

**WEEK 22 - DAY 2**



**Cha-Ching!** Time to start the meter.

According to this **Letter of Engagement**, the City contracted for **"approximately \$5,000"** to hire "Special Counsel" for the initiative protest. A Public Records Request produced no documents outlining the specific scope of work for this money, nor any per-hour rates that the city is being charged. No defined, written scope of work? No written per hour charge? Certainly these would not be "privileged communications" and therefore available for public inspection. As taxpayers, we are owed an explanation as to how our money is being spent by the city.

We'll just have to **add that to the \$448** the city spent for the ad in this week's *UA News*, **and the approximately \$500** spent for the ad in this week's *ThisWeek UA*. And the city isn't allowed to campaign for/against an issue using taxpayer dollars? I guess they can disguise it as "educational material."

This may be just the beginning ... just how many of **YOUR** tax dollars is the city going to spend trying to derail **YOUR** right to vote?



Article in UA News, "**UA leaders protest trash issue.**" Nothing new.

**WEEK 22 - DAY 2**



WOSU Article ... "**Upper Arlington challenges Initiative on trash.**" Just a repeat of the same old stuff.

Let's stick to the facts. On Monday, September 8, the Franklin County Board of Elections, which in their expert role certified the petitions not two weeks ago as valid, will render the decision after a review, an action brought on as a result of a protest by our City, and at significant cost to them and to us.



Article in today's *Dispatch*, "**City protests residents' petition.**"

**This is precedent-setting.**

Counter to the claims of the City Attorney, the process **WAS** followed. The staff at the Board of Elections holds the expertise in the legality of petitions and issues and has already made the determination that the process was followed correctly.

Think about it ...  
**YOUR** city is using **YOUR** tax dollars to fight **YOU**  
and **YOUR** right to vote.

## Upper Arlington Challenges Ballot Initiative on Trash

Sam Hendren, WOSU Reporter

COLUMBUS, OH (2008-09-04) Trash has been a contentious issue in Upper Arlington ever since the city council privatized solid waste collection. Some residents want the city service back and they are trying to get the issue on the November ballot. But the City of Upper Arlington is challenging the ballot initiative.

The petitioners needed 1,354 signatures to get the initiative on the November 4th ballot. They collected more than 2,000. The initiative calls for an end to private trash collection in Upper Arlington and a return to trash pickup by city employees.

Mike Schadek describes himself as the leader of the trash initiative. He says the old city system, which ended in April, was one of the best in the nation.

"Last year in 2007, the City of Upper Arlington decided to look at whether to privatize the system or not," Schadek says. "And what they did, they convened a task force of residents and they studied the issue for a year. Well what city council did was to ignore that task force and decided to privatize."

So in January Schadek and others began collecting signatures for a ballot initiative requiring an end to private pick-up and a resumption of the city service. The petition was certified by the Franklin County Board of Elections. But Upper Arlington officials say the petition is full of errors and on August 29th they filed a protest. Ben Piscitelli is a spokesman for the board of elections.

"The complaint has a number of objections," he says. "Some are as basic as saying it looks as though one person signed for another. In other cases they're saying the person who signed doesn't live at the address that was listed. They say the dates are lacking as well in some areas. So there are some very basic complaints about this. And also some very technical legal arguments that the City of Upper Arlington is making."

Beyond that, Upper Arlington's city attorney Jeannine Hummer says flatly that the initiative is not legal.

"I believe that the voters have the right to vote on something that is clear and legal," Hummer says. "This is not a legal initiative."

The City says it's saving about \$200,000 a year with the new privatized system. But the city's legal challenge, according to Mike Schadek, means the issue is no longer solely about trash.

"Now we have a much more serious issue," Schadek says. "And now the stakes have been raised significantly. Not only is it a constitutional right to vote, we have a serious problem and a dangerous problem when your city council and your city administrator want to spend your tax dollars to keep residents from voting on the issue. It's wrong and it's really an abuse of power, we feel, by the city counsel and city attorney to take this action."

But city attorney Jeannine Hummer says protecting the city's interests is more important.

"As the city attorney, I'm charged with the duty to protect and defend the city and if I believe that the city's assets and financial stability is in jeopardy by something that individuals have decided to do, I believe it's my duty to make sure that the city's protected," Hummer says.

