

VIRGINIA: IN THE CIRCUIT COURT FOR THE CITY OF CHESAPEAKE

CHESAPEAKE CITY COUNCIL,

Petitioner,

v.

Case No. CL24-4540

DON J. CAREY, III, Individually
and in his Capacity as a Member of
Chesapeake City Council,

Serve: Don J. Carey, III
709 Phalarope Street
Chesapeake, Virginia 23323

Respondent.

VERIFIED PETITION FOR WRIT OF MANDAMUS

NOW COMES Petitioner Chesapeake City Council, by counsel and pursuant to Virginia Code Section 8.01-644, and petitions for a writ of mandamus requiring Respondent Chesapeake City Councilmember Don J. Carey, III to comply with the requirements of the Charter of the City of Chesapeake (the "Charter") and in support of said petition states as follows:

Parties

1. Chesapeake City Council ("City Council") is the governing body for the City of Chesapeake, a municipality of the Commonwealth of Virginia. This action is brought on behalf of City Council acting through a majority of its Members.
2. Under Section 3.05 of the Charter, "All powers vested in the City shall be exercised by the Council, except as otherwise provided in this Charter."
3. The City has the power to control and manage its affairs, including ensuring that it abides by its Charter. *See* Va. Code § 15.2-1106. No provision of the Charter delegates responsibility for enforcing the Charter to another body or official.
4. Respondent Don J. Carey, III ("Respondent") is a current Member of

Chesapeake's City Council. This petition is brought against Respondent individually and in his capacity as a Member of Chesapeake City Council.

Jurisdiction and Venue

5. This court has jurisdiction pursuant to Virginia Code Section 8.01-644 governing the application for mandamus or prohibition.

6. Venue is proper in this judicial district as all parties reside in this judicial district and the petition seeks a writ to compel conduct within this judicial district.

Allegations Supporting Mandamus Relief

7. The City of Chesapeake is a municipality duly created pursuant to the laws of the Commonwealth of Virginia and governed by its Charter as approved by the Virginia General Assembly. A copy of the Charter is attached hereto as **Exhibit 1**.

8. Section 3.02(c) of the Charter for the City of Chesapeake provides in pertinent part as follows:

In the event any Member of Council during his or her term of office shall decide to be a candidate for the office of Mayor, he or she may be eligible to do so, but shall tender a resignation as a Member of Council, such resignation to be effective June 30th of such election year. Such resignation shall state the Councilmember's intention to run for the office of Mayor and shall require no formal acceptance by the remaining Members of Council and shall be final and irrevocable as of the date it is tendered.

9. In late February, 2024, Respondent consulted with the City Attorney seeking an opinion on whether the City Charter requires that he resign his seat on City Council by June 30, 2024 if he chose to run for Mayor in the 2024 general election notwithstanding that the elections are now held in November instead of May as such a requirement would mean Respondent would resign prior to the expiration of his term on December 31, 2024.

10. The City Attorney noted that there was a potential conflict between the Charter and the Virginia Code as the plain language of the Charter indicates that Respondent must resign

his seat as of June 30, 2024 if he chose to run for Mayor; however, Virginia Code Sections 15.2-1400(E) and 24.2-222.1(C) suggest that no council member term may be shortened in implementing the legislative change of the general election from May to November.

11. In light of the apparent ambiguity between these state laws, the City Attorney advised Respondent that it would be appropriate to seek an opinion from the Attorney General's Office with regard to whether the City Charter would require Respondent to resign his seat as of June 30 should he choose to run for Mayor. Respondent concurred, and the City Attorney advised the rest of City Council of the planned course of action in late March, 2024.

12. Meanwhile, on March 18, 2024, Respondent submitted a "Declaration of Candidacy" declaring himself "to be a candidate for the office of Mayor..." which Declaration was notarized on April 12, 2024. A copy of the Declaration is attached hereto as **Exhibit 2**

13. In early April, 2024, the City Attorney submitted the question to the Attorney General's Office.

14. On May 30, 2024, the Attorney General issued his official opinion, a copy of which is attached hereto as **Exhibit 3**. The conclusion of the opinion is as follows:

Accordingly, it is my opinion that a City of Chesapeake Councilmember, whose term otherwise expires on December 31, 2024, but who desires to seek election as Mayor at this year's November general election, must resign from the City Council by June 30 pursuant to Section 3.02(C) of the City Charter.

15. The Charter, therefore, creates a ministerial duty for any council member who is seeking election as Mayor to resign his or her seat on Council by June 30 of the election year.

16. Respondent has submitted his application to run for Mayor. Notwithstanding the opinion of the Attorney General, as of the date of this filing, Respondent has not resigned his seat on City Council.

17. During the regularly scheduled meeting of Chesapeake City Council held on

July 9, 2024, a majority of City Council passed a motion directing the City Attorney to take the steps necessary to file a mandamus action against Respondent asking that the court enter an order requiring that he comply with the Charter provision.

18. A writ of mandamus is appropriate as Chesapeake City Council has no adequate remedy at law to secure compliance with the Chesapeake City Charter.

19. Pursuant to Virginia Code Section 8.01-644, a copy of this Petition along with the attached Notice of Intent to File was served on Respondent five business days before the Petition was filed with this court.

Prayer for Relief

WHEREFORE, the City Council for the City of Chesapeake petitions this Court for a writ of mandamus requiring Respondent to comply with the ministerial duty set forth in Section 3.02(c) of the City Charter, which requires him to resign his position on City Council in light of his decision to run for Mayor.

CHESAPEAKE CITY COUNCIL

By _____


Of Counsel

Gary A. Bryant (VSB No. 27558)
Brett A. Spain (VSB No. 44567)
Bethany J. Fogerty (VSB No. 94753)
Willcox & Savage, PC
440 Monticello Ave., Ste. 2200
Norfolk, Virginia 23510
(757) 628-5500 Telephone
(757) 628-5566 Facsimile
gbryant@wilsav.com
bspain@wilsav.com
bfogerty@wilsav.com