

Case No. _____

**Supreme Court
of the State of Ohio**

STATE OF OHIO *ex rel.* THOMAS E. BRINKMAN, JR.,

Relator,

v.

THOMAS HEEKIN, Judge, Hamilton County Court of Common Pleas,

Respondent.

Original Action in Procedendo

VERIFIED COMPLAINT FOR WRIT OF PROCEDENDO

Counsel for Relator:

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Supreme Court of the State of Ohio

STATE OF OHIO <i>ex rel.</i> THOMAS E. BRINKMAN, JR.	:	Case No. _____
c/o Curt C. Hartman, Legal Counsel	:	
7394 Ridgepoint Drive, Suite 8	:	
Cincinnati, Ohio 45230,	:	
	:	
Relator,	:	VERIFIED COMPLAINT
	:	FOR WRIT OF
v.	:	PROCEDENDO
	:	
THOMAS HEEKIN, Judge	:	
Hamilton County Court of Common Pleas	:	
1000 Main Street, Room 595	:	
Cincinnati Ohio 45202,	:	
	:	
Respondent.	:	

Comes now the STATE OF OHIO, by and on relation to Relator THOMAS E. BRINKMAN, JR., and alleges as follows:

1. This is original action for a writ of procedendo to direct Respondent to proceed to rule upon and issue judgment or a decision on the cross-motions for summary judgment which have been fully brief as of November 1, 2019, and for which oral argument was conducted on December 4, 2019, in the case currently pending in Hamilton County Common Pleas Court styled *Cincinnati ex rel. Brinkman v. Cincinnati* and assigned Case No. A-19-03779 (the “*Brinkman Lawsuit*”), and which has been consolidated into the case styled *Cincinnati v. State of Ohio* and assigned Case No. A-19-2786 (the “*R.C. 9.68 Lawsuit*”).

2. On or about June 6, 2019, the CITY OF CINCINNATI, together with Mayor John Cranley in his official capacity, commenced the *R.C. 9.68 Lawsuit*, challenging the constitutionality of certain amendments to R.C. 9.68.

3. Recognizing that the filing of the *R.C. 9.68 Lawsuit* was without authorization from the Cincinnati City Council, THOMAS BRINKMAN tendered a *Taxpayer Demand Letter* to the then-Cincinnati City Solicitor wherein he sought to have her bring an action pursuant to R.C. 733.56 *et seq.* to restrain the further abuse of corporate powers by the filing and prosecution of the *R.C. 9.68 Lawsuit*. See R.C. 715.03 (“[a]ll municipal corporations have the general powers mentioned in sections 715.01 to 715.67, inclusive, of the Revised Code, and the legislative authority of such municipal corporations may provide by ordinance or resolution for the exercise and enforcement of such powers”); R.C. 715.01 (“[e]ach municipal corporation is a body politic and corporate [which may] sue and be sued”).

4. In response to the *Taxpayer Demand Letter*, Cincinnati City Solicitor expressly denied the request to bring the appropriate injunctive action.

5. In light of the refusal of the Cincinnati City Solicitor to bring the action contemplated and authorized by R.C. 733.56, THOMAS BRINKMAN filed the *Brinkman Lawsuit* wherein he sought, *inter alia*, an injunction to restrain the further abuse of corporate powers by enjoining, *inter alios*, the City of Cincinnati from continuing to prosecute the *R.C. 9.68 Lawsuit*, as well as a declaratory judgment that the authority for filing and prosecuting all lawsuits by or on behalf of the municipal corporation must first be given by the Cincinnati City Council.

6. On August 15, 2019, in the *Brinkman Lawsuit*, the City of Cincinnati and its mayor moved to consolidate the *Brinkman Lawsuit* into the *R.C. 9.68 Lawsuit*.

