

**IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO**

CITY OF MADEIRA, EX REL. DOUGLAS OPPENHEIMER,	:	APPEAL NO. C-170206 TRIAL NO. A-1702034
Relator-Appellant,	:	<i>JUDGMENT ENTRY.</i>
vs.	:	
CITY OF MADEIRA,	:	
THOMAS W. MOELLER,	:	
and	:	
HAMILTON COUNTY, OHIO BOARD OF ELECTIONS,	:	
Respondents-Appellees.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court. See Rep.Op.R. 3.1; App.R. 11.1(E); 1st Dist. Loc.R. 11.1.1.

Relator-appellant Douglas Oppenheimer, as a taxpayer and resident of the City of Madeira (“Madeira”), filed an action against Madeira, Thomas Moeller, the city manager of Madeira, and the Hamilton County Board of Elections (“Board of Elections”) to declare unlawful ordinances submitting proposed charter amendments to the voters and to prohibit a special election on the proposed charter amendments.

Following an evidentiary hearing on the merits of the claims, the trial court denied Oppenheimer’s request for declaratory judgment and for temporary and

permanent injunctive relief. The trial court held that Oppenheimer had presented no evidence that Madeira had abused its corporate powers by failing to comply with the procedures set forth in Article XIV, Section 5 of the Madeira Charter, the Ohio Revised Code, and the Ohio Constitution, Article XVIII, Sections 8 and 9, and that the Board of Elections had not engaged in any conduct that constituted fraud, abuse of power, or a sham legal process.

The special election was held, and the voters approved the charter amendments. Six days after the election, Oppenheimer appealed the trial court's judgment. Four days later, he moved this court, pursuant to App.R. 7, for an injunction pending appeal to prohibit the clerk from certifying the results of the special election and from implementing the charter amendments. This court denied his motion, and the results of the special election were certified on March 23, 2017.

In two assignments of error, Oppenheimer argues that the trial court erred by denying his request for an injunction and by entering judgment in favor of Madeira, Moeller, and the Board of Elections. Madeira, Moeller, and the Board of Elections assert that Oppenheimer's appeal is moot and must be dismissed because the special election has passed and the vote has been certified. Therefore, they contend, this court cannot afford Oppenheimer any relief on appeal. We agree.

The Ohio Supreme Court has held that when an election has passed, the action for extraordinary relief or an appeal from a judgment in an extraordinary-writ action is moot. *State ex rel. Hills Communities, Inc. v. Clermont Cty. Bd. of Elections*, 91 Ohio St.3d 465, 467, 746 N.E.2d 1115 (2001); see *State ex rel. Patrick v. Bd. of Elections*, 174 Ohio St. 12, 13, 185 N.E.2d 433 (1962). Ohio appellate courts have applied the mootness doctrine equally to claims for injunctive relief after an election has been held to protect the value of the vote and the integrity of the

election. *See Reveria Tavern, Inc. v. Summit Cty. Bd. of Elections*, 9th Dist. Summit No. 21893, 2004-Ohio-6733, ¶ 20-44.

We recognize that this court nullified the results of an election on proposed charter amendments in *Oppenheimer v. City of Madeira*, 1 Ohio App.3d 44, 439 N.E.2d 440 (1981). That case, however, is factually distinguishable. It was tried on stipulated facts and the “plaintiff had asked for alternative relief: to enjoin the placing of this issue on the ballot, or to enjoin the counting of the votes on the issue, to enjoin the release and certification of the results.” *Id.* at 45. We held “[th]is demand for relief was sufficiently broad to bring the whole elective process on this issue into question.” *Id.*

Oppenheimer did not seek this alternate relief in the trial court. Furthermore, he does not assert, and we cannot conclude, that the issues in this case are capable of repetition yet evading review or that they are of great public interest or constitutional concern. *See State ex rel. White v. Kilbane Koch*, 96 Ohio St.3d 395, 2002-Ohio-4848, 775 N.E.2d 508, ¶ 11-18. We, therefore, dismiss the appeal as moot.

Further, a certified copy of this judgment entry shall constitute the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

MOCK, P.J., ZAYAS and DETERS, JJ.

To the clerk:

Enter upon the journal of the court on March 30, 2018

per order of the court _____.
Presiding Judge