IN THE COURT OF APPEALS OF OHIO
EIGHTH APPELLATE DISTRICT

CITY OF CLEVELAND,	:	Appellate Case No.: CA-17-105500
Plaintiff-Appellee,	:	REGULAR CALENDAR
v.	:	On Appeal from the Decision of the Cuyahoga County Court of
STATE OF OHIO	:	Common Pleas
Defendant-Appellant.	:	Trial Case No.: CV-16-868008
	:	

MERIT BRIEF OF AMICUS CURIAE, AMERICAN COUNCIL OF ENGINEERING COMPANIES OF OHIO, IN SUPPORT OF DEFENDANT-APPELLANT STATE OF OHIO

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PROPOSITION OF LAW NO. 1:

WHETHER R.C. §9.75 WAS ENACTED PURSUANT TO THE BROAD GRANT OF AUTHORITY TO THE GENERAL ASSEMBLY UNDER SECTION 34, ARTICLE II OF THE OHIO CONSTITUTION.

INTRODUCTION

Amicus Curiae American Council of Engineering Companies of Ohio (herein "ACEC") files its *amicus* brief in support of Appellant State of Ohio. At issue on appeal is whether House Bill 180, or R.C. §9.75 as codified, was constitutionally enacted by the Ohio General Assembly pursuant to its grant of authority provided by Section 34, Article II of the Ohio Constitution.[1]

ACEC is a trade association of more than 120 companies engaged in the design and construction of facilities of all kinds throughout the state of Ohio. R.C. §9.75 was enacted in order to prohibit a public authority from requiring contractors or design professionals to reside within a defined geographic area or service area in order to be eligible to engage in public improvement contracts. As in the construction industry, statutory residency requirements constraining public improvement contracts, similar to Cleveland Codified Ordinance Chapter 188 (herein the "Fannie Lewis laws") at issue here, restrict the ability of qualified design professionals to engage in public works projects and compromise the quality of design on such projects. ACEC and its members have a significant interest in the outcome of the instant appeal.

Procedurally, the trial court imposed a permanent injunction in favor of Appellee City of Cleveland restraining and enjoining Appellant from enforcing R.C. §9.75 on the grounds that the

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[1] H.B. 180 proposed the law at issue to be enacted and codified as R.C. §9.49. As a result, all briefing, orders, and opinions from the trial court identify the law at issue as R.C. §9.49. However, the law has been codified as R.C. §9.75.

law was not enacted by the General Assembly pursuant to its authority under Section 34, Article II of the Ohio Constitution. The trial court further found the law to be in violation of Section 3, Article XVIII of the Ohio Constitution, commonly referred to as the Home Rule Amendment. Finally, the trial court found R.C. §9.75 to be a general law that violates a municipality's right to adopt and enforce such local police, sanitary, and other similar regulations. ACEC submits the herein *amicus* brief to the Court to assist Appellant in illustrating how R.C. §9.75 was enacted to provide for the comfort, health, safety, and general welfare of all employees in the design and construction industry in the state of Ohio.

As this Court is well aware, legislation enacted by the General Assembly must be given deference and is presumed to be constitutional. Only when it "[a]ppears beyond a reasonable doubt that the legislation and constitutional provisions (at issue) are clearly incompatible" may a reviewing court deem legislation unconstitutional. *State v. Cook*, 83 Ohio St.3d 404, 409 (1998), 700 N.E.2d 570. The trial court gave little deference to R.C. §9.75, and simply deemed that it does not provide for the comfort, health, safety, and welfare of Ohio employees without engaging in further analysis.

It is clear, however, that R.C. §9.75 was enacted to provide for the comfort, health, safety, and welfare of contractors and design professionals. And indeed it accomplishes that goal. In addition to binding precedent specifically on point in this regard, a simple look at the legislative history of 2015 H.B. 180 demonstrates the manner in which R.C. §9.75 addresses the comfort and welfare of contractors and design professionals alike.

