

IN THE SUPREME COURT OF OHIO

<p>STATE OF OHIO, ex rel. BARBARA A. LANGHENRY, Director of Law,</p> <p style="text-align: center;">Relator,</p> <p>v.</p> <p>PATRICIA J. BRITT, City Clerk, Clerk of Council,</p> <p style="text-align: center;">Respondent.</p>	<p>Case No. 2017-0753</p>
<p style="text-align: center;">PROPOSED INTERVENORS' COMBINED MOTION TO INTERVENE AND MOTION DISMISS FOR LACK OF JURISDICTION</p>	

Subodh Chandra (0069233)
Peter Pattakos (0082884)
The Chandra Law Firm LLC
The Chandra Law Building
1265 West 6th Street, Suite 400
Cleveland, Ohio 44113
Phone: (216) 578-1700 /Fax: (216) 578-1800
Subodh.Chandra@ChandraLaw.com
Peter.Pattakos@ChandraLaw.com

*Attorneys for Proposed Intervenor,
Diane S. Bufford, Jennifer A. Blakeney,
Verdia Y. Conner, Khalilah A. Worley,
and Linda C. Robinson*

Stephen W. Funk (0058506)
Roetzel & Andress, LPA
222 South Main Street, Suite 400
Akron, Ohio 44308
Phone: (330) 849-6602/Fax: (330) 376-4577
sfunk@ralaw.com

Attorney for Relator, Barbara A. Langhenry

R. Todd Hunt (0008951)
Aimee W. Lane (0071392)
Benjamin G. Chojnacki (0087401)
Walter Haverfield LLP
The Tower at Erieview
1301 East 9th Street, Suite 3500
Phone: (216) 781-1212/Fax: (216) 916-2372
rthunt@walterhav.com
alane@walterhav.com
bchojnacki@walterhav.com

Attorneys for Respondent, Patricia J. Britt

Proposed Intervenors Diane S. Bufford, Jennifer A. Blakeney, Verdiana Y. Conner, Khaliah A. Worley, and Linda C. Robinson (“petitioners”) are the Committee of Petitioners under Cleveland Charter § 49—“electors of the City who shall be officially regarded as [having] fil[ed] the petition” for referendum that is at issue in this lawsuit. For the reasons stated in the below Memorandum in Support, petitioners hereby move to intervene under Civ.R. 24(A) and R.C. 733.581, and also move for dismissal for lack of jurisdiction because this case 1) fails to present a justiciable controversy, and 2) fails to state a viable claim for mandamus relief.

Memorandum in Support

I. Issues Presented

1. Ohio courts only have jurisdiction to hear cases that present actual controversies between parties with interests that are genuinely adverse. Here, no real adversity exists where the parties have jointly stated that their primary goal is to obtain an advisory opinion to avoid “taking an unconstitutional action,” and where both parties are committed, by their own actions, to achieving the same outcome in this suit that is adverse to the rights of interested third parties. Should this Court dismiss this suit for lack of an actual controversy?
2. If a mandamus complaint’s allegations show that the real object sought is a declaratory judgment, the complaint does not state a viable claim in mandamus and must be dismissed for lack of jurisdiction. And mandamus relief is unavailable to parties who have an adequate remedy through a declaratory-judgment action. Here, the law director’s complaint seeks an expedited ruling on a constitutional question. Should this Court dismiss this suit for lack of jurisdiction?
3. Civ.R. 24 provides a right to intervene where existing parties do not adequately represent intervenors’ interests. R.C. 733.581 allows intervention to protect the public interest or to further justice. Here, the law director has instituted an apparently collusive lawsuit against the council clerk directed at denying applicants’ right to a referendum. Should applicants—who actually desire the relief nominally requested by the law director in her suit—be permitted to intervene to seek dismissal of this lawsuit and otherwise protect their interests in this case?

II. Introduction

After months of public outcry over a proposed ordinance intended to provide a nine-figure subsidy for a discretionary upgrade of Quicken Loans Arena, Cleveland City Council passed the ordinance, the mayor approved it, and petitioners immediately began to gather signatures to subject

it to a referendum. While petitioners were gathering signatures for the referendum, the mayor and council members doubled down on their political commitment to the ordinance, including with public statements that it represented “one of the best deals the City has ever made.” Within a month, petitioners nevertheless collected more than 20,000 signatures—more than three times the number required—and submitted their petition for referendum to the council clerk consistent with the requirements of Cleveland’s charter.

The clerk—as telegraphed by public statements by the council president issued days before—immediately refused to accept the petition, claiming that a referendum would “unconstitutionally impair an already executed and binding contract.” The council president shortly confirmed that this refusal was based on advice obtained from Cleveland’s law director, who now, by this lawsuit, is ostensibly seeking to compel the Clerk to do precisely what she had only weeks before advised the Clerk against.

These circumstances can only be explained by the mayor’s and council’s determination to avoid a lawful referendum on this controversial issue in an election year. After petitioners served a taxpayer demand letter on the law director to establish their standing to sue to compel council to accept their petition, the mayor and council understood that instituting a collusive lawsuit was the best chance they had to thwart petitioners’ right to a referendum. As the mayor and council president’s own public statements have confirmed, along with the self-defeating contents of the Complaint, this action is, at best, a collusive request for an advisory opinion.

Thus, this lawsuit must be dismissed, as Ohio courts only have jurisdiction to decide cases that present an “actual controversy between genuinely adverse parties.” *State ex rel. JobsOhio v. Goodman*, 133 Ohio St. 3d 297, 2012-Ohio-4425, 978 N.E.2d 153, ¶ 15. Dismissal is also required because the parties are seeking a declaratory judgment on a manufactured constitutional issue

(whether the Contract Clause applies) that this Court lacks jurisdiction to grant in a mandamus action. *Id.*

Petitioners are in the process of instituting separate proceedings in this Court to seek the mandamus relief to which they are entitled, to compel the Clerk to accept and process their referendum petition. But should the Court decline to dismiss this suit for lack of jurisdiction, the Court should at least permit petitioners to intervene as parties under Civ.R. 24(A) or R.C. 733.581, as explained fully below.

III. Statement of Facts

A. In the face of vigorous public opposition, Cleveland City Council passed Ordinance No. 305-17 proposing to commit an estimated \$88 million of City tax revenue to a discretionary renovation of Quicken Loans Arena.

On December 13, 2016, Cuyahoga County Executive Armond Budish, Cleveland Mayor Frank Jackson, and officials from the Cleveland Cavaliers NBA franchise and Destination Cleveland (Cleveland’s tourism bureau) announced a proposal for a \$140 million discretionary “facelift” of Quicken Loans Arena’s exterior and concourse area.¹ This plan—which called for City and County taxpayers to bear half of the construction costs and all of the financing costs for the project (with the total cost estimated to be upwards of \$240 million²)—was immediately met with vigorous public opposition generally based on the notion that these public funds could be put to better use.

By January 2017, Greater Cleveland Congregations (“GCC”), a multid denominational, coalition of faith communities and organizations in Cuyahoga County, had launched a formal “Not

¹ Sam Allard, *Everything You Need to Know About the Quicken Loans Arena Transformation*, Cleveland Scene (Dec. 14, 2016), <https://www.clevescene.com/scene-and-heard/archives/2016/12/14/everything-you-need-to-know-about-the-quicken-loans-arena-transformation> (accessed June 22, 2017), attached as **Exhibit 1**.

² Jay Miller, *Community groups air opposition to Quicken Loans Arena deal before Cleveland City Council*, Crain’s Cleveland Business (Apr. 4, 2017), <http://www.crawinscleveland.com/article/20170404/NEWS/170409931/community-groups-air-opposition-to-quicken-loans-arena-deal-before> (accessed June 22, 2017), attached as **Exhibit 2**.

All In” opposition campaign (a play on the Cavaliers’ “All In” slogan).³ When Cuyahoga County Council began considering proposed legislation to put the deal into effect, opponents packed their meetings, prompting Council President Dan Brady to confirm, in a widely reported statement, that February 14 marked “the most heavily attended meeting in the council’s six-year history.”⁴

As Cleveland City Council began its own deliberations, the Q deal continued to “draw fire”⁵ from opponents, as council was presented with “vocal and persuasive dissidence,” including from within its own ranks.⁶ Like the County Council meetings, “[City] Council Chambers were packed ... with resident opponents who more than once erupted in chants”⁷ directed at supporters of the deal. Yet despite this opposition, the proposal passed through both of the region’s legislative bodies as Cleveland Councilman Michael Polensek cynically predicted—“like a knife through butter.”⁸

³ Cleveland 19 Digital Team, *Greater Cleveland Congregations leaders say they are ‘Not All In,’* CBS Cleveland 19 News (Jan. 12, 2017), <http://www.cleveland19.com/story/34247363/greater-cleveland-congregations-leaders-say-they-are-not-all-in> (accessed Jun. 22, 2017), attached as **Exhibit 3**.

⁴ Sam Allard, *GCC Choreographs Masterful Opposition to Quicken Loans Arena Renovations*, Cleveland Scene (Feb. 15, 2017), <https://www.clevescene.com/scene-and-heard/archives/2017/02/15/gcc-choreographs-masterful-opposition-to-quicken-loans-arena-renovations> (accessed Jun. 22, 2017), attached as **Exhibit 4**.

⁵ **Ex. 2**, Jay Miller, *Community groups air opposition to Quicken Loans Arena deal before Cleveland City Council*, Crain’s Cleveland Business (Apr. 4, 2017), <http://www.craincleveland.com/article/20170404/NEWS/170409931/community-groups-air-opposition-to-quicken-loans-arena-deal-before> (accessed June 22, 2017).

⁶ Sam Allard, *Despite Opposition and Confusion, City Council Moves Q Deal Along to Next Stage, Will Surely Pass*, Cleveland Scene (Apr. 4, 2017), <https://www.clevescene.com/scene-and-heard/archives/2017/04/04/despite-opposition-and-confusion-city-council-moves-q-deal-along-to-next-stage-will-surely-pass> (accessed June 22, 2017), attached as **Exhibit 5**.

⁷ Sam Allard, *What Led to Councilman Brian Cummins’ Last-Minute Flip-Flop on the Q Deal?*, Cleveland Scene (Apr. 25, 2017), <https://www.clevescene.com/scene-and-heard/archives/2017/04/25/what-led-to-councilman-brian-cummins-last-minute-flip-flop-on-the-q-deal> (accessed June 22, 2017), attached as **Exhibit 6**.

⁸ **Ex. 5**, Sam Allard, *Despite Opposition and Confusion, City Council Moves Q Deal Along to Next Stage, Will Surely Pass*, Cleveland Scene (Apr. 4, 2017), <https://www.clevescene.com/scene-and-heard/archives/2017/04/04/despite-opposition-and-confusion-city-council-moves-q-deal-along-to-next-stage-will-surely-pass> (accessed June 22, 2017).

City Council passed the controversial ordinance on Monday, April 24. Councilman Brian Cummins, who cited pressure from the Mayor in justifying his vote for the deal, publicly acknowledged his concerns over “the anti-democratic manner in which the legislation passed through legislative bodies at the county and the city.”⁹

B. Cleveland Mayor Frank Jackson, while acknowledging the controversy surrounding the ordinance, immediately signed it into effect, calling it “a great deal,” and “one of the best deals the City has ever made.”

The next day, April 25, 2017, Mayor Jackson signed the ordinance into effect. “I know this is a great deal,” Jackson said as he signed the ordinance.¹⁰ “As much controversy as people were putting around this, this is one of the best deals the city of Cleveland has ever made in regards to investing and at very little public dollars and getting huge returns in public benefit.”¹¹

On April 30, 2017, Mayor Jackson published an op-ed at Cleveland.com in which he further touted the benefits of the ordinance, calling it “one of the best [he’s] seen in [his] 27-year career in public office.”¹² Jackson also decried what he called “the loud and misleading rhetoric coming from opponents of this deal.”¹³

⁹ **Ex. 6**, Sam Allard, *What Led to Councilman Brian Cummins’ Last-Minute Flip-Flop on the Q Deal?*, Cleveland Scene (Apr. 25, 2017), <https://www.clevescene.com/scene-and-heard/archives/2017/04/25/what-led-to-councilman-brian-cummins-last-minute-flip-flop-on-the-q-deal> (accessed June 22, 2017).

¹⁰ Robert Higgs, *Cleveland Mayor Frank Jackson signs the deal to upgrade Quicken Loans Arena*, Cleveland.com (Apr. 25, 2017), http://www.cleveland.com/metro/index.ssf/2017/04/cleveland_mayor_frank_jackson_33.html (accessed June 22, 2017), attached as **Exhibit 7**.

¹¹ *Id.*

¹² Frank Jackson, *Quicken Loans Arena deal is good for Cleveland, its neighborhoods and its people: Frank G. Jackson (Opinion)*, Cleveland.com (Apr. 30, 2017), http://www.cleveland.com/opinion/index.ssf/2017/04/quicken_loans_arena_deal_is_go.html (accessed June 22, 2017), attached as **Exhibit 8**.

¹³ *Id.*

C. Petitioners collected 20,000 signatures, more than three times the amount required, to subject the Q-deal ordinance to approval by referendum.

On April 26, 2017, the day after the Mayor approved the ordinance, GCC announced that a coalition of local organizations (including GCC, SEIU Local 1199, the Cuyahoga County Progressive Caucus, AFSCME Ohio Council 8, and Amalgamated Transit Union Local 268) had launched a petition drive to collect, within 30 days, approximately 6,000 signatures of Cleveland voters to subject the ordinance to a ballot referendum as provided by Ohio law and Chapter 7 of the Cleveland Charter.¹⁴ By May 21, 2017, they had collected more than 20,000 signatures.¹⁵ Proposed Intervenor here are the five members of the Committee of Petitioners listed on the petition under Cleveland Charter § 49 as “electors of the City who shall be officially regarded as [having] fil[ed] the petition”

D. The council clerk—at the Council’s direction—refused to accept the petition, citing an unwritten legal opinion from the law director’s office about the U.S. Constitution’s contracts clause.

On the morning of May 22, 2017, petitioners attempted to submit the signatures to the council clerk, following the procedures set forth in the Cleveland Charter (§§ 59–66). When the petitioners arrived at the council’s offices and attempted to submit the petition, they were informed by the deputy council clerk Allan Dreyer that he would not accept the petition. That morning, Mr. Dreyer handed petitioners a letter dated May 22, 2017 (attached as **Exhibit 11**), signed by Dreyer, referencing the Contract Clause of the U.S. Constitution in stating as follows: “A referendum seeking repeal of Ordinance No. 305-17 would unconstitutionally impair an already executed and binding contract. Therefore I do not accept the petition papers for such referendum.”

¹⁴ Robert Higgs, *Opponents of The Q renovation deal launch referendum effort*, Cleveland.com (Apr. 26, 2017) http://www.cleveland.com/metro/index.ssf/2017/04/opponents_of_the_q_renovation.html (accessed June 22, 2017), attached as **Exhibit 9**.

¹⁵ Kaylee Remington, *Coalition to submit signatures to put Q deal on ballot*, Cleveland.com (May 20, 2017) http://www.cleveland.com/metro/index.ssf/2017/05/coalition_to_submit_signatures.html (accessed June 22, 2017), attached as **Exhibit 10**.

While Mr. Dreyer signed this letter, both the Cleveland charter and the council president's statements make clear that it was Council's decision to reject the petition and not the clerk. Charter § 31 provides that council chooses the clerk, who is required to perform all "as may be required by [the] Charter or by the Council," and only "serves during the pleasure thereof." Thus, the clerk, who may be replaced at council's pleasure, can only be understood to have acted at the council's direction.

Council President Kevin Kelley confirmed as much, in stating "repeatedly," according to a report by *Cleveland Scene*, that "he'd made the decision after advice and consultation from city lawyers—both attorneys for city council ... and attorneys [in the Law Director's] office."¹⁶ Council members who opposed the rejection of the petition asked Mr. Kelley for a written copy of the opinion. "I don't have a written opinion," said Kelley, who also said that he could not produce an opinion by that evening's council meeting "on such short notice."¹⁷ Kelley's Contract Clause argument, however, had been considered at least as early as May 20, when *Cleveland.com* reported that Kelley "questioned whether a referendum could derail the deal now that formal contracts have been signed."¹⁸ "As far as I'm concerned we are moving forward," Kelley said. "If [the Petitioners] present signatures, I'll just consult with the law department and see where our next steps are."

Later on May 22, Mr. Dreyer gave petitioners another letter, attached as **Exhibit 13**, stating as follows: "I, Allan Dreyer, Deputy Clerk/Clerk of Council Pro Tem am in receipt of a referendum

¹⁶ Sam Allard, *City Council Rejects 20,603 Q Deal Petition Signatures on Questionable Grounds*, Cleveland Scene (May 22, 2017), <https://www.clevescene.com/scene-and-heard/archives/2017/05/22/city-council-rejects-20603-q-deal-petition-signatures-on-questionable-grounds> (accessed June 22, 2017), attached as **Exhibit 12**.

¹⁷ *Id.*

¹⁸ **Ex. 10**, Kaylee Remington, *Coalition to submit signatures to put Q deal on ballot*, Cleveland.com (May 20, 2017), http://www.cleveland.com/metro/index.ssf/2017/05/coalition_to_submit_signatures.html (accessed June 22, 2017).

petition seeking the repeal of Ordinance No. 305-17. We are taking custody of such petition at your request, but do not consider the petition to be filed with the Clerk.”

E. Petitioners served a taxpayer demand on the law director under under R.C. 733.59 and Cleveland Charter § 90, demanding that the Council Clerk accept the petition as required by law.

Four days later, on May 26, petitioners served a taxpayer demand letter on the law director under R.C. 733.59 and Cleveland Charter § 90, demanding that the Council Clerk accept the petition as required by law. In this letter, attached as **Exhibit 14**, petitioners set forth the Clerk’s legal duty to accept the petition under the Charter, and the law director’s duty to file litigation seeking a writ of mandamus to compel the Clerk to fulfill this duty should the clerk fail to do so. Petitioners expressly requested that the law director name petitioners as party defendants in any such litigation, as permitted by R.C. 733.581, “to assist in presenting all issues of law and fact to the court in order that a full and complete adjudication of the controversy may be had.” And petitioners further notified the Law Director that petitioners would exercise their right to file a taxpayers’ suit should the clerk and law director not act as required by law.

