

**IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO**

<p>JACK PETSCHÉ 6607 Morningside Drive Brecksville, Ohio 44141</p> <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">v.</p> <p>CITY OF BRECKSVILLE 9069 Brecksville Road Brecksville, Ohio 44141</p> <p style="text-align: center;">Defendant</p>	<p>Case No. _____</p> <p>Judge _____</p> <p style="text-align: center;">Verified Complaint for Declaratory Relief</p>
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I. Introduction

1. This is an action for declaratory relief against the City of Brecksville to enjoin City officials from undertaking unlawful and retaliatory proceedings to remove a political opponent, Councilperson John (Jack) Petsche, from his elected office, in violation of Petsche’s clearly established constitutional rights as well as the rights of the Brecksville voters who placed him in office.

2. For the reasons set forth below, Petsche seeks declarations from this Court confirming, (1) that the City may not expel one of its elected officials under Section 2 of its Charter—which prohibits a public official’s direct or indirect interest in a public contract—without evidence of clear and substantial misconduct, as required by the Ohio Constitution, and not for a single unintentional and harmless violation; and (2) that the below-discussed efforts by Petsche’s political opponents in the Brecksville government to preside over proceedings to remove him from office violate Petsche’s constitutional right to due process, including to an impartial tribunal.

II. Facts

A. Jack Petsche, the lone Democrat on Brecksville City Council, has been an effective voice for progress and a consistent challenger to the status quo since long before he was elected to Council in the fall of 2017.

3. Petsche, a Brecksville resident since 1996, has been a voice for progress and consistent challenger to an inert status quo in Brecksville government since long before he was elected, in the fall of 2017, as the only Democrat on a Brecksville City Council that is otherwise dominated by Republicans.

i. In 2012 Petsche and his wife Rose led the successful “Democracy Day” ballot initiative against the opposition of Brecksville’s mayor and law director, who unsuccessfully challenged the initiative before the Cuyahoga County Board of Elections and in the Supreme Court of Ohio.

4. In 2012, Petsche and his wife Rose drafted and led an ultimately successful ballot initiative by which the City’s residents adopted a formal resolution supporting a national constitutional amendment intended to ameliorate the corrupting effects of corporate money on U.S. elections, and declaring a City-wide “Democracy Day,” requiring the City to hold a public hearing on the influence of money on politics.¹ City leaders opposed this resolution, including law director David Matty who unsuccessfully challenged it on the City’s behalf at the Cuyahoga County Board of Elections, and longtime Mayor Jerry Hruby, also a Republican, who, also unsuccessfully, sought to invalidate the resolution in The Supreme Court of Ohio. *See State ex rel. City of Brecksville v. Husted*, 133 Ohio St.3d 301, 2012-Ohio-4530, 978 N.E.2d 157.

ii. In 2018, Petsche demanded public accountability regarding a controversial plan by City leaders to use the general fund to pay \$680,000+ for water and sewer connections that should have been assessed to residents of Brecksville’s Four Seasons neighborhood.

5. In the late summer of 2018, Petsche drew the ire of his fellow councilpersons and other City leaders, including Hruby and Matty, by speaking out against the City’s treatment of a \$680,000+

¹*See* Robert Rozboril, “Brecksville citizens group holds public hearing about Issue 25,” *Cleveland.com* (Jan. 12, 2019), available at: https://www.cleveland.com/brecksville/2012/10/brecksville_citizens_group_hol.html (accessed July 6, 2020).

shortfall in a municipal bond fund for the construction of water and sewer lines to Brecksville's Four Seasons neighborhood, which was one of the newest and most expensive residential developments in the City. This discrepancy related to charges that the County erroneously failed to assess Four Seasons residents, who included two Council members, Kim Veras and Council President Mike Harwood. When City officials discovered the shortfall, Hruby, Matty, and Council attempted to approve an appropriation to pay it from the City's general fund, which caused Petsche to speak out against the lack of transparency in this process. This sparked media coverage and vocal public opposition to the bailout, and also led to the formation of a political group called "A Better Brecksville," which ran a slate of four Council candidates seeking to inject new and independent voices into the Brecksville government. Hruby and Matty both publically expressed their anger with Petsche over his opposition to their Four Seasons dealings.²

iii. In 2019, Petsche ran for Mayor against Jerry Hruby, who has held the office since 1987 and usually runs unopposed.

6. In 2019, Petsche also ran for mayor against Hruby, who has held the office for nine consecutive terms since 1987 and "usually runs unopposed for re-election every four years."³

² See Kathleen Steele Gaivin, "Petsche remains lone voice against funding option for Four Seasons assessment shortfall," *ScriptType* (Sept. 27, 2018), available at: <https://www.scriptype.com/2018/09/27/petsche-remains-lone-voice-against-funding-option-for-four-seasons-assessment-shortfall/> (accessed July 6, 2020); Danielle Serino, "County billing blunder leaves Brecksville on the hook for hundreds of thousands of dollars," *WKYC* (Sept. 6, 2018), available at: <https://www.wkyc.com/article/news/local/cuyahoga-county/county-billing-blunder-leavesbrecksville-on-the-hook-for-hundreds-of-thousands-of-dollars/95-591715833> (accessed July 6, 2020); Bob Sandrick, "Brecksville residents sound off over city's payment of Four Seasons sewer taxes," *Cleveland.com* (Oct. 16, 2018), available at: https://www.cleveland.com/brecksville/2018/10/brecksville_residents_sound_of.html (accessed July 6, 2020).

³ See Bob Sandrick, "Longtime Brecksville mayor faces one opponent in November mayoral election," *Cleveland.com* (Oct. 7, 2019), available at: <https://www.cleveland.com/community/2019/10/longtime-brecksville-mayor-faces-one-opponent-in-november-mayoral-election.html> (accessed July 6, 2020).

B. Brecksville officials, including the Mayor, Law Director, and Council President, had long known that Petsche was the owner of USA Roofing Inc., which successfully bid for a subcontract for Brecksville’s new police station in 2017 before Petsche was elected to Council.