Ordinances like the Fannie Lewis are not limited in application to builders and contractors. Rather, some municipalities have espoused "hiring and diversity goals" specific to design firms. The city of Akron, for example, has proposed that all new and amended, locally

funded, and loan-funded public improvement projects be completed by design firms having 31% of its employees residing full time within the corporate city limits, and at least 66% of all hours worked on a particular project be performed by employees paying city of Akron income tax. As stated by Donald L. Mader, former Executive Director of ACEC, in testimony to the Senate Committee on Government Oversight & Reform regarding the passage of House Bill 180:

> What these residency requirements mandate is that, instead of assigning (an engineering) firm's most highly qualified technical experts to the design of a particular project, the engineering firm's first consideration must be to make sure that two-thirds of the work is performed by city taxpayers.... Ultimately, we believe these arbitrary residency requirements have the potential to do real, long-term economic damage to Ohio's construction and design industries.

Putting aside for the moment the practical difficulties in achieving the seemingly arbitrary percentages espoused by Akron's hiring and diversity goals, Akron's position mandates residency requirements on the employees of design firms over the selection of the most highly qualified employee for the work. Similarly, the Fannie Lewis laws at issue in this appeal require the same of contractors. R.C. §9.75 puts an end to such mandates, for the comfort, health, safety, and welfare of Ohio employees in the design and construction industry, and in accord with the broad grant of authority to the General Assembly under Section 34 of Article II of the Ohio Constitution.

STATEMENT OF FACTS

The Merit Brief of Appellant State of Ohio adequately sets forth the facts and procedural history of this case. While Amicus endorses both propositions of law set forth in Appellant's brief, this brief deals only with Proposition of Law No. 1.

ARGUMENT AND ANALYSIS

It is unquestioned that the Ohio Constitution authorizes the General Assembly to enact laws providing for the comfort, health, safety and general welfare of all employees; and that no other provision of the Constitution may impair or limit this power. Ohio Constitution, Section 34, Article II. The mandates of R.C. §9.75 clearly conflict with the mandates of Cleveland Codified Ordinance Chapter 188, otherwise known as the Fannie Lewis laws. If R.C. §9.75 was enacted pursuant to Section 34, Article II, then its provisions override any conflicting law of a political subdivision or municipality, including the residency requirements of Cleveland Codified Ordinance Chapter 188 at issue in the instant appeal. Under these circumstances, any additional analysis, such as whether R.C. §9.75 is unconstitutional pursuant to the Home Rule Amendment of Section 3, Article XVIII of the Ohio Constitution, is unnecessary because the prohibition of Section 34, Article II applies to all other provisions of the Constitution. Under such a scenario, the Fannie Lewis laws cannot stand.

1. Standard of review.

R.C. §9.75 is presumed constitutional and must be given deference. Any enactment of the General Assembly may only be declared unconstitutional by a reviewing court where it "[a]ppears beyond a reasonable doubt that the legislation and constitutional provisions (at issue) are clearly incompatible." *Cook, supra,* at 409. Section 34, Article II is a "[b]road *grant* of authority to the General Assembly, not (a) limitation on its power to enact legislation." *Am. Assn. of Univ. Professors, Cent. State Univ. Chapter v. Cent. State Univ.*, 87 Ohio St.3d 55, 61 (1999), 717 N.E.2d 286 (emphasis in original). It grants broad authority to the General Assembly to "[p]rovide for the welfare of all working persons." *Cent. Ohio Transit Auth. v. Transport Workers Union of Am., Local 208*, 37 Ohio St.3d 56, 62 (1988), 524 N.E.2d 151.

Where the language of a statute or constitutional provision is clear and unambiguous, it is the duty of courts to enforce the provision as written. *Bernardini v. Board of Education*, 58 Ohio St.2d 1, 387 N.E. 2d 1222 (1979). The "[l]anguage of Section 34 is so clear and unequivocal that resort to secondary sources...is actually unnecessary." *Rocky River v. State Employment Relations Bd.*, 43 Ohio St.3d 1, 15 (1989), 539 N.E.2d 103. "[A]llowing...employees more freedom of choice of residency...provides for the employees' comfort and general welfare." *City of Lima v. State of Ohio*, 122 Ohio St.3d 155, 158 (2009), 909 N.E.2d 616.

