

IN THE HURON MUNICIPAL COURT
ERIE COUNTY, OHIO

STATE OF OHIO <i>Plaintiff,</i> v. STACY HINNERS <i>Defendant.</i>	Case No.: CRB1900126ABC Visiting Judge S. Dwight Osterud
MOTION TO CONVERT ORDER OF DISMISSAL	

Defendant Stacy Hinnners respectfully moves the Court for an order converting its previous dismissal of the charges against her to a dismissal with prejudice. Since this case was dismissed without prejudice, the City has replaced the city manager and law director who instigated Mrs. Hinnners’s arrest. The new law director has fired the prosecutor hired to pursue these misconceived charges¹ and renounced any intention of refiling them.²

The Court has the inherent authority to enter a dismissal with prejudice “where it is apparent that the defendant has been denied either a constitutional or a statutory right, the violation of which would, in itself, bar prosecution.”³ As explained in her motion to dismiss, selectively prosecuting Mrs. Hinnners for conduct the City has always permitted from those who aren’t engaged otherwise in protected speech violates her rights to free speech and equal protection under the First and Fourteenth amendments, requiring a pretrial dismissal of the charges.⁴

¹ Schrader letter to O’Shea, June 24, 2020 (“[Y]our services are terminated, effective immediately.”) (attached as Ex. 1).

² Schrader letter to Chandra, June 24, 2020 (“There are no charges pending against Ms. Hinnners, and the City has no present plans to seek any criminal charges.”) (attached as Ex. 2).

³ *State v. Sutton*, 64 Ohio App. 2d 105, 108 (Ohio Ct. App. 1979).

⁴ *United States v. P.H.E., Inc.*, 965 F.2d 848, 853 (10th Cir. 1992) (“[T]he First Amendment affords scant protection unless it is understood to include ‘a right not to be tried.’”); *United States v. Thomas*, 74 F.3d 701, 710 (6th Cir. 1996) (quoting *Bose Corp. v. Consumers Union of U.S., Inc.*, 466 U.S. 485, 505, 104 S. Ct. 1949, 80 L.Ed. 2d 502 (1984)) (“[C]ourt has a duty to conduct an independent review of the record ‘both to be sure that the speech in question actually falls within the unprotected category and to confine the perimeters of any unprotected category within acceptably narrow limits in an

Mrs. Hinners's motion provided hours of video footage demonstrating that other citizens routinely engage in the same conduct as Mrs. Hinners, but that Mrs. Hinners was singled out for prosecution because she had, only 24 hours earlier, filed a lawsuit to reverse secret payments to a City official. The City's opposition never disputed any of those facts. It merely asked the Court to let a jury decide whether to enforce Mrs. Hinners's rights and then sought a dismissal without prejudice.

Given the undisputed nature of the selective prosecution, the termination of the prosecutor responsible, and the City's lack of intent to pursue any further charges, Mrs. Hinners asks the Court to grant her motion, convert the dismissal of the charges to her to being with prejudice, and lift the hardship imposed when "charges have been kept hanging over the heads of citizens."⁵

Respectfully submitted,

THE CHANDRA LAW FIRM LLC

/s/ Subodh Chandra

Subodh Chandra (0069233)
Brian D. Bardwell (0098423)
The Chandra Law Building
1265 W. 6th St., Suite 400
Cleveland, OH 44113-1326
216.578.1700 Phone
216.578.1800 Fax
Subodh.Chandra@ChandraLaw.com
Brian.Bardwell@ChandraLaw.com
Attorneys for Stacy Hinners

effort to ensure that protected expression will not be inhibited."); *Pestrak v. Ohio Elections Com'n*, 670 F. Supp. 1368, 1378 (S.D. Ohio 1987), *opinion clarified*, 677 F. Supp. 534 (S.D. Ohio 1988), and *aff'd in part, rev'd in part*, 926 F.2d 573 (6th Cir. 1991) ("[S]ociety's interest in robust political debate are simply too important to sidestep judicial determination of whether speech violates the line between protected and unprotected speech."); *United States v. Hill*, 473 F.2d 759 (9th Cir. 1972) (denying writ to vacate pretrial, First Amendment-based dismissal of indictments); *United States v. Thompson*, 420 F.2d 536, 542 (3d Cir. 1970) (holding "defendant is entitled to have the indictment dismissed for constitutional infirmity"); *United States v. Head*, 317 F. Supp. 1138, 1140 (E.D. La. 1970) ("The judge has a duty to protect the constitutional rights of defendants who assert the protection of the First Amendment that requires him, when the issue is properly presented, to pass on the constitutional adequacy of the evidence before it can be submitted to the jury on the question whether the statute was violated.").

⁵ *United States v. Marion*, 404 U.S. 307, 317-18 (1971).