F. The mayor and council president held a joint press-conference announcing that the law director—despite an acknowledged conflict of interest prohibiting her from acting as counsel in the case—has sued the Council Clerk to seek an advisory opinion on a constitutional question that the mayor and council president described as presenting two opposing “valid legal arguments.”

On June 5, 2017, the mayor and council president held a joint press conference to announce that the law director, in response to petitioners’ demand letter, filed a lawsuit against the council clerk to determine whether the clerk should be required to accept the petition. Under the Cleveland charter, the law director serves at the pleasure of the mayor (§ 85), and the council clerk serves at the pleasure of council (§ 31), so—as Jackson’s and Kelley’s statements would shortly confirm—this is, effectively, a lawsuit by the mayor against council.

At this press conference, a transcript of which is attached as **Exhibit 15**,¹⁹ the mayor and council president made clear that they are not adverse parties interested in opposing results—but rather were only seeking an advisory opinion with this lawsuit. Mayor Jackson began the press conference by expressing his opinion that both parties to this lawsuit presented “valid legal arguments:” “As you know on Monday May 22 the office of the Clerk of Council determined that they could not legally accept petitions, as it would unconstitutionally impair an already executed and binding contract. **So this is a valid legal argument.**” **Ex. 15**, Press Conf. Tr. at 2:6–12. Jackson then went on to add, “The referendum petitioners, however, demanded that our law director file a writ of mandamus to force the clerk to accept and certify the petitions if the clerk of council did not voluntarily do so. They argued that, uh, legally under the city charter the clerk has -- could not refuse to accept or certify the petition.” *Id.* at 2:13–20. But then Jackson claimed, “**Now, this also is a valid legal argument. Uh, so we have two conflicting legal arguments, two conflicting legal issues.**” *Id.* at 2:20–22 (Emphasis supplied).

The mayor then took care to explain that both he and the council president “are on record as supporting [the Q Deal],” and claimed that this lawsuit “has nothing to do with the Q deal.” *Id.* at 2:25–3:2.

“Now, we do not want to take an unconstitutional action, whether it is around interfering with a contract or denying people the right to vote on the referendum,” the mayor went on to say. *Id.* at 3:7–10. “And both of these, uh, legal arguments, and both of these issues -- constitutional issues, are very important to us because they speak to the rights of our citizens.” *Id.* at 3:11–14. The mayor then turned the floor over to the council president to “outline ... the process that brings this resolution to, uh, some -- hopefully some conclusion.” *Id.* at 3:14–17.

¹⁹ While this brief was filed using this Court’s electronic filing system, a copy of the video of this press conference has been filed separately over the counter along with a notice of over-the-counter filing.

Council president Kelley then said that this lawsuit was “most importantly, ... the most, um, expeditious way to resolve this important issue that the mayor outlined.” *Id.* at 4:1–3 “Um, by going to the Supreme Court in this matter -- in this manner,” Kelley added, “we will be able to resolve this and give the people, um, any party to this issue, the resolution that they deserve in the quickest way possible. And as the mayor stated, what the Court says will be the rule of law that we will follow.” *Id.* at 4:3–10.

In the question-and-answer session that followed Jackson’s and Kelley’s opening remarks, Kelley explained that the lawsuit was a result of “long conversations” between himself and the mayor, and reiterated that their goal was to “take the course that resolves this issue for all parties that are involved.” *Id.* at 6:22–7:3. When asked, “is it the Council arguing against the City Law Director?” Kelley acknowledged the conflict of interest inherent in the lawsuit:

It is -- I mean it’s a procedural mechanism that sounds a little awkward at first. Everybody that first heard it, it sounded that way. But the way that the Charter reads in a taxpayer action is, yes, the law director is going to be filing a mandamus action against the clerk. And for those reasons both parties, um, have chosen to get outside counsel to represent them just based on any potential conflicts that may exist over previous discussions.

Id. at 5:2–12.

The mayor also confirmed that the law director chose the outside counsel for both parties to this lawsuit, and echoed Kelley in stating that the law director needed outside counsel due to a conflict of interest regarding her prior representation of the council on this issue (*i.e.*, her previous advice to the council on which its decision to reject the petition was based). Specifically, Jackson, in response to a question as to whether “the City remains in control of who the lawyers are versus outside parties coming in,” stated that “it is my understanding the request to the law director was that she take this action. And in order for her to take this action she’s already represented the clerk

in this, so she cannot take this action so there's an outside counsel who will take the action." *Id.* at 8:6–12.

The Mayor did not explain why—if a conflict of interest prohibits the law director from serving as counsel in a lawsuit ostensibly seeking to require the council to accept the referendum petition—the same conflict of interest does not prohibit her from acting as the petitioner in the same lawsuit.

G. The law director's Complaint against the Council Clerk is intentionally self-defeating, including in its failure to name petitioners as defendants, as petitioners requested.

In keeping with the conflict of interest expressly acknowledged by the mayor and Council president at their press conference, the law director's suit against the council clerk is apparently designed to defeat itself. While the law director's Complaint does request a writ of mandamus to compel the clerk to accept and process the referendum petition, it also then argues *against* the relief it seeks by raising a constitutional issue that has no legitimate bearing on this lawsuit. At paragraph 13, the Complaint presents council's Contract Clause argument as a relevant and legitimate legal position when it is not, citing two cases as counseling against the relief the law director ostensibly seeks with her suit:

This Court has held that neither a legislature nor an electorate are free to impair a city's ability to perform its obligations under a binding contract. *See Middletown v. Ferguson*, 25 Ohio St.3d 71, 76–77, 495 N.E.2d 380 (1986) *cert. denied*, 479 U.S. 1034 (1987). In *Middletown*, for example, this Court held that an initiative ordinance that unconstitutionally impairs an existing municipal contract is “void *ab initio*.” *Id.* at 80. Accordingly, at least one Ohio court of appeals has held that a referendum petition is not valid and should not be submitted to the Board of Elections if it would unconstitutionally impair a municipality's obligations under the contract. *State ex rel. Perona v. Arici*, 128 Ohio App.3d 15, 19, 716 N.E.2d 1181 (9th Dist. 1998).

While needlessly presenting this argument that could only help her ostensible “opponent” (indeed, these two cases were the first two cited by Council in its first substantive filing in this case,

Respondent's Memo. In Opp. to Relator's Motion for Alternative Writ of Mandamus, 6-15-2017, at 7–8) the law director failed to present obvious counter-arguments in her favor: Namely, that any party who entered a contract regarding the controversial Ordinance at issue did so on notice that the Ordinance was subject to referendum, and thus no such contract could possibly be considered unconstitutionally impaired. *Allstate Life Ins. Co. v. Hanson*, 200 F. Supp. 2d 1012, 1018 (E.D. Wis. 2002) (“To prove a substantial impairment, a party must show that the law disrupts the parties’ expectations.”), citing *Allied Structural Steel Co. v. Spannaus*, 438 U.S. 234, 245, 98 S.Ct. 2716, 57 L.Ed. 727 (1978), *Chrysler Corp. v. Kolosso Auto Sales*, 148 F.3d 892, 894–95 (7th Cir. 1998) (“Of great, and we are inclined to say controlling, importance in the determination of whether a law violates the contracts clause is the foreseeability of the law when the original contract was made; for what was foreseeable then will have been taken into account in the negotiations over the terms of the contract.”); *McF Supermarket v. Owens*, 997 F. Supp. 908, 914–15 (S.D. Ohio, 1997) (holding that substantial impairment of contractual obligations could not be found where “[p]laintiffs were on notice that at any time the local community could vote [in the manner that impacted plaintiffs’ business]” and where “[p]laintiffs [c]ould have put a clause in their lease that allowed them to cancel the lease if the community voted [in the manner at issue].”).

Further, despite the conflict of interest apparent in these proceedings and acknowledged by Jackson and Kelley in the press conference, the law director's suit also failed to name petitioners as party defendants as petitioners requested in their demand letter and as permitted by R.C. 733.581, “to assist in presenting all issues of law and fact to the court in order that a full and complete adjudication of the controversy may be had.” Counsel for petitioners called the law director's counsel to again request to be added to the suit, and the law director's counsel again denied this follow-up request. He also refused to explain why the law director had failed to heed the request

contemplated by the taxpayer-lawsuit statutes other than to say that including the petitioners was not “required.”

IV. Law and Argument

- A. This lawsuit should be dismissed for lack of jurisdiction because it is, at best, a nonjusticiable request for an advisory opinion by parties that are not genuinely adverse, and, at worst, a collusive effort to thwart petitioners’ right to a referendum.**

In keeping with the jurisdictional requirement that courts only decide cases that present an “actual controversy between genuinely adverse parties,” this case must be dismissed. As the parties’ own actions have made clear, this lawsuit is, at best, nonjusticiable request for an advisory opinion by parties that are not genuinely adverse, and, at worst, a collusive effort to thwart petitioners’ right to a referendum.

1. Ohio courts only have jurisdiction to decide cases that present an “actual controversy between genuinely adverse parties.”

“It has been long and well established that it is the duty of every judicial tribunal to decide actual controversies between parties legitimately affected by specific facts and render judgments which can be carried into effect.” *Fortner v. Thomas*, 22 Ohio St. 2d 13, 14, 51 Ohio Op. 2d 35, 257 N.E.2d 371 (1970). Thus, “the ‘case or controversy’ requirement is a predicate requirement for a court to exercise subject-matter jurisdiction.” *State ex rel. Ebersole v. Del. County Bd. of Elections*, 140 Ohio St. 3d 487, 2014-Ohio-4077, 20 N.E.3d 678, ¶ 44. “The presence of a disagreement, however sharp and acrimonious it may be, is insufficient” to establish jurisdiction “if the parties to the action do not have adverse legal interests.” *State ex rel. Barclays Bank PLC v. Hamilton County Court of Common Pleas*, 74 Ohio St. 3d 536, 542, 1996-Ohio-286, 660 N.E.2d 458 (1996). An “actual controvers[y] between *genuinely* adverse parties” is required. *State ex rel. JobsOhio v. Goodman*, 133 Ohio St. 3d 297, 2012-Ohio-4425, 978 N.E.2d 153, ¶ 15 (emphasis supplied). Thus, it is similarly “well-settled that this court does not indulge itself in advisory opinions.” *Egan v. National Distillers & Chemical Corp.*,

25 Ohio St. 3d 176, 177-178, 495 N.E.2d 904 (1986). These considerations protect against “the risk of an improvident or ill-advised opinion, given the court’s dependence on the adversarial process for sharpening the issues for decision.” *State v. Bodyke*, 126 Ohio St. 3d 266, 2010-Ohio-2424, 933 N.E.2d 753, ¶ 78 (citations and punctuation omitted).

Article IV, Section 4(B) of the Ohio Constitution, from which Ohio’s “actual controversy” requirement is derived, “has been interpreted in a manner similar to the case or controversy limitation of the federal constitution.” *Hirsch v. TRW Inc.*, 8th Dist. Cuyahoga No. 83204, 2004-Ohio-1125, ¶ 8. Thus, it is instructive to refer to federal authority on this subject, including that explaining the requirement of “concrete adverseness” as especially important in passing on constitutional questions. *Diamond v. Charles*, 476 U.S. 54, 61–62, 106 S.Ct. 1697, 90 L.Ed.2d 48 (1986). As the U.S. Supreme Court has stated, the power to determine the constitutionality of any legislative act,

is legitimate only in the last resort, and as a necessity in the determination of real, earnest and vital controversy between individuals. It never was the thought that, by means of a friendly suit, a party beaten in the legislature could transfer to the courts an inquiry as to the constitutionality of the legislative act.

Muskrat v. United States, 219 U.S. 346, 359–60, 31 S.Ct. 250, 55 L.Ed. 246 (1911); *See also United States v. Johnson*, 319 U.S. 302, 304–05, 63 S.Ct. 1075, 87 L.Ed. 1413 (1943); *Lord v. Veazie*, 49 U.S. 251, 255–56, 12 L.Ed. 1067 (1850) (“[A]ny attempt, by a mere colorable dispute, to obtain the opinion of the court upon a question of law which a party desires to know for his own interest or his own purposes, when there is no real and substantial controversy between those who appear as adverse parties to the suit, is an abuse which courts of justice have always reprehended, and treated as a punishable contempt of court.”).

2. **This case does not present a justiciable case or controversy because the parties are not genuinely adverse, and are, at best, merely seeking an advisory opinion.**

The above-cited standards require that this lawsuit be dismissed because the parties are not genuinely adverse and are, at best, merely seeking an advisory opinion.

- a. **The mayor and council president have claimed to support both sides in this lawsuit—which they describe as two “valid legal arguments”—and have admitted that their shared objective with this lawsuit is ostensibly to avoid “taking an unconstitutional action.”**

Because the law director serves at the pleasure of the mayor (Cleveland Charter § 85), and the council clerk serves at the pleasure of council (§ 31), it is the mayor and council who are controlling this lawsuit, and not the named parties. The mayor and council president’s joint press conference announcing the lawsuit made this clear, and also made it clear that this suit does not present an “actual controversy between genuinely adverse parties” and therefore must be dismissed.

Both parties, after clarifying that they “are on record as supporting [the Q Deal],” refused to take a side during their press conference, instead presenting this case as a clash between two equally “valid legal arguments.” **Ex. 15**, Press Conf. Tr. at 2:6–12, 2:25–3:2. Kelley stated that the lawsuit was the product of “long conversations” between himself and the Mayor, and explained that their joint goal was to “take the course that resolves this issue for all parties that are involved.” *Id.* at 6:22–7:3. Jackson echoed Kelley in stating that their purported objective was to avoid “tak[ing] an unconstitutional action whether it is around interfering with a contract or denying people the right to vote on the referendum.” *Id.* at 3:7–10. “Both of [the conflicting arguments on] constitutional issues, are very important to us,” Jackson said, “because they speak to the rights of our citizens.” *Id.* at 3:11–14. These statements—along with the self-defeating nature of the law director’s Complaint as described above—confirm that the parties to this lawsuit do not have genuine adverse interests, are not interested in adversely, sharply, and vigorously litigating each side of this lawsuit, and are only, at best, seeking to punt on a difficult political question to have this Court resolve it for them.

This is the very definition of an unjusticiable advisory opinion. This case should be dismissed on this basis alone.

b. The law director's suit is apparently a collusive effort to thwart petitioners' right to a referendum.

It is troubling enough that the mayor, law director, and council would approach this Court with a request for an unconstitutional advisory opinion when adversity between the parties is so plainly lacking. It is all the more so given the additional evidence that the parties are engaged in a collusive effort to thwart petitioners' right to a referendum.

The mayor and council—who are controlling this lawsuit—have a substantial and undeniable political interest in avoiding a referendum here. They have outspokenly supported the controversial Q deal against a vigorous public outcry, and know that a referendum will bring this issue (and their support of it) under heavy scrutiny in a cycle where they are all (the mayor and all 17 council members) up for reelection.²⁰ They also know—given Clevelanders' rejection of a similar “Sin Tax” arena subsidy at the ballot in 2014 that was more defensible because taxpayers arguably had a legal obligation to fund the renovations at issue—that they are likely to lose this referendum.

Desperation to avoid a referendum is the only explanation for the law director's sudden flip-flop on whether the council clerk had a legal duty to accept the petition. On May 22, the Council president cited a legal opinion from the law director's office to explain council's position that the petition could not legally be accepted because of the Contract Clause.²¹ And now, by this suit, the law director purports to advocate on behalf of the opposite position. In doing so, the law director

²⁰ Robert Higgs, *All Cleveland City Council elections shaping up as contested races, with several primary contests possible*, Cleveland.com (June 19, 2017), http://www.cleveland.com/metro/index.ssf/2017/06/all_cleveland_city_council_ele.html (accessed June 22, 2017), attached as **Exhibit 16**.

²¹ **Ex. 12**, Sam Allard, *City Council Rejects 20,603 Q Deal Petition Signatures on Questionable Grounds*, Cleveland Scene (May 22, 2017), <https://www.clevescene.com/scene-and-heard/archives/2017/05/22/city-council-rejects-20603-q-deal-petition-signatures-on-questionable-grounds> (accessed June 22, 2017).

now purports to deny petitioners their right to file a taxpayer suit to vindicate their right to a referendum in Court under Charter § 90.

There is similarly no other explanation for the law director's failure to name petitioners as party defendants in this litigation, as permitted by R.C. 733.581, "to assist in presenting all issues of law and fact to the court in order that a full and complete adjudication of the controversy may be had." The obvious conflict inherent in the law director's involvement in this suit—explicitly acknowledged by the mayor and council president in their press conference (**Ex. 15** at 5:2–12, 8:6–12)—made it all the more necessary that petitioners be included in this suit. The mayor and law director's failure to do so lays their collusive intentions bare.

Collusive intent is further revealed by the contents of the law director's Complaint, which needlessly presents a constitutional argument and caselaw that, while irrelevant, could only be misinterpreted as counseling against the relief that the mayor and law director are purporting to seek (at ¶ 13), and fails to raise obvious counterarguments in petitioners' favor (as discussed in Section III. G. at pages 12-14, above). And yet, in an important respect, the contents of the Complaint—and whatever justification the mayor and law director may make for them—are irrelevant. This is because there is a vast difference between merely presenting an argument, and vigorously advocating on behalf of a legal position, as the mayor and law director plainly have no intent to do here. The difficulty in conclusively proving this type of collusion is precisely why the prohibition against advisory opinions and the requirement of genuine adversity exist. It is also why this Court has held that where, as here, there is "evidence or inference of any agreement on the part of the parties to obtain an advisory opinion on the constitutionality of legislation" in a mandamus action, that action must be dismissed. *State ex rel. JobsOhio v. Goodman*, 133 Ohio St. 3d 297, 2012-Ohio-4425, 978 N.E.2d 153, ¶ 15.

B. This lawsuit should be dismissed because it seeks a declaratory judgment that this Court lacks jurisdiction to grant.

This Court’s decision in *Goodman*, 133 Ohio St. 3d 297, further clarifies that this lawsuit must be dismissed for lack of jurisdiction.