2. <u>The legislative history of R.C. §9.75 clearly indicates that the General Assembly properly enacted the statute pursuant to its authority under Section 34, Article II of the Ohio Constitution to provide for the comfort, health, safety and general welfare of Ohio employees in the design and construction industry.</u>

In enacting R.C. §9.75, the General Assembly declared its intent to recognize both the **inalienable and fundamental right** of an individual to choose where to live pursuant to Section 1, Article I and to address the comfort, health, safety, and general welfare of Ohio employees in the design and construction industry pursuant to its authority under Section 34, Article II of the Ohio Constitution. 2015 HB 180 §3(A)(B) (emphasis added). The General Assembly further stated that allowing employees working in Ohio's public improvement projects the ability to choose where to live is a matter of statewide concern such that prohibiting public authorities from imposing residency restrictions was necessary. 2015 HB 180 §4.

At the time of House Bill 180's passage, several major municipalities in Ohio had enacted ordinances requiring contractors and designers to employ a certain percentage of the municipality's residents on public improvement projects, including the cities of Akron, Cincinnati, Cleveland, and Columbus. The city of Akron imposed residency requirements to participate in the design and construction of a sanitary sewer overhaul project valued at more than $1,000,000,000. Akron designated a local hiring goal beginning at 30 percent for laborers on city sewer and water

improvements, with the requirement increasing to 50 percent by 2018. In addition, Akron targeted design firms requiring that 31 percent of a firm's employees assigned to an Akron office reside within the corporate limits of the city full time, and that 66 percent of all hours worked on a particular project be performed by employees paying city income tax. See, generally, Akron Codified Ordinance Chapter 34, Sections 34.01 – 34.13. The city of Cincinnati passed an ordinance requiring contractors achieve a minimum percentage between 30 and 40 percent of all hours worked within each trade on a public improvement contract be performed by persons living within the corporate city limits. See Cincinnati Codified Ordinance Chapter 318, §§318-1-C2 – 318-5. The city of Columbus passed an ordinance requiring that a contractor employ at least 15 percent of its workforce from residents within the corporate city limits as one of five factors considered to be designated as a qualified bidder on public improvement projects. See Columbus Codified Ordinance Chapter 329, §§329.18 – 329.211.

In light of the statewide concern, the General Assembly invited experts within the design and construction industry to testify regarding the impact of residency restriction ordinances in the field. Donald L. Mader served as Executive Director of ACEC for more than 34 years and offered testimony before the Senate Committee on Government Oversight and Reform regarding the positive impacts of House Bill 180 as to the comfort, health, safety, and general welfare of employees in the design and construction industry as one of his last acts before retiring.[2] As a point of interest not in the record on appeal, Mr. Mader's testimony both demonstrates how R.C. §9.75 fits within the General Assembly's scope of authority under Section 34, Article II and reflects the General Assembly's intent in its passage.

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[2] Attached as Exhibit 1 is an executed Affidavit of Donald L. Mader authenticating a copy of his speech before the Senate Committee on Government Oversight and Reform in support of House Bill 180 from May 4, 2016 as Exhibit A, and correspondence from the city of Akron's Department of Public Service regarding local hiring and diversity goals as a requirement for design firms to participate in city wastewater and water public improvement projects.

Among the several portions of his testimony worthy of consideration, Mr. Mader notes that residency restriction ordinances negatively impact a design firm's ability to hire and maintain talented and qualified design professionals, discourages efficiency resulting in lost savings to municipalities, creates unachievable standards regarding percentage of work to be completed by specific designers, requires that design firms discriminate against employees based merely on an employee's place of residence, compromises the quality of design, conflicts with R.C. §§153.65 – 153.73 requiring local governments seeking a contract with an engineering firm to award the contract to the most highly qualified firm based on a defined set of criteria (a set of criteria that gives no consideration to where employees of the design firm live), and are inherently unfair insofar as the restrictions cannot be enforced against contractors and designers located outside of Ohio.[3] Mr. Mader's forecast as to the effects of such ordinances is grim, stating, "[t]hese arbitrary residency requirements have the potential to do real, long-term economic damage to Ohio's construction and design industries."

The statement of the General Assembly invokes Section 34, Article II of the Ohio Constitution as the basis of its authority in passing 2015 H.B. 180, which became codified as R.C. §9.75. 2015 H.B. 180 §3(B). The legislation was passed in order to secure the comfort and welfare of contractors and designers in the construction industry. *Id.* Mr. Mader's testimony illustrates just some of the ways in which R.C. §9.75 is necessary to protect the industry from the contradictory, onerous, and negative effects of residency restriction ordinances common among local ordinances at the time of the Bill's passage. The prevalence of laws similar to the Fannie Lewis laws clearly establishes the content of R.C. §9.75 as a matter of statewide concern. Regardless of whether Appellee or the trial court agree with the legislature's assessment, the passage of House Bill 180 and

[3] Enforcement of ordinances instituting residency requirements against contractors and designers located outside of the state of Ohio ordinances have been found to violate the U.S. Constitution's Privileges and Immunities Clause.

