

City will appeal election board ruling

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The battle over the city of Upper Arlington's decision to privatize trash collection service may go all the way to the Ohio Supreme Court.

The Franklin County Board of Elections decided Monday night to keep on the Nov. 4 ballot an initiative petition challenging the city's decision to privatize.

Upper Arlington city attorney Jeanine Amid Hummer said she plans to file a motion with the Ohio Supreme Court protesting the board's decision.

"Millions of dollars are at stake," Hummer said following the board's hearing Monday night at its headquarters at 280 E. Broad St. "This is just the initial stage of challenging this initiative."

The initiative gives voters an opportunity to overturn or uphold city council's decision last December to dismantle its solid waste division and contract with Texas-based Inland Service Corp. to collect trash and recycling. Inland took over solid waste collection at the beginning of April.

Hummer filed a motion on Aug. 29 with the Franklin County Board of Elections protesting the initiative, which the Board of Elections has certified to appear on the Nov. 4 ballot.

Attorney Dan McTigue, an outside counsel representing the city, argued before the board that the initiative should not appear on the ballot because the city's contract with Inland is an administrative and not a legislative matter, and therefore not subject to referendum.

McTigue also argued that the initiative should be declared invalid because Mike Schadek, a local attorney and resident who led the initiative effort, failed to form a committee of at least three people to submit the initiative petition.

McTigue said the initiative also contains numerous erroneous signatures, such as several residents failing to put the date next to their signatures and a wife signing her husband's name.

Petitioners also failed to obtain an adequate number of signatures based on the number of Upper Arlington residents who voted in the last gubernatorial election because they didn't take into account absentee ballots, McTigue said.

Board of Elections operations manager Karen Cotton said petitioners only needed to collect 1,354 signatures because absentee ballots were considered a separate precinct in the 2006 gubernatorial election. The board certified 1,716 signatures on the initiative petition and later found several discrepancies, but not enough to invalidate the whole petition, Cotton said.

"There were 53 signatures that I would concede that our staff gave credit by mistake," she said.

McTigue went on to argue that the initiative is also vaguely worded, stating that residents don't want to privatize trash service or to pay the \$30 annual service fee, rather than containing specific language about what will happen if the initiative passes, McTigue said.

"That sort of language makes it look like a public opinion poll -- 'We want to have the people vote on how they feel about this issue,'" McTigue said.

Jim Becker, an attorney and local resident speaking on Schadek's behalf, argued that the initiative should go forward because council's votes in December and January to contract with Inland and implement the \$30 annual service fee were legislative in nature and therefore subject to referendum.

Board of Elections members Douglas J. Preisse, William A. Anthony Jr., Michael F. Colley and Kimberly E. Marinello offered no comment upon deciding to allow the initiative to go forward, but simply made no motion to remove the initiative from the ballot.

Schadek said he's pleased that the Board of Elections allowed the petition to remain on the ballot.

"People are able to vote now and show city council that we run the city and not the other way around," he said.

City officials said they are disappointed with the board's decision.

"We knew it's a legal issue," said city manager Virginia Barney. "We will continue with what's important to protect the city's assets."

City council president Don Leach said the initiative will cause voter confusion.

"I think it would have been irresponsible not to raise issues because the language is so poorly written," he said.

Hummer said the purpose of challenging the initiative is to ensure that the city does not incur millions of dollars of expense to break the contract with Inland.

"We are not trying to deprive the residents of their rights," she said. "We do not want to put the city's assets at risk."