

IN THE SUPREME COURT OF OHIO

State ex rel. City of Columbus	:	
90 West Broad Street	:	
Columbus, Ohio 43215	:	
	:	
Relator,	:	
	:	Case No.
vs.	:	
	:	Original Action in Procedendo
Judge Stephen L. McIntosh	:	
Franklin County Common Pleas Court	:	
345 South High Street	:	
4 th Floor, Courtroom 4B	:	
Columbus, Ohio 43215	:	
	:	
Respondent.	:	

VERIFIED COMPLAINT FOR A WRIT OF PROCEDENDO

**CITY OF COLUMBUS,
DEPARTMENT OF LAW
ZACH KLEIN**

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Complaint

Relator, the City of Columbus, in the name of the State of Ohio on relation, states as its complaint in *Procedendo* against Respondent, Judge Stephen L. McIntosh of the Franklin County Common Pleas Court, General Division, as follows:

1. The City of Columbus is a home rule chartered municipality of the State of Ohio with its principle place of business located at 90 West Broad Street, Columbus, Ohio 43215.
2. The City of Columbus has been at the forefront attempting to control gun violence by passing common sense gun reform measures, including making it a misdemeanor for a person convicted of a misdemeanor crime of domestic violence to possess a firearm.
3. As part of the City's attempt to curb gun violence, the City filed a lawsuit against the State of Ohio challenging Am. Sub. H.B. 228, passed by the 132nd General Assembly over the veto of the Governor.
4. The Defendant in that case is the State of Ohio.
5. Respondent Stephen L. McIntosh is a duly elected judge on the bench of the Franklin County Common Pleas Court, General Division.
6. McIntosh was last elected to the common pleas court in November 2018 and his current term will end in January of 2025.
7. The Relator seeks a Peremptory Writ of *Procedendo* against Respondent requiring Respondent to issue a decision on the Relator's Motion for a Preliminary Injunction filed on March 19, 2019 and the State of Ohio's Motion to Dismiss the City's amended complaint that was filed on May 31, 2019.
8. In the alternative, the Relator seeks an alternative writ setting forth a schedule to allow the presentation of evidence and a briefing schedule.

Background

9. On December 6, 2018, both houses of the Ohio General Assembly passed Am. Sub. H.B. 228, a bill that, in part, amended RC 9.68, the State's firearms preemption statute.
10. The bill was vetoed by the Governor.
11. On December 27, 2018, both houses of the Ohio General Assembly voted to overturn the Governor's veto.

12. Portions of Am. Sub. H.B. 228 became effective on March 28, 2019, with the amendments to RC 9.68 becoming effective on December 28, 2019.
13. Because RC 9.68 violated the City's constitutionally guaranteed right to home rule, the City of Columbus filed a lawsuit against the State of Ohio seeking a declaration that RC 9.68 was unconstitutional.
14. The City filed that case in the Franklin County Common Pleas Court and it was assigned Case No. 2019-cv-2281.
15. A true and accurate copy of that lawsuit is attached to this Complaint as Exh. A.
16. Case Number 2019-cv-2281 was assigned to Respondent Judge Stephen L. McIntosh.
17. That case asked that the Court issue a declaratory judgment that Am. Sub. H.B. 228 and RC 9.68 was unconstitutional.
18. The City in that case also asked that the Court issue a temporary and permanent injunction against RC 9.68.
19. On March 19, 2019, the City of Columbus also filed a motion for preliminary injunction in Case No. 2019-cv-2281.
20. A true and accurate copy of the Motion for a Preliminary Injunction is attached as Exh. B.
21. On March 26, 2019, Judge McIntosh held a status conference on the case and both sides were present for the conference.
22. On April 19, 2019, the Defendant filed a memorandum contra the City's motion for a preliminary injunction in Case No. 2019-cv-2281.
23. On that same date, the State of Ohio filed a motion to dismiss the complaint filed in Case No. 2019-cv-2281.
24. On April 26, 2019, the City of Columbus filed its reply brief in support of its motion for a preliminary injunction in Case No. 2019-cv-2281.
25. A true and accurate copy of that brief is attached to this Complaint at Exh. C.
26. In response to the State's motion to dismiss, the City of Columbus filed an amended complaint on May 17, 2019.