7. Notwithstanding Mr. BRINKMAN not being afforded an opportunity to file any opposition to the motion to consolidate, the judges in the *Brinkman Lawsuit* and the *R.C. 9.68 Lawsuit* ordered the cases consolidated before any memorandum in opposition was due under

Ohio R. Civ. P. 6(C)(1). Thus, all further proceeding progressed under the *R.C. 9.68 Lawsuit*. The consolidated actions shall be referred herein further as the “*Brinkman/R.C. 9.68 Lawsuit*”.

8. Respondent THOMAS HEEKIN is the judge of the Hamilton County Common Pleas Court presiding over the *Brinkman/R.C. 9.68 Lawsuit*.

9. In September and October 2019, Mr. BRINKMAN and the City of Cincinnati and its mayor filed and briefed cross-motions for summary on the narrow and sole legal issue presented by Mr. BRINKMAN’s taxpayer claim in the *Brinkman/R.C. 9.68 Lawsuit*, *i.e.*, whether a municipal corporation and its officials possess the legal authority to file a civil lawsuit on behalf and in the name of a municipal corporation or its officials without authorization by the legislative authority, *i.e.*, the village or city council, notwithstanding the provisions of state law and municipal ordinance by which the Cincinnati City Council expressly authorized the filing of such lawsuits in certain instances (but not the circumstances under which the *R.C. 9.68 Lawsuit* was filed).

10. By November 1, 2019, the cross-motions for summary judgment were fully briefed.

11. On December 4, 2019, Judge HEEKIN held and conducted oral arguments on the cross-motions for summary which were limited to the narrow legal issue presented by Mr. BRINKMAN’s taxpayer claim in the *Brinkman/R.C. 9.68 Lawsuit*, *i.e.*, whether a municipal corporation and its officials possess the legal authority to file a civil lawsuit on behalf and in the name of a municipal corporation or its officials without authorization by the legislative authority, *i.e.*, the village or city council, notwithstanding the provisions of state law and municipal ordinance by which the Cincinnati City Council expressly authorized the filing of such lawsuits in certain instances (but not the circumstances under which the *R.C. 9.68 Lawsuit* was filed).

12. Following the oral argument on December 4, 2019, Judge HEEKIN indicated he would take the matter under advisement.

13. In an email dated January 7, 2020, Staff Attorney for Judge HEEKIN notified all counsel in the case that a case management conferenced scheduled for the next day would be rescheduled. In so doing, Staff Attorney for Judge HEEKIN apprised all counsel that “Judge Heekin received the transcript from the oral argument held last month and hopes to finish his written decision by this week.”

14. And since January 7, 2020, the Staff Attorney for Judge HEEKIN has been reminded on multiple occasions that the parties are awaiting a decision on the outstanding cross-motions for summary judgment that were fully briefed as of November 1, 2019, and for which oral argument was conducted on December 4, 2019.

15. Even though it has now been over 16 months since the parties had fully briefed the cross-motions for summary judgment on whether a municipal corporation and its officials possess the legal authority to file a civil lawsuit on behalf and in the name of a municipal corporation or its officials without authorization by the legislative authority, Judge HEEKIN has failed to issue any ruling thereon and notwithstanding the indication from early January 2020 that Judge HEEKIN “hopes to finish his written decision by this week.”

16. “A writ of procedendo is appropriate when a court has either refused to render a judgment or has unnecessarily delayed proceeding to judgment.” *State ex rel. CNG Financial Corp. v. Nadel*, 111 Ohio St.3d 149, 855 N.E.2d 473, 2006-Ohio-53441[20 (2006); accord *State ex rel. Weiss v. Hoover*, 84 Ohio St.3d 530, 532, 705 N.E.2d 1227 (1999).

17. Ohio R. Sup. 40(A)(3) provides that “[a]ll motions shall be ruled upon within one hundred twenty days from the date the motion was filed, except as otherwise noted on the report forms.”

