

Supreme Court to consider city's case; petitioners respond to suit

Wednesday, September 17, 2008 11:59 AM

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The city of Upper Arlington has filed suit with the Ohio Supreme Court protesting the Franklin County Board of Elections' (BOE) decision to allow the solid waste initiative petition to remain on the Nov. 4 ballot.

The initiative, officially known as Issue 52, 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.

In a Sept. 8 hearing, BOE members heard arguments from attorney Dan McTigue, an outside counsel representing the city, and Jim Becker, an attorney and local resident speaking on behalf of petition organizer Mike Schadek. Following the arguments, BOE members made no motion to remove Issue 52 from the ballot -- effectively allowing the initiative petition to go forward.

The board met again on Sept. 12 and formally voted to allow Issue 52 to remain on the ballot.

"They formalized the initial decision," said BOE spokesman Ben Piscitelli. "Our legal counsel recommended taking a formal vote."

The city filed its court action on Sept. 11, seeking to have the court overturn the board's decision. According to the suit, the city is protesting Issue 52 on the following grounds: the initiative doesn't propose a law and "would result only in a public preference poll of voters," the initiative doesn't contain the required number of signatures of registered voters, and the petitioners failed to establish a committee upon submitting the petition.

"The arguments we'll make to the Supreme Court are essentially the ones we presented to the board of

elections," said assistant city attorney Tom Lindsey. "We'll do a little more research to see if there's any more cases (to refer to as precedents) we missed."

Schadek said Becker has already filed a response with the court.

"We're saying the board of elections did its job. Issue 52 should appear on the ballot," Schadek said. "We're asking the court to dismiss their case."

Lindsey said the court will give the city an opportunity to respond to Schadek's response, and both sides will have the opportunity to file one additional response.

"Within two weeks the court will get all the documents," Lindsey said.

Schadek said he is confident the court will allow Issue 52 to go forward.

"For the city council and the administration to continue to misuse taxpayer dollars and to continue to interfere with the election process is both an unreasonable and desperate approach," he said.

Lindsey said the city's court action is a minimal expense, compared to the millions that the city would have to spend to break its contract with Inland if Issue 52 were to pass. In addition to a \$140 filing fee with the Supreme Court, Lindsey said, the city will retain McTigue to assist him and city attorney Jeanine Amid Hummer in preparing for the case.

"The city attorney has the authority to hire outside counsel at a cost of up to \$15,000," Lindsey said. "We believe (McTigue's fee) will be within that amount."

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