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CHARTER AMENDMENT - OHIO

State ex rel. Cincinnati Action for Housing Now v. Hamilton County Board of Elections

Supreme Court of Ohio - March 30, 2021 - N.E.3d - 2021 WL 1186411 - 2021-Ohio-1038

Organization and individual electors sought writ of mandamus to compel county board of elections, Secretary of State, and city council to change ballot language regarding proposed city charter amendment on primary-election ballot.

The Supreme Court held that:

- Language regarding city's priorities for appropriation of funds was not misleading or inappropriately argumentative;
- Language regarding funding dedicated to essential city services and infrastructure was not misleading or inappropriately argumentative;
- Language relating to selection process for members of board did not mischaracterize process and was not inappropriately misleading;
- Ballot language was not misleading as to list of funding sources;
- Ballot language that potential funding sources were "prohibited by state law" was inappropriately argumentative; and
- Language regarding purposes of proposed amendment was not misleading or incomplete.

County board of elections, alone, had legal duty to prepare ballot language relating to proposed city-charter amendment, under statute providing for use of ballot language "as prepared and certified...by the board," and its role was not to merely choose between petition signed by electors or ballot language proffered by city council, though electors and council were free to suggest ballot language.

Ballot language regarding proposed amendment to city charter requiring appropriation of at least \$50 million for affordable housing trust fund, which stated that the appropriation would take priority over other funding needs of the city and "could require" city to reduce city services and infrastructure projects by as much as \$50 million annually, was not misleading or inappropriately argumentative; statement that appropriations would have priority over infrastructure and city services funding was accurate, language did not state it would "mandate" reduction in funding, only that it "could require" such reduction, and it was fair for ballot language to explain consequences of proposed measure on future city budgets.

Ballot language for proposed amendment to city charter requiring appropriation of at least \$50 million for affordable housing trust fund, which stated that amendment would require city to appropriate funding using sources otherwise dedicated to providing for essential city services and public infrastructure needs, was not misleading or inappropriately argumentative; text fairly and accurately described reality, as much of the \$50 million funding would have to come from city's general-operating and capital funds, appropriations for essential services and infrastructure projects currently came from general-operating and capital funds, and objectors to ballot language did not

dispute that trust fund would dip into bucket of funds that provided for essential city services and public infrastructure.

Ballot language for proposed amendment to city charter requiring appropriation of at least \$50 million for affordable housing trust fund, which stated that the trust-fund board would be “administered by an unelected volunteer board,” and that the board members would be selected by community organizations and city council president pro tem, did not mischaracterize selection process and was not impermissibly argumentative, though objectors to ballot language asserted that language omitted critical role played by city council in selecting members; council would not have significant role in deciding membership, as, even if it had authority to reject nominees, it did not have right to select individuals for service, and ballot language that members were “unelected” was factually accurate.

Ballot language regarding source of funds for proposed amendment to city charter requiring appropriation of at least \$50 million for affordable housing trust fund, which provided that city would appropriate funds from its operating or capital funds, revenue related to railway, proposed fee on developers, “or” personal income tax, was not misleading as to funding sources, though objectors to ballot language asserted that language misleadingly suggested that funding would be drawn from all, and not merely from among, the potential sources, as provided in proposal; use of disjunctive “or” plainly indicated that funding need not be drawn from each of the listed sources.

Ballot language regarding source of funds for proposed amendment to city charter requiring appropriation of at least \$50 million for affordable housing trust fund, which provided that city would appropriate funds from its operating or capital funds, revenue related to railway, proposed fee on developers, or personal income tax, was not misleading as to funding sources on the ground that it omitted fifth potential source, namely an increase in municipal-income-tax rate if approved by city voters, as provided in proposal; proposal language related to municipal-income-tax rate, if approved by voters, did not establish a funding source, but it instead prohibited funding source absent future voter approval.

Ballot language stating that two proposed funding sources for proposed amendment to city charter requiring appropriation of at least \$50 million for affordable housing trust fund, namely revenue related to railway and personal income tax on stock-option income, were “prohibited by state law,” was inappropriately argumentative; statements were legal opinions on questions that the proposed amendment did not address.

Ballot language regarding purposes of proposed amendment to city charter requiring appropriation of at least \$50 million for affordable housing trust fund, which stated fund would be established for affordable housing for persons with low incomes “and for related purposes,” but did not list specific related purposes of neighborhood stabilization, housing investment to prevent displacement, and leveraging additional outside resources, was not misleading or incomplete; there was no indication that stating specific purposes was essential to voters understanding proposal, nature of summary necessarily required omission of some important but nonessential information, and later part of summary stated that funds could be allocated to items including new construction, renovation, and direct services.

Secretary of State had no clear legal duty to eliminate inappropriately argumentative ballot language stating that two proposed funding sources for proposed amendment to city charter requiring appropriation of at least \$50 million for affordable housing trust fund, namely revenue related to railway and personal income tax on stock-option income, were “prohibited by state law,” under statutes governing preparation of ballot title and final approval of ballot language, and thus objectors to ballot language were not entitled to writ of mandamus compelling secretary to change

language; statute governing ballot title was inapplicable to issue with ballot language, and relators were not trying to compel Secretary to substantively review language, which duty belonged to County Board of elections.

Objectors to ballot language relating to proposed amendment to city charter requiring appropriation of at least \$50 million for affordable housing trust fund were not entitled to award of attorney fees or costs against county board of elections, Secretary of State, or city council, in mandamus proceeding in which objectors successfully challenged some of the language as being inappropriately argumentative, in absence of evidence that board, Secretary, or council acted in bad faith.

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