7. Petsche is the owner of USA Roofing, a company he founded in 1995 that has constructed the roofs on some of the most iconic buildings in Northeast Ohio, including Peters Hall at Oberlin College, which was originally constructed in 1896, St. Paul’s Shrine at East 40th Street in Cleveland, and the recently restored League Park facility, former home of Cleveland’s negro league and major league baseball teams.

8. Petsche’s status as USA Roofing’s owner was no secret to Brecksville officials. In 2013, Petsche met with Hruby at Brecksville’s Old Town Hall concerning needed repairs on that building’s cupola, and exchanged correspondence regarding USA Roofing’s quotes for the work. In 2015, Council President Harwood, as a project manager for Panzica Construction on a new building at a Pepper Pike country club, worked directly with Petsche and USA Roofing, and exchanged correspondence on it. Matty had likewise corresponded with Petsche regarding USA Roofing’s work on the Solon fire station in 2007. Additionally, USA Roofing successfully bid on the roofing subcontract for Brecksville’s new police station in 2017, before Petsche was elected to Council. Further, in 2018, Petsche and one of his installers volunteered, at no cost, to install the roofs on Brecksville’s new Safety Town facilities, and did so while wearing USA Roofing t-shirts. And in 2018, before beginning work on the police station roof, USA Roofing filed registration forms with Brecksville’s Building Department that were signed by Petsche himself.

C. In the fall of 2018, six days after the Four Seasons controversy was covered by the local press, the mayor and law director filed a retaliatory report against Petsche to the Ohio Ethics Commission regarding USA Roofing’s work on the Brecksville police station, and did not alert Petsche or the public about their purported concerns.

9. On September 8, 2018, only two days after local news outlets first reported on the Four Seasons controversy to which Petsche alerted them, Hruby and Matty met to discuss Petsche’s affiliation with USA Roofing, and on September 12, 2018, submitted a letter to the Ohio Ethics

Commission alleging that Petsche had committed violations of Ohio Ethics Law in connection with his work for the City. Hruby and Matty did not alert Petsche or the public to these allegations, instead proceeding in secret with their plan for political payback.

D. In the spring of 2019, unaware that the Charter barred elected officials from transparently submitting competitive bids for public contracts, and unaware of the mayor and law director's pending ethics complaint, USA Roofing submitted a competitive bid for a subcontract for Brecksville's new Aquatic Center.

10. In the spring of 2019, construction of the new Brecksville Aquatic Center went out for bid. Several general contractors, including Seitz Builders, requested that USA Roofing submit a bid for the work. In response, USA Roofing submitted a bid for the subcontract, being unaware that Section 2 of Brecksville's Charter barred an elected official from directly or indirectly having or soliciting an interest in a contract with the City. It was Petsche's understanding that if USA Roofing's bid was competitively submitted with full transparency, and USA Roofing was the low bidder on the project, that it was not improper for his company to do the work for the City, and that it would indeed be a service to the City to be the lowest bidder for the work. This understanding is consistent with Ohio Revised Code § 2921.42(C) governing public contracts in the State of Ohio.

E. City officials, unbeknownst to Petsche, struck USA Roofing from the contractor's bid for the Aquatic Center, and did not inform Petsche of any alleged violation of the Charter until after Petsche transparently stated that he was abstaining from Council's vote to approve the Aquatic Center's general construction contract because he believed that USA Roofing could be awarded the roofing subcontract.

11. In May of 2019, unbeknownst to Petsche, Seitz submitted its bid to the City for the Aquatic Center project, which listed USA Roofing as the roofing contractor. On May 13, also unbeknownst to Petsche, Brecksville employee Rebecca Riser emailed Seitz Builders, copying Mayor Hruby, requesting that they "please remove USA Roofing from the subcontractors list for the New Aquatic Center Project." At a meeting on May 21, 2019, Council voted to award the contract to Seitz as the low bidder. After this meeting, Petsche told Harwood that he abstained from the vote because he believed there was a chance that Seitz would award the roofing subcontract to USA Roofing.

Harwood then asked Petsche to repeat what he had just told him to Matty, and Petsche did so.

Matty then indicated that Council would need to revote to approve Seitz as the contractor, because while Petsche had abstained from the vote, he did participate in a related procedural vote to suspend Council rules, which Petsche believed to be perfunctory. This was the first indication that Petsche had received from City officials that it was improper for him to submit competitive bids for City work.

F. In August of 2019, after Petsche announced that he was running for mayor, and nearly a full year after the mayor and law director submitted their secret ethics complaint against him, the mayor, law director, and Council threatened to remove Petsche from office based on USA Roofing’s work on the police station contract.

12. This issue did not come up again until August 6, 2019, the same day Petsche announced that he would run for Mayor that November. At a Council meeting on this day, Matty finally accused Petsche publically of having an improper interest in the roofing subcontract for the police station, for which Petsche submitted the low bid, to a private contractor, in 2017 before he was elected to Council. At this meeting as well as at the next month’s meeting on September 3, Hruby, Matty, and Council members feigned surprise and outrage that Petsche was affiliated with USA Roofing, and threatened to have him removed from his elected Council seat. Additionally, Council members leveled accusations against Petsche regarding who was funding his mayoral campaign, as well as the Democracy Day” initiative in 2012.

G. In June of 2020, Council served Petsche with a notice of proceedings to “expel” him from his elected office due to USA Roofing’s unsuccessful bid for the Aquatic Center subcontract, despite the complete lack of evidence that Petsche engaged in any intentional wrongdoing or caused any harm.

13. In response to Council’s announcement of its intent to remove Petsche, the undersigned attorney sent two letters to the City on Petsche’s behalf. These letters, attached as **Exhibit 1** and **Exhibit 2**, cited clear Supreme Court precedent holding that under the Ohio Constitution, because it is “the people by their votes [who] determine their choice of officers, and they should not be robbed of the fruits of such choice for slight or insufficient reasons,” an elected official in Ohio may

only be removed from office “for clearly substantial reasons and conclusions that his further presence in office would be harmful to the public welfare.” *State ex rel. Corrigan v. Hensel*, 2 Ohio St.2d 96, 99–100, 206 N.E.2d 563 (1965); *Zeigler v. Zumbar*, 129 Ohio St.3d 240, 2011-Ohio-2939, 951 N.E.2d 405, ¶ 40-41. These letters further pointed out that no such wrongdoing could possibly be established regarding USA Roofing’s successful submission of a competitive bid to a private contractor prior to Petsche’s election to council.

