



ZACH KLEIN

CITY ATTORNEY

CITY ATTORNEY'S OFFICE • COLUMBUS OHIO

MEMORANDUM

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

FROM: Zach Klein, City Attorney *ZK/JS*

DATE: July 9, 2018

RE: Review of Initiative Petition—"Community Bill of Rights"

As required by Section 42-9 of the City Charter, the City Clerk has forwarded to me a copy of an initiative petition filed with her office on June 26, 2018, entitled by the petitioners as: "To Establish a Community Bill of Rights for Water, Soil, and Air Protection and to Prohibit Gas and Oil Extraction and Related Activities and Projects." I am required by that same section to "advise on the legal sufficiency of the petition, based upon any applicable local, state or federal laws, rules or regulations." Further, Section 42-11 provides that "[n]o city officer may 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 a memorandum dated July 6, 2017, former City Attorney Pfeiffer reported to Council that he had conducted the initial review of the pre-circulation filing of this petition as required by Section 42-5 of the City Charter and opined that it did address a single subject and did meet the requirements as to form set forth in Section 42-2 of the City Charter. The form and content of the petition as filed on June 26, 2017 are the same as that pre-circulation filing, and I find no new deficiency in the form of the petition that would render it legally insufficient.

With respect to the substance of the petition, I again note that consideration of the subject matter of a petition is prohibited by City Charter Section 42-11 "except as required to assure compliance with applicable provisions of this charter, general laws of the state, or ordinance of council." Determination of compliance with the single subject requirement would fall under this exception language. However, Section 42-11 does not alter the long-established law that a city council's constitutional authority to review the sufficiency of petitions is limited to matters of form, not substance. See, e.g., *Morris v. City Council of Macedonia*, 71 Ohio St. 3d 52, 55 (1994). In this respect, a city council's authority to determine if all applicable statutory requirements have been met is therefore more restricted than that of a board of elections. *Id.*; see also, *State ex rel. Norwood v. Hamilton Cnty. Bd. of Elections*, 2016-Ohio-5919, ¶7. Thus, substantive issues such as

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All Members of City Council
Andrea Blevins, City Clerk
July 9, 2018
Page 2 of 2

the constitutionality of a proposal, whether the subject is one a municipality is authorized by law to control by legislative action, or the petition circulator's compliance with R.C. 3501.38(F), are not within the scope of municipal officials.

With this limited discretion in mind, in determining the legal sufficiency of the subject petition, neither I nor City Council may consider the fact that the Ohio Supreme Court has unequivocally ruled (albeit in a 4-3 decision) that the Home Rule Amendment to the Ohio Constitution "does not allow a municipality to discriminate against, unfairly impede, or obstruct oil and gas activities and production operations that the state has permitted under R.C. Chapter 1509." *State ex rel. Morrison v. Beck Energy Corp.*, 2015-Ohio-485, ¶34.¹ In fact, even though a board of elections has greater discretion to inquire into the sufficiency of a proposed ballot measure than municipal officials do, the Ohio Supreme Court found that the Mahoning County Board of Elections had improperly considered the constitutionality of a nearly identical "Community Bill of Rights" proposal in refusing to place that measure on the ballot. *State ex rel. City of Youngstown v. Mahoning County Bd. of Elections*, 2015-Ohio-3761.

In sum, it is my opinion, and City Council and the City Clerk are so advised, that the initiative petition filed with the City Clerk on June 26, 2018, entitled by the petitioners "To Establish a Community Bill of Rights for Water, Soil, and Air Protection and to Prohibit Gas and Oil Extraction and Related Activities and Projects" is legally sufficient as to form for purposes of Section 42-9 of the City Charter, provided the Franklin County Board of Elections determines that it contains the requisite number of valid signatures in accordance with Section 43 of the City Charter. To the extent this petition may have deficiencies related to the constitutionality of the proposal or to the inclusion of subjects that a municipality is not authorized by law to control by legislative action, those substantive issues are not within City Council's discretion to consider in your determination of the petition's sufficiency as required by City Charter Section 43-1.

¹ Prior to submission of the pre-circulation copy of this petition, the City Attorney's office specifically advised the petitioners of this decision and the City's legal obligation to comply with it, regardless of whether the subject proposal was initiated by citizen petition or by Council directly.