

IN THE SUPREME COURT OF OHIO

CHARLES OSBORNE)	On Appeal from the Stark
)	County court of Appeals,
Plaintiff-Appellant)	Fifth Appellate District
)	
vs.)	
)	Court of Appeals
CITY OF NORTH CANTON)	Case No.: 2013 CA 00246
)	
Defendant.-Appellee)	

**MEMORANDUM IN SUPPORT OF JURISDICTION
OF APPELLANT CHARLES OSBORNE**

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NOTICE OF APPEAL OF APPELLANT CHARLES OSBORNE

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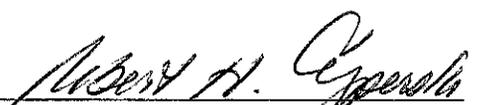
NOTICE OF APPEAL OF APPELLANT CHARLES OSBORNE

Appellant Charles Osborne hereby respectfully gives notice of his appeal to the Supreme Court of Ohio from the Judgment Entry of the Stark County Court of Appeals, Fifth Appellate District, entered in Court of Appeals Case No. 2013CA 00246 on July 21, 2014.

This case and appeal involves issues of public or great general interest.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that a copy of this Notice of Appeal has been sent by ordinary U.S. Mail this

3rd day of September 2014 to counsel for Appellee, at the following:

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TABLE OF CONTENTS

	<u>Page</u>
Table of Contents	i
Table of Authorities	ii
EXPLANATION OF PUBLIC OR GREAT GENERAL INTEREST	1
STATEMENT OF THE CASE	2
Procedural Posture	2
Statement of the Facts	2
PROPOSITIONS OF LAW TO BE ARGUED IF APPEAL IS GRANTED	4
FIRST PROPOSITION OF LAW	
The language of an emergency ordinance must be sufficiently specific to adequately apprise the voters of the true nature of the emergency.	
.....	4
CONCLUSION	9
CERTIFICATE OF SERVICE	10
APPENDIX	<u>Appx. Page</u>
Trial Court’s Decision/Entry, July 21, 2014.....	1
Fifth District’s Court of Appeals Decision.....	6

TABLE OF AUTHORITIES

<i>Caselaw</i>	<u>Pages</u>
<i>City of Youngstown v. Aiello</i> , 156 Ohio St. 32, 37 (1951)	5
<i>Moore v. Abrams</i> , 62 Ohio St.3d 130, 132 (1991)	4, 8
<i>State ex rel. Emrick v. Wasson</i> , 62 Ohio App.3d 498, 503 (2 nd Dist.1990)	5
<i>State ex rel. Fostoria v. King</i> , 154 Ohio St. 213, 220-221 (1950)	8
<i>State ex rel. Oster v. Lorain Cty. Bd. Of Elections</i> , 93 Ohio St.3d 480 (2001)	2
<i>State ex rel. Nolan v. Clendenning</i> , 93 Ohio.St. 264, 277 (1915)	1
<i>State ex rel. Ohio Gen. Assembly v. Brunner</i> , 115 Ohio.St.3d 103 (2007)	1
<i>State ex rel. Webb v. Bliss</i> , 99 Ohio St.3d 166, ¶16 (2003)	7,8
<i>Stone v. Prescott</i> , 173 F.3d 1172, 1175 (9 th Cir. 1999)	2
<i>Snyder v. City of Bowling Green</i> , No. WD-96-036, 8-10 (6 th Dist	7,8
<i>Walsh v. Cincinnati City Council</i> , 54 Ohio App.2d 107 (1st Dist 1977)	1,6
 <i>Statutes</i>	
Ohio R.C. 731.30	5,6
 <i>Other</i>	
The Webster's New World Dictionary, Fourth Edition	6

EXPLANATION OF PUBLIC OR GREAT GENERAL INTERESTS

The right to referendum is a constitutional guarantee Ohio citizens have treasured for more than a century. As the keeper of the law, Ohio courts have traditionally guarded this right and consistently recognized the referendum's imperative function in our democratic society. Time and again, Ohio citizens have been assured the referendum is "one of the shibboleths of democracy," and of "paramount importance." *Walsh v. Cincinnati City Council*, 54 Ohio App.2d 107 (1st Dist 1977) and *State ex rel. Ohio Gen. Assembly v. Brunner*, 115 Ohio.St.3d 103 (2007). This Court has, in fact, called the referendum "one of the most essential safeguards to representative government," *State ex rel. Nolan v. Clendenning*, 93 Ohio.St. 264, 277 (1915).

