

Ken Schneider
Law Director, City of Mason
Mason Municipal Center
6000 Mason-Montgomery Road
Mason, Ohio 45040

SENT VIA U.S. MAIL & VIA FAX TO: 513/229-8511

RE: Circulation of Petitions in Mason

Dear Mr. Schneider:

AMERICAN CIVIL
LIBERTIES UNION
OF OHIO FOUNDATION
4506 CHESTER AVENUE
CLEVELAND, OH 44103-3621
T/216.472.2220
F/216.472.2210
WWW.ACLUOHIO.ORG
contact@acluohio.org

SHARES



I write you on behalf of several Mason residents: Rick Inskeep, Thomas Anderson, Frank Miller and Rick Dotson. They recently contacted my office because they feel their First Amendment right to circulate petitions calling for the recall of several council members is in jeopardy because of various statements you have made in the past about their petition efforts.

Indeed, Mr. Inskeep, Anderson, Miller and Dotson are so concerned about your statements they have decided to forgo their petition efforts in an effort to avoid what you claim are potential felonies. A careful review of the record indicates their fears are understandable. But a review of the law indicates that your implicit threats are wholly without legal basis.

During a March 26, 2007 meeting of City Council you and Vice Mayor Thomas Grossman, also a Council member, repeatedly referred to a draft copy you obtained of their petition as false, fraudulent, and untruthful. Such claims were made despite the fact neither of you offered any details as to what language in the draft petition either of you found so objectionable. After much conversation about their efforts during the meeting, you then indicated that those involved in the petition efforts would be or could be in violation of Ohio Revised Code Section 3599.14. You then went on to state:

I do hope that the person that's planning to circulate these petitions is aware of the danger that might be involved and would be truthful about the reasons for doing it....If it's not truthful there is a substantial degree of jeopardy with those involved.

Mr. Grossman then replied to your remarks by asking:

So, that means that not only the person who drafted the recall petition that has the false statements in it but also the individuals who are the sponsors – specifically, there are sponsors – and the representatives of the petitioners as well as the circulators could be in violation of that law?

Your reply to Mr. Grossman, in part, was:

It's possible they could be.

However, a careful reading of ORC § 3599.14 reveals that there is no basis whatsoever for your contention that those involved with the petition efforts could be in violation of that law.

I assume your opinion is based on one or both of the following sections:

ORC 3599.149(A)(1) (No person shall...)
“Misrepresent the contents, purpose, or effect of the petition or declaration for the purpose of persuading a person to sign or refrain from signing the petition or declaration.”

ORC 3599.14(A)(7) (No person shall...) “Make a false certification or statement concerning the petition or declaration.”

These sections apply to statements made about the petitions in the context of circulation efforts, not language contained within the petition.

In fact, Langley v. Fetterolf, 89 Ohio App.3d 14, 623 N.E.2d 577 (Ohio App. 11 Dist.,1993), a case involving a recall petition controversy, specifically states, “We note there is no provision regarding the necessity for ‘truth’ in the petition”.

In other words, you and other Mason officials have repeatedly referred to the draft petition as containing various false statements (which you have not yet, to my knowledge, ever identified) and how such alleged falsehoods could subject the sponsors and others to the felony penalty provision of ORC 3599.14. Yet, the statute you repeatedly cited does not support your claims.

If anything, by labeling the language of the draft petition as "full of falsehoods," among other descriptions, you and other Mason officials might be in violation of ORC 3599.14, not the petition sponsors and circulators. And if not that section, you should certainly be wary of violating ORC 3599.13(A)(5):

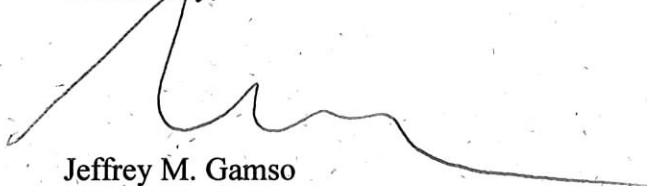
(No person shall...) "Seek by intimidation or threats to influence any person to sign or refrain from signing such a petition, or from circulating or abstaining from circulating such a petition"

Furthermore, whether or not either of the two aforementioned sections of the Ohio Revised Code prohibit your actions, the First Amendment certainly does. Make no mistake, your ongoing comments describing the recall petitions as having false and fraudulent information, combined with your public statements that petition organizers are or could be subjecting themselves to felony prosecution, have effectively "chilled" petition supporters to a point where they feel they cannot safely circulate their petitions while remaining free of prosecution and/or harassment.

As a result, from this day forward, it will be my advice to Mr. Inskeep, Anderson, Miller and Dotson to circulate the recall petitions as they originally planned. I will further request that they contact me immediately should your office or any other representative of the City of Mason attempt to unlawfully interfere with their First Amendment right to circulate petitions in the city. Should I come to the conclusion that your office or any other representatives of the City is violating their First Amendment rights, I will have no choice but to refer the matter to my Board of Directors for litigation. It is my sincere hope this will not be necessary and that no further contact from my office with regard to this matter will be needed.

Should you have any questions or concerns about this letter and the position of the ACLU of Ohio Foundation, Inc., I invite you to contact me directly at 216/472-2220.

Yours truly,

A handwritten signature in black ink, appearing to read "Jeffrey M. Gamso". The signature is fluid and cursive, starting with a large initial 'J' and ending with a long horizontal stroke.

Jeffrey M. Gamso
Legal Director