

IN THE SUPREME COURT OF OHIO

STATE EX REL. MARK A. HARRIS, <i>et al.</i>	)	CASE NO. 2018-1129
	)	
Relators	)	
	)	
vs.	)	
	)	
MATT RUBINO, in his official capacity as	)	
Director of Finance of the City of Solon, <i>et</i>	)	
<i>al.</i>	)	
	)	
Respondents	)	
	)	

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RESPONDENTS MATT RUBINO, SOLON CITY COUNCIL AND CITY OF SOLON,  
OHIO'S OPPOSITION TO RELATOR'S APPLICATION FOR ATTORNEY FEES

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Now come Respondents, Matt Rubino, Solon City Council and City of Solon, Ohio (hereinafter referred to collectively as the "Solon Respondents"), by and through undersigned counsel, and for their opposition to Relator's Application for Attorneys' Fees, Costs and Expenses provides as follows.

The Solon Respondents respect and absolutely shall abide by the Honorable Court's opinion and have taken all steps necessary to implement and complete its actions necessary to comply with the Court's Order. The Solon Respondents will continue to continue complete all actions necessary to comply with the Court's order, and provide the following for the Court's consideration concerning the Court's allocation of Relator's attorney fees, costs, and expenses. The following is important to the Court's consideration in light of the fact that Relators are seeking in excess of One Hundred Thousand Dollars (\$100,000.00) in fees, costs and expense.

Relators submitted their Taxpayer Demand Letter on July 20, 2018 to Law Department for the City of Solon. Relators provided two arguments, in the alternative, within it demand letter. In its initial argument, Relator' letter provided, "[A]s written, Article XIV of the Solon Charter cannot be applied to a zoning ordinance proposed by initiative petition without requiring two elections to be held in order for the proposed ordinance to take effect, and further requiring two elections is unconstitutional."

In the alternative, Relators argued in their taxpayer demand letter that Respondent Solon City Council, not Respondent Rubino, should submit the initiative petition to the Cuyahoga County Board of Elections either without the necessity of legislative actions (by motion) or by acting "forthwith" as required in Charter Amendment matters. Relators' letter provided, "If the City, despite our objection, still applies Article XIV of the Solon Charter to the proposed ordinance, there is nothing in the Solon Charter nor in the Ohio Revised Code that requires the

City Council to act by ordinance to submit the initiated ordinance for placement on a regularly scheduled election ballot. Indeed, the Charter is entirely silent as to the mechanism to be used to submit initiated zoning ordinances for placement on the ballot. Given this silence, City Council can submit the initiated ordinance by way of a motion." The major thrust of the taxpayer demand was that Respondent Council, not Respondent Rubino act. Relators argued that Rubino would only be required to act if the Court found Solon Charter Article XIV unconstitutional.

This Honorable Court granted the writ in part, upon its determination that, "[T]hese provisions of the Solon city charter [Article XIV] do not clearly and expressly conflict with R.C. 731.28. The charter provisions do not set forth a procedure for submitting a zoning initiative petition to the city or for verifying the petition's signatures . . . [T]he terms of the charter reflect the somewhat inartful insertion of a clause regarding initiative petitions into what had been solely automatic-referendum provisions. The resulting provisions do not clearly and expressly conflict with R.C. 731.28's requirement that the city auditor exercise his limited, discretionary authority to certify the validity and sufficiency of the initiative petition to the board of elections."

As such, this Honorable Court's granting of Relator's writ was not premised on unconstitutionality of Charter Article XIV, nor on the actions of Council as argued by Relators. The Solon Respondents actions in defense of its Charter were conducted in good faith. Under these circumstances, an award of attorney fees, costs and expenses in excess of \$100,000.00 is unwarranted and should be rejected by the Court.

In essence, the Solon Respondents respectfully ask this Court to review the specific demands and arguments raised in the Taxpayer Demand Letter and see that the Court did not rule on those particular demands and arguments but rather on new issues raised by the Relators thereafter. Further, the City was faced with a challenge of unconstitutionality of its Charter

which should in good faith be defended. As such, please note that the City did not act in bad faith or “illogically” but rather only in good faith to the issues presented by the Taxpayer Demand Letter.

WHEREFORE, Solon Respondents respectfully request that this Honorable Court take consideration of the forgoing in establishing it Order for attorney fees, costs, and expenses in this matter.

Respectfully submitted,

/s Thomas G. Lobe

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## **CERTIFICATE OF SERVICE**

I certify that a copy of the foregoing Answer was served by e-mail service this 20th day of September, 2018 upon:

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Respectfully submitted,

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