14. After receiving the September 2019 letters from Petsche’s attorney, the City put on hold its plans to remove Petsche from office, and did not take any apparent action in furtherance of these plans for another nine months, until June 16, 2020, when Brecksville’s Assistant Law Director Sergio DiGeronimo served Petsche with a document, attached as **Exhibit 3**, purporting to notify him of proceedings to “expel” him from his Council seat.

15. According to this notice, the City purports to be entitled to remove Petsche from office because USA Roofing submitted a competitive bid, as a subcontractor, to the general contractor Seitz Builders, Inc., for the job on the Brecksville Aquatic Center Roof. As noted above, Petsche was ultimately not awarded this contract, he was not aware of the Charter provision (Section 2) barring Council members from having or soliciting an interest in a public contract, and was not aware that he was doing anything improper by submitting a competitive bid for a construction project to a private contractor.

16. Upon being notified of the Charter’s prohibition referenced above, Petsche has not had an interest or attempted to have any interest in any contract whatsoever with the City of Brecksville.

17. In finally moving forward with their retaliatory “expulsion” proceedings against Mr. Petsche, Petsche’s political opponents in Brecksville government were apparently emboldened by the fact that—despite the lack of any indication of intentional misconduct by Petsche—the Cuyahoga County Prosecutor’s office recently obtained an indictment against him under Ohio Revised Code Section 2921.42(A) on three counts of “having an unlawful interest in a public contract,” relating to

USA Roofing's successful competitive bid for the subcontract for the police station roof project mentioned above (which was submitted and approved before Petsche was elected to Council), and one count of "attempting to have an unlawful interest in a public contract" with respect to his unsuccessful bid for the subcontract for the Aquatic Center roof.

18. Petsche expects to be cleared at trial under R.C. 2921.42(C), which provides a complete defense to the charges against him. Specifically, Section C provides that a public official's interest in a public contract is not prohibited where, as here, (1) the subject of the contract is necessary supplies or services; (2) the supplies or services are unobtainable elsewhere for the same or lower cost; (3) the treatment accorded to the public entity under the contract is either preferential to or the same as accorded to other customers in similar transactions; and (4) the transaction is conducted at arm's length, with full knowledge by the public entity involved of the official's interest in the contract. *See also Struewing v. Village of Yellow Springs*, 2d Dist. Greene No. 2013 CA 21, 2014-Ohio-1864.

H. The City has confirmed its intent to move forward with the expulsion proceedings in violation of Petsche's due process rights and the principle that Ohio's elected officials may only be removed from office for "for clearly substantial reasons and conclusions that their further presence in office would be harmful to the public welfare."

19. Upon receiving the notice of expulsion proceedings from Mr. DiGeronimo, the undersigned attorney for Petsche wrote DiGeronimo a letter dated June 23, 2020 (attached as **Exhibit 4**) including the following: (1) a reminder that under the Ohio Constitution an elected official may only be removed from office "for clearly substantial reasons and conclusions that his further presence in office would be harmful to the public welfare" (*Hensel*, 2 Ohio St.2d 96, 99-100; *Zeigler*, 2011-Ohio-2939, ¶ 40-41); (2) notification that Petsche intends to call Hruby, Matty, and his fellow Council members as witnesses in the proceedings; and (3) a demand that the proceedings be submitted to the Cuyahoga County Probate Court pursuant to R.C. 733.72 to ensure Petsche's constitutional right to have any removal proceedings adjudicated by an impartial tribunal.

20. In response to the undersigned's June 23 letter, Mr. DiGeronimo sent a letter that was received on June 29, 2020 (attached as **Exhibit 5**), indicating that Council would not honor Petsche's demand for an impartial tribunal. DiGeronimo's letter also clarified the City's position that Petsche may be removed from his elected Council seat even based on a single unintentional and harmless violation of the Charter's "qualifications" provisions, by virtue of his having simply submitted a bid for the Aquatic Center subcontract.

21. On June 30, 2020, the undersigned then sent Mr. DiGeronimo a letter in reply, attached as **Exhibit 6**, to confirm Petsche's understanding as stated in the paragraph above. To date, there has been no substantive response to this letter.

22. Brecksville's unlawful expulsion proceedings against Petsche are currently scheduled for July 21, 2020.

III. Causes of Action

Count 1

Declaratory Judgment: The Brecksville Charter cannot apply to support removal of an elected official absent evidence of "clear and substantial misconduct" and "conclusions that his further presence in office would be harmful to the public welfare."

23. Under the Ohio Constitution, because it is "the people by their votes [who] determine their choice of officers, and they should not be robbed of the fruits of such choice for slight or insufficient reasons," an elected official in Ohio may only be removed from office "for clearly substantial reasons and conclusions that his further presence in office would be harmful to the public welfare." *State ex rel. Corrigan v. Hensel*, 2 Ohio St.2d 96, 99–100, 206 N.E.2d 563 (1965); *Zeigler v. Zumber*, 129 Ohio St.3d 240, 2011-Ohio-2939, 951 N.E.2d 405, ¶ 40-41.

24. Thus, based on the facts set forth above, Petsche is entitled to a declaration from this Court under R.C. 2721.05, Civ.R. 57, and the Ohio Constitution, affirming that the City may not expel one of its elected officials under Charter Section 2 without evidence of clear and substantial misconduct that would support conclusions that his further presence in office would be harmful to the public

welfare. In other words, contrary to Brecksville's apparent position in these proceedings, the Charter cannot apply to support the expulsion of an elected official for an unintentional and harmless violation of Section 2's prohibition against an official's direct or indirect interest in a public contract.

