

# MONTGOMERY, RENNIE & JONSON

A LEGAL PROFESSIONAL ASSOCIATION

DOUGLAS W. RENNIE<sup>1</sup>  
GEORGE D. JONSON<sup>1</sup>  
KELLY CARBETTA SCANDY<sup>1</sup>  
LINDA L. WOEBER<sup>2</sup>  
RALPH E. BURNHAM<sup>3</sup>  
G. TODD HOFFPAUIR<sup>1</sup>  
MATTHEW E. STUBBS<sup>5</sup>  
KIMBERLY VANOVER RILEY<sup>1</sup>  
JASON A. GOLDEN<sup>4</sup>  
TIMOTHY C. AMMER<sup>5</sup>  
STEPHEN J. BREWER<sup>1</sup>  
TRUDIE E. MCADAMS<sup>1</sup>  
KERRY A. BUTE<sup>7</sup>  
CHAD M. SIZEMORE<sup>6</sup>  
LISA M. ZARING  
BRIAN M. SPIESS<sup>1</sup>  
J. KELLY RATLIFF<sup>1</sup>  
JOHN D. WAGNER<sup>1</sup>  
ELAINE M. STOLL<sup>1</sup>  
BRANDON A. WOODARD<sup>1</sup>  
BRIAN J. POKRYWKA<sup>8</sup>  
GREGORY A. KENDALL  
AMBER R. OROZCO  
LINDSAY M. UPTON

Cincinnati  
36 East Seventh Street  
Suite 2100  
Cincinnati, Ohio 45202  
(513) 241-4722

Cleveland  
14701 Detroit Avenue  
Suite 555  
Cleveland, Ohio 44107  
(216) 221-4722

Direct Dial: (513) 768-5220 / (440) 779-7978  
Direct Facsimile: (513) 768-9220 / (513) 768-9205  
Email: [gjonson@mrjlaw.com](mailto:gjonson@mrjlaw.com) / [kriley@mrjlaw.com](mailto:kriley@mrjlaw.com)

**Please direct all paper correspondence in  
this matter to the Cincinnati office.**

<sup>1</sup> ALSO ADMITTED IN KENTUCKY  
<sup>2</sup> ALSO ADMITTED IN KENTUCKY  
& PENNSYLVANIA  
<sup>3</sup> ALSO ADMITTED IN KENTUCKY  
& TEXAS  
<sup>4</sup> ALSO ADMITTED IN KENTUCKY,  
FLORIDA & NEW YORK  
<sup>5</sup> ALSO ADMITTED IN KENTUCKY &  
INDIANA  
<sup>6</sup> ALSO ADMITTED IN KENTUCKY  
& WASHINGTON D.C.  
<sup>7</sup> ALSO ADMITTED IN ILLINOIS  
<sup>8</sup> ALSO ADMITTED IN INDIANA

January 20, 2015

## VIA EMAIL & ORDINARY U.S. MAIL

Dennis Fiorelli, Chairman  
4533 Mackall  
South Euclid, Ohio 44121  
[dennisfiorelli@gmail.com](mailto:dennisfiorelli@gmail.com)

Ruth Gray  
3852 Princeton  
South Euclid, Ohio 44121  
[ruthigray@sbcglobal.com](mailto:ruthigray@sbcglobal.com)

Martin Gelfand  
3954 Eastway  
South Euclid, Ohio 44118  
[mgelfand@seuclid.com](mailto:mgelfand@seuclid.com)

Denise Turner  
4143 Hinsdale  
South Euclid, Ohio 44121  
[dasturner@sbcglobal.net](mailto:dasturner@sbcglobal.net)

Modestino Romeo  
4768 Dorshwood  
South Euclid, Ohio 44121  
[moeromeo@gmail.com](mailto:moeromeo@gmail.com)

Georgine Welo  
1359 Victory  
South Euclid, Ohio 44121  
[gwelo@seuclid.com](mailto:gwelo@seuclid.com)