R.C. §9.75 pass constitutional muster by any reasonable degree of review given the broad grant of authority to the General Assembly under Section 34, Article II of the Ohio Constitution.

3. The trial court erred in finding that R.C. §9.75 was not enacted pursuant to the broad authority granted to the General Assembly by Section 34, Article II of the Ohio Constitution.

The trial court erred in finding that R.C. §9.75 was not enacted pursuant to the authority granted to the General Assembly by Section 34, Article II of the Ohio Constitution. In making its finding, the trial court gives short shrift to the deference and presumptive constitutionality of R.C. §9.75, simply stating that the statute does not provide for the comfort, health, safety, and welfare of Ohio employees, but rather seeks to dictate the terms by which municipalities may contract for workers in construction projects within their jurisdiction. Judgment Entry, pg. 2 – 3. The trial court then engages in an analysis of the Home Rule Amendment to determine whether R.C. §9.75 superseded the Fannie Lewis laws. *Id.* at pg. 3 – 6. The trial court gives no consideration to the legislative history supporting R.C. §9.75, which speaks directly to its passage for the comfort and welfare of Ohio employees in the design and construction industry.

In so finding, the trial court ignored binding precedent directly on point and dispositive to the issues on appeal. Noting that Appellant relies heavily upon the *Lima* case cited earlier, the trial court simply distinguished *Lima* from the present case on the grounds that the Fannie Lewis laws do not impose residency restrictions, but rather establish certain labor requirements for construction contracts placed for bid by the city of Cleveland.

The fatal flaw to the trial court's reasoning is in the assumption that its distinction from the facts in the *Lima* case is dispositive of whether R.C. §9.75 was properly enacted under Section 34, Article II. The assumption is incorrect. The question to be considered is not whether the Fannie Lewis laws impose residency restrictions, but rather whether R.C. §9.75 was enacted

to provide for the comfort and welfare of contractors and design professionals in the construction industry. It does, and the *Lima* decision puts any consideration to the contrary to rest.

As the Ohio Supreme Court has repeatedly recognized, Section 34, Article II creates a "[b]road grant of authority to the legislature to provide for the welfare of **all working persons**." *Lima, supra*, at 158 (emphasis added). In *Lima*, the Court found that providing workers freedom of choice in residency provides for the comfort and general welfare of workers and thus acts within the broad grant of power defined in Section 34, Article II. *Id.* at 158. The *Lima* Court focused on the General Assembly's belief that the public interest necessitated legislative intervention and the resulting enactment of a law to modify the existing concern was within the broad grant of power to the General Assembly to address such matters. *Id.* Because Section 34, Article II provides that "*[n]o other provision* of the Constitution may impair the legislature's power under Section 34" the Court determined that analysis of the Home Rule Amendment was unnecessary. *Id.* at 159 (emphasis in original). The question here, then, is not simply whether the Fannie Lewis laws impose residency restrictions, regardless of the accuracy of the trial court's finding, but rather whether the legislation in question, R.C. §9.75, fits within the broad parameters of legislative authority under Section 34, Article II of the Ohio Constitution.

The Court's ruling in *Lima* is dispositive to the instant matter because it defines the deference required in reviewing the constitutionality of a statute enacted by the General Assembly pursuant to Section 34, Article II. As discussed in the preceding section, the General Assembly specifically states that disallowing employees working on public improvement projects to choose where to live frustrates an inalienable and fundamental right. Regardless of whether the Fannie Lewis laws impose a residency restriction or simply establish labor requirements for construction contracts that are placed for bid by the city of Cleveland, it cannot

reasonably be argued that their effects do not impact the ability of employees working on public improvement projects to choose where to live because contractors working on such projects may only hire a specified number of laborers from outside of the corporate limits of the city. It is the effect of the Fannie Lewis laws, and local ordinances similar to them, that drove the General Assembly to conclude that passage of R.C. §9.75 was a matter of statewide concern to affect the comfort and welfare of contractors and design professionals in the construction industry.