The board of elections has agreed to consider the complaint at its next meeting on September 8th.

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**WEEK 22 - DAY 1**



**September 2, 2008 EVENING UPDATE**

Story on NBC Channel 4 ...



Click here for the hard copy. Click here to see the video.



So ... **they're going to take it to court?**  
Is THIS how you want your tax dollars spent?  
Working AGAINST you???

**September 2 UPDATE:**

Click [here](#) to see the protest itself.  
YOU decide for yourself whether you feel it has merit, or whether it's just an 11th-hour attempt by the City to continue to prevent us from voting.

**August 29, 2008**

"The City of Upper Arlington has filed a protest against the [Solid Waste] initiative with the Franklin County Board of Elections"

For all the details, plus Mike Schadek's response, go to **Week 21**.

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We're leaving this up because it clearly compares the two services.

**After studying it,**  
**YOU decide which one you want for the next 5 years.**

### UA leaders protest trash issue

By DONAVON CAMPBELL

Published: Wednesday, September 3, 2008 10:19 AM EDT

Upper Arlington city officials have filed a protest against the ballot initiative opposing privatize trash collection that's scheduled to be decided by voters Nov. 4.

City Attorney Jeanine Amid-Hummer announced the city has filed a legal protest to the Franklin County Board of Elections to take Issue 52 off the ballot.

A hearing date has been set at the Franklin County Board of Elections at 280 E. Broad St. for Monday, Sept. 8.

The decision to privatize originally was made by City Council in December in an emergency vote. The ballot issue in question is not a referendum on that decision, but instead is an initiative that attempts to make city leaders reconstitute its solid waste department.

In April, waste services company Inland Services Inc. took over the role of trash collection in the city. An admittedly rocky start fueled the fire of those in opposition to the switch.

In August, resident group organizer Mike Schadek filed a petition to put an initiative on the ballot that would put the decision to privatize trash collection retroactively in the hands of voters.

A lingering cloud over the efforts of Schadek and company has been whether, should their initiative succeed, the vote would be upheld in Ohio Supreme Court because of the city's contractual obligations with Inland. City leaders also are concerned about the cost of reacquiring equipment and manpower needed for the service to once again fall under city purview.

"The initiative language places the city's and resident's assets at great risk ...," said Amid-Hummer in a written statement.

"In addition to paying Inland contract damages, (the petition) could cost the city significant tax dollars and result in increased service costs to residents to return to the former method of delivery."

The position statement goes on to label the initiative "poorly drafted," "financially irresponsible" and "flawed."

It also goes on to defend Inland's progress as the primary

collection service in the city saying, "the new Solid Waste service approach is successful ... monitoring of Inland's performance clearly indicates that collection is consistently occurring on time, with an exceptionally high success rate in achieving an efficient, comprehensive and neat delivery of service."

The position statement also points out that the petition language requires the city to repay Inland contract damages without any limit to the dollar amount and that the petition does not specifically mention the issuing of refunds regarding a \$30 annual fee that accompanied the switch.

Hummer said the city obtained the services of McTigue Law Group, which specializes in election law, to review the city's analysis of the petition's language as well as provide its own independent determination.

"I think it was made clear that at some point this initiative would be challenged," said Hummer.

"We chose at this time to challenge the initiative at the beginning. It was the appropriate legal challenge to take."

Schadek said the city administration has overstepped its bounds with regards to the Constitutional rights of voters by filing the protest.

"We have our City Council and city attorney trying to use taxpayer dollars to keep taxpayers from voting," said Schadek. "That's about as serious as it gets."

"This is no longer about trash," said Schadek.

"It's about an out-of-control City Council that wants to prevent residents from exercising their Constitutional rights. This can't and won't stand."

"This is no longer about trash. It's about an out-of-control City Council that wants to prevent residents from exercising their Constitutional rights. This can't and won't stand."

--Mike Schadek



## UPPER ARLINGTON TRASH COLLECTION

# City protests residents' petition

Wednesday, September 3, 2008 3:03 AM

BY MARTIN ROZENMAN

THE COLUMBUS DISPATCH

Upper Arlington city officials don't want residents to vote on the City Council's decision to privatize trash collection.