In *Goodman*, the state-sponsored, economic-development corporation JobsOhio sought a writ of mandamus requiring the director of the Ohio Department of Commerce, David Goodman, to fulfill an alleged legal duty to execute an agreement with JobsOhio. *Id.* at ¶¶ 3–8. Mr. Goodman had previously refused to fulfill this alleged duty based on his claim that “the Ohio Constitution precludes him from executing the agreement until the Ohio Supreme Court addresses the merits of ... constitutional claims” that had been raised by third parties against the legislative acts that were alleged to have required his execution of the agreement. *Id.* at ¶ 9. Like the mayor and council president who have repeatedly expressed their support for the Q deal at issue here and their disdain for the deal’s opponents, Mr. Goodman reiterated his support for “JobsOhio and its mission,” vouched for the validity of the agreement and negotiating process at issue, and “question[ed] the validity of [the] constitutional challenges” raised by opponents. *Id.* Like the mayor and council president who have here touted their joint goals of avoiding “an unconstitutional action” and “resolv[ing] this and giv[ing] the people, um, any party to this issue the resolution that they deserve in the quickest way possible,” Mr. Goodman “concur[red] with JobsOhio’s allegation that “[e]xercise of the Court’s jurisdiction is necessary to allow [JobsOhio] the opportunity to timely adjudicate its claim against [Goodman], and to provide a swift and conclusive resolution to any and all questions regarding the constitutionality of the Legislation.” *Id.* at ¶ 9.

Based on these facts, the Court held that “sua sponte dismissal of this case without reaching the merits of the constitutional claims [was] warranted.” *Id.* at ¶ 13. The Court explained that, “if the allegations of a mandamus complaint indicate that the real object sought is a declaratory judgment, the complaint does not state a viable claim in mandamus and must be dismissed for lack of

jurisdiction.” *Id.* at ¶ 14. Thus, dismissal was required because, while “JobsOhio’s complaint is couched in terms of compelling ... Goodman to comply with his [duty to execute the agreement], it actually seeks an expedited ruling from this court declaring [the legislative acts authorizing the agreement] constitutional, so as to preclude any further challenges.” *Id.* at ¶ 14.

The Court further held, as an alternative basis for dismissal, that “mandamus [was] not available” because “JobsOhio ha[d] an adequate remedy by way of a declaratory-judgment action in common pleas court to raise its claim that [the legislation at issue was] constitutional.” *Id.* at ¶ 15. The Court distinguished “cases that [the parties] cite[d] in which the court decided the constitutionality of legislation in the context of mandamus cases ... because in those cases, there was no evidence or inference of any agreement on the part of the parties to obtain an advisory opinion on the constitutionality of legislation.” *Id.* The Court then emphasized that the distinguishable cases “involved actual controversies between genuinely adverse parties.” *Id.*

Here, on top of all of the other evidence discussed above creating an “inference” of a collusive suit, the law director’s Complaint (at ¶ 13) expressly invites this Court to consider a constitutional issue that, by the Complaint’s own admission, need not have been raised at all. *Id.* at ¶ 15 citing *State ex rel. Walker v. Husted*, 144 Ohio St.3d 361, 2015-Ohio-3749, 43 N.E.3d 419, ¶ 16 (“[T]his Court generally has followed the rule that we will not consider, in an action to strike an issue from the ballot, a claim that the proposed amendment would be unconstitutional if approved, such claim being premature.”). Thus *Goodman* additionally requires dismissal of this suit.

C. If this Court does not dismiss this lawsuit for lack of jurisdiction, petitioners should be permitted to intervene to protect their interests, to protect the public interests, and to further justice.

Should this Court decline to dismiss this suit, it should allow petitioners to intervene under Civ.R. 24(A) or R.C. 733.581.

Civ.R. 24(A) provides, in pertinent part, as follows:

Upon timely application anyone shall be permitted to intervene in an action ... when the applicant claims an interest relating to the property or transaction that is the subject of the action and the applicant is so situated that the disposition of the action may as a practical matter impair or impede the applicant's ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.

R.C. 733.581 is the same statute that would have allowed the law director to name petitioners as parties to this suit “to assist in presenting all issues of law and fact to the court in order that a full and complete adjudication of the controversy may be had.” This statute further provides that,

[i]n any civil action or proceeding involving the public interest the court shall grant the application of any person to intervene if the court believes that the public interest will be better protected or justice will be furthered.

Both provisions require that petitioners be permitted to intervene here.

First, applying Civ.R. 24(A), petitioners have an interest in vindicating their right to a referendum on the ordinance in question. Given the evidence of collusion and the absence of genuine adversity between the mayor, law director, and council, as set forth above, the existing parties to the suit cannot protect petitioners' interests in this suit. Petitioners are thus entitled to intervene should this suit not be dismissed. *See Purnell v. Akron*, 925 F.2d 941, 950 (6th Cir. 1991) (“Interests need not be wholly ‘adverse’ before there is a basis for concluding that existing representation of a ‘different’ interest may be inadequate.”).

R.C. 733.581—which, as this Court has recognized, “operates as a check upon the discretion of city officials when matters of public interest are in litigation”—offers an alternative basis for intervention. *Cincinnati v. Cincinnati Dist. Council 51*, 35 Ohio St. 2d 197, 200-201, 299 N.E.2d 686 (1973). Should this Court decline to dismiss this suit for lack of jurisdiction, petitioners' intervention will serve the public interest by helping to ensure that truly adverse parties litigate this lawsuit that implicates the fundamental right to referendum—“one of the most essential safeguards to

representative government.” *State ex rel. Ohio Liberty Council v. Brunner*, 125 Ohio St. 3d 315, 2010-Ohio-1845, 928 N.E.2d 410 ¶ 55.

V. Conclusion

The law director and city council cannot legitimately claim to be adverse parties here, and the law does not permit the risk that the law director steer the parties’ request for an advisory opinion in the wrong direction. The Court should dismiss this case for the lack of a justiciable controversy between the parties, and if it does not, it should at least permit petitioners to intervene to protect the integrity of these proceedings.

Dated: June 23, 2017

Respectfully submitted,

THE CHANDRA LAW FIRM LLC

/s/ Peter Pattakos

Subodh Chandra (0069233)

Peter Pattakos (0082884)

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

Peter.Pattakos@ChandraLaw.com

Attorneys for Proposed Intervenors

CERTIFICATE OF SERVICE

On June 23, 2017, my office served the foregoing motion by email on counsel of record for all parties to this lawsuit.

/s/ Peter Pattakos
Peter Pattakos
Attorney for Proposed Intervenors



SCENE & HEARD

Wednesday, December 14, 2016

Everything You Need to Know About the Quicken Loans Arena Transformation

Posted By Sam Allard on Wed, Dec 14, 2016 at 12:03 pm

Courtesy: Cleveland Cavalier:

At a jubilant press conference Tuesday afternoon, representatives from Cuyahoga County, the city of Cleveland, Destination Cleveland and The Cleveland Cavaliers announced a "creative" "collaborative" funding structure that will facilitate major renovations at the Quicken Loans Arena. We did it, our leaders bragged. We made this work.

Roughly \$140 million will be bonded by the County Ñ the very same county with a "maxed-out credit card" Ñ and repaid over 18 years using a variety of revenue streams. The final repayment costs will be roughly double the initial price tag, which is why you might have seen the \$282-million figure at Cleveland.com. Tim Offtermatt, recent Chairman of the Gateway Board , advised during a Q&A that the final costs are at this point unknown. They could be even higher than \$282 million, and will depend on "market conditions."

(If it helps, when the County talks about "bonds," just substitute the word "loans." They're taking out massive loans.) !

Both County Executive Armond Budish and Mayor Frank Jackson promised that all of the revenue streams that will be used to pay off the renovations already exist. No new taxes will be created and neither the city's nor the county's general funds will be affected.

But the Tuesday announcement nonetheless scanned, once again, as propaganda. Sparkling images of the proposed new facade cycled on huge hi-def TV screens on either side of the speaker platform. The comments themselves focused on the region's recent success, and on the Q as both moto and Mecca. The Q as "Cleveland's living room" was the recurring metaphor.!

Far from apologizing for yet another instance of a weary tax-paying public subsidizing billionaire sports owners, Armond Budish spent most of his remarks praising the generosity of the Cavaliers' organization.

"The Cavaliers offered to pay half of the [\$140 million] cost," Budish said in opening remarks, "which I will tell you is very unusual in these types of projects, especially in a publicly owned facility. We knew that the deal was crucial to continuing the great momentum that the city and county are experiencing and we recognize that the Q is the largest economic driver for our region."

Though the Cavaliers and city leaders continue to say this sort of stuff, the prevailing view among economists (in fact, the consensus) is that "sports subsidies cannot be justified on the grounds of local economic development, income growth or job creation." That's just for the record.

Nevertheless, a bouquet of fawning comments ensued from the roster of suited male executives Ñ Budish, Frank Jackson, Destination Cleveland's Board Chair Dan Walsh, Cavs CEO and Destination Cleveland Board Member Len Komoroski Ñ about the changing narrative of Cleveland (for God's sake), about the glorious potential of new and bigger events (what?), and about the peerless "public friendliness" of the financial arrangement already in place; Dan Gilbert's mantra of "doing well by doing good," was also lauded.]

Here's how the public portion of the funding shakes out:

- **ADMISSIONS TAX:** There is expected to be a continuation of the existing portion of the eight percent tax on every ticket sold at Q events. It's not clear how much this will generate, but the \$88-million figure has been provided, which includes taxes on playoff games from 2024-2034. The Cavaliers have promised to pay any shortfalls on the predicted tax revenue.
- **SALES TAX:** This is the amount generated over and above the existing 1.25 percent County sales tax proceeds on all taxable purchases at the Q.
- **COUNTY BED TAX:** A portion of the county bed tax, which funds Destination Cleveland, will generate \$44 million over 18 years.
- **COUNTY DESTINATION FACILITY RESERVE:** About \$16 million in resources dedicated for the Hilton Hotel project, but were unused, will be re-allocated to pay down the renovations bonds. ! !
- No sin tax dollars may be used for the renovations, as that money is earmarked for maintenance and operation.

It was Fox 8, during the Q&A, who asked city leaders to defend this arrangement to taxpayers. What would you say to folks, a reporter asked, who don't think we should be contributing to stadium renovations... at all?

But it was none other than Fred Nance — big-shot lawyer and Believeland talking head — not an elected official, who walked from the front row to the dais to deliver what must have been perceived as a knockout punch:

"For those of us who have lived in Cleveland for some time, we recall what happened here in 1995," Nance thundered, and the press corps rolled its eyes. "Which is that if we don't take care of the facilities in which our professional sports teams play, we are at risk of losing them."

The risk of losing the Cavs must be almost zero, given the lack of viable markets elsewhere, the team's enormous profitability, and Dan Gilbert's web of local investments, and the Cavs contend that they've never brought up the possibility. But it's a risk — a threat, really — that looms ever more ominously whenever sports teams ask for public money. And it was a threat advanced by Cleveland.com in their exhaustive coverage of the announcement Tuesday, coordinated ahead of time to coincide with the press conference.

The possibility of losing the Cavaliers, the very team that has "restored Cleveland to credibility," is the philosophical dilemma that "hurts most to contemplate," they said.

We are supposed to be grateful that the Cavs — "doing right by doing good," remember — have extended their lease for seven additional years, guaranteeing that they'll remain in town until 2034.

Cleveland will also host an NBA All-Star game. That was part of the announcement as well. The NBA has promised (we were told) that if renovations are complete, Cleveland will land the coveted weekend at some point during the next seven years. There are no specifics of course. (It was not mentioned that an All-Star weekend is small potatoes for a venue that just hosted the RNC before costly renovations.)

There was no mention, either, that the Cavs will be wanting to build a new stadium long before the bonds for these renovations are paid off. Projecting taxes on playoff games more than a decade in the future presupposes that the team will remain competitive after LeBron James retires, and that the Cleveland Cavaliers will still be playing professional basketball in the current Quicken Loans Arena. Those among us skeptical of long-term financing deals can foresee a situation in which existing or new taxes on tickets at a new stadium will still be paying down interest on bonds for renovations on a facility that may have been demolished years ago.

But this is how we roll.

Destination Cleveland's budget will be cleaved into, as well. A tight-lipped David Gilbert, Destination Cleveland's boss, answered a direct question from WKYC's Tom Beres about the impact to his organization's operating budget. Gilbert danced around with some balletic financial mumbo-jumbo but ultimately said it won't matter a lick:

Courtesy: Cleveland Cavaliers

"Throughout the process, we've actually taken a hard look at our budget, where our competitive set is," Gilbert said. "And in this process we've also had the ability, with the total dollars, to smooth it out so there's far less of an effect on

the front end, and back-loading it as the bed tax grows. In the end, we are still very confident we are going to be able to perform our mission and do all the things that the organization is charged with doing."

It's also worth noting that City Council appears to have been kept in the dark on this (once again). Council members were outraged when they were blindsided by the Browns financing agreement back in 2013 , and they'll presumably be outraged this time, especially after they were kept in the dark about the Public Square decision. This is the city's legislative body, (!!!) and no one's bothering to include them in the city's major financial decisions. The ball can't even begin to roll on these renovations until council approves them, after which the construction is projected to last two years, during which the arena will remain fully operational.

Council President Kevin Kelley sent an email to his colleagues one hour before the press conference, saying he didn't have all the details, but that council would "thoroughly review any proposed plan before approval."

To sweeten the pot, Len Komoroski announced that the Cavs would be donating 15,000 tickets to Quicken Loans events each year to folks who otherwise might not be able to afford them Ñ 10,000 of them will be for Cavs games. Well in THAT case!

All of this comes less than a year after County Executive Armond Budish advocated restraint on county spending. We're a fat billion in debt. The "maxed-out credit card" is his oft-quoted line, and Scene asked whether or not these new bonds represented a contradiction of his earlier remarks.

"Not at all," Budish said. "What I've said is we want to continue to move the county forward. We want to continue the momentum and looking for creative ways to do that. We can issue bonds as long as we have a way to pay for them. As you've heard, we've been able to work with the city and Destination Cleveland and our own sources to come up with a way to pay for these bonds without impacting city or county social services."

We'd be remiss if we didn't note that the energy and creativity expended to scrape every last available dollar for renovations at the Q might have been expended on worthier causes. Where is the county's innovation and creativity in helping solve the financial perils of public transit? Where is the city's creativity on infant mortality and lead poisoning? What if leaders bent over backwards to find money to solve, you know, actual problems?

But hey: At least the city income tax increase, lately passed, should lessen the blow of all the money the city would have received (from the Cavs' rent on the publicly owned arena, ~\$5 million per annum, from the admissions tax, from the sales tax) which will now go back into the renovation pot.

And just so we're clear on the merits of this "public-friendly" "public-private partnership":

Vince Grzegorek
@vincethepolack

Follow

To be clear, Dan Gilbert/the Cavs aren't forking over \$70 million to do this upfront. (1)

3:40 PM - 13 Dec 2016

65

Vince Grzegorek
@vincethepolack

Follow

The Cavs "private" Pnancial contribution is literally just their rent til 2034, which the Cle is choosing to use to payoff part of loan (2)

3:42 PM - 13 Dec 2016

86

Tags: Quicken Loans Arena , Cleveland Cavaliers , Cleveland , Cuyahoga County , Armond Budish , Frank Jackson , Dan Gilbert , Image

Jump to comments (8)

f

Share 0

Tweet

!

Email

Print

Favorite

Share

SPEAKING OF...

Roldo and Ralph Nader Discuss Q Deal, 100,000 Hours of Police Time Devoted to Q in 2016
Jun 20, 2017

Progressive Caucus Will Protest Frank Jackson's "Fat Cat" Fundraiser in Gates Mills
Jun 19, 2017

Cleveland Rec Centers to Offer Free Meals to Kids This Summer; Facilities Still Need Improvement
Jun 16, 2017

MORE »

Advertisement

Community groups air opposition to Quicken Loans Arena deal before Cleveland City Council

April 04, 2017 UPDATED 4/5/2017

! "

\$	SHARE	CLEVELAND!	(Of	Quicker!	Loans	Government	Jackson,!Frank	Gilbert,Dan
								Budish,!Armond

By JAY MILLER #

The deal to invest public money in the \$140 million renovation of Quicken Loans Arena continues to draw fire at Cleveland City Council on Tuesday, April 4, with representatives of the two n groups that oppose the deal outlining their objections before council's Development, Planni and Sustainability Committee, and supporters, from the building trades, advocating for wh



% TOP STORIES | ○ Parker Hannifin opens center focused on

the Cavaliers will remain at the arena through 2034, a seven-year extension of the existing l

The county would issue bonds that would be repaid by available funds from existing l
admissions and hotel taxes and from increased rent payments from the Cavs. Interest on two,
million bond issues would bring the cost over 17 years to about \$250 million. The Cavaliers w
pay \$122 million of that in increased rent, while the city and county would cover the remain

The issue before city council, though, is its portion of that, an extension of an 8% admission
on events at The Q

The community groups that presented their view at the meeting are seeking a renegotiation
the deal that would include additional money from the Cavaliers that would go in
neighborhood improvements.

"It's not that we are anti-Cavs; we're anti-this deal," said Ivonka Hall, outreach director of 1
Cuyahoga County Progressive Cauc

Rev. Jawanza Colvin, pastor at Olive
Institutional Baptist Church and one of the
leaders of the Greater Cleveland Congregation

Advertisement

(GCC), agreed, saying his group opposes the deal, not the team. GCC describes itself as co
of faith communities and other organizations working together to build power for social justic

The groups point to deals struck over public funding of sports facilities elsewhere and argue
those cities – Baltimore, Milwaukee and San Diego among them – got more of a finan
commitment to their communities from the sports team owners. They point to the need for mo
money to fight high unemployment in the city of Cleveland's poorer neighborhoods; the need
focus resources on fighting crime and mental health problems; and the need to invest in
economic development of the neighborhoods of the city and the coun

"We want downtown development, but we think that the development has to extend througho
the city and throughout the county," Colvin said. "We firmly believe there is a better de

Norman Edwards, president of the American Center for Economic Equality, agreed that violen
and unemployment need to stop, but he argued that pressing Cavaliers principal owner L
Gilbert to pay more for that is unfair, since Gilbert and his businesses – including the JACK co
and the Quicken Loans mortgage company – already work hard to put Greater Clevelanders,
especially minority residents, to work

"He has given us the opportunity to go to work not just as tradesmen, but as workers in th
facilities," Edwards said.