Justice O'Donnell makes this distinction differently in his concurring opinion in *Lima*:

> [T]he simple holding of this case involves an interpretation that the phrase "general welfare of all employees" as set forth in Section 34, Article II of the Ohio Constitution, authorizing the legislature to enact laws relating to "hours of labor, establishing a minimum wage, and providing for the comfort, health, safety, and general welfare of all employees," includes restrictions on where employees may reside as a condition of employment. Nothing more.

Lima at 160, O'Donnell concurring opinion. The same is true in the instant appeal. The question is whether the General Assembly acted for the general welfare of employees in the design and construction industry in enacting R.C. §9.75. The General Assembly states that it did and describes the statewide concern that formed the basis of its decision to enact the statute. In doing so, the General Assembly addressed a statewide concern, as laws imposing arbitrary residency requirements, similar to the Fannie Lewis laws at issue here, had also been enacted in Akron, Cincinnati, and Columbus. Further, testimony from experts in the industry, such as Mr. Mader, identified for and informed the legislature of the various ways in which employees of the industry are negatively impacted by ordinances like the Fanning Lewis laws. All of the considerations by the General Assembly fit squarely within the identified parameters of Section 34, Article II.

Given that R.C. §9.75 must be presumed constitutional and the level of deference required in reviewing the constitutionality of statutes enacted by the General Assembly,

combined with the broad grant of authority to the General Assembly under Section 34, Article II, the trial court erred as a matter of law in finding R.C. §9.75 unconstitutional.

The mandates of R.C. §9.75 clearly conflict with the mandates of the Fannie Lewis laws. Because R.C. §9.75 was properly enacted pursuant to Section 34, Article II of the Ohio Constitution, its provisions override any conflicting law. As such, the additional analysis by the trial court as to the Home Rule Amendment is unnecessary and has no application here. The prohibition of Section 34, Article II is such that the conflicting Fannie Lewis laws must fail. Accordingly, the decision of the trial court is in error and must be reversed.

CONCLUSION

For the foregoing reasons, in addition to the reasons discussed in the Merit Brief of Appellant State of Ohio, this Court should adopt Proposition of Law No. 1 in the affirmative, reverse the decision of the trial court, and remand the matter with an instruction that R.C. §9.75 was enacted pursuant to the authority granted to the General Assembly by Section 34, Article II of the Ohio Constitution.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was filed via the court's electronic filing system, and served upon all parties by regular U.S. mail on this 24th day of April, 2017.

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EXHIBIT
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The undersigned, Donald L. Mader, being first duly sworn and cautioned, and competent to testify from personal knowledge as to the facts set forth herein, does hereby declare and state the following:

1. I, Donald L. Mader, of the City of Columbus in Franklin County, Ohio, served as the Executive Director of the American Council of Engineering Companies of Ohio (herein "ACEC") for more than 34 years.
2. ACEC is a trade association of more than 120 companies engaged in the design and construction of facilities of all kinds throughout the state of Ohio.
3. On or about May 4, 2016, I offered testimony in support of the passage of House Bill 180 before the Senate Government Oversight and Reform Committee.
4. Attached hereto as Exhibit A is a true, complete, and accurate copy of the testimony I gave to the Senate Government Oversight and Reform Committee in support of the passage of House Bill 180.
5. Attached hereto as Exhibit B is a true, complete, and accurate copy of a letter issued the City of Akron, Department of Public Service regarding the City's Local Hiring and Diversity Goals policy imposing residency restrictions and other requirements restricting the ability of design firms from engaging in locally funded and loan-funded City of Akron public works projects.
6. The purpose of my testimony before the Senate Government Oversight and Reform Committee in support of the passage of House Bill 180 was to illustrate the manner in which residency restriction statutes, similar to Cleveland Codified Ordinance Chapter 188, restrict the ability of qualified design professionals and contractors to engage in

public works projects and compromise the quality of design and construction on such projects.

FURTHER THIS AFFIANT SAYETH NAUGHT

Donald L. Mader

Donald L. Mader

Sworn (or affirmed) before me at the City of Columbus, Franklin County, Ohio, on this 24TH day of April, 2017.

