

Office of Public Information *
 Executive Office Building
 101 Monroe Street *
 Rockville, MD 20850 *
 Defendants
 * * * * *

COMPLAINT

Plaintiffs Fraternal Order of Police, Montgomery County Lodge 35, Inc. (“FOP”), Michael Kane (“Kane”), and Mario Mastrangelo (“Mastrangelo”), through counsel, pursuant to Md. Code Ann., Cts. & Jud. Pro. §§ 3-406 and 3-409, bring this action for declaratory judgment against Defendants Montgomery County, Maryland (“County”), County Executive Isiah Leggett (“Leggett”), and Patrick Lacefield (“Lacefield”), Director of the Montgomery County Office of Public Information, and in support thereof state:

THE PARTIES

1. Plaintiff FOP is a Maryland corporation located in the County. It is the recognized and certified exclusive employee collective bargaining representative for officers below the rank of lieutenant in the Montgomery County Department of Police (“MCPD”) under Montgomery County Code (“MCC”) § 33-76 (1994). At all times mentioned it has been and now is a real property owner and taxpayer in the County.

2. Plaintiff Kane is a resident of the County and a registered voter there. He is a police officer in the MCPD and a member of the bargaining unit represented by the FOP. He works secondary employment. At all times mentioned he has been and now is

a real property owner and taxpayer in the County.

3. Plaintiff Mastrangelo is a resident of the County and a registered voter there. He is a police officer in the MCPD and a member of the bargaining unit represented by the FOP. At all times mentioned he has been and now is a real property owner and taxpayer in the County.

4. Defendant Montgomery County, Maryland is a chartered home rule county exercising all governmental functions granted by its Charter, by the Maryland Constitution and by Article 25A of the Annotated Code of Maryland.

5. At all times mentioned in this complaint, Defendant Leggett was and still is the County Executive of the County.

6. At all times mentioned in this complaint, Defendant Lacefield was and still is the Director of the Montgomery County Office of Public Information.

JURISDICTION AND VENUE

7. This Court has jurisdiction over the Defendants pursuant to Md. Code Ann., Cts. & Jud. Proc. § 6-102 *et seq.* Defendant County is a government agency created pursuant to Maryland law; Defendant Leggett is domiciled in the State; and the matters giving rise to this action all took place in the State of Maryland.

8. Venue is appropriate in Montgomery County pursuant to Md. Code Ann., Cts. & Jud. Proc. § 6-201 *et seq.* as Defendant Montgomery County maintains its principal offices in the County, and Defendant Leggett resides in the County.

FACTUAL BACKGROUND

9. On July 19, 2011, the Montgomery County Council passed Bill No. 18-11 (“the Bill”) which eliminated what is known as “effects bargaining” from MCC § 33-80 (a) . Defendant Leggett signed the Bill into law on August 1, 2011.
10. The FOP led a petition drive to bring Bill 18-11 to referendum, collecting over 48,000 signatures.
11. On November 18, 2011, the Montgomery County Board of Elections certified that the petition had sufficient signatures to qualify for placement on the ballot at the November 2012 General Election.
12. On November 28, 2011, the County and Stephen B. Farber filed suit in Circuit Court to challenge the Montgomery County Board of Elections certification of County Council Bill 18-11.
13. On July 27, 2012, the Maryland Court of Appeals granted certiorari from the Montgomery County Circuit Court. On August 17, 2012, the Court of Appeals ruled for the FOP and ordered that the Board of Elections place County Question B (“Question B”) on the ballot for the November 6, 2012 election.
14. Upon information and belief, Defendant Leggett in his official capacity as County Executive and Defendant Lacefield in his official capacity as Director of the County Office of Public Information have mounted an election campaign for Question B and expended substantial amounts of tax derived public funds to exhort voters to vote for Question B.

15. Upon information and belief, the Defendants have directed and are directing county employees, including merit system employees, to engage in political activity in support of Question B while on the job during working hours.

16. The County Office of Public Information has written, printed and disseminated campaign materials that advocate in favor of Question B and contain false and misleading information.

17. The Defendants have used County employees, public funds and other County resources to:

- a. advocate "Vote for Question B" on the Montgomery County web site;
- b. place advertisements advocating "Vote for Question B" on County Ride-On buses;
- c. produce and place bumper stickers advocating "Vote for Question B" on county owned vehicles ;
- d. produce and display posters and distribute handbills advocating "Vote for Question B" at County libraries and other county facilities;
- e. advocate support of Question B at the Montgomery County Democratic Central Committee ballot recommendation committee meeting; and
- f. email voters to support Question B.

18. On November 1, 2012, Plaintiffs were informed that in addition to the above activities, the County had hired individuals, paying them \$15.00 per hour, to distribute County produced Question B handbills exhorting voters to "Vote For Question

B”at early voting centers and at polls on Election Day.

19. On November 1, 2012, Plaintiffs also learned that the County Office of Public Information had produced and mailed a campaign advertisement to County voters exhorting them to “Vote for Question B.” This advertisement was delivered on or about November 1, 2012.

20. On November 3, 2012, Plaintiffs learned that the County Office of Public Information had produced and mailed a second campaign advertisement to County voters exhorting them to “Vote for Question B.” This advertisement was delivered on or about November 3, 2012.