Certificate of Service

I certify that on July 2, 2020, this document was served on opposing counsel, City of Huron prosecuting attorney Michael Kaufman, as provided by Ohio Civ.R.P. 5(B)(2)(f).

/s/ Subodh Chandra

One of the attorneys for Stacy Hinners

CITY OF
HURON
A *great lake* PLACE

Todd A. Schrader, Esq.
Direct Dial No. (216) 535-4517
Email: LawDirector@HuronOhio.US

June 24, 2020

VIA EMAIL (Michael@moshea.com)
And REGULAR U.S. MAIL

Michael J. O'Shea, Esq.
700 W. St. Clair Ave., Suite 110
Cleveland, OH 44113

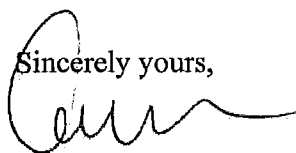
**RE: Termination of Special Prosecutor Services for the City of Huron,
re: Stacy Hinnners**

Dear Mr. O'Shea:

On behalf of the City of Huron, thank you for your services on behalf of the City in connection with your service as special prosecutor in the Stacy Hinnners matter, concerning the events at and after the City Council meeting of May 14, 2019.

Please be advised that, at the direction of the City Council and in my capacity as Law Director of the City of Huron, your services as special prosecutor are terminated, effective immediately.

Sincerely yours,



Todd A. Schrader
Law Director, City of Huron

TAS/sld

Cc: Client (Via Email Only)
Jeffrey S. Moeller, Esq. (Via Email Only)



CITY OF
HURON

A *great lake* PLACE

Todd A. Schrader, Esq.
Direct Dial No. (216) 535-4517
Email: LawDirector@HuronOhio.US

June 24, 2020

VIA EMAIL: Subodh.Chandra@ChandraLaw.com

Brian.Bardwell@ChandraLaw.com

And REGULAR U.S. MAIL

Subodh Chandra, Esq.
Brian D. Bardwell, Esq.
1265 W. 6th St., Suite 400
Cleveland, OH 44113

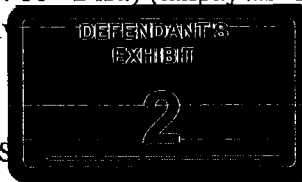
RE: Demand for Injunctive Suit Under O.R.C. 733.56 & .59
Re: Appointment of Michael J. O'Shea, Esq. as Special Prosecutor

Dear Messrs. Chandra and Bardwell:

As you know, I was recently appointed as the Law Director of the City of Huron. In that capacity, I am addressing your request (dated May 8, 2020) on behalf of several taxpayers (including Stacey Hartley) that a suit for injunctive relief be brought to preclude Michael J. O'Shea, Esq. from further action as the City's special prosecutor, as it pertains to a potential prosecution of Stacy Hinnners concerning the events at and after the City Council meeting of May 14, 2019.

Please be advised that, at the direction of the City and in my capacity as Law Director, Mr. O'Shea's services as special prosecutor in that matter have been terminated, effective immediately. There are no charges pending against Ms. Hinnners, and the City has no present plans to seek any criminal charges arising out of those events, or to retain Mr. O'Shea in relation to any.

This accomplishes all of the injunctive (forward-looking) relief that a taxpayers' suit under O.R.C. 733.56 & 733.59 might accomplish. Even when a taxpayers' demand is initiated, the municipality remains in charge of determining how to pursue or resolve the demand. City of Mentor ex rel. Deitrick v. City of Mentor, 2008-Ohio-2138 (Ohio App. 11th Dist.) (settlement of prior suit brought by city is res judicata as to subsequent taxpayer's suit); Laituri v. Nero, 741 N.E.2d 228 (Ohio App. 11th Dist. 2000); State ex rel. Obojski v. Perciak, 113 Ohio.St.3d 486 (2007); State ex rel. Roth v. Lewis, 128 N.E.2d 141 (Ohio App. 8th Dist. 1955) (subsequent suit by municipality moots pending taxpayers' suit). See also Ohioans for Concealed Carry v. City of Columbus, 2019-Ohio-3105 (Ohio App. 10th Dist.) (taxpayers' suit not an appropriate vehicle for abstract declaratory relief, only injunctive



VIA EMAIL: Subodh.Chandra@ChandraLaw.com

Brian.Bardwell@ChandraLaw.com

And REGULAR U.S. MAIL

Subodh Chandra, Esq.

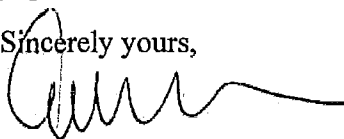
Brian D. Bardwell, Esq.

June 24, 2020

Page 2

Please feel free to contact me with any questions.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Todd A. Schrader". The signature is fluid and cursive, with a long horizontal stroke at the end.

Todd A. Schrader
Law Director, City of Huron

TAS/sld

Cc: Client (Via Email Only)

Jeffrey S. Moeller, Esq. (Via Email Only)