




Zach Klein

CITY ATTORNEY

CITY ATTORNEY'S OFFICE • COLUMBUS OHIO

MEMORANDUM

TO: Andrea Blevins, CMC, City Clerk
All Members of City Council

FROM: Zach Klein, City Attorney 

DATE: February 26, 2018

RE: Legal Sufficiency Review of Charter Amendment Petition Filing

The City Clerk has forwarded to my office for review a copy of a charter amendment petition filed with her office on February 6, 2018, entitled by the petitioners as "To enact electoral system and related administrative changes to Columbus City Council by amending Sections 3, 4, 5, 6, 14, 17, 18, 20, 22, 41 and 46 of the 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."

As required by Section 42-9 of the City Charter, upon the filing of a charter amendment petition, the City Clerk is required to "forward the [part] 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." City Charter Section 42-9 further requires that upon the City Clerk's receipt of the elections authority's report regarding signature validation and the City Attorney's findings regarding legal sufficiency, the Clerk is to forward the same to City Council forthwith. City Council then has the duty under City Charter Section 42-11 to consider the petition's legal sufficiency as defined by City Charter Section 42-2 and in doing so may not "consider the subject matter of a petition when determining the legal sufficiency thereof, except as required to assure compliance with applicable provisions of this charter, general laws of the state, or ordinance of council."

In determining legal sufficiency as to the form of the petitions, City Charter Section 42-2 is the controlling provision. Failing to comply with the requirements of this section can warrant not placing any proposed Charter amendment on the ballot for consideration. That section reads as follows:

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:

- (a) A petition may be circulated in separate part-petitions, but shall be uniform in character.
- (b) Each part-petition shall be circulated and submitted as a single instrument.
- (c) The petition and parts thereof shall be printed in a single, uniform color.
- (d) A petition may only contain one proposal, which shall not address multiple or unrelated subject matters or questions of law.
- (e) The title of the proposal shall clearly and without argument describe the proposed ordinance, referendum, recall, or charter amendment, and such title shall be placed, in at least fourteen-point font, on the top of each page of a part-petition, which pages shall be numbered sequentially.
- (f) A petition shall contain a full and correct copy of any proposed ordinance, referendum, or charter amendment, with no summary, argument or other ancillary information regarding the proposal placed thereon, unless otherwise required by this charter or ordinance of council.
- (g) On each page of a part-petition where voters' signatures may be placed, the following shall be printed, in at least twelve-point font, below the title of such proposal: "NOTICE: Whoever knowingly signs this petition more than once; signs a name other than one's own on this petition, except as provided by general laws of the state; or signs this petition when not a qualified elector of the City of Columbus, is liable to prosecution."
- (h) The following sentence shall appear in the circulator's statement provided for by general law: "I am provided or promised moneys or things of value to circulate this petition by (Name and address of employer)."

The subject petition complies with these form requirements and is legally sufficient, with the notable exception of Section 42-2(d), which provides that "[a] petition may only contain one proposal, which shall not address multiple or unrelated subject matters or questions of law." This is commonly known as the single-subject rule.

In determining compliance with City Charter Section 42-2(d)'s single-subject requirement, an examination includes the Columbus City Charter itself and associated interpretations, as well as the similar state constitutional and statutory requirements. See Ohio Constitution, Article II, Section 15(D) ("[n]o bill shall contain more than one

subject”); R.C. 3519.01(A) (“[o]nly one proposal of law or constitutional amendment to be proposed by initiative petition shall be contained in an initiative petition”).

Beginning with Ohio state constitutional and statutory requirements, the Ohio Supreme Court has set forth the following test in examining the single-subject rule:

"[T]he applicable test for determining compliance with the separate-vote requirement of Section 1, Article XVI is that 'a proposal consists of one amendment to the Constitution only so long as each of its subjects bears some reasonable relationship to a single general object or purpose.' (Emphasis sic.) 'Thus, where an amendment to the Constitution relates to a single purpose or object and all else contained therein is incidental and reasonably necessary to effectuate the purpose of the amendment, such amendment is not violative of the provisions of Section 1, Article XVI'. Courts have generally taken 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, ¶42, quoting *State ex rel. Willke v. Taft*, 107 Ohio St. 3d 1, 2005-Ohio-5303, at ¶ 34 (internal citations omitted).

However, “when 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,” a petition does not satisfy the single subject requirement. *State ex rel. Dix v. Celeste*, 11 Ohio St. 3d 141, 145 (1984). For example, in *Hinkle* the Ohio Supreme Court found that a bill modifying the state’s judiciary system and the local liquor option election did not contain a single subject under the test. *State ex rel. Hinkle v. Franklin Cty. Bd. of Elections*, 62 Ohio St. 3d 145, 147-49 (1991). Similarly, the Tenth District Court of Appeals struck down legislation which eliminated a judgeship, re-organized the mayors’ courts, and contained a texting-while-driving provision, finding that only the first two provisions shared a common relationship of regulating the organization and structure of Ohio's statutory courts. *Vill. of Linndale v. State*, 2014-Ohio-4024, ¶¶ 10-19 (10th Dist.).