In December, Gilbert, along with Cuyahoga County Executive Armond Budish and Clevel
Mayor Frank Jackson, announced a \$140 million makeover of the 22-year-old arena, fina



% TOP STORIES | ○ Parker Hannifin opens center focused on ' ()

week that he expects the legislation to pass though some council members, including Kevin Conwell, Jeff Johnson and Michael Polensek, already have expressed their opposition.

After hearing from the community leaders, council heard from Ken Silliman, Jackson's chief staff, and representatives of the Cavaliers, who defended the city's participation in the deal.

Silliman told council that the county and the Cavaliers came to the city late last year with a deal. The only part of the deal before council is that city portion of the renovation revenue, which included Cleveland extending its existing city admissions tax on Quicken Loans Arena event which runs until 2023, for 10 years. That tax is projected to bring in \$88 million that would go toward paying off the bonds.

Polensek asked the presenters if they understand the plight of the neighborhoods and the cost that council members are getting from people who say they aren't seeing any trickle-down impact from The Q and the Cavaliers.

Attorney Fred Nance, who negotiated the deal for Cuyahoga County, defended the project.

"We tried to put forward an economic equation that is not at the expense of the neighborhood," he said.

Advertisement

MORNING ROUNDUP

Business headlines from Crain's Cleveland Business and other Ohio newspapers Ñ delivered FREE to your inbox every morning. Sign up for the Morning Newsletter.

email address

SUBMIT

[Summer Fun Dea](#) | [2 Strong 4 Bullie](#) | [W82TX](#) | [Romona's Kid](#) | [Contests](#) | [Security](#) | [Legal](#) | [Spot The Sign](#)79°
Overcast
Cleveland[FULL FORECAST](#)

Search



JUNE 22-24 • I-X CENTER



WORLD OF TANKS

CLEVELAND TANK PLANT

HOMECOMING MILITARY
SHOW & SWAP MEET[MORE INFO](#)

Greater Cleveland Congregations leaders say they are 'Not All In'

*Published Thursday, January 12th 2017, 3:12 pm**Updated Thursday, January 12th 2017, 4:44 pm*Posted by Cleveland 19 Digital Team | [CONNECT](#)

CLEVELAND, OH (WOIO) — Dozens of people with the Greater Cleveland Congregations stood in front of Quicken Loans Arena on Thursday to show their displeasure of the [Q arena transformation deal](#). The GCC rather see that money go toward the needs of people in Cleveland and their neighborhoods.

People held up signs that said 'Stop Fast-Tracking the Q Arena Deal' and 'Not All In'.

"We want to work to reducing economic inequality here," Marcia Levine said.

The GCC wants jobs for the unemployed, after school programs for the Cleveland Municipal School District and better housing in the neighborhoods. Levine adds if there is enough money to remodel the Q there should be enough money to put toward these issues.

She also wants know who determined the need for the arena modifications and how will this benefit the community.

"This deal shouldn't go forward unless there is something for the community, something for the people who need jobs, especially good paying jobs." Kevin Miller said.

Another GCC leader said they love this team, they hate this deal.

Back in December Cuyahoga County Executive Armond Budish said The Q is the largest economic driver in the region. Mayor Fred Jackson has said in the past this deal ensures the presences of the Cavaliers and ensures nobody will have to spend 100s of millions of dollars down the line.

In 2016, The Q generated \$245 million in direct spending and \$44 million in tax revenue, supporting 4,800 jobs.

Download the Cleveland 19 News app!

Copyright 2017 WOIO. All rights reserved.

RECOMMENDED STORIES



[Man kills his 2 children, then hangs himself](#)



[Female Cop Hid Her Double Life For Years](#)

[Sponsored | Wife Wine - Wine](#)



[Cornbread So Good It Should Be Illegal](#)



[Lebron James Slashes Price Of Merch In Order To Save Jobs](#)

[Sponsored | Lonny Magazine](#)



[Girl Poses For Class Photo, 30 Year Old Her Fiancé Looks At Bottom Left Corner And Gasps](#)

[Sponsored | On](#)



[6-year-old boy found dead hours after Amber Alert issued](#)



[Explore The New Lincoln Navigator](#)

[Sponsored | Yahoo! Sports](#)



[Video of the scene where a 18-year-old was shot in Cleveland](#)

Share

0

Tweet

!

Email

Print

Favorite

Share

SCENE & HEARD

Wednesday, February 15, 2017

GCC Choreographs Masterful Opposition to Quicken Loans Arena Renovations

Posted By Sam Allard on Wed, Feb 15, 2017 at 2:21 pm

Sam Allard / Scene

Members of Greater Cleveland Congregations raise their hands.

As promised , more than 100 members of Greater Cleveland Congregations packed into the Cuyahoga County Council chambers Tuesday evening to mightily protest the "sweetheart deal" whereby renovations to the Quicken Loans Arena will be funded, in part, by an estimated \$160 million in public money.

The deal was orchestrated behind closed doors between city and county leader and the Cavaliers. Though it creates "no new taxes," it is still an outrageous financial arrangement for a county with a "maxed out credit card," a county that nonetheless already contributes millions of dollars each year to the Cavs, Indians and Browns via a dedicated tax on alcohol and cigarettes.

It's no surprise that locals, dismayed at the brazenness (or else spinelessness) of elected officials and the rapaciousness of Cavs' owner Dan Gilbert, arrived in force.

The room was so crowded Ñ upwards of 100 seated, an eveballed 60-80

1 of 6

6/22/17, 1:48 PM

standing around the room's perimeter Ñ that early in the public comment period, the fourth-floor chambers at the County administrative headquarters on E. 9th Street were deemed to be at full capacity. GCC members and others, barred from entrance, chanted "Not All In" at intervals outside the door. Council president Dan Brady remarked more than once that it was the most heavily attended meeting in the council's six-year history.

Donned in Cavs' apparel and NBA Championship head-wear Ñ this to underscore that opposition to corporate subsidies should in no way be conflated with opposition to the team Ñ!GCC members reiterated a proposal they made last month. They asked for a dollar-for-dollar match (\$160 million) toward a Community Equity Fund that would invest in mental health crisis centers, school programs, workforce development and capital projects in Cleveland's neighborhoods.

Rev. Jawanza Colvin, Pastor at Olivet Institutional Baptist Church and one of GCC's leaders, begged that the same deep wells of creativity and imagination that had so clearly been tapped to excavate \$160 million in public moneys for the further enrichment of a multi-billionaire be commensurately tapped for solutions to problems facing the region.

The questions from GCC members were so pointed, the opposition so rational, that the parade of corporate leaders and downtown non-profit lickspittles called upon to preach the gospel of Cleveland's momentum appeared hollow and almost laughably planted by comparison. (As locals witnessed in the "Keep Cleveland Strong" Pro-Sin Tax Campaign, Cleveland's sports owners and business leaders are more than happy to rally the troops, and to shell out big bucks for marketing and public relations.)

Chef Rocco Whalen, Downtown Cleveland Alliance's Joe Marinucci, Businessman Fred DiSanto, and leaders from the local building and construction trades spoke of Cleveland's momentum and of the wisdom Ñ presumed to be axiomatic Ñ in keeping our "foot on the gas pedal." Variations on this metaphor were deployed by almost every supporter of the deal.

But the GCC opposition testified to the strength of that group's strategy and planning. GCC members were the first five speakers at the microphone and each attacked the deal from a slightly different angle.

First, Rabbi Josh Caruso from Anshe Chesed Fairmount Temple invited the members of GCC and from the Cuyahoga County Progressive Caucus to stand up or raise their hands to show the size of their contingent (pictured above). He then asked all employees of Quicken Loans Arena or Quicken Loans to stand. A number of young suits begrudgingly or pridefully stood to be counted. The impression Caruso created Ñ no doubt intentionally Ñ was that that the supporters of the deal were present, at least to some degree, by company mandate.

Caruso asked five probing questions for the council and for the press to consider:

- 1) Why have County Executive Budish and the Cavs represented the "deal" as an even 50/50 public-private split? Taxpayers are expected to pay in the neighborhood of \$160 million on the \$282 million project, \$38 million more than the Cavs, once borrowing costs are factored in.

2) Why have Cleveland's business leaders, the business community, and the

resources for basic city services, when the city had access to the "tens of millions of dollars available in the Q deal"? And why was information about the impending Q deal withheld from the public until after the vote on the income tax?

3) Given that the \$160 million for the Q deal is over and above the existing sin tax for maintenance of the sports facilities, what's to stop the Indians or the Browns from asking for a similar deal in the next few years? "Doesn't this open the floodgates?" Caruso asked. Where does it stop?

4) How is it possible that Destination Cleveland has \$44 million available to contribute? How was it determined that the Q was the best use of these capital funds?

5) What guarantee do the city and county have that the Cavs won't turn around in the next five to 10 years and demand a completely new stadium, especially if Dan Gilbert sells the team? Why aren't the city and county demanding an agreement where if the upgrade is approved, any new stadium in the next 20 years will be 100-percent financed by the Cavs? "What protections do we have on our investments?"

Caruso was followed in impassioned sequence by Donna Weinburger, Rev. Richard Gibson, an activist for non-violence named Gregory Tyrell and Rev. Jawanza Colvin, all of them GCC members. After Rev. Colvin's remarks, members of GCC emerged from the crowd to present County Councilpeople with individual invitations Ñ or Valentine's Day cards? Ñ to a GCC event on March 9 at Elizabeth Baptist Church.

Other local activists objected to the deal on the grounds of equity Ñ shouldn't the county be focused on assets like MetroHealth and the Justice Center, they asked Ñ and the region's host of other problems: the deterioration of infrastructure, crime, joblessness, poverty. The three leaders from the Cuyahoga County Progressive Caucus spoke as well, condemning the deal as yet another example of corporate welfare.

The most impassioned speaker on the pro-deal side was Norman Edwards, former president of the local Black Contractors Association . Before the meeting, Edwards had mounted a solo "ALL IN" counter chant to the "NOT ALL IN"-ers, and rhapsodized about the goodness of Dan Gilbert during his remarks.

"I'd take a bullet for that man," Edwards said. He claimed that Gilbert had stood by a Community Benefits Agreement that mandated 30-percent minority hiring on the project, and he believed that same benchmark would be met in hiring for renovations work. His remarks became testy, though. He turned to the crowd and accused them of not fighting sincerely or properly for diversity and inclusion. After several verbal attacks on the churches, Rev. Colvin stood from his seat and invited Edwards outside for a one-on-one chat, the steady echos from which piped into the chambers for some time thereafter. ! !

Tags: Greater Cleveland Congregations , Quicken Loans Arena , Cuyahoga County , Cleveland , Armond Budish , Dan Gilbert , Frank Jackson , Image

Jump to comments (6)

 Share 0

 Tweet

 Email

 Print

 Favorite

 Share

 Share 0

 Tweet

 Email

 Print

 Favorite

 Share

SCENE & HEARD

Tuesday, April 4, 2017

Despite Opposition and Confusion, City Council Moves Q Deal Along to Next Stage, Will Surely Pass

Posted By Sam Allard on Tue, Apr 4, 2017 at 4:42 pm

Cleveland City Council on a neighborhood tour in June.

Sam Allard / Scene

After a marathon six-hour City Council hearing, Anthony Brancatelli, chairman of council's Development, Planning and Sustainability committee, approved the Quicken Loans Arena renovation deal legislation, moving it along to council's finance committee. The move came as a slight surprise, given the number and magnitude of unanswered questions by meeting's end and earlier assurances by Councilman Matt Zone, dulcet as ever, that "nobody [wanted] this fast-tracked."

Finance is where most legislation goes before final approval on the city council floor. The finance committee usually meets Monday afternoons. Brancatelli said that the scheduling for this piece of legislation is now at the discretion of the Finance chair — Council President Kevin Kelley — which means it could be discussed as early as this coming Monday.

If approved then and there, the Q deal legislation could be shipped to the floor and passed Monday evening. And if that happens, the Cavaliers will have

achieved precisely what they intended when they first announced the Q deal in November : Cut through the region's legislative bodies "like a knife through butter," (as synthesized to Scene by Councilman Mike Polensek last month).

Despite vocal and persuasive dissidence, voiced last week by City Councilmen Mike Polensek, Jeff Johnson, and Zack Reed (and today by the same parties plus Brian Cummins, Kevin Conwell and TJ Dow), the opposition doesn't appear to have the majority required to halt or even slow the progression of this legislation. It looks like it will be passed without any significant changes. In fact, the only change from what the Cavaliers' initially proposed was an amendment by county councilman Dale Miller, who wanted to extend the time that certain public funds will sit in a dedicated facility reserve.

As Cleveland.com has reported, our public "negotiators" Ñ Armond Budish, big-shot attorney Fred Nance and Financial Adviser Tim "Conflict of Interest" Offtermatt Ñ really didn't "negotiate" anything at all. The one benefit to the public in this arrangement is a seven-year lease extension, which Cleveland.com's Karen Farkas has reported was on the table all along. Nance, at last week's hearing, said that seven years "was the best [the negotiating team] could do."

But it's good enough for City Council. Council President Kevin Kelley has argued that for his colleagues, the responsible thing to do is to consider the cost of "doing nothing." He asked presenters this morning from Greater Cleveland Congregations and the Cuyahoga County Progressive Caucus if they disagreed with the premise that the Q, as a facility, generates revenue for the city.

"If we agree that the Q is an asset and generates income," Kelley asked, "How would Cleveland be better off if we didn't move forward on this?"

GCC's Pastor Richard Gibson basically denied the framework of Kelley's inquiry, arguing that the question should not be one of resource scarcity but of resource allocation. When Kelley followed up by asking about Dan Gilbert's hiring record, what has become a key argument for the pro-deal side, Gibson again declined to answer directly. Gilbert's hiring record was "not why [GCC was there]," Gibson said.

Gibson acknowledged, in his presentation, that the city council votes on the issue had likely been internally tallied and "marshaled" already. (That certainly appears to be the case .) His "biggest disappointment," he said, was the utter lack of creativity displayed by these legislators.

"Is this the highest and best use of public funds?" He asked.

Certainly not for some. Mike Polensek reiterated his outrage over the deal, citing statistics about the decline of Cleveland's population and infrastructure in the era of massive sports subsidies, beginning with the Gateway project that was greenlit in 1990: Cleveland's population has plummeted, child poverty has soared, median home income has dropped right along with the quality of city services, four out of five police district headquarters are in need of repair...

"I could go on and on," Polensek said. "This ain't working... You guys are trying to sell snowmobiles in the desert."

Comment and follow-up both drilled into Cleveland's political and business world.

of the deliberation that occurred at the County level. Cummins, for his part, was alarmed at the rudimentary nature of the financial paperwork provided.

"Quite frankly, we're used to seeing an Excel spreadsheet," he said. Cummins also stated for the record that the Cavs pay no taxes on the facility they inhabit, an annual cost in the neighborhood of \$9 million per year that the city does not collect. He invited the audience to consider that fact when they looked at the financials of the deal in a comprehensive way.

Johnson staked his philosophical territory Ñ not that it was ever up for debate Ñ and suggested a "pivot" in the way Cleveland tries to do economic development by investing in the neighborhoods instead of this one downtown asset.

"We've already paid significantly," Johnson said. "Significantly."

Reed, after a meandering speech about Civil Rights and the Old Testament book of Esther, managed to make a few key points. He questioned the strength of the Cavs' admissions tax projections, especially because they wouldn't go into effect until 2024.

"[The Cavs] can't win a game when [LeBron's] not on the floor," Reed said, suggesting that arena sellouts weren't a guarantee after James retires.

Reed also began to probe the dire predictions of the Cavaliers if the upgrade is not approved. The Cavs Ñwho have been known to lie on this issue, recall Ñ have suggested that the Q's annual events would drop from 200 to 160, resulting in a significant decline in ticket sales and subsequent admissions tax payments.

That seemed like an awfully sharp dip to Reed, who verified that the Cavaliers, Monsters and Gladiators would still play all their home games at the Q. (Without the upgrade, would the Q lose out on every single one of the concerts and special events that it has managed to secure in recent years, making it, as is often cited, the 13th most trafficked venue in the United States and the 33rd in the world?) Almost definitely not.

Eventually, Reed asked Komoroski point blank if he would just talk to Dan Gilbert and try to get something concrete for the neighborhoods, transparently disavowing the competency of the Jackson administration. Reed's argument was that the promises from the teams have all been bullshit, and presumably still are Ñ he cited the "28,000 permanent jobs, \$15 million per year for CMSD and housing for the homeless!" promoted to enlist votes for the Gateway project Ñ and asserted that Cleveland residents don't see the trickle-down effects of the stadium subsidies, despite the lovely graphs and charts. Reed asked if maybe Gilbert could just give toss some money Cleveland's way for youth extracurricular programming or something.

In another memorable moment, Polensek asked Komoroski and Nance if they had any idea what Clevelanders go through every day.

"I'm getting the impression that you have no idea," Polensek said.

Much of council's conversation Ñ and speechifying Ñ about the deal hinged on naming what it was really all about. Remarks by councilpeople often included the following phrase: "The real issue is..." And the "real issue," for those opposing the deal, was public investment, the idea of using public funds,

not required in the lease, that would otherwise go toward any number of more urgent causes across the city.

"All this other stuff is smoke," Jeff Johnson said.

Tags: Cleveland City Council , Q deal , Quicken Loans Arena , Dan Gilbert , Image

Jump to comments (2)

f

Share 0

Tweet

!

Email

Print

Favorite

Share

SPEAKING OF...

