall comply with the following as to form and with general laws of the state, unless otherwise provided by this charter or ordinance of council:

* * *

(d) A petition may only contain one proposal, which shall not address multiple or unrelated subject matters or questions of law.

21. On February 26, 2018, the Columbus City Attorney issued a memorandum in which he opined that:

. . . this petition violates the one-subject requirement. The proposed petition contains numerous separate and distinct topics, including, but no limited to the size and geographical representation of Council, appointments of Council vacancies, campaign finance and contribution limits, term limits, restrictions on the hiring of Council support staff, and the use of public access television. . . .

A true copy of this memorandum is filed herewith as Exhibit C but is not incorporated herein.

22. In his memorandum, the Columbus City Attorney further opined that “the petitions are deemed legally insufficient as to form and Council may reject forwarding these proposed amendments to the City Charter to the Board of Elections for voter consideration.”

23. On February 26, 2018, Respondents Shannon G. Hardin, Michael Stinziano, Elizabeth Brown, Mitchell J. Brown, Jaiza Page, Emmanuel V. Remy, and Pricilla R. Tyson, acting as Columbus City Council, enacted Ordinance No. 0640-2018 rejecting Relators’ petition for their proposed charter amendment and ordering that the amendment “shall not be submitted to the

electors of the City of Columbus.” This is described in a true copy of the Legislation Report filed herewith as Exhibit D but is not incorporated herein.

24. As a consequence, Respondent Franklin County Board of Elections will not place Relators’ proposed charter amendment on the May 8, 2018 Primary Election ballot.

25. Relators’ proposed charter amendment does not violate the “one-subject” rule as described in Columbus City Charter Section 42-2(d).

This Court said in *State ex rel. Dix v. Celeste*, 11 Ohio St.3d 141, 145, 464 NE2d 153, 157 (1984), that the one-subject rule is not violated unless “there is an absence of common purpose or relationship between specific topics in an act and when there are no discernible practical, rational or legitimate reasons for combining the provisions in one act”. Also, this Court has supported taking a liberal view in interpreting what such a single general purpose or object may be. *State ex rel. Ohio Liberty Council v. Brunner*, 125 Ohio St.3d 315, 2010-Ohio-1845, 928 N.E.2d 410, ¶42.

26. This Court further said in *State ex rel. Hinkle v. Franklin Cty. Bd. of Elections*, 62 Ohio St.3d 145, 147-148, 580 NE2d 767, 769-770 (1991), that the one-subject rule “allows a plurality of topics” if it does not show a manifestly gross and fraudulent violation of this rule.

27. The topics encompassed by Relators’ proposed charter amendment have a common purpose, which is the comprehensive improvement of Columbus City Council.

28. There are practical, rational, and legitimate reasons for combining the topics encompassed by Relators’ proposed charter amendment, which are:

- a. To make Columbus City Council a more normal size for a city with the population of the City of Columbus;
- b. To create a more representative Columbus City Council that balances the needs of the populace across the City of Columbus and ensures that all of its voices are heard;

- c. To create a multi-partisan, independent apportionment board for developing a new apportionment plan after every decennial census;
- d. To improve the way by which Columbus City Council fills mid-term vacancies by appointment;
- e. To structure fair and competitive elections for Columbus City Council;
- f. To reduce the needlessly anti-competitive requirement of 1,000 signatures on nominating petitions for election to Columbus City Council to 500 signatures;
- g. To promote fiscal responsibility by limiting the number of new hires for Columbus City Council staff;
- h. To provide electors with more and better information about Columbus City Council candidates, their backgrounds, and their issue positions through public access television; and
- i. To impose term limits so that Columbus City Council members do not become entrenched and less responsive to the electorate.

29. The Respondents have not asserted that Relators' proposed charter amendment shows a manifestly gross and fraudulent violation of the one-subject rule.

30. Respondents Shannon G. Hardin, Michael Stinziano, Elizabeth Brown, Mitchell J. Brown, Jaiza Page, Emmanuel V. Remy, and Pricilla R. Tyson, acting as Columbus City Council, have a duty under the Columbus City Charter to submit Relators' proposed amendment to the Columbus City Charter for a vote of the electors in the May 8, 2018 Primary Election.

31. Respondent Franklin County Board of Elections has a duty under the laws of the State of Ohio to place Relators' proposed amendment to the Columbus City Charter on the ballot for a vote of the electors in the May 8, 2018 Primary Election.

32. Relators have a clear legal right under the Columbus City Charter and the Constitution and laws of the State of Ohio to have their proposed amendment to the Columbus City Charter placed on the ballot for a vote of the electors in the May 8, 2018 Primary Election.

33. Relators lack an adequate remedy in the ordinary course of law.

PRAYER FOR RELIEF

WHEREFORE, the Relators respectfully pray that this Court issue judgments, orders, and/or writs granting them the following relief:

a. A judgment or order that Relators' proposed amendment to the Columbus City Charter does not violate the "one-subject" rule and is legally sufficient;

b. A writ of mandamus ordering Respondents Shannon G. Hardin, Michael Stinziano, Elizabeth Brown, Mitchell J. Brown, Jaiza Page, Emmanuel V. Remy, and Pricilla R. Tyson, acting as Columbus City Council, to submit Relators' proposed amendment to the Columbus City Charter for a vote of the electors in the May 8, 2018 Primary Election;

c. A writ of mandamus ordering Respondent Franklin County Board of Elections to place Relators' proposed amendment to the Columbus City Charter on the ballot for a vote of the electors in the May 8, 2018 Primary Election;

d. An alternative writ of mandamus ordering the relief set forth above;

e. A peremptory writ of mandamus ordering the relief set forth above after the Respondents answer this complaint;

f. A judgment or order assessing the costs of this action against the Respondents;

g. A judgment or order awarding the Relators their reasonable attorneys' fees, costs, and expenses; and

h. A judgment or order granting the Relators such other relief that this Court deems just and proper.

Respectfully submitted,

/s/Robert J. Fitrakis

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Attorney for Relators

CERTIFICATE OF SERVICE

Pursuant to S. Ct. Prac. R. 12.08(C), I hereby certify that a true copy of the foregoing Amended Complaint has been sent on March 12, 2018 by email to:

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