Count 2

Declaratory Judgment: Petsche's political opponents in Brecksville government may not lawfully preside over the removal proceedings instituted against him.

25. Under the Ohio Constitution, "an unbiased tribunal is a ... necessity in a quasi-judicial hearing, and a denial of the same is a denial of due process." *Sorin v. Bd. of Edn.*, 39 Ohio Misc. 108, 111-112, 315 N.E.2d 848 (Cuyahoga C.P. 1974) (citing cases), *aff'd*, *Sorin v. Bd. of Edn. of Warrensville Hts.*, 8th Dist. Cuyahoga No. 33648, 1975 Ohio App. LEXIS 6127 (May 8, 1975), *rev'd on other grounds*, *Sorin v. Bd. of Edn.*, 46 Ohio St.2d 177, 347 N.E.2d 527 (1976).

26. Accordingly, those who prosecute or serve as witnesses in such proceedings "cannot and should not proceed in judgment upon the evidence so obtained." *Id.*

27. Thus, based on the facts set forth above, Petsche is entitled to a declaration from this Court under R.C. 2721.05, Civ.R. 57, and the Ohio Constitution, that City Council, Hrubby, Matty, nor any other biased City official may lawfully adjudicate the instant removal proceedings against him. All Council members are relevant witnesses to these proceedings, and otherwise cannot preside over them impartially, including due to their personal political motivations as set forth above.

IV. Prayer for Relief

Wherefore, Plaintiffs respectfully pray for the declaratory relief set forth above as well as the costs and disbursements of this action, including reasonable attorneys' fees and any other relief as the Court deems equitable and just.

Respectfully submitted,

/s/ Peter Pattakos

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Attorneys for Plaintiff

Verification

I hereby verify and attest under penalty of perjury that I have read the Verified Complaint and know the contents thereof, and that I believe the information contained therein to be true upon my own knowledge, information, and belief.



Jack Petsche

STATE OF OHIO, COUNTY OF SUMMIT

The foregoing Verification was acknowledged and attested to me by the above-signed Plaintiff, having been duly sworn, on 7-6-2020 at FAIRLAWN, OH.



Notary Public, State of Ohio



Attorney Peter G. Pattakos
Resident Summit County
Notary Public, State of Ohio
My Commission Has No Expiration Date
Sec 147.03 RC

Request for Service

To the Clerk of Courts:

Please issue the Summons and Complaint and serve this Complaint and accompanying exhibits to each of the Individual Defendants at the address listed below, making return according to law.

City of Brecksville
9069 Brecksville Road
Brecksville, Ohio 44141

/s/ Peter Pattakos
Attorney for Plaintiffs

September 17, 2019

By U.S. priority mail and email to dmatty@brecksville.oh.us, dmatty@mblegal.com

David Matty
Brecksville City Hall
9069 Brecksville Rd.
Brecksville, OH 44141

Re: Jack Petsche

Dear Mr. Matty:

I've been retained by Brecksville City Council member Jack Petsche in connection with the suggestion made by certain other Council members at the September 3, 2019 meeting that removal proceedings might be instituted against Mr. Petsche under the City Charter in connection with a contract performed by Mr. Petsche's company, U.S.A. Roofing, on the City's police station.

As you know, the Charter provisions at issue are intended to bar self-dealing by Brecksville's public officials in conducting City business. I trust that you and all of Mr. Petsche's colleagues on City Council also know that U.S.A. roofing was hired as a subcontractor for the job at issue *before* Mr. Petsche was elected to council, and only *after* having submitted a competitive bid for the work in response to the general contractor's request for proposals. By the time Mr. Petsche was elected to Council, U.S.A. Roofing was already contractually obligated to perform on this contract and City officials were on notice of this obligation.

Thus, it should be clear that no wrongdoing is at issue here and that no harm was caused by U.S.A. Roofing having completed this job for which it was the low bidder, on a bid that was accepted before Mr. Petsche was elected to Council. In fact, it is far more likely that harm would have been caused to the City had U.S.A. Roofing not performed on this contract as it competitively bid and agreed to do.

While I doubt that Council could lawfully resort to the Charter's removal provisions under these circumstances, for present purposes it should be enough to note that under Section 4 of the Charter it is wholly within Council's discretion to decide whether to institute such proceedings in the first place.

In the event that Council does decide to seek Mr. Petsche's removal despite the absence of any wrongdoing and despite the absence of any harm to the City, please note that it will be Mr. Petsche's right to pursue all available remedies under the U.S. Constitution and Ohio law for what would apparently be a retaliatory abuse of process under the color of law. Additionally, any public statements suggesting that Mr. Petsche used his elected position to obtain this contract are plainly false and malicious and thus constitute actionable defamation.

Finally, this letter shall serve as a public records request under Ohio Revised Code § 149.43 to you, all Brecksville City Council members, the Mayor, and all City officials and employees whatsoever regarding the matter of U.S.A. Roofing's contract with the City, including all communications made

EXHIBIT 1

to or received from Joe Pagonakis, News 5 Cleveland, any other news reporter or outlet, or any Brecksville citizen or other person or party whatsoever.

Ohio's public-records law requires that a public office or official, upon receiving a public-records request, promptly make its records available for inspection. R.C. 149.43(B)(1). The Ohio Supreme Court has required public offices to produce records within eight days of a request. *State ex rel. Wadd v. City of Cleveland*, 81 Ohio St.3d 50, 54 (1998). Ohio law also provides that records relating to public business that are in officials' personal e-mail accounts, cell phones, personal computers, etc., are public records that must be produced under the statute. *See, e.g., State ex rel. Glasgow v. Jones*, 119 Ohio St.3d 391, 2008-Ohio-4788, at ¶ 23. As the statute gives the requester the right to choose the medium in which the records are received for inspection (R.C. 149.43(B)(6)), I am thus requesting that you provide .pdf files of all responsive records by email to me at peter@pattakoslaw.com by October 1, 2019.

I am best reached at that email address, or by phone at 330.836.8533.