Michael Shaughnessy  
4518 Ardendale  
South Euclid, Ohio 44121  
[mikshaug@gmail.com](mailto:mikshaug@gmail.com)

Edward Icove  
1751 South Belvoir  
South Euclid, Ohio 44121  
[ed@icovelegal.com](mailto:ed@icovelegal.com)

David Miller  
3826 Merrymound  
South Euclid, Ohio 44121  
[dbmillersecc@hotmail.com](mailto:dbmillersecc@hotmail.com)

Re: 2015 Charter Amendment Proposals  
MR&J Ref: 205-329

Charter Review Commission Members:

We have been retained by Judge Gayle Williams-Byers to review the City of South Euclid 2015 Charter Amendment Proposals for Consideration of January 5, 2015. We have informed Judge Williams-Byers that, in the opinion of the undersigned, three of the proposed amendments, if accepted, would be overturned as unconstitutional or

otherwise contrary to Ohio law. Judge Williams-Byers has asked us to share our analysis and opinions with you for your consideration and the consideration of your counsel.

### **Proposed Amendment No. 34**

This proposal states that the Charter Review Commission may want to consider an amendment that states at what population figure or budgeted dollar amount the court needs to be merged with another regional court. This proposal raises a legal question regarding the charter's authority to create, modify or eliminate the South Euclid Municipal Court.

The answer is that the charter does not have that authority. The South Euclid Municipal Court is created by state statute, and the enabling foundation for the General Assembly to create the court exists exclusively in the Ohio Constitution.

ORC 1901.01(A) provides:

There is hereby established a municipal court in each of the following municipal corporations: Akron, Alliance, Ashland, Ashtabula, Athens, Avon Lake, Barberton, Bedford, Bellefontaine, Bellevue, Berea, Bowling Green, Bryan, Bucyrus, Cambridge, Campbell, Canton, Carrollton, Celina, Chardon, Chesapeake, Chillicothe, Cincinnati, Circleville, Cleveland, Cleveland Heights, Columbus, Conneaut, Coshocton, Cuyahoga Falls, Dayton, Defiance, Delaware, East Cleveland, East Liverpool, Eaton, Elyria, Euclid, Fairborn, Fairfield, Findlay, Franklin, Fremont, Gallipolis, Garfield Heights, Georgetown, Girard, Greenville, Hamilton, Hillsboro, Huron, Ironton, Jackson, Kenton, Kettering, Lakewood, Lancaster, Lebanon, Lima, Logan, London, Lorain, Lyndhurst, Mansfield, Marietta, Marion, Marysville, Mason, Massillon, Maumee, Medina, Mentor, Miamisburg, Middletown, Millersburg, Mount Gilead, Mount Vernon, Napoleon, Newark, New Philadelphia, Newton Falls, Niles, Norwalk, Oakwood, Oberlin, Oregon, Ottawa, Painesville, Parma, Perrysburg, Port Clinton, Portsmouth, Ravenna, Rocky River, Sandusky, Shaker Heights, Shelby, Sidney, **South Euclid**, Springfield, Steubenville, Struthers, Sylvania, Tiffin, Toledo, Troy, Upper Sandusky, Urbana, Vandalia, Van Wert, Vermilion, Wadsworth, Wapakoneta, Warren, City of Washington in Fayette county, to be known as Washington Court House, Willoughby, Wilmington, Wooster, Xenia, Youngstown, and Zanesville.

In *State -vs- Harris*, 1983 Ohio App. LEXIS 13821, 14-15 (Ohio Ct. App., Cuyahoga County Nov. 10, 1983), the court stated that the, "The Cleveland Municipal Court is established by state statute (R.C. 1901.01), pursuant to state constitutional authority. Ohio Const., Art. IV, Sec. 1." Article IV, Section 1 of the Ohio Constitution states:

The judicial power of the state is vested in a supreme court, courts of appeals, courts of common pleas and divisions thereof, and such other

courts inferior to the Supreme Court as may from time to time be established by law.