Despite this extolled reverence, municipalities across the state have gone rogue, making it their quotidian practice to isolate legislation from referendum by the voters. To do so, local governments have hijacked the emergency ordinance, turning it into a rubber stamp for any and all type of legislation. In the case *sub judice*, the municipality of North Canton passed ninety percent (90%) of its 2013 legislation, including the ordinance in question, on an emergency basis. In 2012, ninety-three percent (93%) of the legislation was passed by emergency, in 2011, eighty-three percent (83%) was passed by emergency and in 2010, ninety-two (92%) was passed by emergency.

In too many instances, Ohio courts have turned a deaf ear to citizen suits, allowing

municipalities to violate the rights of the people with the very tool intended to protect those citizens during times of crisis.

The failure of the courts to engage with the law surrounding the enactment of emergency ordinances, or to even enforce the narrow limitations previously established, has silenced the political speech of those in North Canton and elsewhere.

This Court noted a decade ago in *State ex rel. Oster v. Lorain Cty. Bd. Of Elections*, that “where the people reserve the initiative or referendum power, the exercise of that power is protected by the First Amendment applied to the States through the Fourteenth Amendment, and a state ‘may not impermissibly burden the exercise of the right to petition the government by initiative or referendum.’” 93 Ohio St.3d 480 (2001) (quoting *Stone v. Prescott*, 173 F.3d 1172, 1175 (9th Cir. 1999)). Yet, thirteen years later, local governments like North Canton are repeatedly burdening the right of its citizens to petition the government by referendum. In fact, they are operating in a constant state of illusory emergency with the express intention of suppressing that right. Plaintiff, for the benefit of all Ohio citizens, therefore, asks this court to enunciate the true state of the referendum right in Ohio.

STATEMENT OF THE CASE AND FACTS

Procedural Posture and Statement of the Facts

On August 5, 2013, Appellant Charles Osborne brought suit against Appellee City of North Canton. The Appellee passed Municipal Ordinance 47-13 by emergency legislation

unlawfully by not giving sufficient reasoning for the purpose of passing it under an emergency basis.

On July 8, 2013, the Appellee, City of North Canton's City Council, passed a municipal ordinance, Ordinance 47-13, which "established the rates of compensation for elected officials of the City of North Canton, Ohio, effective December 1, 2013." The ordinance was passed with an emergency provision. The reason stated for the emergency provision was, "to meet the Stark County Board of Election's filing requirements for the November 5, 2013, general election."

The ordinance was signed into law, by North Canton's mayor, on that day. It was passed in such a hurried manner because of a deadline posed by the Charter of the Municipality of North Canton ("Charter"), which states that the "compensation of the mayor and each member of council shall be fixed at least thirty (30) days prior to the filing date of the nominating petitions for the terms beginning on the next succeeding first of December, and shall not be changed during the term of office or any part thereof." Charter Section 4.04. Salaries and Bonds.

North Canton was also subject to the filing deadline posed by the Stark County Board of Election. That deadline required that Ordinance 47-13 be passed 90 days prior to the November 5, 2013, general election. With the combination of both the Charter and the Stark County Board of Election's deadlines, Ordinance 47-13 needed to be enacted at least 120 days prior to the November 5, 2013, general election.

If Ordinance 47-13 had not been passed with an emergency provision, it would not have had the time to be enacted before the filing requirements and thus would not go into effect, assuming it would be lawfully enacted, until the subsequent term of elected officials. Therefore,

it was passed with an emergency provision. However, in order for a municipal ordinance to be passed lawfully, it must give sufficient reasons for the emergency. That was not the case. Ordinance 47-13 was passed as an emergency provision so as to defeat the right of referendum held by the people of North Canton.

Appellant's Complaint alleged that the passage of Ordinance 47-13 by the Appellee is not a valid emergency ordinance in that the reasons for the declaration of the ordinance as an emergency were not specified and/or were insufficient to justify an emergency and/or were not valid reasons for an emergency. Appellee denied the allegations.