Thank you for your prompt attention to this matter.

A handwritten signature in black ink, appearing to read 'Peter Pattakos', with a stylized flourish at the end.

Peter Pattakos

cc: Michael T. Harwood
Laura C. Redinger
Gerald F. Broski
Louise N. Carouse, Jr.
Jack Petsche
Dennis R. Rose
Kimberly A. Veras
Tammy Tabor

September 25, 2019

By U.S. priority mail and email to dmatty@brecksville.oh.us, dmatty@mhglegal.com

David Matty
Brecksville City Hall
9069 Brecksville Rd.
Brecksville, OH 44141

Re: Jack Petsche

Dear Mr. Matty:

Mr. Petsche has informed me that you have asked him to let you know, by today, whether he intends to resign from his seat on Brecksville's City Council. I further understand that your request relates to the suggestion by certain Brecksville officials that Mr. Petsche's removal from office would be warranted under the Brecksville Charter due to a pair of competitive bids that his company, U.S.A. Roofing, submitted to general contractors for work on City facilities.

Thus, I'm writing to advise you that Mr. Petsche will not be resigning from his Council seat and will seek all available legal recourse against any such unlawful efforts to remove him from this position.

As in my letter to you of September 17, I again remind you that the Charter provisions at issue are intended to prohibit Brecksville's public officials from abusing their positions to enrich themselves at the public's expense. As you know, there is no possible basis for a conclusion that Mr. Petsche abused or intended to abuse his Council seat in this or any manner, or that he was even aware that the Charter barred his submission of competitive bids to general contractors for work on City jobs.

Accordingly, there is no possible basis for Mr. Petsche's removal under Ohio law, which properly "disfavors the removal of duly elected officials," and provides that "statutes authorizing the removal of an incumbent from public office ... should be strictly construed." *Zeigler v. Zumber*, 129 Ohio St.3d 240, 2011-Ohio-2939, 951 N.E.2d 405, ¶ 41, citing *In re Removal of Sites*, 170 Ohio App.3d 272, 2006 Ohio 6996, 866 N.E.2d 1119, ¶ 16. Because it is "the people by their votes [who] determine their choice of officers, and they should not be robbed of the fruits of such choice for slight or insufficient reasons," an elected official in Ohio may only be removed from office "for clearly substantial reasons and conclusions that his further presence in office would be harmful to the public welfare." *State ex rel. Corrigan v. Hensel*, 2 Ohio St.2d 96, 99-100, 206 N.E.2d 563 (1965). To the extent that Brecksville's Charter provisions conflict, or are applied to conflict, with these binding constitutional standards, any such application would of course be invalid. *See also State ex rel. Hoel v. Brown*, 105 Ohio St. 479, 486-488, 138 N.E. 230 (1922) (removal statute invalid under the Ohio Constitution where it conflicted with Section 38, Article II, "relating to the removal of public officers believed to be derelict or faithless in their public service, so much so that the honesty and efficiency of that service required their removal").

On the facts at issue here, it is hard to believe that anyone would say with a straight face that there are "clearly substantial reasons" to support the "conclusion" that Mr. Petsche's "further presence in office would be harmful to the public welfare" or that "the honesty and efficiency of [public] service

required [his removal].” Under the circumstances, however, I must nevertheless advise you that in the event removal is pursued, Mr. Petsche would insist on the full extent of his constitutional right to due process. *See, e.g., Brown*, 105 Ohio St. 479, 486 (“[Section 38, Article II] clearly and concretely recognizes Ohio’s obligation to the cardinal doctrines included within this phrase, ‘due process of law.’”). This would, at a minimum, require that any removal proceedings be adjudicated by an impartial tribunal, thus barring the participation of most if not all of Mr. Petsche’s fellow Council members and any other Brecksville officials who would necessarily be witnesses in the proceedings or whose partiality would otherwise be in doubt. *See, e.g., Sorin v. Bd. of Edn.*, 39 Ohio Misc. 108, 111-112, 315 N.E.2d 848 (Cuyahoga C.P. 1974) (“The requirement of an impartial tribunal applies to administrative proceedings no less than criminal trials. ... One who investigates and then proceeds to prosecute and furthermore proceeds to act as a witness in the prosecution cannot and should not proceed in judgment upon the evidence so obtained.”) (citing cases), *aff’d, Sorin v. Bd. of Edn. of Warrensville Hts.*, 8th Dist. Cuyahoga No. 33648, 1975 Ohio App. LEXIS 6127 (May 8, 1975), *rev’d on other grounds, Sorin v. Bd. of Edn.*, 46 Ohio St.2d 177, 347 N.E.2d 527 (1976).

Mr. Petsche would also reserve his right to pursue all available remedies, including fee-shifting, for any violation of these due-process rights, as well as other rights guaranteed by Ohio and federal law as discussed in my letter of last week. But it remains his hope that any such reservation will be unnecessary.

If you would like to discuss any of the above further, or if you or Mr. Petsche’s fellow Councilmembers would be interested in working on a joint statement regarding the resolution of this issue, I would be glad to hear from you. Again, I am best reached by phone at 330.836.8533 or by email at peter@pattakoslaw.com.

With thanks and best regards,



Peter Pattakos

cc: Sam O’Leary



IN THE CITY OF BRECKSVILLE, OHIO
CITY COUNCIL

IN RE:)	CHARTER OF CITY OF BRECKSVILLE
)	SECTION 4. REMOVAL
CITY OF BRECKSVILLE)	
CITY COUNCIL)	EXPULSION OF COUNCILPERSON JOHN
)	(JACK) PETSCHÉ

NOTICE:

Pursuant to the Charter of the Municipality of Brecksville, Ohio, this Written Notice, effective June 16, 2020, is hereby given by City Council to COUNCILPERSON JOHN (JACK) PETSCHÉ notifying him of a Hearing to occur on 8:00 pm 7/21, 2020, in the Ralph W. Biggs Council Chambers, 9069 Brecksville Road, Brecksville, Ohio, for the below described charge of gross misconduct, malfeasance, nonfeasance in or disqualification for office by COUNCILPERSON JOHN (JACK) PETSCHÉ.