Notary Public

Michael T Piatak
Notary Public, State of Ohio
My Commission Expires 10-13-2021

Testimony of
Donald L. Mader, Executive Director
American Council of Engineering Companies of Ohio
to the
Senate Government Oversight & Reform Committee
regarding House Bill 180
May 4, 2016

Chairman Coley, Vice Chairman Seitz, Ranking Member Yuko, members of the committee, I am Don Mader, Executive Director of the American Council of Engineering Companies of Ohio, a trade association of 120 companies that design all kinds of constructed facilities; everything from highways and bridges, to water and wastewater plants, to buildings and industrial and manufacturing facilities.

Our member companies range in size from very small specialty engineering firms of only one or two people to some that employ hundreds. Our average size company employs 50 persons.

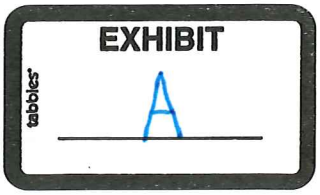
We work very closely with contractors, inasmuch as they end up building what we design, so we sympathize totally with their concerns regarding municipalities that require contractors to hire a quota of municipal residents in order to bid on city projects.

These residency requirements cause major problems for engineering firms, as well, although our problems are somewhat different from our contractor friends.

Unlike contractors, engineering firms compete for work on the basis of their professional qualifications, not by low bid. In order to be selected by either public or private owners to design their projects, it behooves an engineering firm to retain the very best engineering talent that is available. And that talent is very hard to find.

In order to be licensed as a professional engineer, you must obtain a four-year degree from an accredited engineering program, accumulate four years of engineering work experience and then pass a rigorous license exam.

An engineering degree and a professional engineer's license are highly valued credentials and, as you can imagine, individuals who have obtained these credentials are highly compensated. When an engineering firm succeeds in obtaining the services of a skilled professional engineer, they normally will do everything to retain the services of such an individual.



What this means is that it is much more difficult for an engineering firm, just as it would be for a law firm or accounting firm, to add and subtract from its staff just to meet arbitrary municipal residency requirements.

As I mentioned earlier, engineering firms tend to be small operations. Our average size firm has only 50 employees, and they may be spread out over three or four offices in various cities throughout the state.

Unlike construction, engineering is not site-dependent. Thanks to advancements in electronic communication and engineering design software, an engineer in Ohio can work on a project in Cincinnati today, one in St. Louis tomorrow and one in Paris the third day.

This kind of efficiency should be encouraged, because it enables local governments to obtain high quality engineering service at a reasonable cost.

As you can see from the attached letter, the city of Akron's recently announced Professional Workforce Goals require that 30 percent of an engineering firm's employees must be Akron residents in order for an engineering firm to obtain a contract with the city. That percentage requirement increases to 35 percent by 2018.

Yet, the city's requirement are actually much more onerous than even these goals would suggest, in that the city also requires that "66 percent of all hours worked (including subconsultant work) on a particular project [are] to be performed by employees paying city of Akron income tax."

So as an engineering firm manager, I not only have to make sure 30 percent of my office staff lives in the city, I've somehow got to make sure that two-thirds of the hours worked on any given project are performed by city income tax-payers.

I have been associated with this industry for nearly 35 years, and I'd like for someone to explain to me how – on any engineering project – one might reasonably manage this.

Let's say an engineering firm is fortunate enough to be retained to design a complex project, such as a water treatment plant, and suppose that firm's top environmental engineer lives outside the municipality? How do you meet this 66 percent requirement? Do you put your best environmental engineer to work on it until it's a third designed, then replace him or her with another, less accomplished engineer who happens to live within the city?

I would hope reasonable people would agree that this is not good public policy, but that's exactly what these municipal residency requirement would force us to do –discriminate for or against employees based merely on their place of residence.

Further complicating matters, the city says that to ensure a firm meets the 66 percent requirement it will have a third-party organization monitor how many employees are working on a project and where those employees live. This means the firm will be required to divulge confidential employee information, such as employee addresses, to a third party, which can expose the firm to legal liability for failing to protect employee privacy rights.

As you might imagine, the design of any major construction project is extremely complicated and technical, and involves a team of engineers, technicians and other professionals.

What these residency requirements mandate is that, instead of assigning the firm's most highly qualified technical experts to the design of a particular project, the engineering firm's first consideration must be to make sure that two-thirds of the work is performed by city taxpayers.

