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Dale R. Emch  
Director of Law  
City of Toledo  
One Government Center, Suite 2250  
Toledo, OH 43604  
Via email only to dale.emch@toledo.oh.gov

RE: Lake Erie Bill of Rights initiative petition (question re requisite elector signatures)

Dear Mr. Emch:

I'm writing as legal counsel for the committee of petitioners currently circulating part petitions for the Lake Erie Bill of Rights (copy attached). The sponsoring group contacted both the Clerk of Council and the Lucas County Board of Elections, neither of which could answer the question of how many valid signatures are required to put a charter amendment on the ballot. That's why I'm writing you.

I'm seeking the City's concurrence in our interpretation of the requisite number of valid elector signatures necessary to put the measure on the ballot for the November 2018 election. It's a nuanced question, the answer to which is not apparent from the wording of the Charter of the City of Toledo.

Section 5 of the Charter governs amendments of the Charter, and pertinent to my query to you, states that "Any amendment to this Charter may be submitted to the electors of the City for adoption by resolution of the Council, two-thirds of the members thereof concurring, and shall be submitted when a petition is filed with the Clerk of the Council setting forth the proposed amendment and signed by not less than ten percent of the electors."

We believe that the lawful interpretation of "not less than ten percent of the electors" is, according to the Ohio Constitution, "ten percent of the electors who voted in the last municipal election." A total of 52,437 voted in the 2017 municipal election, so our view is that the required number of viable elector signatures is 5,244.

Our position is predicated on two Ohio Supreme Court decisions. In *State ex rel. Huebner v. W. Jefferson Village Council*, 75 Ohio St.3d 381, 662 N.E.2d 339 (1995), an initiative petition to amend the village charter proposed a limitation on the village income

taxation powers. The petition contained 208 valid signatures, and there were 2,272 registered voters in the village. Council refused to place the matter on the ballot because supposedly 228 signatures were needed (10% of the gross number of electors). The petitioners maintained that since they number of registered voters who had voted at the last preceding general municipal election was 482, that they had greatly exceeded the requirement of 49 signatures.

The Ohio Supreme Court initially ruled, but on reconsideration, set aside its previous interpretation of Article XVIII, § 9<sup>1</sup> and held as follows:

We hold that, in determining the number of valid part-petition signatures necessary to establish a right to the placement of a proposed amendment of a municipal charter before the voters, Sections 5, 8, 9, and 14,<sup>2</sup> Article XVIII of the Ohio Constitution must be construed in *pari materia*. Accordingly, the percentage of electors required to sign such part-petitions is ten percent of the electors of the municipality based upon the total number of votes cast at the last preceding general municipal election. In the case at bar the relator was therefore required to present 49 valid signatures to create a legal duty on the part of the appellees to certify the proposed amendment for presentation on the ballot. Appellant met and exceeded that requirement by presenting part-petitions that contained 208 valid signatures.

*Heubner*, 75 Ohio St.3d 384. Notably, the Court based its decision on considerations of public policy. The Court pointed out that reliance on the gross number of electors means that the total literally cannot be established until the day the petitions are submitted because the voter rolls fluctuate daily.

*Heubner* was approved and followed in *State ex rel. Wilen v. City of Kent*, 144 Ohio St.3d 121, 41 N.E.3d 390, 2015-Ohio-3763 (2015). There, petitioners initiated a petition to amend the Kent city charter. The petitioners submitted 621 valid signatures and claimed that under *Heubner*, they needed only 333 because there had been 3,324 votes cast in the preceding general municipal election. The Kent Charter, in contrast to the Toledo Charter, contained a specific provision stating that “[a]t least 10 percent of the qualified electors of the City registered to vote at the next preceding regular Municipal election must sign the initiative petitions for Charter change.”

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<sup>1</sup>Art. XVIII, § 9 states in part: “Amendments to any charter framed and adopted as herein provided may be submitted to the electors of a municipality by a two-thirds vote of the legislative authority thereof, and, upon petitions signed by ten per centum of the electors of the municipality setting forth any such proposed amendment, shall be submitted by such legislative authority.”

<sup>2</sup>Art. XVIII, § 14 states that “All elections and submissions of questions provided for in this article shall be conducted by the election authorities prescribed by general law. The percentage of electors required to sign any petition provided for herein shall be based upon the total vote cast at the last preceding general municipal election.”

The Supreme Court declared that “If the amendment procedures spelled out in a municipal charter conflict with the Ohio Constitution, the constitutional provisions will prevail. *State ex rel. Commt. for the Charter Amendment, City Trash Collection v. Westlake*, 97 Ohio St.3d 100, 2002-Ohio-5302, 776 N.E.2d 1041, ¶ 30.” *Wilens*, § 7. The Court then affirmed and followed *Heubner*.

I wonder if you might please review our position and signify whether or not the City agrees. The committee of petitioners will be submitting their signed petitions for signature validation within the coming week and is desirous of having the issue certified to the ballot well ahead of the commencement of early and military balloting.

We will look for your response. Thank you very much.

Very truly yours,

*/s/ Terry J. Lodge*  
Terry J. Lodge

cc: Gerald Dedinger, Clerk of City Council