CHARGE:

- 1) COUNCILPERSON JOHN (JACK) PETSCHÉ (Mr. Petsche) was duly elected by the electorate of the City of Brecksville in November 2017, and sworn into the Office of Councilperson for said Municipality on January 2, 2018.
- 2) At all times relevant hereto, Mr. Petsche was an elected official acting in the capacity of Councilperson at large for the City of Brecksville.
- 3) At all times relevant hereto, Mr. Petsche was the owner of USA Roofing, Inc., a roofing contractor organized under the Laws of the State of Ohio.
- 4) On May 3, 2019, Seitz Builders, Inc. submitted a bid to be the General Contractor for the Aquatic Center Project in the City of Brecksville.
- 5) On or about May 13, 2019, City of Brecksville Purchasing Director, Rebecca Riser, discovered that Seitz Builders, Inc. submitted their bid naming USA Roofing, Inc. to be the roofing subcontractor for the Aquatic Center Project in the City of Brecksville.
- 6) On May 13, 2019, City of Brecksville Purchasing Director, Rebecca Riser, contacted Seitz Builders, Inc. and advised them that their submission could not proceed unless USA Roofing, Inc. was removed as a subcontractor.
- 7) As part of the resubmission, Seitz Builders, Inc. removed USA Roofing, Inc. as a subcontractor.
- 8) On May 27, 2019 at a special meeting of the Brecksville City Council, Ordinance 5244 was adopted by the City Council accepting the bid of Seitz Builders, Inc. for the Aquatic Center Project.
- 9) On June 4, 2019, at a regular meeting of the Brecksville City Council, while discussing an Ordinance (Ord. 5248) relating to design and construction of the Aquatic Center Project, Mr. Petsche admitted that he, on behalf of his Company, USA Roofing, Inc., bid on the roof for the Aquatic Center.

- 10) On June 9, 2020, the Cuyahoga County Prosecutor's Office received a True Bill of Indictment from the Cuyahoga County Grand Jury which indicted Mr. Petsche for Three (3) Counts of Having An Unlawful Interest in a Public Contract, and One (1) Count of Attempted Having An Unlawful Interest in a Public Contract. Each of the foregoing charges are felonies under Ohio Revised Code Section 2921.42.
- 11) One of the four Felony Charges is the charge of Attempted Having An Unlawful Interest in a Public Contract, which concerns the conduct of Mr. Petsche as it relates to the USA Roofing, Inc. bid to Seitz Builders, Inc. for the Aquatic Center Project.

Based upon the foregoing facts, it is formally alleged that JOHN (JACK) PETSCHÉ, while a duly elected councilperson for the City of Brecksville, directly or indirectly, solicited, contracted for, received, or be interested in any profit or emolument from or on account of any contract, job, work, or service with or for the municipality. This is in contravention to the City Charter (Section 2. Qualifications.) which provides:

SECTION 2. QUALIFICATIONS.

Each member of Council shall have been for at least two years immediately prior to the date of his election and during his term of office shall continue to be, a resident in this municipality and qualified elector thereof. Except as otherwise provided in this Charter, no member of Council shall hold any other municipal office or municipal employment in this municipality. He shall not, directly or indirectly, solicit, contract for, receive, or be interested in any profit or emolument from or on account of any contract, job, work, or service with or for the municipality.

CHARTER OF THE MUNICIPALITY OF BRECKSVILLE, OHIO

AUTHORITY:

Council will convene a public hearing on the aforesaid date, on the issue of whether COUNCILPERSON JOHN (JACK) PETSCHÉ shall be removed or expelled from the office of Councilperson for the City of Brecksville for gross misconduct or malfeasance or nonfeasance in or disqualification for office. Authority for this action rests in the Charter of the Municipality of Brecksville, Ohio:

SECTION 4. REMOVAL.

The Council shall be the judge of the election and qualifications of its own members. It may expel or remove any member for gross misconduct or malfeasance or nonfeasance in or disqualification for office, or upon conviction while in office of a felony or other crime involving moral turpitude, or for violation of his oath of office, or persistent failure to abide by the rules of Council, or absence without justifiable excuse from three (3) consecutive regular meetings of Council, provided that such expulsion or removal shall be upon the concurrence of five (5) or more members of Council after public hearing upon the charge or charges brought; and provided, further, that the accused member shall have been notified in writing of the charge or charges against him at least fifteen (15) days in advance of such public hearing; and provided,

further that he or his counsel shall have been given an opportunity to be heard, and examine witnesses appearing in support of such charge or charges.

The decision of Council in expelling or removing a member of Council after compliance with this section shall be final and thereupon the office of any such removed or expelled member of Council shall be vacant.

CHARTER OF THE MUNICIPALITY OF BRECKSVILLE, OHIO

SERVICE OF NOTICE:

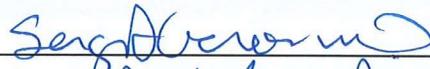
THIS NOTICE OF CHARGE READ INTO THE PUBLIC RECORD AND ORDERED TO BE DELIVERED TO COUNCILPERSON JOHN (JACK) PETSCHÉ THIS 16 DAY OF June, 2020.

City of Brecksville



Michael Harwood, Council President

THIS NOTICE OF CHARGE PERSONALLY SERVED UPON COUNCILPERSON JOHN (JACK) PETSCHÉ THIS 16 DAY OF June, 2020.

By: 
Asst. Law Director

June 23, 2020

By U.S. Priority Mail and email to sdigeronimo@brecksville.oh.us, brecksvillelan@gmail.com

Sergio DiGeronimo
8748 Brecksville Road, Suite 216,
Brecksville, OH 44141

Re: Jack Petsche

Dear Mr. DiGeronimo:

Bob Belovich, Paul Daiker and I represent Jack Petsche in connection with the notice of proceedings to remove him from his position as an elected member of Brecksville's City Council that you served on him on June 16, 2020. I'm writing to confirm our understanding regarding various aspects of these proceedings.