How does this make any sense? I wonder if the municipalities who are imposing such requirements on professional engineering firms also impose them on law firms, or accounting firms or IT consulting firms they routinely retain?

Perhaps most significantly, these municipal residency requirements conflict directly with a key section of the Ohio Revised Code that specifies how local governments are to select engineers and architects for the design of public works projects.

Section 153.65-.73 requires that when a local government seeks to contract with an engineering firm to design a public works project, that contract award must be made to the "most highly qualified firm," based on a defined set of criteria – and where the employees of competing engineering firms live is not listed as a qualification factor that may be considered in the evaluation process.

The contradictions implicit in these residency requirements are ironic on several levels. The Ohio Supreme Court has already ruled that a municipality can't dictate where its employees live, yet that same municipality might think itself justified in dictating where those who are employed by another party must live.

The most unfair aspect of this is that these restrictions cannot be enforced on out-of-state companies, as courts have repeatedly ruled doing so violates the U.S. Constitution's Privileges and Immunities Clause.

Ultimately, we believe these arbitrary residency requirements have the potential to do real, long-term economic damage to Ohio's construction and design industries.

If I owned a construction company or engineering firm and I were barred from competing for a municipal contract just because too few of my employees resided in that jurisdiction, my response is going to be to go back to my home town city officials and ask them to enact similar restrictions.

If I owned a construction company or engineering firm near the state border, I'd have to seriously consider moving to an adjoining state to skirt these residency requirements that thwart me from competing in the marketplace.

Taken to its logical extreme, if these residency requirements are allowed to stand, we will end up with a situation in which contractors and designers will be frozen out of being able to compete in many jurisdictions. That will lead to less competition and higher prices for public works design and construction contracts. It's simple supply and demand.

For all of these reasons, we urge the committee to support House Bill 180.

Thank you for the opportunity to testify. I will be happy to try to answer any questions you may have.

JOHN O. MOORE
Service Director

JEFF FUSCO
Mayor

CHRIS D. LUDLE
Deputy Director

DEPARTMENT OF PUBLIC SERVICE
166 S. High St., Room 201
Akron, OH 44308-1657

[redacted]

December 22, 2015

Re: City of Akron
Wastewater and Water Projects
Letters of Interest

Dear Consultant:

Introduction
The City of Akron is requesting "Letters of Interest" for professional engineering services for wastewater and water project design and construction management services. **Letters of Interest will be received until 4:00 p.m. local time, on February 4, 2016.**

The City of Akron will review all submitted Letters of Interest. Upon completion of this review, the City will develop a list of firms who may be called upon in the future to provide design and construction management services for wastewater and water related projects. Updated Letters of Interest may be submitted in the future to update previously submitted information if a firm so desires.

Letters of Interest are being requested in order to meet the Water Pollution Control Loan Fund (WPCLF) program requirements for the procurement of Architectural and Engineering Services resulting from the passage of the Water Resources Reform and Development Act of 2014 (WRRDA). New Letters of Interest will be requested annually.

Specific Design and Construction Management Tasks
Potential wastewater and water projects could include, but are not limited to: combined sewer overflow (CSO) tunnel, CSO storage basin, CSO sewer separation, sanitary sewer design and rehabilitation, wastewater treatment plant, water main design and rehabilitation, water treatment plant, pump station design and rehabilitation, river and wetland restoration, "green" streets, bioretention, and storm water best management practice projects.

The individual project scopes could include the following:

- Design and Specifications
- Survey
- Utility Coordination/Relocation
- Environmental Site Assessments
- Historical and Cultural Impacts
- Permitting
- Cost Control/Value Engineering/Design/Constructability Reviews
- Cost Estimating
- Preliminary and Detailed Project Schedules
- QA/QC – Project Quality Assurance Plan
- Construction Bid Documents
- Services/Assistance During Bidding
- Real Time Control Systems
- Hydraulic Modeling
- Geotechnical Investigation
- Land Acquisition Documents
- Construction Management

Local Hiring and Diversity Goals
In order to make our community stronger, benefit the local economy, and create jobs and employment opportunities for its residents, the City of Akron has instituted local hiring and diversity goals for all design, construction management, and professional service contracts.

