

November 30, 2020

By U.S. Priority Mail and email to mayor@beachwoodohio.com; barbara.janovitz@beachwoodohio.com; justin.berns@beachwoodohio.com; alec.isaacson@beachwoodohio.com; eric.synenberg@beachwoodohio.com; june.taylor@beachwoodohio.com

Martin Horwitz, Justin Berns,
Alec Isaacson, Barbara Janovitz,
Eric Synenberg, and June Taylor
City of Beachwood
25325 Fairmount Boulevard
Beachwood, Ohio 44122

Re: Taxpayer demand under R.C. 733.56–59 to enjoin “special prosecutor” Stephanie Scalise’s unauthorized representation of the City of Beachwood

Dear Mayor Horwitz and Beachwood City Council members:

As you are likely aware, I represent Councilman Mike Burkons and have in recent weeks submitted correspondence to Beachwood Law Director Diane Calta exercising Burkons’ right under Ohio Revised Code Sections 733.56–59 to demand that Calta fulfill her obligation to ensure the immediate termination of “special prosecutor” Stephanie Scalise’s unauthorized representation of the City in the criminal prosecution she has instituted against Burkons currently pending in the Chardon Municipal Court (Case No. 2020-CR-B-0858). The basis for this demand is that the Beachwood Charter and Codified Ordinances make clear that an attorney, including “special legal counsel,” may only act on the City’s behalf if specifically authorized “by ordinance of Council,” and no such ordinance has been enacted here. *See* Charter, Art. V Sec. 2.1, 2.3; B.C.O. Sec. 133.02–03.

To date, Scalise’s unauthorized representation of the City has continued unabated. Thus, in a final effort to avoid litigation over this matter, Burkons is requesting that you fulfill your own duties and responsibilities to Beachwood’s citizens where Ms. Calta has failed to do so by ensuring that the Charter and Code provisions at issue are upheld.

Specifically, as set forth in my October 22 letter to Ms. Calta, a copy of which is enclosed with this letter (**Exhibit A**) and incorporated by reference herein,

- Article V, Section 2.1 of the Charter provides that the Law Director “shall be *appointed and supervised by Council*,” while “*Council may also provide* for Assistant Law Directors and special legal counsel.” (Emphasis added).
- Article V, Section 2.3 further provides that the Law Director “shall represent the City in all proceedings in court or before any administrative body,” and that “the Law Director shall perform [these] and all other duties ... *unless otherwise provided by Ordinance by Council*.” (Emphasis added).
- Beachwood Codified Ordinance 133.02 provides that the Law Director serves “subject to the direction of the Mayor and Council,” and “shall represent [Beachwood] in all

proceedings in court,” “shall perform all other duties ... *unless otherwise provided by ordinance of Council.*” (Emphasis added).

- And Codified Ordinance 133.03, which specifically pertains to the “hiring of assistants or special counsel,” confirms that “when it becomes necessary or advisable, *in the opinion of Council*, to employ assistants and/or special counsel to assist the Law Director in the performance of h[er] duties, *Council may employ* such assistants and/or special counsel, including any law firm with which the Law Director may be connected or a member, and agree to pay such assistants and/or special counsel such reasonable compensation *as shall be approved by Council*,” and “shall perform such other duties consistent with his/her office *as the Mayor or Council may request.*” (Emphasis added).

Additionally,

- Art. III, Sec. 5.3(I) of the Charter requires Council to implement “such legislation, rules and/or regulations,” or take any “*other acts as Council shall require to implement the Charter or any requirement of Council.*” (Emphasis added).
- And Art. IV, Sec. 4, requires the Mayor to “supervise the administration of the City’s affairs, exercise control over all Departments and Divisions, except those reserved to Council,” and “*require that all laws, Ordinances, Resolutions, and Regulations are enforced.*” (Emphasis added).

These provisions, which you have taken a sworn oath to uphold, require you—as the elected Mayor and Council members of the City of Beachwood—to, at minimum, notify Ms. Scalise that her representation of the City is unauthorized by law and therefore terminated.

From there—with Ms. Calta and Assistant Law Director Nathalie Supler both prohibited from advising the City on this matter due to admitted conflicts of interest—if you deem it necessary to retain an attorney to entertain the question of whether Burkons should be prosecuted over the events at issue, then Council may adopt an ordinance to retain an attorney as the Charter and Code require.

What you may not do is avoid accountability over this matter by pretending that you are somehow bound by a lawless handshake agreement reached by an admittedly conflicted Assistant Prosecutor (Supler) with one of her friends (Scalise) in an apparent conspiracy to engineer a transparently retaliatory prosecution based a wildly unprecedented and unsupportable interpretation of an Ohio statute, 2921.45, criminalizing “interference with civil rights.”