In *State ex rel. Cherrington v. Hutsinpillar*, 112 Ohio St. 468, 147 N.E. 647 (1925), the Ohio Supreme Court held that, “The municipalities of this state have no power, by charter or otherwise, to create courts and appoint judges thereof, such exercise of power being in violation of Sections 1 and 10, Article IV, of the Constitution of Ohio.” *Id.* at Syllabus.

In other words, the General Assembly, as enabled by the Ohio Constitution, has the exclusive authority to create or eliminate a municipal court. Cities do not.

In fact, the City of South Euclid Charter acknowledges that the municipal court is established pursuant to the Ohio Revised Code. Charter Section 151.01 states: “Establishment of the Court. Under provisions of Ohio R.C. 1901.01, there is established the South Euclid Municipal Court, consisting of a Judge, a Clerk and a Bailiff and such other employees as may be authorized by Council.”

### **Proposed Amendments Nos. 27 and 33**

These proposals are duplicative and suggest that the charter can alter the election process for judges by requiring a run-off election. However, the charter has no such authority.

Although municipal corporations (cities and villages) have certain “home rule” powers granted to them in Article XVIII of the Ohio Constitution, Article IV creates the judicial branch of government, preventing municipal corporations from establishing or otherwise modifying courts or judgeships. Therefore, city charters may not determine the manner by which municipal court judges are elected.

In *State ex rel. Cherrington v. Hutsinpillar*, the Supreme Court of Ohio set out to determine whether “the charter of the city [could] provide for the appointment of a judge rather than his election by the people?” The Court held that the charter could not.

“We have reached the conclusion that under Section 10, Article IV, all judges of courts in this state ‘shall be elected by the electors of the judicial district for which they may be created.’ Except, therefore, for the purpose of filling vacancies, as provided by law, there is no legal or constitutional power by which a judge may be appointed in this state.” See *Hilton v. State ex rel.*, 108 Ohio St., 233, 238, 140 N. E., 681.

In *State ex rel. Higley v. Shale*, 137 Ohio St. 311, 313 (Ohio 1940), the Supreme Court of Ohio denied a petition to hold a municipal court election in an even-numbered year. The office of judge of the Municipal Court of the city of Youngstown had become vacant in December 1939, by the resignation of the then incumbent. The vacancy was filled in March 1940, by appointment by the Governor, until a successor should be elected and qualified. The relator, Joseph N. Higley, Jr., sought to nominate candidates for election in the fall of 1940.

“However, the court held that under Ohio Const. art. XVIII, § 1, elections for only state and county officers would be held in the even-numbered years, and because a municipal judge was neither a state nor county officer the board of elections was not required by a writ of mandamus to place the name of relator on the ballot at the November election of that year.” *Id.*

Further, elections are governed by Title 35 of the Ohio Revised Code. For example, R.C. 3505.27 details the process for counting a tallying of votes. Section (B) states that the tallying of votes shall include: “The recording on a worksheet or other appropriate document of the number of votes cast for each candidate and the number of votes cast for and against each question or issue;”

The recording of “the number of votes cast for each candidate” is simple because the candidate with the most votes wins—there is no other alternative available under the law. Section 3515.011, meanwhile, states that if the margin of votes between the top two candidates is within a certain margin, the board of elections shall order a recount – not a run-off as suggested by the charter amendment proposal.

Any modification to this system may not be effected through local legislative change. The City lacks this authority.

It is clear from Ohio law that judicial elections are outside of the authority of city charters established under the Ohio Constitution’s home-rule provisions. It is equally clear that the candidate with the most votes wins. The City lacks any authority to modify this system. Therefore, the City of South Euclid Charter proposal regarding a run-off election when a candidate does not win by more than 50% of the vote would not survive a legal challenge.

### **Conclusion**

Should these proposals proceed, we are prepared to challenge them. Meanwhile, feel free to contact us if we may clarify any of these issues.

Sincerely,  
MONTGOMERY, RENNIE & JONSON



GEORGE D. JONSON



KIMBERLY VANOVER RILEY