The City's intended goal is that work on all new and amended contracts be completed by firms having 31% of the employees assigned to their Akron office residing full time within the corporate limits of the City of Akron. In addition, contracts shall provide that at least 15% of the total contract amount be performed by companies located within the corporate limits of the City of Akron that have been certified by the State of Ohio as Encouraged Diversity, Growth and Equity Enterprise (EDGE), Minority Business Enterprise (MBE), Women Business Enterprise (WBE), or Disadvantaged Business Enterprise (DBE). These requirements will not apply to state and federally funded projects, but will apply to all locally funded and loan funded projects. A professional workforce goal is also in place requiring at least 66% of all hours worked (including subconsultant work) on a particular project to be performed by employees paying City of Akron income tax.

In 2016 it is intended that 31% of your staff assigned to your Akron office resides within the corporate limits of the City of Akron.

- If 25-49 employees pay City of Akron income tax, then a 3% bonus credit will be applied to the 31% goal.
- If 50-74 employees pay City of Akron income tax, then a 6% bonus credit will be applied to the 31% goal.
- If 75+ employees pay City of Akron income tax, then a 10% maximum bonus credit will be applied to the 31% goal.

Future increases are outlined as follows:

- Starting January 1, 2017 32% of your office staff should reside full time within the corporate limits of the City of Akron.
- Starting January 1, 2018 35% of your office staff should reside full time within the corporate limits of the City of Akron.

Letters of Interest
The Letters of Interest for the wastewater and water project design and construction management services must be limited to 40 pages, one-sided, 12 point font, including attachments. Firms may submit qualifications for design, construction management services, or both. Please indicate in the cover letter the work for which your firm wants to be considered.

The Letter of Interest submittal shall include the following information, at a minimum:

Firm Overview
- Brief overview of your firm, to include:
  - Primary and branch office locations (with addresses and phone numbers),
  - Years in business,
  - Total number of employees,
  - Primary point of contact (with address, phone number, and email address),
  - Description of five largest clients and the work performed for each.
- Level of local resources (Akron and State of Ohio) and location where the predominance of the work will be performed.
- Licenses, certifications and/or registrations for performance of requested professional services.

Experience
- Previous design and construction management experience for completed wastewater and water projects.
- Experience working within the Federal, State of Ohio, and local regulatory environments.

- References for similar work, including contact name, telephone number, and email address of the person most familiar with the work your firm is claiming as part of their experience.
- Experience maintaining required schedule in a stipulated penalty environment. (Not a requirement for all projects.)
- Experience working within a program management team environment. (Not a requirement for all projects.)

Project Team

- Proposed Project Manager, Design Manager and other project staff, their relevant experience, location and availability. Limited to 10 pages.
- Proposed potential subconsultants, their area of expertise and intended use. (For review only. Not a commitment to use the proposed subconsultants.)

Local Hiring and Diversity Goals

Provide information on how you meet or propose to meet the Local Hiring and Diversity workforce goals. We realize that companies may not currently meet these workforce goals. If you do not currently meet these workforce goals, please explain your current status (which will be used as a baseline) along with how your firm plans to meet or exceed these workforce goals in the near future.

When submitting the requested information, please include the following:

- Firm name and address
- Total number of employees assigned to your Akron office
- Total number of employees in your Akron office paying City of Akron income tax
- Total number of employees assigned to your Akron office that reside in the City of Akron Corporation limits
- Services your firm performs that best meet these requirements

If your company is currently not located within the corporate limits of Akron, please provide information with respect to your current office location.

You will be required to submit employee information at the time of each invoice providing the above information. Each individual employee's name, address, office assignment and verification of withholding (or not withholding) of Akron income tax will be required for all employees billing time on the project.

Responses
Firms interested in being considered for award of contract(s) to perform these services should send two hard copies and one electronic copy (pdf) of their Letter of Interest indicating their interest and qualifications to:

Genny Hanna, P.E.
Project Manager
Akron Engineering Bureau
166 South High Street, Room 701
Akron, Ohio 44308

If you have any questions or require any additional information, please feel free to contact Genny Hanna, Project Manager, at 330-375-2494 or GHanna@akronohio.gov.

Sincerely,

John O. Moore, Director
Department of Public Service

JOM/GH/mm

c: J. Hewitt
P. Gsellman
M. DiFiore
H. Ullinger
B. Gresser
J. Bronowski
Environmental Division File