The city filed a protest Friday with the Franklin County Board of Elections against the petition drive that put Issue 52, which seeks to reverse privatization, on the Nov. 4 ballot.

The city disbanded its Solid Waste Division and hired Texas-based Inland Service Corp. to handle trash collection. Many residents say Inland does substandard work, but city officials say initial problems were solved and the collection now meets standards set by former city workers.

The Board of Elections sent letters to the city and petitioners yesterday afternoon inviting both sides to Monday's board meeting to present their positions, board spokesman Ben Piscitelli said.

"The board will decide what to do: remove it from the ballot, or take no action and it will remain on the ballot," he said.

"This happens from time to time, usually on something like a local liquor option, but nothing sticks out as memorable as a major issue being invalidated by a protest," Piscitelli said.

Michael Schadek, a resident and lawyer who led the petition drive, said he was shocked and upset by the city's protest.

"This is huge, and it's a sad day in Upper Arlington when we have our City Council and city attorney spending taxpayers' dollars to try to prevent residents from voting on Nov. 4," he said. "This is last-minute legal maneuvering, trickery. It can't succeed."

Upper Arlington City Attorney Jeanine Hummer said the citizens' initiative doesn't meet legal requirements.

The protest lists 14 reasons why it does not, including: It does not propose a measure that is legislative in nature, and its language is too indefinite to accomplish a legislative action.

"There's a process in place to put something on the ballot," Hummer said. "You have to follow the statutes and do it correctly. If it's not, it shouldn't be on the ballot."

There also are practical reasons why the issue should be pulled, she said.

A vote for reversing privatization puts the city at risk because it could have to pay damages to the contractor, Hummer said. In addition, although contract law protects the city's decision on trash collection, she said, it would be costly to have to go to court for that ruling.

mrozenman@dispatch.com



CITY OF | **UPPER**  
**ARLINGTON**

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July 25, 2008

Donald McTigue, Esq.  
Attorney at Law  
550 E. Walnut St.  
Columbus, Ohio 43215  
Sent via e-mail: [mctiguelaw@rrohio.com](mailto:mctiguelaw@rrohio.com)

**Re: Special Counsel – Election Law**

Dear Donald,

We are pleased to retain your firm as outside counsel in conjunction with the above referenced matter. Your firm is retained pursuant to the authority granted to the City Attorney in Upper Arlington Codified Ordinance § 139.06.

The terms of your representation are contained in the enclosed booklet entitled *City of Upper Arlington, Ohio City Attorney's Office Guide to Outside Legal Counsel ("Guide")*. Please familiarize yourself with the requirements contained in the *Guide* and ensure that all personnel working on City of Upper Arlington matters are familiar with them as well. By undertaking this engagement, you are agreeing to abide by the terms of the *Guide* and the agreed upon approximate cost of \$5,000.00 for the project to be paid based on billing. We ask that you sign the bottom of this letter and return to our office.

We ask that you appoint a principal designee to serve as the City's Attorney's main point of contact for this engagement. City Attorney Jeanine Hummer will be responsible for this project; it is requested you keep her informed regarding all aspects of the work in accordance with the requirements set forth in the *Guide*.

We look forward to working with you on this matter.

Sincerely,

Jeanine Hummer  
City Attorney  
City of Upper Arlington

Approved:

Donald J. McTigue, Esq.

Enclosure

C: Catherine Armstrong, Finance Director

**McTigue Law Group**  
ATTORNEYS AT LAW

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August 29, 2008

Franklin County Board of Elections  
280 E. Broad Street  
Room 100  
Columbus, Ohio 43215

FILED  
08 AUG 29 PM 12: 25  
FRANKLIN COUNTY  
BOARD OF ELECTIONS

Re: City of Upper Arlington Initiative Petition on Solid Waste

To the Board of Elections:

On behalf of the City of Upper Arlington ("City") and Margaret Concilla of 4041 Fairfax, Upper Arlington, Ohio 43220, a qualified elector of the City, I am hereby filing a protest against the initiative petition filed with the City on July 25, 2008 with respect to solid waste collection. The grounds for this protest are:

1. The petition fails to name a committee of at least three petitioners.
2. The initiative does not propose a measure that is legislative in nature.
3. The language of the proposed ordinance is too indefinite to constitute or accomplish an actual legislative action.
4. The initiative, as worded, proposes an action, namely repeal of an ordinance and payment of damages to a contractor, tied to a contingency occurring prior to adoption of the initiated ordinance, the effect of which is that the action will never be able to be taken.
5. The petition does not contain sufficient valid signatures based on 10% of the total vote by electors of the City for the office of Governor.
6. The following part-petitions appear to contain instances of persons signing another person's name, disqualifying the part-petitions: 10 (lines 17&18 and 19&20), 34 (lines 17&18), 99 (lines 20&21), 100 (lines 11&12), 108 (lines 6&7), and 113 (lines 5&6 and 13&14).
7. The part-petitions circulated by Michael Schadek list two different cities as his permanent residence. Some list Upper Arlington and others Columbus. Those listing Columbus are not correct and are invalid.
8. Part-petitions 25 and 26 list the circulator, Debbie Schadek's, city of permanent residence to be Columbus. This is not correct, making the part-petitions invalid.
9. Part-petition 39, line 7 fails to list the signer's apartment number.
10. On part-petitions 6 and 91, the circulators signed their on petitions, which they are not permitted to do, thus knowing permitting an unqualified person to sign the part-petitions and making the part-petitions invalid.
11. On part-petition 32, lines 16-20, the signatures are not dated.
12. On part-petition, line 5 is signed by a power of attorney.

## **FOR IMMEDIATE RELEASE**

August 30, 2008

Contact: Michael Schadek  
1537 Guilford Road  
Upper Arlington, OH 43221

Phone: (614) 554-5607

### **Upper Arlington seeks to stop residents from vote on trash issue**

In a serious breach of trust and disregard for the constitutional rights of voters, Upper Arlington City officials and members of City Council filed a legal protest in an effort to stop residents from voting on an initiative issue, which has already been approved by the Franklin County Board of Elections.

This initiative is in response to the city's outsourcing of the trash collection system, which was passed against the recommendations of a city-appointed task force and over the objections of hundreds of residents. It seeks to restore the system that served the community successfully for many years.

Just before close of business on Friday and without notice to the initiative's legal counsel, Upper Arlington city officials filed the protest asking the Board of Elections to declare petition signatures invalid and remove it from the November ballot ... a move which has never happened before in Franklin County.

"We appreciate the work the Board of Elections has already done on this issue," said organizer Michael Schadek. "After a thorough review, they certified the petitions under Ohio law and assigned the matter ballot issue number 52 for the November 4<sup>th</sup> election. In certifying the petitions, the board praised organizers stating that the petitions 'were among the best' they had ever processed."

Schadek went on to say that the protest is a direct effort to prevent UA voters from voting on the delivery of an essential service. Moreover, the use of tax dollars to attempt to block a constitutionally protected right to vote, with no legal basis whatsoever, is wrong.

"It's a sad day for Upper Arlington residents, and residents in any community, when elected officials seek to stop a vote of the people," said Schadek. "Upper Arlington residents are capable of deciding for themselves which trash system they prefer and they don't want city officials blocking their right to vote."

Upper Arlington residents are urged to contact the City Manger's Office at (614) 583-5040 and tell city officials to drop its protest before the Board of Elections. We also advise all interested parties to visit [www.uatrash.org](http://www.uatrash.org) for a complete accounting of the solid waste initiative.

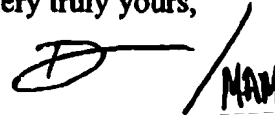
# # #

13. On part-petitions 6, 7 and 8, the circulator's statements appear to have been completed by a different person than who signed the statement.  
The petition does not meet the legal requirements for validity and sufficiency.

Protestors reserve the right to amend the protest to include additional grounds that may become known.

If you have any questions, please do not hesitate to contact me.

Very truly yours,

A handwritten signature in black ink, appearing to be 'D' followed by a long horizontal stroke and a diagonal slash, with the letters 'NAM' written in block letters below the slash.

Donald J. McTigue  
Special Counsel for the City  
of Upper Arlington and  
Counsel for Margaret Concilla

And

Jeanine Hummer, Law Director  
On behalf of the City of Upper  
Arlington