Roldo and Ralph Nader Discuss Q Deal, 100,000 Hours of Police Time Devoted to Q in 2016
Jun 20, 2017

Council Weighs in on City's Ballsy Legal Maneuver in Q Deal: Suing Itself
Jun 12, 2017

Tom Petty & the Heartbreakers Celebrate Their 40th Anniversary with a Rousing Performance at the Q
Jun 11, 2017

MORE

From The Web

Sponsored Links by Taboola

Bedford, Ohio: This Brilliant Company Is Disrupting a \$200 Billion Insurance Market
EverQuote Insurance Quotes

Actress Maggie Q Shocks Us With Her Simple Solution To Tired Skin
Advanced Restorative Probiotic Supplement

Say Hello to Reverso To Wrinkles - Do This Once Daily
ActivePlus

Just Released Pics: 2017's Top Trucks
Search Truck Ads

Save Bundles of Cash by Buying Eyeglasses Online
GlassesUSA.com

Here's Why Everyone's Obsessed With These Socks
Cup of Jo for Bombas Socks

Indie Rockers Foster the People to the Top of the Charts
Ohio Man Who Epically Botched 'Wheel of Fortune' Wins Big

Archives | RSS

COMMENTS (2)

Sort Oldest to Newest

Showing 1 - 2 of 2

add a comment

Next time you see an elected official at an event in the arena, ballpark or stadium.....wonder out loud how the tickets were procured. One hint -- it wasn't through StubHub.



SCENE & HEARD

Tuesday, April 25, 2017

What Led to Councilman Brian Cummins' Last-Minute Flip-Flop on the Q Deal?

Posted By Sam Allard on Tue, Apr 25, 2017 at 2:58 pm

Councilman Brian Cummins

And just like that, the Gateway Six became the Gateway Five.

With his head down, Ward 14 Councilman Brian Cummins voted YES Monday night on a piece of "companion legislation" (469-17) that would add three new provisions to the existing Quicken Loans Arena renovation deal.

Shortly thereafter, in accordance with rumors, Cummins also voted YES on 305-17, the Q deal itself, which will commit a projected \$88 million of city money from 2023-2034 to the project. Cummins' vote pushed the final count to 12-5, a super-majority that grants the ordinance emergency status and puts it into effect immediately. It also complicates the possibility of a voter-led referendum, though that effort should still technically be possible.

Cummins was one of six councilman Ñ dubbed the Gateway Six by Mark Naymik on WTAM Monday morning Ñ who had firmly opposed the deal in earlier votes and hearings. Cummins' opposition was largely philosophical. He'd told Cavs and City Council leadership to their faces that he "just couldn't

get there." Among other things, Cummins found it outrageous that after the NBA's negotiation of a major new network deal (worth about \$24 billion), a deal that is expected to lead to enormous increases in team valuation, Gilbert could come asking for a handout with a straight face.

The other opponents in the resistance were Jeff Johnson, Zack Reed, Mike Polensek, Kevin Conwell and T.J. Dow. Despite Cummins' objections, he was thought to be somewhat susceptible because he's a newer member of council leadership – he chairs the health and human services committee – and was the lone opposing councilman from the city's west side.

Council Chambers were packed last night with resident opponents who more than once erupted in chants directed at Cummins and Council President Kevin Kelley. "Hey hey, ho ho," etc. (Note: Supporters of the Q deal, including many representatives from the labor unions, were also in attendance.) Yet despite the vocal opposition from citizens and councilmen, the Q deal has been ratified virtually untouched.

Never once did an elected leader at the city or county level attempt to scrap the current deal and re-negotiate on behalf of their constituents. County Councilman Jack Schron merely wanted to postpone the deal to assess it in the context of state budget cuts. County Councilwoman Nan Baker made one alternative suggestion, that the Cavs themselves bear the burden of the financing, but did so in somber final remarks that were shrugged off as a fantasy. There was never any "creative" negotiating, as Armond Budish has repeatedly bragged; a seven-year lease extension represents the one publicized perk for taxpayers.

But in a last-ditch effort to "polish the turd," in the words of one observer, the deal was subject to a "major announcement" Monday afternoon. The Cavs said they'd sweeten the deal by refurbishing 22 gym floors at rec centers citywide and refurbishing gym floors at CMSD high schools. The other two announced provisions were insignificant public-relations gestures. Though Kelley bristled at the suggestion Monday night, the entire afternoon event seemed oriented toward the city's predominantly black east side community, where opposition to the deal is concentrated. !

"Q Deal Will Provide Jobs for Blacks," read one sign that framed the lectern on the steps of City Hall. "Vote Yes!!"

According to Frank Jackson, it was Kelley himself who worked this weekend to negotiate these additional community benefits.

The gym floor promise is nice, but it bears no resemblance to a negotiated community benefits agreement that organizations like Greater Cleveland Congregations have proposed. As a point of clarification: GCC's position all along has not been to reject the deal outright, but to renegotiate the deal with specific community benefits attached — they've proposed a Community Equity Fund. (The "CBA" touted by the city is in fact merely a labor agreement. That's crucially important, but according to the GCC, ensuring baselines in local and minority labor should happen anyway.)



These final amendments were evidently sufficient to persuade Brian Cummins to change his mind. It is well-known by now that the Cavs and their team of negotiators had been lobbying the council opposition hard all week. Dan Gilbert himself even called Councilman Zack Reed — to try to turn him. In a conversation Tuesday with Scene, Cummins said that the new provisions were important.

"It's hard to say whether they're substantial," Cummins said, "but the admissions tax piece — over the last five years, that's been on average, about \$10 million per year. And that's a lot better than where we were at two weeks ago."

Not just an insignificant public-relations gesture, in other words.

But it was clear, in talking with Cummins, that political pragmatism played a far greater role in his decision-making than these new alleged benefits (to which no specific dollar values were attached, as Mike Polensek noted last night). Cummins said he hated that he was forced to make this difficult decision, but ultimately, preserving his relationship with council leadership

and the mayor's administration was a more beneficial approach for his ward.

"I had to think hard and long about this," Cummins said, "but if I'm trying to garner funds from the mayor's administration, competing with 16 other wards, things like this matter. And that's just a non-debatable fact."

Cummins was frustrated. He said he maintains his objections to the deal on ethical grounds and reiterated that his leadership role on council was not explicitly threatened. But as a former Green party member who was ostracized for years, Cummins said he's had to work harder than most to rehabilitate relationships with council Democrats. It's been an "uphill battle."

"I'm not a lone wolf, but it's hard to always feel like you're leading the opposition," Cummins said. "It's a challenge, and quite frankly, it's tiring."

In the past week, Cummins said he spent more time gauging his constituency and said many of the people he works closely with in Ward 14 recognize that in order to accomplish the development goals that they have for the ward, political relationships are essential.

"As an elected leader, if you're gonna run for office," Cummins said, "you have to play the political game in a good way, to try to get more for the people you represent. This was a really difficult decision, but I was putting my ward first."

Cummins acknowledged the anti-democratic manner in which the legislation passed through legislative bodies at the county and the city, and said that it was extremely difficult to change the ordinance by the time it arrived on city council desks. (As in prior controversial political issues, the debate often hinged on tactics when it should have hinged on fundamentals). But without strong executive leadership from the Mayor and the County Executive, a small caucus of city council opponents could do very little to effect change.

"But if it's this difficult to influence current structures of government," Cummins said, "it's a sign that they need to be changed."

(Cummins said he would be releasing a full statement on his rationale this afternoon.)

Speaking of change, the city council challengers in Ward 14 (the Clark-Fulton and Stockyards area, home to the city's densest concentration of Hispanics) are pouncing on this opportunity to criticize the incumbent Cummins. As we've reported, city council challengers intend to use council support of the Q deal as a lynchpin in their campaigns.

In Ward 14, that's certainly the case.

"I am greatly disappointed that Ward 14's City Councilman Brian Cummins voted to allow the residents of Cleveland be the LOSERS in this deal!" Challenger Jasmin Santana wrote in a statement, the first we'd received from her. She is one of three candidates, in addition to Cummins, who has pulled petitions (Control-F: "Ward 14"). All three are Hispanic.

"Councilman Cummins was the 12th and LAST vote needed to get the majority to approve the Mayor's request to give away an additional \$88 million of our tax dollars to the Quicken Arena sports palace," she wrote.

Santana contended that the deal was a "perfect example of income inequality"

in Cleveland, and said she supported using those funds for services that residents "really need," things like job-training programs and solutions to drugs and crime in the neighborhood.

Santana wrote that she supported "putting the brakes" on the proposal and re-negotiating a better deal for Cleveland residents. Furthermore, she said she supported putting the Q deal on the ballot in November.

Former City Councilman and perennial challenger Nelson Cintron is another candidate in Ward 14. His campaign contacted Scene to alert us that Cintron was "shocked" that Council had passed the legislation, "especially with our schools and crime being among the worst in the country."

Pastor Omar Medina, the third and final challenger, said that he, too, has been opposed to the Q deal from the beginning. He felt that Cummins' reversal actually would make it more difficult for Ward 14 residents to get their "fair share," something he said he would continue to fight for.

It's worth noting that while Cummins' reversal was indeed the most pivotal, as it facilitated the ordinance's emergency status, and was also a stark departure from his publicly stated opposition, 11 other city councilpeople also voted in support of the deal, none of whom (in this reporter's recollection) expressed any moral reservations whatsoever. !

In the meantime, Mayor Frank Jackson signed the Q Deal legislation into law on Facebook live. "I know this is a great deal," Jackson said, in one of very few public comments he has made on the deal to date. "This is one of the best deals the city of Cleveland has ever made in regards to investing very little of public dollars and getting huge returns in terms of public benefits."

Jackson repeated the lie that the Cavs would be covering all shortfalls on the project Ñ the county will be covering those out of a dedicated reserve Ñ and lauded the Cavs' generosity for covering cost overruns on the construction. In theory, this is true, but the costs of the project are not yet known and may be dramatically overestimated. The public will have no way of learning the actual costs, as the Cavs will manage the construction themselves and are not obliged to open their books. They never have in the past.

The Mayor characterized the recent amendments Ñ the gym floor provision et. al Ñ as "the best community benefits that I've ever witnessed in my life as a public official since 1990."

METRO NEWS

Cleveland Mayor Frank Jackson signs the deal to upgrade Quicken Loans Arena (video)



Updated on April 25, 2017 at 3:37 PM
Posted on April 25, 2017 at 2:25 PM

Cleveland City Council approved the deal to upgrade Quicken Loans Arena at its meeting Monday evening. In this video, Mayor Frank Jackson talks about the deal while he signs the legislation. (*Karen Farkas, cleveland.com*)

213
shares

BY ROBERT HIGGS, CLEVELAND.COM
bhiggs@cleveland.com

CLEVELAND, Ohio - Mayor Frank Jackson on Tuesday signed into effect an ordinance committing Cleveland to the deal for upgrades at Quicken Loans Arena.

The deal, a four-way arrangement among the city, Cuyahoga County,

Destination Cleveland and the Cavaliers, will pay for \$140 million in upgrades to The Q. City Council voted 12-5 Monday evening in favor of using admissions taxes collected at the arena to fund the city's share of the deal, an estimated \$88 million over 11 years beginning in 2024.

"I know this is a great deal," Jackson said while signing the legislation. "As much controversy as people were putting around this, this is one of the best deals the city of Cleveland has ever made in regards to investing and at very little public dollars and getting huge returns in public benefit."

The city posted his signing of legislation via Facebook live. The mayor's discussion of The Q deal begins shortly after the 6:00 mark.

Posted by City of Cleveland - City Hall
3,872 Views

The city already diverts admissions tax receipts toward debt service for the original construction bonds that paid to build The Q. Under this deal, that revenue would continue to be diverted once the bonds are paid off in 2023. From 2024 to 2034 an estimated \$88 million - about \$8 million a year -- would go toward paying off the bonds for the upgrades.

Jackson compared the city's commitment to an individual getting a second mortgage on their home.

"What this does is like getting a second mortgage. It extends the debt for 10 more years," Jackson said. "It is not part of our general fund. It is not part of our operation. It does not hamper any of what we do towards

Cleveland Mayor Frank Jackson signs the deal to upgrade Quicken... http://www.cleveland.com/metro/index.ssf/2017/04/cleveland_ma
providing services."

Jackson's signature puts the ordinance into effect. It also starts a 30-day clock for the gathering of signatures for any efforts to repeal the ordinance.

cleveland.com is a partner of the Greater Cleveland Food Bank. Every dollar buys four meals for the hungry. [Click here to donate](#).

Follow @RobertVHiggs

[Follow me on Facebook](#).

Registration on or use of this site constitutes acceptance of our [User Agreement](#) and [Privacy Policy](#)

© 2017 Advance Ohio All rights reserved ([About Us](#)).

The material on this site may not be reproduced, distributed, transmitted, cached or otherwise used, except with the prior written permission of Advance Ohio

[Community Rules](#) apply to all content you upload or otherwise submit to this site.

[Ad Choices](#)

OPINION, EDITORIALS, LETTERS AND COLUMNS

Quicken Loans Arena deal is good for Cleveland, its neighborhoods and its people: Frank G. Jackson (Opinion)

38

Updated on April 30, 2017 at 5:25 AM

Posted on April 30, 2017 at 5:24 AM

Workers from Cleveland's Brilliant Electric Company hang the Cavaliers playoff banners outside Quicken Loans Arena on Friday, April 14, 2017. *(Lynn Ischay/The Plain Dealer)*

476
shares

BY GUEST COLUMNIST/CLEVELAND.COM

Cleveland Mayor Frank Jackson (Lonnie Timmons III/Plain Dealer)

On Monday night, Cleveland City Council wisely voted to approve the city's \$88 million commitment to the Q Transformation Project. I signed the legislation into law on Tuesday, April 25.

The Q deal is one of the best the city of Cleveland has ever made for the benefit of our residents and neighborhoods. And it's one of the best I've seen in my 27-year career in public office.

The deal requires the Cavs to extend their lease at the Quicken Loans Arena until 2034. The project is a forward-thinking investment in Cleveland's neighborhoods, with big results now and in the future.

Four entities are funding the upgrades: The Cleveland Cavaliers, Destination Cleveland, Cuyahoga County and the city of Cleveland.

Here's why I signed the legislation:

Financial Benefits

Based on projections, millions of dollars of admissions tax revenue will be generated from 2023 to 2034 as a result of the Cavs' lease extension. This money will be added directly to our city's general fund.

The city of Cleveland will fund its portion of the upgrades through the admissions tax, which is already in existence and is paid by those attending events at the Q. In other words, if you do not attend an event

at the Q, you do not contribute to the allocation.

Like obtaining a second home mortgage, the Q deal extends the city's debt for another ten years. The Cavaliers will guarantee that debt and pay for half of the renovation costs. If the city's admissions tax contribution falls short of projections, the Cavs have committed to covering the shortfall.

Economic Benefits

The Q deal will secure employment for the 2,500 people currently working for the arena. It will also create 700 new permanent jobs and 2,500 temporary jobs and will contribute to the local economy via taxes and visitor spending - all without increasing taxes or creating a new tax. The funds for the Q deal do not come from income taxes or property taxes. Nor do the funds come from the city's general fund or operational dollars. In fact, it will add millions of dollars to the city's revenue.

As far as venues, Quicken Loans Arena is the largest driver of economic activity in the city of Cleveland, with more than 200 events, from Cavs games, to Monsters Hockey to concerts and arena football. Surrounding businesses also see revenue generated from the 2 million visitors who dine, shop and stay in downtown Cleveland before and after Q events. The Clevelanders who work at these businesses depend on visitor dollars to sustain their jobs and businesses.

ADVERTISING

[Read more on Q deal](#)


Community Benefits

This deal is good for Cleveland's neighborhoods. Thanks in large part to the efforts of Council President Kevin J. Kelley, the Cavs have agreed to contribute even more to the city's neighborhood revitalization efforts as part of this deal, including:

- For every city dollar that goes to the Q Transformation Project at least an equal amount will go to the city's general fund. That money goes directly to our neighborhoods. To do nothing would leave the city with less revenue to provide services.
- The Cavs will refurbish all 22 gym floors at our city recreation centers as well as all basketball courts at Cleveland School District high schools.
- The team will donate the proceeds of the Cavs' away game playoffs to Watch Parties to Greater Cleveland Habitat for Humanity. The nonprofit will renovate 100 homes over three years in Cleveland's neighborhoods.

Several key people, churches and organizations have publicly expressed their support for the Q deal because of the Cavs' commitment to creating jobs and opportunities for people of all backgrounds.

Supporters include U.S. Rep. Marcia Fudge, state Sen. Sandra Williams, the Cleveland branch of the NAACP, Cleveland Building Trades and the Black Contractors Association, to name a few.



Sen. Sandra Williams
@SenSWilliams

Follow

Senator Williams joins local leaders today reaffirming her support for the Q deal and presses upon city council members to vote yes!

8:16 PM - 24 Apr 2017

37

The Cavaliers are an important part of the fabric of the city of Cleveland. Keeping the team in our City is vital not only for the economic success of downtown Cleveland but for the people in neighborhoods throughout the City who rely on the Q and surrounding businesses to provide for their families. Despite the loud and misleading rhetoric coming from opponents of this deal, the fact remains - the Q deal is an investment in our city's future and our neighborhoods. It is a good deal for Cleveland, its neighborhoods and its people.

Frank G. Jackson is the mayor of Cleveland.

For more information, follow the city of Cleveland on [Facebook](#), [Twitter](#) or Instagram at @CityofCleveland.

Have something to say about this topic? Use the comments to share your thoughts, and stay informed when readers reply to your comments by using the Notification Settings (in blue) just below.

cleveland.com is a partner of the Greater Cleveland Food Bank. Every dollar buys four meals for the hungry. Click [here](#) to donate.



Registration on or use of this site constitutes acceptance of our [User Agreement](#) and [Privacy Policy](#)

© 2017 Advance Ohio All rights reserved ([About Us](#)).

The material on this site may not be reproduced, distributed, transmitted, cached or otherwise used, except with the prior written permission of Advance Ohio

[Community Rules](#) apply to all content you upload or otherwise submit to this site.

[Ad Choices](#)



METRO NEWS

Opponents of The Q renovation deal launch referendum effort

418

Updated on April 27, 2017 at 8:07 AM
Posted on April 26, 2017 at 7:47 AM



A coalition of social advocacy groups and labor organizations will seek to collect about 6,000 signatures of Cleveland voters within 30 days to put a deal to pay for renovations to Quicken Loans Arena before voters. *(John Kuntz, cleveland.com)*

216
shares

BY ROBERT HIGGS, CLEVELAND.COM
bhiggs@cleveland.com

CLEVELAND, Ohio - A coalition of social advocacy groups and labor organizations has launched a petition drive in hopes of repealing a deal in which Cleveland would commit an estimated \$88 million in tax dollars to a renovation of Quicken Loans Arena.

