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Columbus Wins Sweeping Victory Against State of Ohio in Environmental Lawsuit

Judge finds state violated several provisions of Ohio's Constitution, ruling in favor of Columbus' efforts to protect safe drinking water

COLUMBUS—After prevailing in a years-long legal battle against the State of Ohio, Columbus City Attorney Zach Klein expressed optimism that the state will forgo any new efforts that threaten municipalities' ability to provide clean, safe drinking water to the public.

Last week, Franklin County Court of Common Pleas Judge Michael J. Holbrook ruled in favor of Columbus, along with the Northeast Ohio cities of Akron and Barberton, in their long-standing environmental lawsuit against the state. Ohio still has the option to appeal the judge's ruling following his determination that the state violated three separate clauses of Ohio's Constitution in its misguided gambit to interfere with the municipalities' ability to manage city-owned property along their reservoirs.

The three cities filed their joint lawsuit after the Ohio General Assembly surreptitiously slipped an unrelated provision into the 2016-2017 state budget to authorize certain adjacent property owners to trespass and alter publicly-owned land that surrounds the cities' reservoirs. Some property owners had been warned previously that they were illegally trespassing on city land when they were caught cutting grass, removing trees and vegetation, and making other alterations to create waterfront views for themselves. The cities maintained that the grass, trees, plants and other vegetation on the city-owned property were serving as a natural filtration system to help prevent fertilizer and other chemicals from entering the reservoirs that provide the public's drinking water.

The proposed state law, Ohio Revised Code 743.50, never went into effect after the judge initially ordered a stay following the cities' lawsuit. The potential for damages was not merely hypothetical. In 2014, Columbus successfully sued a trespassing property owner who "recklessly" clear-cut 2.7 acres of city trees and other plants that were serving as a natural buffer zone to filter toxins and other contaminants that threatened Columbus' public reservoir parkland and the drinking water supply of 1.2 million people throughout Central Ohio.

"It is imperative that we do our part to protect Columbus' safe and healthy drinking water," said Columbus City Attorney Zach Klein. "While I understand that the property owners want to maximize their view of the water, the reality is that we, as stewards of public land in Columbus, need to ensure we are properly balancing owners' interests with the health and safety of all residents. Protecting our safe and healthy drinking water must be the top priority."

In the judge's decision, the court ruled that the state violated the Ohio Constitution's single-subject rule. The rule requires the General Assembly to pass laws that deal only with a single

subject and is designed to prevent legislators from using procedural gimmicks to pass laws that would not have support on their own.

The court also ruled that the state violated the Utility Clause of the Ohio Constitution, which allows cities in Ohio to operate public utilities. Columbus and the other cities successfully argued that they maintain the natural vegetative buffers around the reservoirs because they filter out nitrates, pesticides, and other contaminants from going into the drinking water supply. Because the state's new law would have interfered with the cities' ability to maintain those buffers, the court concluded the law would have restricted the cities' ability to operate a public utility. The court also concluded that the state had no real interest in its law because the law would have benefitted only the select few people living next to the cities' reservoir property.

Finally, the court ruled that the state violated the Ohio Constitution's Home-Rule Amendment. In addition to helping provide safer and cleaner drinking water, Columbus' reservoir parkland also provides the people of Central Ohio a range of recreational activities such as boating and fishing, in addition to providing a habitat for wildlife such as bald eagles. The law would have restricted Columbus' ability to use and maintain its own property, but would not have regulated the conduct of all citizens equally or uniformly throughout the state.

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