



## Citizen-initiated charter amendment results in costly penalty for city

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Citizen-initiated ballot issues are the cornerstone of our democracy, but one Ohio city found itself in an untenable position at the end of a three-year legal battle that included multiple trips to the board of elections, the Ohio Supreme Court and the federal courts. A citizen-initiated charter amendment attempting to stop a development project in Powell, Ohio, was ultimately ruled unenforceable by a federal court, but there were no real winners in this scenario.

The matter began in 2013, when Powell City Council narrowly approved a mixed-use development for its downtown district. Citizen complaints about traffic and congestion ensued, and, ultimately, three ballot issues were proposed. The city refused to place the issues on the ballot claiming, among other things, they were unconstitutional. The Ohio Supreme Court initially ruled in favor of the city but then reversed course upon reconsideration.

In the end, the Court ruled that one of the issues should be allowed to proceed to the ballot despite potential constitutional flaws. "The proper time for an aggrieved party to challenge the constitutionality of the charter amendment is after the voters approve the measure, assuming they do so." *State ex rel. Ebersole v. City of Powell*, 141 Ohio St. 3d 17 (2014).

The voters did approve the measure, and the developer promptly challenged the constitutionality of the charter amendment, this time turning to the federal court. The federal court found the charter amendment to be unconstitutional and prohibited the city from enforcing it. *Ctr. for Powell Crossing, LLC v. City of Powell*, 173 F. Supp. 3d 639 (S.D. Ohio 2016). The federal court also ordered the city to pay the developer's damages and attorney fees. The case finally ended in 2016 when an appeal brought by the citizens was denied by the U.S. Court of Appeals for the Sixth Circuit. *Ctr. for Powell Crossing, LLC v. Ebersole*, 696 F. App'x 702 (6th Cir. 2017).

At the end of the battle, the citizens delayed development but lost their court challenges. The developer is now free to build as initially planned. Several of the citizens leading the effort to stop the development subsequently ran for City Council and were, according to press coverage of the election, soundly defeated. But it was arguably the city that faced the most significant harm. In addition to its own costs incurred from years of protracted litigation against its citizens, the city ended up settling with developers for \$1.8 million.