The coalition, comprised of the social advocacy groups Greater Cleveland Congregations and the Cuyahoga Progressive Caucus, Service Employees International Union Local 1199, AFSCME Ohio Council 8, and

Amalgamated Transit Union Local 268, will seek to collect about 6,000 signatures of Cleveland voters within 30 days to put the deal before voters.

Join us today from noon to 1:30 p.m. for a constructive conversation about The Q as part of our Talk it Out series. Comments will be reviewed by a moderator before they are published.

The groups finalized their decision Tuesday evening, one day after Cleveland City Council approved the deal by a vote of 12-5, and issued a news release Wednesday morning.

The clock began ticking Tuesday when Mayor Frank Jackson signed the deal, making the ordinance effective immediately.

What's the deal?

The deal, a four-way arrangement among the city, Cuyahoga County, Destination Cleveland and the Cavaliers, will pay for \$140 million in upgrades to The Q.

City Council voted Monday in favor of using admissions taxes collected at the arena to fund the city's share of the deal, an estimated \$8 million a year over 11 years, beginning in 2024.

The work at the arena would dramatically alter the facility's appearance, creating more space for dining, bars and public gathering. The Cavaliers contend that the work will keep the 22-year-old arena competitive with other cities as they vie for major concert acts and other shows.

Cuyahoga County has agreed to sell the bonds to finance the project. Passage of the ordinance Monday, followed Tuesday by Mayor Frank Jackson signing it into law, clears the way for the county to proceed.

What's the opposition?

The Greater Cleveland Congregations and Cuyahoga County Progressive Caucus have been vocal opponents of the deal, arguing that the city has much more serious needs in its neighborhoods - crime, poverty and unemployment - and that they must be addressed first.

While areas downtown have benefited from The Q's success, those benefits have not flowed out to neighborhoods, they said.

As the deal was debated, they sought to get a community benefits package nailed down. As part of such a deal, the Cavaliers would contribute toward a fund to benefit Clevelanders. They envisioned that fund being under the control of a board staffed with a mix of public officials and private citizens -- but not the GCC.

ADVERTISING

"From the beginning there has been an unwillingness to develop a deal that addresses the critical ills in our neighborhoods like high unemployment, inadequate mental health crisis centers, increasing gun violence, and persistent challenges in schools," Rev. Richard Gibson, pastor of Elizabeth Baptist Church in Cleveland and a co-chair of the GCC, said in a statement Wednesday morning. "More energy has been spent attacking our proposal than considering or developing a deal that would more broadly impact our city and county.

"We will continue to lead the discussion and focus on our neighborhoods until there is fairness and substantial progress in our struggling neighborhoods. We are 'all-in' for a real community benefits agreement for the greater good," Gibson said.

The group previously said that such a fund should focus on three specific areas:

- Development of jobs in neighborhoods - permanent jobs that offer a chance for advancement.
- Targeted capital improvements in neighborhoods - both brick-

and-mortar projects and blight-reduction work.

- Development of mental health centers on the East Side and West Side to help people with mental illnesses. The goal is to aid people in crisis, perhaps heading off an arrest and leading to more effective treatment. They would try to link individuals with social services and perhaps provide some temporary housing.

What's the process?

When the mayor signed the ordinance Tuesday, it started a 30 day clock on the referendum process.

The groups will have to collect about 6,000 valid signatures from registered voters in Cleveland - a total equal to 10 percent of the last citywide election. They must file their petitions with the clerk of council before the 30-day clock expires.

If enough signatures are deemed valid, the issue could be forwarded to the ballot.

An unanswered question is whether the agreement with the county and the Cavaliers could be repealed. The deal is essentially a contract among the parties that is in effect now and can be acted upon.

That question presumably would end up being determined by a court.

cleveland.com is a partner of the Greater Cleveland Food Bank. Every dollar buys four meals for the hungry. [Click here to donate](#).

Follow @RobertVHiggs

[Follow me on Facebook](#).

permission of Advance Ohio

Community Rules apply to all content you upload or otherwise submit to this site.

Ad Choices

METRO NEWS

Coalition to submit signatures to put Q deal on ballot

125

Updated on May 21, 2017 at 6:30 PM
Posted on May 20, 2017 at 5:24 PM

A coalition is planning to submit signatures to Cleveland City Hall to put Q deal on the ballot. *(Karen Farkas, cleveland.com)*

252
shares

BY [KAYLEE REMINGTON, CLEVELAND.COM](#)
kremington@cleveland.com

CLEVELAND, Ohio -- A coalition opposed to the partially taxpayer-funded plan to renovate Quicken Loans Arena has collected more than

20,000 signatures on a petition to ask the city to withdraw its support of the deal. They plan to submit the signatures at City Hall Monday morning.

The group seeks a referendum on legislation passed by City Council and approved by Mayor Frank Jackson in late April. The deal, a four-way arrangement among the city, Cuyahoga County, Destination Cleveland and the Cavaliers, will pay for \$140 million in upgrades to The Q.

The city declined to comment. An email to a Cavs spokesman was not returned.

The group had 30 days to collect about 6,000 signatures to force a referendum. Typically, groups mounting petition drives submit far more signatures than required, knowing that some signatures will be found to be invalid.

The coalition will make its way to the front steps of City Hall at 10:30 a.m. Monday. The group is made up of local organizations including Greater Cleveland Congregations, Service Employees International Union Local 1199, Cuyahoga County Progressive Caucus, AFSCME Ohio Council 8 and Amalgamated Transit Union Local 268.

"What we should do is take the signatures in, verify the signatures and put (the deal) on the ballot," Cleveland City Councilman Zach Reed said. "My firm belief now is we should work out a plan that we should have worked out in the beginning."

Reed is challenging Jackson in this year's mayoral election.

Reed is not opposed to renovating the arena, but would like a plan that also focuses on economic development to help rebirth the city's neighborhoods.

"The community needs to be involved, it's a community project, we're using community funding so therefore the community has to be

involved."

Council President Kevin Kelley refuted the notion that the public did not have its say in the deal. The county provides minutes of public comment before their meetings. Many opponents of the deal went to the meetings to voice their opinion, he said. In addition to their comments to the county, city council also heard hours of testimony from those for the deal and those against it, he added.

He questioned whether a referendum could derail the deal now that formal contracts have been signed.

"As far as I'm concerned we are moving forward," he said. "If they present signatures, I'll just consult with the law department and see where our next steps are."

The opposition groups have called for greater investment in Cleveland's downtrodden neighborhoods. Among their demands are:

- Development of jobs in neighborhoods - permanent jobs that offer a chance for advancement.
- Targeted capital improvements in neighborhoods - both brick-and-mortar projects and blight-reduction work.
- Development of mental health centers on the East Side and West Side to help people with mental illnesses. The goal is to aid people in crisis, perhaps heading off an arrest and leading to more effective treatment. They would try to link individuals with social services and perhaps provide some temporary housing.

The deal has faced strong, vocal opposition practically since it was announced. Opponents have argued that the city has much more serious needs in its neighborhoods - crime, poverty and unemployment - that should be addressed before millions of additional dollars are spent on arena renovations.

Groups crowded meetings of both Cuyahoga County council and Cleveland's. The GCC took its list of demands all the way to Detroit seeking a meeting with Cavs and Quicken Loans owner Dan Gilbert.

ADVERTISING

Yet the deal has garnered its share of support as well. In addition to both councils, County Executive Armond Budish and Mayor Frank Jackson, the deal has been endorsed by the U.S. Rep. Marcia Fudge, the local NAACP, numerous labor groups, including the Black Contractors Group.

Supporters say the deal will continue momentum in Cleveland's booming downtown and ensure that the team will remain in the arena through 2034. But opponents say the deal is another handout to a millionaire sports team owner.

While signing the legislation in April, Jackson said it is one of the best deals the city has been a part of to invest.

"What this does is like getting a second mortgage," Jackson said. It extends the debt for 10 more years," Jackson said in April. "It is not part of our general fund. It is not part of our operation. It does not hamper any of what we do towards providing services."

Once interest on the loans is factored in, the deal is estimated to cost \$205 million. This is based on estimates under current market conditions for borrowing. The Cavs will pay half the initial cost and finance its share.

Cleveland, Cuyahoga County and Destination Cleveland will finance the remaining \$70 million cost. The public entities' share of the project total will be more than the Cavs because it will include a reserve fund being set up with tax money to cover future expenses for Gateway's other sports venue - baseball's Progressive Field.

Cleveland City Councilman Jeff Johnson, who strongly opposes the deal, is impressed the coalition was able to come up with 22,000 signatures.

Johnson also is challenging Jackson in this year's mayoral election.

The community is sending the message that they're tired of the money going into downtown at the expense of the neighborhoods, he said.

The deal disrespects the neighborhoods and it channels public dollars that the residents didn't support, Johnson said.

"There comes a point when enough is enough," he said. "The community wants to vote on it."

Kelley took issue with the idea that the project was not worthy of public investment.

"The revenue that's generated by this arena supports our general fund," he said, "which in turn allows the city to invest in our neighborhoods, invest in our parks, invest in our police department, invest in our fire department and all of the functions of the city of Cleveland."

Please take a moment and click [here](#) to help the Greater Cleveland Food Bank, a cleveland.com partner. Every dollar you give buys four meals for the hungry.

Registration on or use of this site constitutes acceptance of our [User Agreement](#) and [Privacy Policy](#)

© 2017 Advance Ohio All rights reserved ([About Us](#)).

The material on this site may not be reproduced, distributed, transmitted, cached or otherwise used, except with the prior written permission of Advance Ohio

[Community Rules](#) apply to all content you upload or otherwise submit to this site.

[Ad Choices](#)



CITY OF CLEVELAND

Office of the Council

www.clevelandcitycouncil.org

Patricia J. Britt, MMC

CITY CLERK, CLERK OF COUNCIL

May 22, 2017

A referendum seeking repeal of Ordinance No. 305-17 would unconstitutionally impair an already executed and binding contract. Therefore, I do not accept the petition papers for such referendum.

Allan Dreyer
Deputy Clerk/Clerk of Council Pro Tem

 Share 1

Tweet



Email

Print

Favorite

Share

SCENE & HEARD

Monday, May 22, 2017

City Council Rejects 20,603 Q Deal Petition Signatures on Questionable Grounds

Posted By Sam Allard on Mon, May 22, 2017 at 3:33 pm

Leaders of the referendum coalition speaking gathering on the steps of City Hall before their signatures were rejected.

Sam Allard / Scene

Democracy died once again in Cleveland Monday, and this time more than a few seemed to mourn its passing. Several city councilmen cried foul after City Council rejected 20,603 signatures presented Monday morning, signatures for a petition seeking a referendum on a city ordinance that will commit future tax revenue to an enormous upgrade at Quicken Loans Arena.

At a noon Committee of the Whole meeting, Councilman Mike Polensek, who voted against the deal and who was one of its most vocal opponents, argued that in rejecting the signatures, council had gone beyond the issue of support of or opposition to the deal itself; they were entering territory that called into question the city charter, to say nothing of certain foundational principles of American democracy.

"Twenty-thousand signatures were submitted," Polensek said. "These are citizens. These are not illegal aliens. These are citizens of the United States and residents of the City of Cleveland. I don't know why we are denying residents

their due process under the law. We've got to be real careful what we're doing here. Very careful. This is part of the basic, fundamental rights of an American citizen. We better be very careful about what decisions are being made here, and by whom."

If you ask Councilman Jeff Johnson, Council President Kevin Kelley made the decision to reject the signatures on his own, a suggestion at which Kelley balked.

Kelley repeatedly said that he'd made the decision after advice and consultation from city lawyers Ñ both attorneys for city council (Jennifer Heinert O'Leary and Rachel Scalish) and attorneys within Barb Langhenry's office in the city's law department. Kelley would not name the names of the lawyers who'd given him advice until the end of the meeting, when he hinted that "Rick Horvath was involved." Horvath is Cleveland's Chief Corporate Counsel.

More troubling to Jeff Johnson, Zack Reed, Mike Polensek, Kevin Conwell, and even Matt Zone was the fact that this legal opinion is currently unavailable in writing.

"I don't have a written opinion," Kelley said, responding to a question from Johnson.

"So someone just told you?" Johnson replied, incredulous.

"Yeah," Kelley said.

Johnson, who doubted Kelley's explanation, wanted a written opinion by Monday's 7 p.m. council meeting, but Kelley said that that couldn't happen on such short notice. Johnson took exception to that as well. "I'd like to remind everyone that it's 1:24 p.m.," he said, at 1:24. "I've seen these opinions produced in an hour. It could be the two sentences you just said."

The two sentences in question were loosely paraphrased from the two sentences that were handed to representatives of the referendum coalition when they tried to officially submit their signatures earlier in the day. The petition required 6,000 valid signatures. The coalition had collected more than 20,000 in less than 30 days.

"A referendum seeking repeal of Ordinance 305-17 [the Q Deal] would unconstitutionally impair an already executed and binding contract. Therefore, I do not accept the petition papers for such referendum," read the message signed by Deputy Clerk Allan Dreyer.

Members of the Greater Cleveland Congregations, Service Employees International Union Local 1199, the Cuyahoga County Progressive Caucus, AFSCME Ohio Council 8, and Amalgamated Transit Union Local 268 had given a brief press conference at 10:30 a.m. outlining their position once again. Pastors Richard Gibson and Jawanza Colvin spoke about GCC's idea for a Community Equity Fund, with money that would go toward a job pipeline, mental health access and neighborhood investment. Colvin said that the city was in a "state of emergency," and railed against the idea of committing millions of public dollars without input from the public itself.

"We want a better deal or no deal at all," Colvin said.

And yet, Kelley, via counsel, personally decided the City Council position: that the signatures would not even be accepted because of an existing contract. (Council did agree to receive the four boxes of signatures for safekeeping, but in another memo to the coalition signed by Dreyer, said that they did not consider the petition to have been filed with the Clerk.)

Polensek wondered to which contract Dreyer's first message referred. It was his understanding that the County hadn't yet sold the renovation bonds, as the county was waiting for a resolution on the referendum issue, per the advice of financial adviser Timothy Offtermatt. Kelley said that there were other contracts that had been signed, city contracts.

Johnson and Reed, reeling, asked what contracts Kelley was talking about. (This remained unclear.) "Can I get a copy of those?" Reed asked. "Because I haven't seen a single one."

During one heated exchange, Johnson demanded that Kelley let the public know how he'd arrived at the decision he did. Johnson would not, he said, allow himself be embarrassed by "the circus" over which Kelley was presiding.

"I need to know who gave you that opinion," Johnson said. "Was it our folk? Was it Barb Langhenry's people?"

"It was both," Kelley said. "While we live in a public realm where almost everything is public record, there's still attorney-client privilege on certain matters."

"Who's the client here?" Johnson asked.

"Council," said Kelley.

"That's right," said Johnson. "Am I a member of council?"

"As far as I know," Kelley said.

Tags: Q Deal , Quicken Loans Arena , referendum , Kevin Kelley , Je Johnson. , Image

Jump to comments (10)

 Share 1

 Tweet



 Email

 Print

 Favorite

 Share

SPEAKING OF...

Roldo and Ralph Nader Discuss Q Deal, 100,000 Hours of Police Time Devoted to Q in 2016
Jun 20, 2017

Council Weighs in on City's Ballys Legal Maneuver in Q Deal: Suing Itself
Jun 12, 2017

Tom Petty & the Heartbreakers Celebrate Their 40th Anniversary with a Rousing Performance at the Q
Jun 11, 2017

MORE

From The Web

Sponsored Links by Taboola

Say ÔAu RevoirÔ To Wrinkles - Do This Once Daily
ActivePlus

Get smiles for miles with Aetna Dental Plans.
Aetna

Hollywood Actress Tells All: ÔI Hope My Story Will Help Other
Advanced Restorative Probiotic Supplement

Save Bundles of Cash by Buying Eyeglasses Online
GlassesUSA.com

Bedford, Ohio: This Brilliant Company Is Disrupting a \$200 Bi
EverQuote Insurance Quotes

This Workout Sock Makes a Huge Dilerence
Cup of Jo for Bombas Socks

QOhio Supreme Court Justice Advocate
Here's How Cavs Fans Reacted to Las



CITY OF CLEVELAND

Office of the Council

www.clevelandcitycouncil.org

Patricia J. Britt, MMC

CITY CLERK, CLERK OF COUNCIL

May 22, 2017

I, Allan Dreyer, Deputy Clerk/Clerk of Council Pro Tem am in receipt of a referendum petition seeking the repeal of Ordinance No. 305-17. We are taking custody of such petition at your request, but do not consider the petition to be filed with the Clerk.

Signed:

A handwritten signature in blue ink, appearing to read "Allan B. Dreyer", written over a horizontal line.

Allan Dreyer, Deputy Clerk/Clerk of Council Pro Tem

%

May 26, 2017

Via fax to 216.664.2663, email to blanghenry@city.cleveland.ohio.us, and Certified U.S. Mail

Barbara A. Langhenry
Director of Law
City of Cleveland
601 Lakeside Ave., Room 106
Cleveland, OH 44114

Re: Taxpayer demand under R.C. 733.59 and City of Cleveland Charter § 90 that the Clerk of Council accept the petition submitted by taxpayers on May 22, 2017 for a referendum on Ordinance No. 305-17 under Charter §§ 59D60 and 64.

Dear Director Langhenry

I write on behalf of City of Cleveland taxpayers Diane S. Bufford, Jennifer A. Blakeney, Verdiana Y. Conner, Khalilah A. Worley, and Linda C. Robinson (Taxpayers). R.C. 733.59 and City of Cleveland Charter § 90, to demand that the Clerk of Council accept the petition submitted by Taxpayers on May 22, 2017 for a referendum on Ordinance No. 305-17 under Charter §§ 59D60 and 64.

Ordinance No. 305-17 (attached as Exhibit 1) would commit an estimated \$88 million of City tax revenue to a discretionary renovation of Quicken Loans Arena and its surrounding concourse area and has been the subject of vigorous public debate. It is entitled "An Emergency Ordinance to amend Section 195.03 of the Codified Ordinances of Cleveland, Ohio, 1976, as amended by Ordinance No. 139-5 passed April 29, 2013, relating to exemptions from Admissions Tax; and to authorize the Directors of Finance and Law to enter into an agreement to the Cooperative Agreement between the City and Cuyahoga County dated as of September 15, 1992."