18. “Sup. R. 40(A)(3) imposes on trial courts a duty to rule on motions within 120 days.” *State ex rel. Brown v. Luebbers*, 137 Ohio St.3d 542, 2013-Ohio-5062 ¶14.

19. “Although the Rules of Superintendence do not provide litigants with a right to enforce Sup.R. 40, the rule does guide this court in determining whether a trial court has unduly delayed ruling on a motion for purposes of ruling on a request for an extraordinary writ.” *State ex rel. Culgan v. Collier*, 135 Ohio St.3d 436, 988 N.E.2d 564, 2013-Ohio-1762 ¶11.

20. With respect to the now-consolidated *Brinkman/R.C. 9.68 Lawsuit*, the delay of over 16 months since all matters have been fully briefed and over 15 months since oral argument relative to the narrow legal issue asserted by Mr. BRINKMAN constitutes and represents an unwarranted and unreasonable delay by Judge HEEKIN so as to entitle Mr. BRINKMAN to the issuance of the request writ of procedendo. *See State ex rel. Bunting v. Haas*, 102 Ohio St.3d 161, 807 N.E.2d 359, 2004-Ohio-2055 ¶9 (2004)(with respect to a petition for post-conviction-relief “trial court judge has not yet ruled on his petition although it is now over one year after Bunting filed it. Nor does the record reflect reasons for the delay. As in [*State ex rel. Turpin v. Stark Cty. Court of Common Pleas*, 8 Ohio St.2d 1, 2, 220 N.E.2d 670 (1966)], without any evidence justifying the passage of time without a ruling, this delay appears excessive. And procedendo is the appropriate remedy to rectify a violation of the 180-day requirement of Crim.R. 35(C)”; *State ex rel. Hunter v. Hastings*, 2006-Ohio-806 ¶3 (8th Dist. 2006)(“[a] lapse of more than nine months, since the filing of the pending motion, constitutes an unreasonable delay which requires that this court issue a writ of procedendo on behalf of Hunter”).

21. Relators lack any adequate remedy at law to obtain a ruling on the still pending and outstanding cross-motions for summary judgment matters in the now-consolidated *Brinkman/R.C. 9.68 Lawsuit*.

WHEREFORE, the STATE OF OHIO, by and on relation to the Relator, hereby prays to this Court for the issuance, in its name, of a peremptory writ of procedendo or, alternatively, an alternative writ of procedendo, directing Respondent to forthwith proceed to rule upon and issue judgment on the cross-motions for summary judgment in the now-consolidated *Brinkman/R.C. 9.68 Lawsuit* as presented by Relator THOMAS BRINKMAN, the City of Cincinnati and the mayor of the City of Cincinnati, addressing whether a municipal corporation and its officials possess the legal authority to file a civil lawsuit on behalf and in the name of a municipal corporation or its officials without authorization by the legislative authority.

Respectfully submitted,

/s/ Curt C. Hartman
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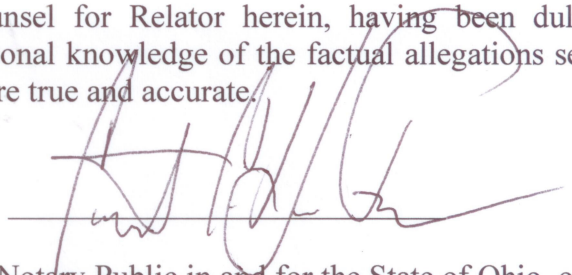
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Counsel for
Relator Thomas E. Brinkman, Jr.

VERIFICATION

State of Ohio, County of Clermont ss:)

Comes now, Curt C. Hartman, legal counsel for Relator herein, having been duly cautioned and sworn, and declares that he has personal knowledge of the factual allegations set forth above in the Complaint and such allegations are true and accurate.



Sworn to and subscribed before me, a Notary Public in and for the State of Ohio, on this the 26th day of March 2021.



JULIA WEBER
Notary Public, State of Ohio
My Commission Expires
July 7, 2024