In applying this general guidance on the single-subject rule to the charter amendment petition before me, it is my opinion that this petition violates the single-subject requirement. The proposed petition contains numerous separate and distinct topics, including, but not limited to the size and geographical representation of Council, appointments for Council vacancies, campaign finance and contribution limits, term limits, restrictions on the hiring of Council support staff, and the use of public access television. There is no practical or rational reason to combine these disparate topics into a single petition, and the inclusion of them all into one petition is likely to lead to voter confusion. Moreover, given the distinct and individual policy proposals being lumped into a single petition, voters fail to get the opportunity to separately decide the individual merits of these different and unrelated ideas.

A primary subject matter of the petition deals with the size and composition of City Council by amending Sections 5 and 6 of the City Charter. The petition proposes enlarging City Council from seven to thirteen members and replacing its current at-large elected membership with the election of ten of the thirteen members by districts. The petition also changes the process for appointments to vacant council seats.

Additionally, the proposed amendments to Section 41-1 also generally address the separate subject of campaign finance, providing for, among other things, campaign contribution limits. The petition further compels City Council to require "significant low-cost access to broadcast time" on public access television stations for council candidates. How candidates raise money and their access to public television do not relate to each other, let alone bear any potential nexus to the number of City Council members elected and whether they represent districts or are chosen at-large. Importantly, campaign finance restrictions affect both candidates who become members of City Council and those who ultimately do not, as well as affecting the rights of citizens who want to contribute to a campaign.

The petition goes even further by also containing a provision implementing term limits on Council members. Term limits serve as a prerequisite or qualification for office, *see generally United States Term Limits v. Thornton*, 514 U.S. 779, 115 S.Ct. 1842, 131 L.Ed.2d 881 (1995), and again bears no rational relationship to the size and geographical representation of Council, how elections are financed, or the parameters of whether a candidate gets guaranteed airtime on public access television.

Finally, the petition would limit the size of City Council staff by authorizing each Council member to employ only four personnel. Perhaps this is the most disjointed provision in the various charter amendments proposed by the petition. The size of the staff for City Council is an administrative and budgetary matter. Its inclusion is further evidence of the absence of a common purpose and has no legitimate relationship to the other varying amendment topics.

Finding the petition to be in violation of the single subject rule is in keeping with prior interpretations and practice. Both City Charter Section 42-2(d)'s single-subject requirement as to petition form and Section 42-9's review of legal sufficiency as to petition form were born out of the voter-approved City Charter amendments in 2014. Since the adoption of these amendments, single-subject determinations have been required in various petition submissions. For example, this same petition was reviewed pursuant to City Charter Section 42-5 and deemed legally insufficient as to form by previous Columbus City Attorney Richard C. Pfeiffer for violating City Charter Section 42-2(d)'s single-subject petition requirement. Nonetheless, these petitioners proceeded to collect signatures using the flawed petition form.

Similarly, the Columbus City Charter has had a single subject requirement since 1914 for legislation introduced and passed by Council. City Charter, Section 19. Historically, Council has taken this requirement seriously and has broken complex legislative actions

into discrete ordinances. *See, e.g.*, Ordinance Nos. 0084-2016, 0087-2016 and 0086-2016 (separating the issues of legislative agent disclosure, campaign finance disclosure, and candidate/elected official financial disclosure into three ordinances versus lumping them into a single ordinance under the purview of ethics reform). In demanding no less (or no more) from the proponents of an initiated charter amendment under Charter Section 42-2 than Council has demanded of itself, Council would be acting consistently with its historic approach to single subject should it determine that the petition violates the Charter.

Thus, given past practice of adhering to the City Charter's single-subject requirement, and the deference that exists by the Columbus City Attorney to interpret Columbus' Charter, *see* Columbus City Charter Sections 67 and 70 (city attorney is counsel for the city and in doing so can render legal opinions), I believe that, in addition to violating the limitations and restrictions of Ohio state constitutional and statutory single-subject requirements, the petitions also fail to comply with the City's own Charter requirements of the single-subject rule. Columbus has the authority to interpret, and duty to follow, its own Charter so long as in doing so it does not run afoul of any federal or state constitutional requirements. *See, e.g., State ex rel. Hackworth v. Hughes*, 97 Ohio St. 3d 110, 114 (2002) (pertinent statutory requirements that do not conflict with the Ohio Constitution and the city charter must be satisfied before the city council's duty to submit a charter amendment to the voters arises).

In sum, pursuant to Columbus City Charter Sections 42-2, 42-9, and 42-11, as the Columbus City Attorney, I have the legal obligation to review the submitted petitions for legal sufficiency as to form, and in doing so, am required to make a determination as to specifically relates to any violation of the single-subject rule. As stated above, the petition addresses multiple and unrelated subject matters, despite this defect having been identified in former City Attorney Pfeiffer's May 18, 2017 pre-circulation review memorandum. It is my opinion that the proposed petition continues to violate the single-subject requirement of the City Charter; therefore, 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.