21. The Defendants’ expenditure of public funds to campaign for passage of Question B may greatly diminish the likelihood that Question B will be defeated.

22. Plaintiff FOP and Defendant County are likely to disagree about whether certain issues are mandatory subjects of bargaining or effects on employees of the employer’s exercise of an employer right.

23. If Question B is approved, Plaintiff FOP may reasonably sustain pecuniary losses due to increased and protracted litigation over whether disputed issues with the County are mandatory subjects of bargaining or effects on employees of the employer’s exercise of an employer right.

24. The right to transfer, assign and schedule employees is an employer right under MCC § 33-80(10). If Question B is approved, the County may not be required to bargain the effects on employees of its exercise of this right.

25. The FOP and the County have bargained minimum time requirements for notifying bargaining unit members of schedule changes. Those requirements will be in effect until the end of the current collective bargaining agreement between the FOP and the County.

26. When the current collective bargaining agreement expires, the County may decide to unilaterally shorten notice of schedule change requirements and refuse to bargain them, claiming the issue is not a mandatory subject of bargaining but rather an effect on employees of the employer's exercise of an employer right.

27. Shortening schedule change notice requirements poses potential pecuniary damage to Plaintiff Kane as well as other members of the FOP bargaining unit who work secondary employment by reducing their secondary employment opportunities.

28. Shortening schedule change notice requirements poses potential pecuniary damage to Plaintiff Mastrangelo who may incur increased costs for obtaining childcare for his minor children due to the shortened notice.

29. The Defendants' use of public funds, county resources and county employees while on the job during working hours to engage in campaign activities advocating for passage of Question B is illegal, *ultra vires* and without any authority of law.

30. Md. Ann. Code., Election Law §§ 13-202 and 13-101(f) require that with the exception of individual expenditures, all solicitations and expenditures of funds to support or oppose a ballot question at an election must be conducted by a ballot issue

committee registered with the State Board of Elections.

31. The County's expenditure of public funds to campaign for Question B is not being conducted through a ballot committee registered with the State Board of Elections.

32. The promotion of public support for the purpose of winning a ballot question election is not a proper governmental function nor reason for expenditure of County funds.

33. Expenditures by an administrative official are proper only if they are authorized explicitly or implicitly by legislative enactment.

34. A home rule county may exercise only the authority with which it has been expressly impliedly given by law. The County's expenditure of public funds and use of on the job County employees to campaign in a contested election is not one of the powers expressly or impliedly granted to a home rule county by the Express Powers Act, Md. Ann. Code, Art. 25A § 5.

35. No other law authorizes the County to use public funds or County employees working on the job to advocate for passage of a ballot question.

36. Md. Code Ann., Article 24 § 13-105 prohibits local government employees from engaging in political activities while on the job during working hours.

37. Montgomery County Personnel Regulation ("MCPR") § 3.8 allows County merit system employees to participate in political causes and campaigns on their own time but prohibits them from using County equipment, supplies or other property for

a political cause or campaign. It also prohibits County employees from directing, coercing, or otherwise obligating another County employee to contribute to a political cause or campaign or to provide work or service of any type to a political cause or campaign.

38. Defendants deny that their expenditure of public funds and use of County resources and County employees working on the job to persuade voters to vote for Question B is illegal.

39. Plaintiffs are seeking a declaratory judgment pursuant to Md. Code Ann., Cts. & Jud. Proc. §§ 3-406 and 3-409, for the purpose of determining a question of actual controversy between the parties..

40. There exists an actual controversy of a justiciable issue between Plaintiffs and Defendants within the jurisdiction of the Court involving the construction and application of Md. Ann. Code, Art. 24 § 13-105, Md. Code Ann., Election Law § 13-202, Md Ann. Code, Art. 25A § 5, and MCPR 3.8. A declaratory judgment by this Court will serve to terminate this controversy.

41. Plaintiffs have incurred counsel fees and other litigation costs and expenses in the prosecution of this action.

WHEREFORE, Plaintiffs respectfully request that this Court :

a. Declare that the Defendants' expenditure of public funds and use of County resources and County employees while on the job during working hours to persuade voters to vote for Question B is illegal and ultra vires;

b. Declare that the Defendants' expenditure of public funds to exhort voters to vote for Question B violates Md. Ann. Code., Election Law §§ 13-202;

c. Adjudge Defendants Leggett and Lacefield to be personally liable to Defendant Montgomery County for the above-mentioned wrongful and illegal expenditure of public funds with interest at the legal rate in the amount of the illegal expenditures;

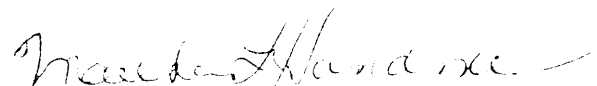
d. Order restitution to Defendant Montgomery County of the amount of the illegal expenditures with interest at the legal rate be enforced against Defendant Leggett and Defendant Lacefield;

e. Award Plaintiff attorney's fees to be awarded from the fund created by the judgment;

f. Award Plaintiffs the costs of these proceedings; and

g. Grant Plaintiff such other and further relief as in law and justice it may be entitled to receive.

Respectfully submitted,



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