The retaliatory and otherwise unlawful nature of Scalise’s appointment, as well as the utter meritlessness of the legal position she has taken on the City’s behalf pursuant to her unauthorized representation, are apparent as set forth in my October 22 letter. Thus, I hope you will be glad to put an expeditious end to this unfortunate chapter in Beachwood history by simply terminating Scalise and being done with it. But if you nevertheless determine, in your discretion, that an attorney need be appointed here, it should be clear that this attorney need be someone other than Scalise, whose decision to accept the unlawful and conflict-ridden appointment, and her disregard for

fundamental constitutional principles in pursuing charges against Burkons pursuant to that appointment, are independently and relatedly disqualifying.

Finally, you must also ensure that Councilman James Pasch be excluded from your deliberations over this matter due to his own involvement in engineering the unlawful prosecution at issue, as is made clear by public records recently produced by the City disproving Pasch's repeated claims that he "has not been involved in the criminal proceedings against Mr. Burkons," and that he was "unaware of the hiring of Scalise" until she charged Burkons.

The truth, as shown by phone, text, and email records produced by the City, is that Pasch—who claims that prior to June 6 he had "never heard from or about" Alix Nouredinne, the recipient of Burkons' allegedly 'criminal' email—had seventeen phone calls with Nouredinne between June 9 and September 16, in addition to one-hundred twenty-three (123) calls with Law Department officials over the same time period, as well as a ten-minute conversation with Scalise on September 16, nine days before Burkons was charged on September 25.

These records (enclosed for your reference as **Exhibits B–G**) also show that Pasch had a total of seven calls with Nouredinne on Aug. 16, 19, and 22, and eight calls with Law Department officials over the same seven-day span. This started with a voicemail exchange between Pasch and Nouredinne on the morning of August 16, then a four-minute conversation between Pasch and Calta, and a 15-minute conversation between Pasch and Nouredinne later that evening. Pasch and Calta spoke again the next evening for 5 minutes, and then at least three times on August 18 for a total of 23 minutes, with Supler having also spoken with Calta for 9 minutes, and Nouredinne for 45 minutes on the same day. On the following day, August 19, Pasch exchanged two voicemails with Nouredinne, and had a five-minute conversation with him. Then, on August 21, Pasch exchanged a voicemail with Supler and had a 16-minute phone call with her. The next day, Saturday Aug. 22, Nouredinne spoke twice with Pasch, and then emailed Supler the following Monday morning, Aug. 24, stating that he "look[s] forward to speaking with [Supler] or a special prosecutor about this matter and pursuing it as swiftly as possible." Later on the morning of Aug. 24, Supler wrote back to Nouredinne to inform him that "[she's] in the process of finding a special prosecutor" to review the matter, and that afternoon Supler and Pasch had an 8-minute phone call, undoubtedly to discuss the same. The next day, August 25, Supler spoke with Nouredinne for 45 minutes, and the following day, Aug. 26, Supler wrote to Nouredinne confirming that Scalise would be "reviewing the matter." Supler then filed her unauthorized "motion to appoint" Scalise as "special prosecutor" in the Shaker Heights Municipal Court on September 14, two days before Pasch's ten-minute phone call with Scalise on Sept. 16. And in addition to sixteen other calls he had with Law Department personnel between August 25 and September 16, Pasch also spoke with Nouredinne on September 8 and September 16, well after Nouredinne was informed of Scalise's involvement as "special prosecutor," and well before Scalise filed charges against Burkons.

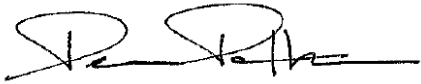
Whether or not you have had anything close to 123 phone calls with the Law Department over this or any three-month period in discharging your duties as an elected Beachwood official, I trust you agree that Pasch's apparent involvement in these proceedings, as reflected by these records, requires his disqualification from your deliberations even apart from his patently untruthful efforts to disclaim any such involvement. I further hope you agree that these records underscore the urgency of the need for you to fix this mess that your admittedly conflicted Law Department officials have

conspired with Pasch to create.

In any event, we have waited more than a month for the City's compliance since having first submitted our demand to Ms. Calta, and cannot wait much longer. If you do not fulfill your respective duties to ensure the termination of Ms. Scalise's unlawful representation of the City by next Monday, December 7, Burkons will proceed in court to ensure the City's compliance with the Charter and Code provisions discussed above, as is his right under R.C. 733.59.

Thank you for your immediate attention to this matter and please feel free to contact me with any questions or concerns about it.

Sincerely,

A handwritten signature in black ink, appearing to read "Peter Pattakos", with a long horizontal line extending to the right.

Peter Pattakos

Encl. (by email only)

Cc: Mike Burkons
Diane Calta
Kenneth Fisher