27. A true and accurate copy of the amended complaint is attached to this Complaint as Exh. D.
28. The State of Ohio filed a new motion to dismiss on May 31, 2019.
29. On June 13, 2019, the City filed its memorandum contra the motion to dismiss.
30. A true and accurate copy of that memorandum contra is attached to this Complaint at Exh. E.
31. On June 19, 2019, the State of Ohio filed its reply brief in support of its motion to dismiss.
32. Because the Respondent failed to issue any rulings on either the motion for preliminary injunction or the motion to dismiss, on December 2, 2019, the City and State filed a joint motion to vacate the case schedule in Case No. 19-cv-2281.
33. A true and accurate copy of that joint motion is attached to this Complaint as Exh. F.
34. On December 3, 2019, the Respondent Judge Stephen L. McIntosh granted the joint motion to vacate the case schedule associated with Case No. 19-cv-2281.
35. A true and accurate copy of that order is attached to this Complaint as Exh. G.
36. On February 4, 2020, the Respondent Judge Stephen L. McIntosh issued a notice of status conference to the parties in Case No. 19-cv-2281 informing them that a status conference was to be held in that case in his chambers on March 4, 2020.
37. A true and accurate copy of that notice is attached to this Complaint as Exh. H.
38. A status conference was held between the parties and the Respondent on March 4, 2020.
39. To date, Respondent Judge McIntosh has failed to issue any rulings concerning the City's motion for a Preliminary Injunction or the State's motion to dismiss in Case No. 2019-cv-2281.
40. A true and accurate copy of the court's docket for Case No. 2019-cv-2281 is attached to this Complaint as Exh. I.
41. The Rules of Superintendence for the Courts of Ohio provide that "[a]ll motions shall be ruled upon within one hundred twenty days from the date the motion was filed, except as otherwise noted on the report forms." Sup. R. 40(A)(3).

42. The Relator filed Case No. 2019-cv-2281 three and a half years ago and Respondent has failed to issue any rulings despite the City's motion for a preliminary injunction became decisional on April 26, 2019 and the State's motion to dismiss became decisional on June 19, 2019.

Count One

43. The Relator restates and reincorporates by reference Paragraphs 1 through 42 as though fully restated herein.

44. Article IV Sec. 2(B)(1)(e) of the Ohio Constitution gives this Court original jurisdiction to hear applications for writs of procedendo.

45. A writ of procedendo is an order from a superior court to an inferior court to proceed to judgment.

46. A writ of procedendo is appropriate when a court has either refused to render judgment or has unnecessarily delayed proceeding to judgment.

47. A refusal or failure to timely resolve a pending case is the error that procedendo was created to fix.

48. There are no legal obstacles preventing Respondent Judge McIntosh from proceeding immediately and promptly ruling on the City's motion for a preliminary injunction filed on March 19, 2019.

49. Likewise, there are no legal obstacles preventing Respondent Judge McIntosh from proceeding immediately and promptly ruling on the State's motion to dismiss filed on May 17, 2019.

50. The Relator City of Columbus has a clear legal right to have its case promptly ruled upon.

51. Respondent Judge McIntosh has a clear legal duty to promptly rule upon cases in front of him.

52. Relator City of Columbus lacks an adequate remedy at law to obtain legal judgment in its case.

53. Further, Relator City of Columbus has already waited over three years for a court to address this issue. It should not have to wait any longer.

54. WHEREFORE, Relator City of Columbus prays that this Court issue a Peremptory Writ of Procedendo requiring Respondent Judge McIntosh to:

- a. Immediately proceed with Case No. 2019-cv-2281;
- b. Promptly rule on the City's March 19, 2019 motion for preliminary injunction;
- c. Promptly rule on the State's May 31, 2019 motion to dismiss;
- d. Set a case schedule and trial date, as necessary;
- e. In the alternative, issue an alternative writ setting forth a schedule for the submission of evidentiary material and briefing.

Respectfully submitted,

s/ Richard N. Coglianesse

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