1. City of Cleveland Charter §§ 59D60 and 64 mandate that the Clerk of Council accept Taxpayers' petition for referendum and certify Ordinance No. 305-17 to Council for reconsideration and, if necessary, a vote of the electors of the City of Cleveland.

Chapters 7 and 9 of the Charter of the City of Cleveland (Charter § 59D66) set forth the process by which ordinances passed by Cleveland City Council are subject to referendum.

Charter § 59 provides that within 30 days of the passing of an ordinance by Council, a petition signed by electors equal in number to ten percent (10%) of the total vote cast at the last preceding regular Municipal election of the City may be filed with the Clerk of the Council requesting that the ordinance, or any specified part thereof, be repealed or

submitted to a vote of the electors. This petition shall become operative if it is prepared and filed in the manner and form prescribed in Chapter 7 for an initiative petition for an ordinance.

Charter § 64 provides that ordinances passed as emergency measures, like the ordinance at issue here, are subject to referendum in like manner as other ordinances. Unlike the ordinance at issue here, they are passed as emergency measures for the immediate preservation of the public peace, property, health, or safety and providing for the refinancing of bonds, notes or other securities of the City.

Charter § 60 provides that,

When [a petition for referendum] is filed with the Clerk of the Council he shall determine the sufficiency thereof in the manner provided in this Charter for an initiative petition for an ordinance. If the petition be found sufficient, or be rendered sufficient by amendment as provided in Sections 52, 53 and 54 hereof, the Clerk shall certify that fact to the Council, which shall proceed to reconsider the ordinance. If, upon such reconsideration, the ordinance be not entirely repealed the Council shall provide for submitting it to a vote of the electors of the City, and in so doing the Council shall be governed by the provisions of Sections 57 and 66 hereof respecting the time of submission and manner of voting on ordinances proposed to the Council by petition.

On May 22, 2017, Taxpayers submitted a referendum petition to the Clerk of Council consistent with the above provisions, containing 20,603 signatures of Cleveland residents (more than three times the number required), and directing the repeal of Ordinance No. 30517, passed by Council of this City on the 24th day of April, 2017, be submitted to the electors of Cleveland for their approval or rejection.

There is no indication from the Council Clerk or otherwise that Taxpayers' petition does not meet the requirements of the Cleveland Charter as set forth above or otherwise. Yet the Council Clerk has refused to accept the petition, with Deputy Clerk Allan Dreyer, ostensibly acting as Clerk of Council Pro Tem, having stated as follows in a letter of May 22, 2017 (attached as Exhibit 2): "A referendum seeking repeal of Ordinance No. 30517 unconstitutionally impair an already executed and binding contract. Therefore I do not accept the petition papers for such referendum."

Mr. Dreyer followed this letter with another one the same date (attached as Exhibit 3), stating as follows: "I, Allan Dreyer, Deputy Clerk/Clerk of Council Pro Tem am in receipt of a referendum petition seeking the repeal of Ordinance No. 30517. We are taking custody of such petition at your request, but do not consider the petition to be filed with the Clerk."

This correspondence from Mr. Dreyer lacks any legitimate justification for the Clerk's refusal to accept Taxpayers' petition, and no such justification exists. As explained below, Mr. Dreyer's invocation of the U.S. Constitution's Contract Clause does not apply to Taxpayers' petition.

petition. Thus, Cleveland's Charter requires the Council Clerk to accept Taxpayers' petition for referendum and certify Ordinance No. 3050 Council for reconsideration and, if necessary, a vote of the electors of the City of Cleveland.

2. Contrary to the Clerk's misrepresentation, the U.S. Constitution's Contract Clause does not apply to Taxpayers' petition for referendum.

The U.S. Constitution's Contract Clause (Article I, Section 10, Clause 1) provides that, "No State shall enter into any Treaty, Alliance, or Confederation; grant Letters of Marque and Reprisal; coin Money; emit Bills of Credit; make any Thing but gold and silver Coin a Tender in Payment of Debts; pass any Bill of Attainder, ex post facto Law, or Law impairing the Obligation of Contracts, or grant any Title of Nobility." (Emphasis added.)

Thus, by its plain language, the Contract Clause only bars the passing of laws "impairing the obligation of contracts." It has no application to an electorate's rejection of a newly proposed or newly enacted law subject to referendum. Not only has no Ohio court ever held to the contrary, but our research suggests that no Ohio party has ever advanced this specious argument. Indeed, it is unimaginable that the Contract Clause intended to give government officials carte blanche to propose new laws against the will of the electorate and then rush into contracts in an effort to void the electorate's statutory repeal of those laws. Of course, any party that has entered a contract regarding the controversial Ordinance at issue has done so on notice not only that the Ordinance was subject to referendum, but that it was likely to be put to the test through the referendum process. Thus, no contractual obligations could be considered "substantially impaired" here even if the Contract Clause did apply (again, it does not). See *M&F Supermarket v. Owens*, 997 F. Supp. 908, 914 (S.D. Ohio, 1997) (noting that substantial impairment of contractual obligations could not be found where "[p]laintiffs were on notice that at any time the local community could vote the manner that impacted plaintiffs' business" and where "[p]laintiffs could have included clause in their lease that allowed them to cancel the lease if the community voted [in the manner at issue]"). Simply put, any contracting parties were on notice and would and should have known better.

¹ Mr. Dreyer's statement that "[w]e do not consider the petition to be filed with the Clerk" might reflect the Clerk's intent to claim that taxpayers' right to a referendum is barred due to the Clerk's own unlawful refusal to accept taxpayers' petition that was lawfully submitted in advance of Charter § 59's 30-day deadline. Here, the Law Director should note that the Supreme Court of Ohio's holding that "when the board of elections ultimately certifies the validity of a petition and [any] delay was not the fault of the initiative supporters, a writ of mandamus will issue to place the matter on the ballot. Any other result would be unfair and thwart the constitutional right of initiative." *State ex rel. Meigs Cty. Hon. Court v. Meigs Bd. of Comm.*, 18 Ohio St. 3d 63, 2016 Ohio-5658, 68 N.E.3d 781, 19, citing *State ex rel. Stern v. Quast*, 38 Ohio St. 2d 9, 426 N.E.2d 1389 (1981).

3. Taxpayers request that the Clerk of Council accept the petition for referendum and certify it to Council for reconsideration and, if necessary, a vote of the electors of the City of Cleveland

Please arrange for us to receive by June 7, 2017 written assurance from the Clerk of Council that Taxpayers' petition for referendum be accepted and certified to Council for reconsideration under Charter Sections 59D60 and 64.

If the Clerk fails to accept Taxpayers' petition as the Charter expressly requires 733.58 and Cleveland Charter § 89 require you as Law Director to seek a writ of mandamus forcing the Clerk of Council to perform the duty

Swift action is required. Not only is the City apparently expending resources against the will of the electorate under the false pretense of a failed emergency measure, it is invoking inapplicable constitutional arguments in an apparent effort to thwart the electorate's statutory right to referendum. Continued delay in subjecting Ordinance No. 605 referendum will irreparably harm taxpayers.

If you file litigation against the Clerk of Council under your R.C. 733.58 and Charter § 89 duties, then please name our client as party defendant under R.C. 733.581 so that we may assist in presenting all issues of law and fact in the matter as that statute authorizes.

If we do not receive timely reassurance that the requested actions will occur promptly, then we will file taxpayer litigation on Taxpayers' behalf under R.C. 733.59 and Cleveland Charter § 90 against the Council Clerk, the Council members, and you.

R.C. 733.59 provides as follows:

733.59 Taxpayer's suit.

If the village solicitor or city director of law fails, upon the written request of any taxpayer of the municipal corporation, to make an application provided for in sections 733.56 to 733.58 of the Revised Code, the taxpayer may institute suit in his own name, on behalf of the municipal corporation. Any taxpayer of any municipal corporation in which there is no village solicitor or city director of law may bring such suit on behalf of the municipal corporation. No such suit or proceeding shall be entertained by any court until the taxpayer gives security for the cost of the proceeding.

Cleveland Charter § 90 is identical in effect and provides as follows:

§ 90 Taxpayer's suit

In case the Director of Law, upon written request of any taxpayer of the City, fails to make any application provided for in the preceding three sections, taxpayer may institute suit or proceedings for such purpose in his own name on behalf of the City. No such suit or proceeding shall be entertained by any court until such request to the

Director of Law shall first have been made, nor until the taxpayer has given security for the costs of the proceeding (Ord. 4273-16; passed 7/26/16.)

Our clients will be entitled to their attorneys' fees and costs if successful. Charter § 92; R.C. 733.61 (providing for attorneys' fees and costs for successful taxpayer lawsuits); State ex rel. Fisher v. City of Cleveland, 109 Ohio St.3d 182, 2006-1-45 N.E.2d 500, ¶ 45. It is difficult to see how our clients would not be successful given the Charter's clear and unambiguous mandate. If you, the Clerk of Council, and Council fail swiftly, you will be subjecting Cleveland's taxpayers to needless cost of litigation, when your respective duties to act otherwise under the Charter are plain.

We will follow up with a call to you early next week to discuss the matter further. Again, time is of the essence before the Clerk's continued refusal to fulfill her legally mandated duties further harms the public.

Sincerely,



Peter Pattakos

Subodh Chandra

Cc:Terrell Pruitt (tp Pruitt@clevelandcitycouncil.org)
Zack Reed (zreed@clevelandcitycouncil.org)
Kerry McCormack (kmcormack@clevelandcitycouncil.org)
Kenneth Johnson (kjohnson@clevelandcitycouncil.org)
Phyllis Cleveland (pcleveland@clevelandcitycouncil.org)
Blaine A. Griffin (bgriffin@clevelandcitycouncil.org)
T.J. Dow (tdow@clevelandcitycouncil.org)
Michael Polensek (mpolensek@clevelandcitycouncil.org)
Kevin Conwell (kconwell@clevelandcitycouncil.org)
Jeffrey Johnson (jjohnson@clevelandcitycouncil.org)
Dona Brady (dbrady@clevelandcitycouncil.org)
Anthony Brancatelli (abrancatelli@clevelandcitycouncil.org)
Kevin Kelley (kkelley@clevelandcitycouncil.org)
Brian Cummins (bcummins@clevelandcitycouncil.org)
Matt Zone (mzone@clevelandcitycouncil.org)
Brian Kazy (bkazy@clevelandcitycouncil.org)
Martin Keane (mkeane@clevelandcitycouncil.org)
Patricia Britt (pbritt@clevelandcitycouncil.org)
Allen Dreyer (adreyer@clevelandcitycouncil.org)
Rochelle Long (rlong@clevelandcitycouncil.org)

%

1

2

3

4

5

~ ~ ~ ~ ~

6

7

CITY OF CLEVELAND

8

MAYOR FRANK JACKSON AND

9

COUNCIL PRESIDENT KEVIN KELLEY

10

JOINT PRESS CONFERENCE

11

RE: QUICKEN LOANS ARENA

12

REFERENDUM PETITIONS

13

JUNE 5, 2017

14

15

~ ~ ~ ~ ~

16

17

18

19

20

21

22

23

24

25

1 MAYOR JACKSON: Well, um, the
2 council president and I want to provide you
3 with an update as it pertains to the referendum
4 petitions seeking to repeal the city
5 ordinance -- city council ordinance on the 2017
6 Quicken Loans Arena transformation project. As
7 you know, on Monday, May 22, the office of the
8 clerk of council determined that they could not
9 legally accept petitions, as it would
10 unconstitutionally impair an already executed
11 and binding contract. So this is a valid legal
12 argument.

13 The referendum petitioners, however,
14 demanded that our law director file a writ of
15 mandamus to force the clerk to accept and
16 certify the petitions if the clerk of council
17 did not voluntarily do so. They argued that,
18 uh, legally under the city charter the clerk
19 has -- could not refuse to accept or certify
20 the petitions. Now, this also is a valid legal
21 argument. Uh, so we have two conflicting legal
22 arguments, two conflicting legal issues.

23 Before I go further just let me explain
24 to you, this has nothing to do with the Q deal
25 itself. Both myself and the council president

1 are on record as supporting that, so this has
2 nothing to do with the Q deal. This is really
3 about, uh, two constitutional legal arguments,
4 one interfering with a contract and the other
5 basically whether or not people will be denied
6 the right to vote based on the referendum
7 petition. Now, we do not want to take an
8 unconstitutional action, whether it is around
9 interfering with a contract or denying people
10 the right to vote on the referendum.

11 And both of these, uh, legal arguments,
12 and both of these issues -- constitutional
13 issues are very important to us because they
14 speak to the rights of our citizens. Uh, so
15 the council president will outline for you the
16 process that brings this resolution to, uh,
17 some -- hopefully some conclusion; and whatever
18 that conclusion is, we will abide by that
19 conclusion as a city. Okay.

20 MR. KELLEY: Thank you, Mayor.

21 The law director has informed me that she
22 has filed a mandamus action in the supreme
23 court of Ohio. Um, this action was the action
24 that the petition committee requested. It is
25 also the process that is set forth by law, but

1 most importantly this is the most, um,
2 expeditious way to resolve this important issue
3 that the mayor outlined. Um, by going to the
4 supreme court in this matter -- in this manner,
5 we will be able to resolve this and give the
6 people, um, any party to this issue, the
7 resolution that they deserve in the quickest
8 way possible. And as the mayor stated, what
9 the court says is -- will be the rule of law
10 that we will follow.

11 MAYOR JACKSON: Residence?

12 AUDIENCE: What exactly will
13 the court be deciding?

14 MAYOR JACKSON: Two issues.

15 You want to explain?

16 MR. KELLEY: The two issues is
17 whether the referendum is an unconstitutional
18 impairment of the contract or will the court
19 decide that it is not and that the petition --
20 that the clerk should submit the petitions to
21 the board of elections.

22 AUDIENCE: It's basically
23 between the two legal departments?

24 MR. KELLEY: Yeah.

25 AUDIENCE: Is it against the

1 council or against the city law director?

2 MR. KELLEY: It is -- I mean,
3 it's a procedural mechanism that sounds a
4 little awkward at first. Everybody that first
5 heard it, it sounded that way. But the way
6 that the charter reads in a taxpayer action is,
7 yes, the law director is going to be filing a
8 mandamus action against the clerk. And for
9 those reasons, both parties, um, have chosen to
10 get outside counsel to represent them just
11 based on any potential conflict that may exist
12 over previous discussions.

13 AUDIENCE: When was this
14 filed? Today?

15 MAYOR JACKSON: Um --

16 MR. KELLEY: It's going to be
17 filed today. I don't know if it's filed yet.
18 Is it filed?

19 MAYOR JACKSON: It's filed.

20 AUDIENCE: Did you say the
21 city has outside counsel as well?

22 MR. KELLEY: Both have outside
23 counsel, both the law director and the clerk
24 have outside counsel.

25 AUDIENCE: Any sense of what

1 kind of timing you have here?

2 MR. KELLEY: Um, no. But, um,
3 the last time we were involved in a mandamus
4 action, it was about eight weeks.

5 MAYOR JACKSON: And that was around
6 the 15th --

7 MR. KELLEY: That was around
8 the 15th issue.

9 AUDIENCE: They have to accept
10 it first and then go through a brief
11 processing?

12 MR. KELLEY: Yes, yes, but this
13 is unlike -- I mean, this is the type of matter
14 that the supreme court looks at directly as
15 opposed to, um, you know, the longer process of
16 filing in common pleas, the 8th district court
17 of appeals and the supreme court.

18 AUDIENCE: Is this something
19 that you'd go that route anyway?

20 MR. KELLEY: Yeah, yeah. Like
21 we said, we -- both the mayor and I, we've had
22 long conversations about this issue in terms of
23 the fact that, you know, people did sign a
24 petition. We respect that. You know, we don't
25 want to deny, you know, anybody their rights.

1 And we thought that it was really important
2 that we take the course that resolves this
3 issue for all parties that are involved --

4 MAYOR JACKSON: In a quick manner.

5 MR. KELLEY: -- in the quickest
6 manner possible.

7 AUDIENCE: And then are there
8 possibilities that the court would uphold the
9 clerk's decision on one hand or they would
10 initiate like the normal procedure for
11 reviewing the signatures and sending it to the
12 board of elections?

13 MR. KELLEY: I believe those are
14 the -- it will be one of those two options.
15 I'm obviously not going to be the attorney in
16 this case, but I believe it's going to be that.
17 The issue, I believe before the court is going
18 to be, does this impair the contract, or, is
19 the clerk to forward those petitions to the
20 board of elections.

21 AUDIENCE: Does this then -- I
22 guess my question basically gets down to, Does
23 this step mean that the city remains in control
24 of who the lawyers are versus outside parties
25 coming in?

1 MAYOR JACKSON: Well, if -- um, the
2 quick answer is, yes, because if in fact the
3 clerk has a counsel and then the law director
4 has a counsel that is picked by the law
5 department, that's correct. So anybody could
6 bring an action but the request -- it is my
7 understanding the request to the law director
8 was that she take this action. And in order
9 for her to take this action -- she's already
10 representing the clerk in this, so she cannot
11 take this action, so there's an outside counsel
12 who will take the action. And then there has
13 to be another outside representation of the law
14 director herself. So what they're actually
15 doing is, we're doing what they asked us to do.

16 MR. KELLEY: I want to just, if
17 I could add to what the mayor said. Um, the
18 reason that was done, quite frankly, is, you
19 know, how it looks. You got the law director
20 adverse to the clerk, um, and that makes
21 complications. But the lawyers we chose are
22 some of the best municipal lawyers in town to,
23 you know, kind of resolve any issue that this
24 was -- you know, we could have just had it
25 where, you know, the law director just filed it

1 and then the clerk went and got her own counsel
2 and not dealt with the conflict issue, you
3 know, just waive the conflict. We could have
4 done that. But I think when you look at the
5 quality of the attorneys on both sides of this,
6 you'll realize that this is not something that
7 we're doing to, uh, you know, to make this
8 quick and easy. We're going to really lay out
9 the legal issues and come to the right
10 conclusion.