On November 22, 2013, after extensive briefings by the parties, the trial court granted Appellee's Motion to Dismiss. Plaintiff-Appellant appealed the trial court's decision to the Fifth District Court of Appeals on February 11, 2014. The Fifth District Court of Appeals, in a 2-1 decision, affirmed the decision of the trial court.

PROPOSITIONS OF LAW TO BE ARGUED IF APPEAL IS GRANTED

FIRST PROPOSITION OF LAW: The language of an emergency ordinance must be sufficiently specific to adequately apprise the voters of the true nature of the emergency.

It is well-established that "[w]here an ordinance, passed by the counsel of a municipality, is declared to be an emergency in accordance with the municipality's laws and sets forth the reasons for the immediate necessity thereof, the legislative determining of the existence of an emergency is not reviewable by a court." *Moore v. Abrams*, 62 Ohio St.3d 130, 132 (1991). In a similar vein, "[b]ecause emergency measures seek to address potentially harmful situations

requiring a prompt response, referendum is an ill-suited device for challenging such measures.”
State ex rel. Emrick v. Wasson, 62 Ohio App.3d 498, 503 (2nd Dist.1990).

Properly enacted emergency measures are consequently *isolated from both the courts and the people*, making it imperative that all enacted emergency measures are, in fact, proper.

R.C. 731.30 establishes two content requirements for emergency legislation: 1) Measures must be “necessary for the immediate preservation of the public peace, health, or safety” and 2) “the reasons for such necessity shall be set forth in one section of the ordinance or other measure.” This Court has called these “mandatory requirements” that must “be adhered to and followed.” *City of Youngstown v. Aiello*, 156 Ohio St. 32, 37 (1951).

More specifically, the Court expounded on the enumerated requirements, saying “it is mandatory that the legislative body must consider, determine, and announce the reasons for such necessity and that the same be set forth in one section of the ordinance or other measure.” *Id.* The Second District Court of Appeals has called this a “three-part obligation” that municipalities must fulfill. *Emrick* at 504-505.

Emphasizing the importance of announcing the reasoning on which an emergency ordinance is based, the Second District also noted that “[a] *clear* explanation fulfills two important objectives. First, it demonstrates to the public that the legislature *weighed fully the nature of the emergency* before enacting a remedial measure. Second, it *provides the public with relevant information*. Consequently, purely conclusory, tautological, or illusory language in an

emergency measure does not comport with the prerequisites of R.C. 731.30” (emphasis added).

Id.

Stated another way, there is a statutorily imposed “affirmative duty on municipal governments to provide in the text of the ordinance or measure *an explanation* of the reasons for the emergency” (emphasis added) *Id.* at 504, citing to *Aiello, supra*, at 37. Note the duty is not simply to state the reason, but to *explain* the reason. The Webster’s New World Dictionary, Fourth Edition, defines *explain* as 1) to make clear, plain or understandable, 2) to give the meaning or interpretation of; explained 3) to account for; state reason for.

In the present case, Defendant states the reason the questioned ordinance is an emergency is because of the need “to meet the Stark County Board of Election’s filing deadline for the November 5, 2013 general election.” The only explanation as to why this deadline must be met is that it is “necessary for the preservation of the health, safety and peace of the City of North Canton.” Suffice it to say, Defendant’s explanation of the emergency gives no details and clarifies nothing.

In a factually similar situation, the First District Court of Appeals struck down an emergency ordinance to rename a sports stadium in Cincinnati. In Section Two of the ordinance, the city council set forth reasoning almost identical to Defendant’s: “This ordinance is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health, safety and welfare and shall go into effect forthwith. The reason for the said emergency is the immediate necessity of implementing Section 1” (Section 1 simply stated that the Cincinnati Riverfront Stadium be renamed The Charles P. Taft Riverfront Stadium.). *Walsh*,

supra. at 110. The appellate court said the city council did not have “license to call a fish a fowl.” *Id.* at 111. Further, “the reason for the emergency, if such it was, could have been stated in terms readily understandable, and not as an arbitrary fiat.”