As a preliminary matter, please note that Ohio law "disfavors the removal of duly elected officials," and provides that "statutes authorizing the removal of an incumbent from public office [are] strictly construed." *Zeigler v. Zumbar*, 129 Ohio St.3d 240, 2011-Ohio-2939, 951 N.E.2d 405, ¶ 41, citing *In re Removal of Sites*, 170 Ohio App.3d 272, 2006 Ohio 6996, 866 N.E.2d 1119, ¶ 16. Because it is "the people by their votes [who] determine their choice of officers, and they should not be robbed of the fruits of such choice for slight or insufficient reasons," an elected official in Ohio may only be removed from office "for clearly substantial reasons and conclusions that his further presence in office would be harmful to the public welfare." *State ex rel. Corrigan v. Hensel*, 2 Ohio St.2d 96, 99-100, 206 N.E.2d 563 (1965). To the extent that Brecksville's Charter provisions conflict, or are applied to conflict, with these binding constitutional standards, any such application would be invalid and subject to reversal on appeal. *See also State ex rel. Hoel v. Brown*, 105 Ohio St. 479, 486-488, 138 N.E. 230 (1922) (removal statute invalid under the Ohio Constitution where it conflicted with Section 38, Article II, "relating to the removal of public officers believed to be derelict or faithless in their public service, so much so that the honesty and efficiency of that service required their removal").

Accordingly, Mr. Petsche is entitled to have these proceedings adjudicated by an impartial tribunal. *See, e.g., Brown*, 105 Ohio St. 479, 486 ("[Section 38, Article II] clearly and concretely recognizes Ohio's obligation to the cardinal doctrines included within this phrase, 'due process of law.'"); *Sorin v. Bd. of Edn.*, 39 Ohio Misc. 108, 111-112, 315 N.E.2d 848 (Cuyahoga C.P. 1974) ("An unbiased tribunal is a constitutional necessity in a quasi-judicial hearing, and a denial of the same is a denial of due process. ... One who investigates and then proceeds to prosecute and furthermore proceeds to act as a witness in the prosecution cannot and should not proceed in judgment upon the evidence so obtained.") (citing cases), *aff'd, Sorin v. Bd. of Edn. of Warrensville Hts.*, 8th Dist. Cuyahoga No. 33648, 1975 Ohio App. LEXIS 6127 (May 8, 1975), *rev'd on other grounds, Sorin v. Bd. of Edn.*, 46 Ohio St.2d 177, 347 N.E.2d 527 (1976).

Thus, we are requesting that you confirm that this matter will be submitted to the jurisdiction of the Cuyahoga County Probate Court pursuant to R.C. 733.72 for the impartial adjudication to which Mr. Petsche is entitled under the Ohio and U.S. constitutions. *See also Sorin*, 1975 Ohio App. LEXIS 6127, at *15-16 (“At the inception of the proceedings, appellee complained of the appellant Board’s bias, and at that point, or immediately thereafter, the appellant Board could have referred the matter to probate court for an impartial resolution.”).

Relatedly, this letter shall also serve as notice that Mr. Petsche intends to call as witnesses in the proceedings all of his current fellow Council members, as well as Law Director David Matty, and Mayor Jerry Hruby, who are barred from presiding over these proceedings due to their status as witnesses as well as other well-known facts reflecting on their partiality here. We also presently intend to call the City’s purchasing director Rebecca Riser, its finance director Laura Starosta, and former councilperson Dennis Rose, and will follow up with you regarding additional witnesses as we identify the need for their testimony.

Finally, we are requesting that the following documents be produced no later than July 7, 2020, including all documents that the City intends to use as exhibits against Mr. Petsche:

1. All documents pertaining to the solicitation of or bidding on contracts with the City of Brecksville for the Aquatic Center;
2. All documents pertaining to the solicitation of or bidding on contracts with the City of Brecksville for the New Police Station;
3. All documents pertaining to the solicitation of or bidding on contracts with the City of Brecksville for the Old Town Hall roof;
4. All documents pertaining to the planning or construction of Safety Town;
5. All documents sent to or received from the City of Brecksville (including its representatives) and Panzica Construction that reference Jack Petsche or USA Roofing;
6. All documents sent to or received from the City of Brecksville (including its representatives) and Seitz Builders, Inc. that reference Jack Petsche or USA Roofing;
7. All registration forms or other documents filed with the City’s building department or any other City department that reference USA Roofing;
8. All documents reflecting conflict of interest policies and procedures regarding Brecksville public officials during Mr. Petsche’s time in office;
9. All disclosure forms that Brecksville requires its elected officials to sign, including all versions of such forms executed by Mr. Petsche;
10. All documents reflecting any formal training provided by the City to elected councilpersons during Mr. Petsche’s time in office;
11. Any employee handbooks or manuals provided to Brecksville councilpersons during Mr. Petsche’s time in office.
12. All documents reflecting communications by David Matty, Jerry Hruby, or any other Brecksville official to the Ohio Ethics Commission regarding Mr. Petsche or USA Roofing, including letters, emails, memoranda, text messages, and voice messages;
13. All documents reflecting communications between or among David Matty, Jerry Hruby, or any other Brecksville official regarding alleged misconduct by Mr. Petsche or USA Roofing, including letters, emails, memoranda, text messages, and voice messages.

To the extent that the City purports to deny Mr. Petsche the impartial tribunal to which he is entitled here, or any other aspect of his due process rights, he will pursue all available remedies for any such deprivation, including compensation for attorneys' fees. *Sorin*, 39 Ohio Misc. 108, 118 (awarding attorneys' fees to appellant of administrative proceedings in which he was denied due process "to assure that [appellant] and others who might similarly be forced to great expense to vindicate clear constitutional claims, are not deterred from securing such vindication by the prospect of costly, protracted proceedings which have become necessary only because of the obdurate conduct of [an administrative board]."); *State ex rel. Cater v. City of N. Olmsted*, 69 Ohio St.3d 315, 322-323, 1994-Ohio-488, 631 N.E.2d 1048 ("If the members of a legislative body can ignore, with impunity, the mandates of a constitution or a city charter, then it is certain that the faith of the people in constitutional government will be undermined and eventually eroded completely.").

