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Burkons' attorney: Council leader involved in prosecution

Pasch: 'I'm not as powerful as Burkons seems to think I am'

JANE KAUFMAN | STAFF REPORTER

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Dec 2, 2020

The lawyer for Beachwood City Councilman Mike Burkons has filed a second taxpayer's demand letter, this time claiming Beachwood City Council president James Pasch had prior knowledge and was involved in the decision to prosecute Burkons, his fellow councilman.

Peter Pattakos reviewed telephone records and emails he obtained in a public records request. Pattakos is defending Burkons, who is charged with interfering with the civil rights of Beachwood resident Alix Nouredine.

Pattakos cited Pasch's 17 phone calls with Nouredine between June 9 and Sept. 16, his 123 phone calls to the Beachwood Law Department, a 10-minute conversation with special prosecutor Stephanie B. Scalise on Sept 16 and an email strand between Beachwood city prosecutor Nathalie Supler and Nouredine.

"On the morning of Aug. 24, Supler wrote back to Nouredine 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," Pattakos wrote. "The next day, August 25, Supler spoke with Nouredine for 45 minutes, and the following day, Aug. 26, Supler

wrote to Nouredine confirming that Scalise would be 'reviewing the matter.'”

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Burkons

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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

Pattakos wants Pasch “excluded from your (Beachwood City Council) deliberations over this matter.”

Pasch has repeatedly denied he had prior knowledge or involvement in the decision to prosecute Burkons, who was charged Sept. 25 with a first-degree misdemeanor. Burkons was censured by Beachwood City Council Aug. 17 over the same matter.

“I never asked, instructed, or told the city of Beachwood Law Department to seek a special prosecutor,” Pasch wrote in a Dec. 1 email to the Cleveland Jewish News.

He reiterated his position that he had nothing to do with the hiring of Scalise. He said Scalise called him once to ask about the source of documents attached to Burkons' censure.

“That conversation does not translate into the councilman's conspiracy theory that I somehow masterminded the charges against him. ... I'm not as powerful as Burkons seems to think I am,” he wrote.

Pasch acknowledged his communication with Nouredine, who is the assistant law director of Cleveland Heights, after Nouredine emailed Beachwood council members on June 6 regarding a Sept. 28, 2018, incident involving Lt. Kevin Owens of the Beachwood Police Department and a Black teenager, which was observed by Nourredine. Pasch previously told the CJN he had no prior relationship to Nouredine as Pattakos had alleged.



Pasch

Scott T. Morrison Discovery Photo

“I absolutely did reach out to him afterwards, the same way I would for any resident whose livelihood had been threatened by a fellow member of council,” Pasch wrote. “Over the course of the summer, I spoke with him for about a total of two hours.”



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Yesterday, others in the city received a letter from Councilman Mike Burkons's attorney regarding the municipal-court criminal charges Burkons is facing for allegedly interfering with the civil rights of a Beachwood resident. The letter floats several conspiracy theories about his case and his actions, and ultimately demands that city councilmembers and the mayor politically interfere with the special prosecutor working on the case. The letter on behalf of a criminal defendant even seeks to control the choice of his own independent prosecutor. I will leave it to the City's legal counsel to more thoroughly answer Councilman Burkons's legal questions concerning the Shaker Municipal Court's appointment of a special prosecutor.

To his conspiracy theory that I somehow devised this situation against him, I want to be very clear: at no point did I suggest to Councilman Burkons that he should intimidate one of our residents and contact his employer. That's all on Burkons.

As I have said before, and as the letter acknowledges, I had no contact with Alix Nouredine before his email outreach to Council in June of this year. In fact, to this day, I still have never met Mr. Nouredine. I absolutely did reach out to him afterwards, the same way I would for any resident whose livelihood had been threatened by a fellow member of council. Over the course of the summer, I spoke with him for about a total of two hours.

Similarly, I had nothing to do with the charges brought against Councilman Burkons. I never asked, instructed, or told the City of Beachwood Law Department to seek a special prosecutor. Likewise, after I was informed of an appointment, I did not reach out to the special prosecutor to ask or instruct her to do anything. That's not my job. Special Prosecutor Scalise called me one time, presumably in my capacity as a witness, and she asked questions about the source of the documents attached to the censure of Councilman Burkons. That conversation does not translate into the councilman's conspiracy theory that I somehow masterminded the charges against him. I didn't ask her to charge him and I merely cooperated with the assigned prosecutor's investigation by answering her questions. I'm not as powerful as Burkons seems to think I am.

To the suggestion that I have spoken to our law department frequently in the past few months—as the Council president and for a time as acting mayor, of course I have! Before every council meeting, our entire agenda is reviewed by the law department and me, and it is vital for the Council president to be in touch with department, particularly during such a turbulent year. Over this summer, we were working hard for taxpayers on responses to COVID-19, flooding, the beginning of union negotiations, and a period where I served as both Council president and acting mayor, to name just a few things. All issues that would require constant communication from any Council president. The insinuation that these conversations were all somehow about a plot against Burkons is not only absurd, it's self-delusional about his importance.