In *Snyder v. City of Bowling Green*, a zoning ordinance was passed by emergency measure. The language of the ordinance stated “prompt effectiveness of zoning measures are (sic) necessary in order to provide appropriate zoning for property in the City and thereby protect the public health, safety and well being of our citizens.” *Snyder*, No. WD-96-036, 8-10 (6th Dist. 1996). The Sixth District found such language “failed to apprise voters that their representatives did have valid reasons for the necessity of declaring that the ordinance was an emergency.” *Id.* at 8. As such, the court noted that any purported emergency must be “sufficiently stated and defined.” *Id.* at 6.

In *State ex rel. Webb v. Bliss*, this Court also dealt with a zoning law passed by emergency measure. The preamble to that ordinance stated that the zoning reclassification “would be beneficial and would promote the public health, safety, and the economic interest of the community.” *Webb*, 99 Ohio St.3d 166, ¶16 (2003). This Court dismissed such language as “insufficient to justify the declaration of an emergency.” *Id.* at ¶17.

When presented with additional language from the ordinance that claims the emergency was justified because it allowed “(1) the proper regulation and use of lands with the village, and (2) the parcel of land being rezoned is more properly classified and consistent with RBRR zoning

classification,” this Court noted that such reasons could “be broadly applied to *any* zoning change” (emphasis in original) *Id.* at ¶18.

In the case at bar, the questioned ordinance provides significantly less of an explanation than those offered in *Webb* or *Snyder*. It is not surprising then that Justice Hoffman of the Fifth District dissented from majority and stated, “I find the Ordinance’s declaration as to ‘why’ it was passed as an emergency measure- that is that it was ‘necessary for the preservation of health, safety and peace of the City of North Canton’ is conclusory, illusory and tautological.” *Osborne v. City of North Canton*, 2013 CA 00246, ¶29 (2014). Further, the dissent accurately observed that there is no “nexus between the enactment of the pay raises and the preservation of the public peace, health or safety of the City of North Canton, let alone why passage of the pay raises as an ‘emergency’ was necessary to maintain the same.” *Id.* at 30.

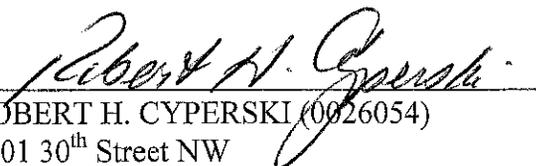
Courts have removed themselves from evaluating the factual necessity of emergency ordinances, reasoning that “the voters have an opportunity to take appropriate action in the subsequent election of their representatives.” *Moore, supra.* at 169, quoting *State ex rel. Fostoria v. King*, 154 Ohio St. 213, 220-221 (1950). However, in order for the voters to make informed decisions regarding their representatives, those representatives must be transparent enough in their legislation for a competent voter to discern their motive and purpose. Lawmakers must, therefore, draft the language of an emergency ordinance so that it is sufficiently specific to adequately apprise the voters of the true nature of the emergency. North Canton voters going to

the polls after the city council passed Ordinance 47-13 did not have sufficient information to determine whether Ordinance 47-13 was an appropriate emergency measure. Thus, the voters were stripped both of their right to referendum and their right to cast a meaningful vote on local matters.

CONCLUSION

As developed above, this appeal goes to the heart of the referendum power and the ideals and principles of this State and Country that governments derive their formidable powers from the consent of the governed. The people of North Canton expressly and without exception reserved unto themselves the power to referendum. The City of North Canton through their repeated attempts to pass legislation on an emergency without specific, sufficient and adequate reason denies the people this right guaranteed not only by the Ohio Constitution but the North Canton Charter. This appeal goes to the basic and fundamental right of the people to referendum, to enforce and protect their First Amendment rights. As such, this appeal involves a matter of sufficient public or great general interest that this Court should accept jurisdiction.

Respectfully submitted,


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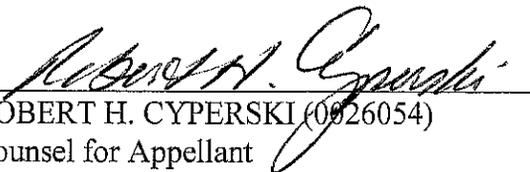
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