11 AUDIENCE: I guess I have two
12 pieces. One, could you get me the names of
13 those lawyers when we're done here? But the
14 other -- and this is what I was leading up to.
15 This then will preclude, say, the lawyer for
16 the petitioners from filing their own taxpayer
17 action, because the law director didn't refuse
18 to do so.

19 MR. KELLEY: I don't know.
20 That's -- I be -- I'm not sure, I'm not sure,
21 but if -- I don't practice in this area enough
22 to answer that conclusively, but I believe so.

23 MAYOR JACKSON: But it is following
24 (inaudible).

25 MR. KELLEY: It's following the

1 charter and we're going to get this issue
2 resolved as quickly as possible.

3 AUDIENCE: Thank you.

4 MAYOR JACKSON: Thank you.

5 MR. KELLEY: Thanks, Everybody.

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

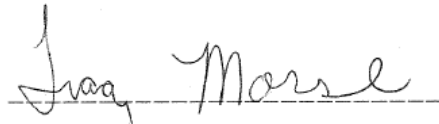
25

1 CERTIFICATE

2
3
4 I, Tracy Morse, do hereby certify that
5 the foregoing is a true, correct and complete
6 transcript of my stenotype notes which were
7 taken at the time and place in the foregoing
8 caption.

9 I do further certify that I am not a
10 relative, counsel or attorney of either party
11 or otherwise interested in the event of this
12 action.

13
14
15
16
17
18
19
20
21 <%Signature%>

A handwritten signature in cursive script, appearing to read "Tracy Morse", is written over a horizontal dashed line.

22
23 Tracy Morse, Notary Public
24 within and for State of Ohio.
25 My Commission expires 1/26/2018.

1	awkward 5:4	conclusion 3:17,18	discussions 5:12
1/26/2018 11:25	b	3:19 9:10	district 6:16
15th 6:6,8	based 3:6 5:11	conclusively 9:22	doing 8:15,15 9:7
2	basically 3:5 4:22	conference 1:10	e
2017 1:13 2:5	7:22	conflict 5:11 9:2,3	easy 9:8
22 2:7	believe 7:13,16,17	conflicting 2:21,22	eight 6:4
5	9:22	constitutional 3:3	either 11:10
5 1:13	best 8:22	3:12	elections 4:21 7:12
8	binding 2:11	contract 2:11 3:4	7:20
8th 6:16	board 4:21 7:12	3:9 4:18 7:18	event 11:11
a	7:20	control 7:23	everybody 5:4
abide 3:18	brief 6:10	conversations	10:5
able 4:5	bring 8:6	6:22	exactly 4:12
accept 2:9,15,19	brings 3:16	correct 8:5 11:5	executed 2:10
6:9	c	council 1:9 2:2,5,8	exist 5:11
action 3:8,22,23	caption 11:8	2:16,25 3:15 5:1	expeditious 4:2
3:23 5:6,8 6:4 8:6	case 7:16	counsel 5:10,21,23	expires 11:25
8:8,9,11,12 9:17	certificate 11:1	5:24 8:3,4,11 9:1	explain 2:23 4:15
11:12	certify 2:16,19	11:10	f
add 8:17	11:4,9	course 7:2	fact 6:23 8:2
adverse 8:20	charter 2:18 5:6	court 3:23 4:4,9	file 2:14
answer 8:2 9:22	10:1	4:13,18 6:14,16,17	filed 3:22 5:14,17
anybody 6:25 8:5	chose 8:21	7:8,17	5:17,18,19 8:25
anyway 6:19	chosen 5:9	d	filing 5:7 6:16 9:16
appeals 6:17	citizens 3:14	deal 2:24 3:2	first 5:4,4 6:10
area 9:21	city 1:7 2:4,5,18	dealt 9:2	follow 4:10
arena 1:11 2:6	3:19 5:1,21 7:23	decide 4:19	following 9:23,25
argued 2:17	clerk 2:8,15,16,18	deciding 4:13	force 2:15
argument 2:12,21	4:20 5:8,23 7:19	decision 7:9	foregoing 11:5,7
arguments 2:22	8:3,10,20 9:1	demand 2:14	forth 3:25
3:3,11	clerk's 7:9	denied 3:5	forward 7:19
asked 8:15	cleveland 1:7	deny 6:25	frank 1:8
attorney 7:15	come 9:9	denying 3:9	frankly 8:18
11:10	coming 7:25	department 8:5	further 2:23 11:9
attorneys 9:5	commission 11:25	departments 4:23	g
audience 4:12,22	committee 3:24	deserve 4:7	give 4:5
4:25 5:13,20,25	common 6:16	determined 2:8	go 2:23 6:10,19
6:9,18 7:7,21 9:11	complete 11:5	directly 6:14	going 4:3 5:7,16
10:3	complications	director 2:14 3:21	7:15,16,17 9:8
	8:21	5:1,7,23 8:3,7,14	10:1
		8:19,25 9:17	

guess 7:22 9:11	9:19	o	previous 5:12
h	l	obviously 7:15	procedural 5:3
hand 7:9	law 2:14 3:21,25	office 2:7	procedure 7:10
heard 5:5	4:9 5:1,7,23 8:3,4	ohio 3:23 11:24	process 3:16,25
hopefully 3:17	8:7,13,19,25 9:17	okay 3:19	6:15
i	lawyer 9:15	opposed 6:15	processing 6:11
impair 2:10 7:18	lawyers 7:24 8:21	options 7:14	project 2:6
impairment 4:18	8:22 9:13	order 8:8	provide 2:2
important 3:13	lay 9:8	ordinance 2:5,5	public 11:23
4:2 7:1	leading 9:14	outline 3:15	q
importantly 4:1	legal 2:11,20,21,22	outlined 4:3	quality 9:5
inaudible 9:24	3:3,11 4:23 9:9	outside 5:10,21,22	question 7:22
informed 3:21	legally 2:9,18	5:24 7:24 8:11,13	quick 7:4 8:2 9:8
initiate 7:10	little 5:4	p	quicken 1:11 2:6
interested 11:11	loans 1:11 2:6	parties 5:9 7:3,24	quickest 4:7 7:5
interfering 3:4,9	long 6:22	party 4:6 11:10	quickly 10:2
involved 6:3 7:3	longer 6:15	people 3:5,9 4:6	quite 8:18
issue 4:2,6 6:8,22	look 9:4	6:23	r
7:3,17 8:23 9:2	looks 6:14 8:19	pertains 2:3	reads 5:6
10:1	m	petition 3:7,24	realize 9:6
issues 2:22 3:12,13	mandamus 2:15	4:19 6:24	really 3:2 7:1 9:8
4:14,16 9:9	3:22 5:8 6:3	petitioners 2:13	reason 8:18
j	manner 4:4 7:4,6	9:16	reasons 5:9
jackson 1:8 2:1	matter 4:4 6:13	petitions 1:12 2:4	record 3:1
4:11,14 5:15,19	mayor 1:8 2:1	2:9,16,20 4:20	referendum 1:12
6:5 7:4 8:1 9:23	3:20 4:3,8,11,14	7:19	2:3,13 3:6,10 4:17
10:4	5:15,19 6:5,21 7:4	picked 8:4	refuse 2:19 9:17
joint 1:10	8:1,17 9:23 10:4	pieces 9:12	relative 11:10
june 1:13	mean 5:2 6:13	place 11:7	remains 7:23
k	7:23	pleas 6:16	repeal 2:4
kelley 1:9 3:20	mechanism 5:3	possibilities 7:8	represent 5:10
4:16,24 5:2,16,22	monday 2:7	possible 4:8 7:6	representation
6:2,7,12,20 7:5,13	morse 11:4,23	10:2	8:13
8:16 9:19,25 10:5	municipal 8:22	potential 5:11	representing 8:10
kevin 1:9	n	practice 9:21	request 8:6,7
kind 6:1 8:23	names 9:12	preclude 9:15	requested 3:24
know 2:7 5:17	normal 7:10	president 1:9 2:2	residence 4:11
6:15,23,24,25 8:19	notary 11:23	2:25 3:15	resolution 3:16
8:23,24,25 9:3,7	notes 11:6	press 1:10	4:7

resolve 4:2,5 8:23 resolved 10:2 resolves 7:2 respect 6:24 reviewing 7:11 right 3:6,10 9:9 rights 3:14 6:25 route 6:19 rule 4:9	think 9:4 thought 7:1 time 6:3 11:7 timing 6:1 today 5:14,17 town 8:22 tracy 11:4,23 transcript 11:6 transformation 2:6 true 11:5 two 2:21,22 3:3 4:14,16,23 7:14 9:11 type 6:13	weeks 6:4 went 9:1 writ 2:14
s		y
says 4:9 seeking 2:4 sending 7:11 sense 5:25 set 3:25 sides 9:5 sign 6:23 signature 11:21 signatures 7:11 sounded 5:5 sounds 5:3 speak 3:14 state 11:24 stated 4:8 stenotype 11:6 step 7:23 submit 4:20 supporting 3:1 supreme 3:22 4:4 6:14,17 sure 9:20,20	uh 2:18,21 3:3,11 3:14,16 9:7 um 2:1 3:23 4:1,3 4:6 5:9,15 6:2,2 6:15 8:1,17,20 unconstitutional 3:8 4:17 unconstitutionally 2:10 understanding 8:7 update 2:3 uphold 7:8	yeah 4:24 6:20,20
t	u	
take 3:7 7:2 8:8,9 8:11,12 taken 11:7 taxpayer 5:6 9:16 terms 6:22 thank 3:20 10:3,4 thanks 10:5	uh 2:18,21 3:3,11 3:14,16 9:7 um 2:1 3:23 4:1,3 4:6 5:9,15 6:2,2 6:15 8:1,17,20 unconstitutional 3:8 4:17 unconstitutionally 2:10 understanding 8:7 update 2:3 uphold 7:8	
	v	
	valid 2:11,20 versus 7:24 voluntarily 2:17 vote 3:6,10	
	w	
	waive 9:3 want 2:2 3:7 4:15 6:25 8:16 way 4:2,8 5:5,5 we've 6:21	

Close Ad X

Marcus

BY GOLDMAN SACHS™

See how much you could save with a fixed-rate, no-fee personal loan.

Enter your credit card debt (in \$500 increments)

\$

You could save

\$

with a 48-month loan

METRO NEWS

All Cleveland City Council elections shaping up as contested races, with several primary contests possible

41

Updated on June 19, 2017 at 3:57 PM
Posted on June 19, 2017 at 2:55 PM



Challengers in every ward are vying for a seat in City Council chambers. Every incumbent member of Cleveland City Council faces at least one potential challenger. More than one-third of the 17 wards could require primary contests. (John Kuntz, cleveland.com file)

55
shares

BY [ROBERT HIGGS, CLEVELAND.COM](#)

bhiggs@cleveland.com

CLEVELAND, Ohio - All 17 seats on Cleveland City Council have the potential for a contested election in November, with primaries already possible in about one-third of them.

Ward 4 Councilman Ken Johnson already has five challengers whose candidacy petitions were validated by the Cuyahoga County Board of Elections Board. Ward 7 Councilman TJ Dow faces three challengers whose petitions already have been validated.

And in both cases there are several other potential candidates circulating petitions for those races, too.

Candidates must collect at least 200 valid signatures from registered Cleveland voters and file their petitions with the Cuyahoga County Board of Elections by June 29 if they want to appear on the Sept. 12 municipal primary.

Incumbents have formally taken out petitions in 14 of the 17 wards. Ward 6 Councilman Blaine Griffin has said he will seek election, although he hasn't formally pulled candidacy petitions in his name.

Ward 2's Zack Reed and Ward 10's Jeff Johnson have given up their council seats to run for mayor.

In addition to Ken Johnson and Dow, incumbents who have enough potential challengers to force a primary are: Terrell Pruitt (Ward 1), Kerry McCormack (3), Phyllis Cleveland (5), Griffin (6), Mike Polensek (8), Kevin Conwell (9), Tony Brancatelli (12), Kevin Kelley (13) and Brian Cummins (14).

Here's a look at potential candidates, along with some biographical information on candidates for whom it was immediately available. Some other people have said they are running, but this list is limited to those who actually have taken out petitions as of Wednesday morning.

Cleveland.com will update this list periodically as the filing deadline nears. Incumbents are noted with an asterisk. Candidates whose names are in bold type have returned their petitions to the elections board has validated the signatures.

Ward 1

- Terrell H. Pruitt*: Member of council since 2008. Major in the Ohio Army National Guard, served two tours of duty in Afghanistan.
- Kimberly F. Brown : Former social worker and radio personality who ran for mayor in 2009. Runs an advocacy and marketing group called Doveside Promotions LLC.
- Joe Jones: Former member of City Council who resigned in 2005 after pleading guilty to mail fraud.
- Keith Smith

Ward 2

- Tyrone Bolden
- Alforneice Chambliss
- Geo! A. Fitch
- Carol Ford: Nursing home worker. Member of the Raise Up Cleveland petition committee that sought a minimum wage for the city that was higher than the state minimum wage.
- Louis Hawkins
- Debra Lewis-Curlee: Former executive director of the Mount Pleasant Community Zone, a community advocacy organization.
- Thomas A. Minor
- Sean Mitchell
- Robert Owens: Has pulled nominating petitions for the Ward 2 seat on City Council. He also has pulled candidate petitions for the mayoral race.

Ward 3

- Kerry McCormack*: Appointed to City Council in April to replace resigning Councilman Joe Cimperman. Previously was director of community affairs for Ohio City Inc.
- Logan E. Fahey
- Delores J. Manley

Ward 4

- Kenneth L. Johnson Sr *: Member of City Council for nearly four decades. Chairs the Municipal Services and Properties Committee and is a member of the Transportation Committee.

- Ngozi Adigwe.
- Monroe Bynum Jr: CEO of his own company, the IYI Network
- LaShorn K. Caldwell: Housing manager for the Union Miles Development Corp.
- Julie Donaldson: Real estate agent.
- Cecil Ekechukwu
- Michael McDaniel Sr: Advocate with the American Postal Workers Union.
- Rowland Mitchell : Retired after 25 years with Cleveland police department.
- Arnold Shurn
- Gail Sparks : Director and founder of GOA Realty in Cleveland.
- Dontez Taylor

Ward 5

- Phyllis Cleveland*: Member of City Council since 2006, majority leader.
- Frank J. Kidd Jr.
- Tiana Newett.
- Richard Starr : Director of the King Kennedy Club for Boys & Girls Clubs of Cleveland.

Ward 6

- Blaine Gri"n: Appointed to City Council in May to #ll the seat made vacant with Councilwoman Mamie J. Mitchell's resignation.
- S. Xavier Allen
- James Jerome Bell
- John A. Boyd
- Joshua Perkins McHamm
- Alonzo Mitchell III
- Lavitta Murray : Political activist. Student at Cleveland State's Marshal College of Law.
- David B. Roney: Physical director for the city's pools. Develops and coordinates aquatic programs.
- Gary A. Sardon: He has #led petitions, but they have not yet been validated by the elections board.
- Dylan L. Sellers: Management professional who has worked with nonpro#t organizations.
- James Thomas Jr.

Ward 7

- TJ Dow* : A lawyer. Member of City Council since 2008. His

completed petitions have been validated by the elections board.

- Ismael J. Flores.
- Mans"eld S. Frazier : Long-time Hough resident, writer, activist, broadcaster and vineyard owner.
- Russell Gates
- Daniel Graves
- Robert L. He\$in III.
- Basheer Jones : Community activist.
- Demar L. She! ey: Law school graduate. Extern in public defender's o"ce in autumn 2016.

Ward 8

- Michael D. Polensek*: Longest serving member of City Council in Cleveland history. Took o "ce in 1978.
- Donald Boyd
- Brian A. Friedman: Former executive director of Northeast Shores Development Corp.
- Ossie Mae Neal: Small business owner, former city employee who was former Mayor Michael R. White's scheduler and a project manager for Mayor Frank Jackson.

Ward 9

- Kevin Conwell* : Member of City Council sine 2001. Vice chair of council's Safety Committee.
- Guy Coleman Jr.
- Randy Willis

Ward 10

- Willie Lewis Britt : Electrician. Former candidate for Ohio Senate.
- Annamaria Cora: Retired from the Cuyahoga County Sheri! 's Department.
- Rico Dancy
- Teresa Floyd
- Yvonne Hurt Frierson
- Naomi A. Goolsby
- Timothy W. Henry
- Ed Hudson-Bey
- Freddie Moore
- Victoria Trotter: Owner of Trotter Dry Cleaners.

Ward 11

- Dona Brady* : Member of City Council since 1999. Vice chair of the

Utilities Committee.

- Gilder E. Malone

Ward 12

- Anthony Brancatelli*: Member of City Council since 2005. Chairs the Cuyahoga County Land Bank.
- Steven Bayt
- Gregory Noeth

Ward 13

- Kevin Kelley*: Member of City Council since 2006. He became president of council in 2014.
- Rocco J. Crisa#
- Michele Burk : Employee with Cuyahoga County Board of Developmental Disabilities.
- Franklin J. Meslovich

Ward 14

- Brian Cummins*: Member of City Council since 2010. Chairs council's Health and Human Services Committee.
- Nelson Cintron Jr.: Former member of City Council.
- Omar Medina : Pastor and community organizer. Case manager for Catholic Charities.
- Jasmin Santana : Community engagement director for Hispanic Alliance Inc. and health care advocate.

Ward 15

- Matt Zone* : Member of City Council since 2002. Chairs council's Safety Committee.
- Alex Karrfalt

Ward 16

- Brian Kazy* : Member of City Council since 2015. Former Cuyahoga County probation officer.
- Richard L. Morris Sr.

Ward 17

- Martin J. Keane*: Member of City Council since 2008. Chairs council's Transportation Committee.
- Clinton E. Preslan: Lawyer

Registration on or use of this site constitutes acceptance of our [User Agreement](#) and [Privacy Policy](#)

© 2017 Advance Ohio All rights reserved ([About Us](#)).

The material on this site may not be reproduced, distributed, transmitted, cached or otherwise used, except with the prior written permission of Advance Ohio

[Community Rules](#) apply to all content you upload or otherwise submit to this site.

[Ad Choices](#)