Councilman Burkons's actions and behavior continue to prevent our city from solely focusing on the genuine issues that we need to address. Amid a global pandemic that threatens the lives of our residents, the services we can provide, and our ability to work together as a community—we can ill afford to continue dealing with his antics. We have all seen the harm our country faces when our leaders embrace and espouse baseless conspiracy theories. Whether it's President Trump, congressional leaders, or local elected officials, our communities and our institutions are eroded when we ignore facts and embrace these harmful delusions. I would therefore call on Councilman Burkons and elected leaders everywhere to come back to reality and focus on the important tasks at hand.

And he should stop baselessly blaming others for problems of his own creation.

As to conversations with Law Director Diane Calta, Pasch said he has spoken with Calta on a regular basis in his capacity as council president on many issues, including the short time he was acting mayor when Mayor Martin S. Horwitz was hospitalized this summer.

“I would therefore call on councilman Burkons and elected leaders everywhere to come back to reality and focus on the important tasks at hand,” Pasch wrote. “And he should stop baselessly blaming others for problems of his own creation.”

In a Dec. 1 email to the Cleveland Jewish News, Calta said attorney Kenneth J. Fisher of Cleveland, who is representing the city, responded to Pattakos' initial taxpayer's demand letter, which was directed to Calta. She enclosed Fisher's Nov. 2 three-page response.

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November 2, 2020

VIA EMAIL ONLY: peter@pattakoslaw.comPeter Pattakos, Esq.
The Pattakos Law Firm LLC
101 Ghent Road
Fairlawn, Ohio 44333**Re: City of Beachwood
Taxpayer Action - Councilman Michael Burkons**

Dear Mr. Pattakos:

Please be advised the undersigned represents the City of Beachwood in regard to the legal issues detailed in your correspondence dated October 22, 2020.

In response thereto, please note the following:

- 1) Consistent with the City's Expenditure Policy, copy enclosed, Law Director Diane Calta has authority to make expenditures of up to \$5,000.00 without City Council approval.

As detailed in City of Beachwood Assistant Law Director/Prosecutor Nathalie E. Supler's Motion of Prosecuting Attorney to Withdraw as Counsel and Appointment of Special Prosecutor (the "Motion to Withdraw") initially filed in Shaker Heights Municipal Court Case No. 20ARW00001¹ on September 14, 2020, Attorney Stephanie Scalise (who agreed to provide "mutual aid" assistance without compensation) was engaged in an investigatory capacity to "gather and review all of the relevant evidence" and make an independent probable cause determination of possible criminal conduct.

On September 28, 2020, the Shaker Heights Municipal Court granted the Motion to Withdraw appointing Attorney Scalise as Special Prosecutor for the City of Beachwood.

¹Administrative Case designation was assigned Shaker Heights Municipal Court Case No. 20CRB00772 and subsequently transferred sua sponte by the Shaker Heights Municipal Court to the Chardon Municipal Court (Case No. 2020CRB00858) on October 6, 2020.

Fisher, wrote, "It is clear that your client's demand that 'special counsel' be appointed other than attorney Scalise is solely for his own benefit. ... In addition, your client's allegations against the city of Beachwood and law director Calta are without merit and any taxpayer action is without legal or factual basis."

Calta wrote, "It is unclear why Mr. Pattakos is continuing to request a response when one has obviously already been provided to him."

Pattakos addressed that question in a Nov. 30 email to the CJN.

"Calta bears as much responsibility for Scalise's unauthorized appointment as anyone in the Beachwood government with the exception of Supler and Pasch."

Pattakos reiterated his claim that Scalise, who is University Heights city prosecutor, did not have legal authorization to represent Beachwood because city council did not vote to appoint her according to city charter.

Scalise has said she took the case at the request of Supler, She is not being paid, she has said.

However, Calta in an Oct. 23 email to the CJN, wrote, "Ms. Scalise was appointed by Court Order."

Burkons was charged Sept. 25 with interfering with civil rights, a first-degree misdemeanor punishable by 180 days in jail, a fine of up to \$10,000 or both.

The criminal case against Burkons is now in Chardon Municipal Court following an order by Shaker Heights Municipal Court Judge K.J. Montgomery, but Pattakos has made a motion to have the case returned to Shaker Heights Municipal Court, where the charge was first filed. He said the judge in Chardon does not have jurisdiction over the case and that venue may be waived by the defendant, but not "taken from him by the court."

If Scalise is not removed, he said he would take the case to the Ohio 8th District Court of Appeals in Cleveland Dec. 7 to ensure the city's compliance with its charter and code provisions.

Scalise said Nov. 30 she had no comment to the CJN and would respond to Pattakos' letter directly to Beachwood City Council.

This is a developing story

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