We hope to hear from you soon and trust that you will contact us immediately to the extent that any of the above is unclear.

Thank you and best regards,

A handwritten signature in black ink, appearing to read 'Peter Pattakos', with a stylized flourish at the end.

Peter Pattakos

cc: Robert Belovich
Paul Daiker

Law Department

June 24, 2020

Peter Pattakos
101 Ghent Road
Fairlawn, Ohio 44333

Re: Correspondence of June 23, 2020

Dear Mr. Pattakos:

I am in receipt of your correspondence dated June 23, 2020. As a preliminary matter, please be aware that the City of Brecksville is a Charter Municipality.

Section 3 of Article XVIII of the Ohio Constitution states, “[m]unicipalities shall have authority to exercise all powers of local self-government and to adopt and enforce within their limits such local police, sanitary and other similar regulations, as are not in conflict with general laws.” These enumerated powers are commonly known as “home rule powers”.

Section 7 of Article XVIII of the Ohio Constitution goes on to provide that “[a]ny municipality may frame and adopt or amend a charter for its government and may, subject to the provisions of section 3 of this article, exercise thereunder all powers of local self-government.” A municipal charter is a legal document that establishes how a municipality is organized and operates, and it is often described as a constitution for a municipality.

Thus, a charter allows a municipality to choose its own plan of government without having to default to statutory options, such as your suggestion to utilize R.C. 733.72. The City of Brecksville’s Charter, provides for the governance of City Council in Article IV. Section 2 of the Article specifically identifies qualifications and prohibited conduct of the members of Council.

SECTION 2. QUALIFICATIONS.

Each member of Council shall have been for at least two years immediately prior to the date of his election and during his term of office shall continue to be, a resident in this municipality and qualified elector thereof. Except as otherwise provided in this Charter, no member of Council shall hold any other municipal office or municipal employment in this municipality. He shall not, directly or indirectly, solicit, contract for, receive, or be interested in any profit or emolument from or on account of any contract, job, work, or service with or for the municipality.

Upon the assertion that a member of Council has engaged in gross misconduct, malfeasance, nonfeasance in or disqualification for office, or for a violation of his oath of office, Council may expel or remove the member. Council will also remove a member from Council for conviction, while in office of a felony. This authority is derived from Article IV, Section 4:



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EXHIBIT 5

SECTION 4. REMOVAL.

The Council shall be the judge of the election and qualifications of its own members. It may expel or remove any member for gross misconduct or malfeasance or nonfeasance in or disqualification for office, or upon conviction while in office of a felony or other crime involving moral turpitude, or for violation of his oath of office, or persistent failure to abide by the rules of Council, or absence without justifiable excuse from three (3) consecutive regular meetings of Council, provided that such expulsion or removal shall be upon the concurrence of five (5) or more members of Council after public hearing upon the charge or charges brought; and provided, further, that the accused member shall have been notified in writing of the charge or charges against him at least fifteen (15) days in advance of such public hearing; and provided, further that he or his counsel shall have been given an opportunity to be heard, and examine witnesses appearing in support of such charge or charges.

The decision of Council in expelling or removing a member of Council after compliance with this section shall be final and thereupon the office of any such removed or expelled member of Council shall be vacant.

The Brecksville City Council will convene a public hearing on July 21, 2020 at 8:00 pm on the sole issue of whether your client Mr. John Petsche, violated his oath as a Council member, when he solicited the General Contractor of Brecksville's Aquatic Center project to install the roof on that project. The public record contains an admission by Mr. Petsche that he did bid on the project. (Council Minutes of June 4, 2019).

Your correspondence of June 23, 2020 requests documents which, if legally permitted, will be provided to you. Some documents, notably those described in items 12 and 13 of your request, are matters which are exempted from the public records law, (Attorney-Client Privilege: *State ex rel. Leslie v. Ohio Hous. Fin. Agency* 105 Ohio St.3d 261, 2005-Ohio-1508; *Morgan v. Butler*, 2017-Ohio-816 (10th District), and Prosecutor/Government Attorney Trial Preparation: R.C. 149.43(A)(1)(g)).

Thank you for your courtesy and cooperation.

Sincerely,



Sergio DiGeronimo

June 30, 2020

By U.S. Priority Mail and email to sdigeronimo@brecksville.ob.us, brecksvillelan@gmail.com

Sergio DiGeronimo
8748 Brecksville Road, Suite 216,
Brecksville, OH 44141

Re: Jack Petsche

Dear Mr. DiGeronimo:

Yesterday, I received your letter dated June 24, which was in response to my letter of June 23 regarding the removal proceedings that you have instituted against my client Jack Petsche, and which did not arrive at my office until Saturday, June 27. Going forward, I would appreciate the courtesy of receiving your correspondence by email, in addition to any paper copies you send by post, which will of course expedite our consideration thereof.

As for the substance of your letter, we understand from it that you and Council intend to disregard the principles of Ohio law set forth in my June 23 letter, including by allowing Council to preside over these removal proceedings and refusing to submit this matter to an impartial tribunal for adjudication as we have requested. We also understand that your reading of the clause, “as are not in conflict with general laws,” contained in Section 3 of Article XVIII of the Ohio Constitution, which you cite in your letter, does not account for other provisions of the Ohio Constitution—including the right to due process, and the requirement that elected officials not be removed from office absent “clearly substantial reasons and conclusions that their further presence in office would be harmful to the public welfare.” *See also Zeigler v. Zumbar*, 129 Ohio St.3d 240, 2011-Ohio-2939, 951 N.E.2d 405, ¶¶ 40-41 (interpreting Section 38, Article II of the Ohio Constitution).

Please advise immediately if our understanding is incorrect. Otherwise, we will proceed accordingly.

Thank you and best regards,



Peter Pattakos

cc: Robert Belovich
Paul Daiker