

**IN THE SUPREME COURT OF OHIO**

STATE <i>ex rel.</i> SENSIBLE NORWOOD	*	Case No:
5406 Carthage Avenue	*	
Norwood, Ohio 45212	*	
and	*	ORIGINAL ACTION IN MANDAMUS
	*	EXPEDITED ELECTION CASE
STATE <i>ex rel.</i> AMY G. WOLFINBARGER	*	PURSUANT TO S.CT.PRAC.R. 12.08
5406 Carthage Avenue	*	
Norwood, Ohio 45212	*	
Relators,	*	
v.	*	
HAMILTON COUNTY BOARD OF	*	
ELECTIONS	*	
824 Broadway Street	*	
Cincinnati, Ohio 45202	*	
Respondent.	*	

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**VERIFIED COMPLAINT FOR WRIT OF MANDAMUS**

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Now come the Relators, Sensible Norwood and Amy G. Wolfinbarger, on relation to the State of Ohio, and hereby bring this action in mandamus against the Respondent Hamilton County Board of Elections. Relators seek a writ of mandamus from this Court compelling Respondent to place the “Sensible Marihuana Ordinance” contained in Realtors’ Initiative Petition on the ballot for the November 8, 2016 general election for consideration by the voters of the City of Norwood, Hamilton County, Ohio. The allegations in the Complaint are supported by the attached Affidavit of Amy G. Wolfinbarger. For its Complaint, Relators state as follows.

#### JURISDICTION

1. This is an original action in mandamus in an expedited election matter. The Court has jurisdiction under Article IV, Section 2(B)(1)(b) of the Ohio Constitution and Section 2731.02 of the Ohio Revised Code.
2. Due to the proximity of the November 8, 2016 general election at which the Sensible Marihuana Ordinance will be voted on by the Norwood electorate, this case qualifies as an expedited election case under S.Ct.Prac.R. 12.08.

#### PARTIES

3. Relator Sensible Norwood is a local ballot issue Political Action Committee under Chapter 3517 of the Revised Code. Sensible Norwood was formed for the purpose of sponsoring an Initiative Petition proposing an Ordinance entitled “The Sensible Marihuana Ordinance” (hereinafter the “Ordinance”) to decriminalize marihuana in the City of Norwood, and to circulate Initiative Petitions with the intent to submit the Ordinance to Norwood voters for their approval or rejection at the upcoming general election on November 8, 2016.

4. Relator Amy G. Wolfinbarger is a resident and elector of the City of Norwood. Relator Amy G. Wolfinbarger is the founder of Sensible Norwood and is one of five committee members designated under Section 731.34 of the Revised Code to represent the petitioners of the Initiative Petition proposing the Ordinance.
5. Respondent Hamilton County Board of Elections (the “Board of Elections”) is the duly authorized board of elections for Hamilton County, Ohio under section 3501.06 of the Revised Code. The Board has a legal duty to perform the relief sought.

#### ALLEGATIONS

6. The City of Norwood is situated within the County of Hamilton, State of Ohio. Norwood is an Ohio municipal corporation having no charter and is operated under the general provisions of the Ohio Revised Code relative to municipalities. The Norwood electorates’ right to the ballot initiative procedure is governed by Chapter 731 of the Revised Code.
7. On February 24, 2016 Sensible Norwood presented a certified copy of the Initiative Petition to the City of Norwood Auditor, pursuant to Section 731.32 of the Revised Code, to bring the Ordinance before the Norwood electorate in the November 8, 2016 general election. A copy of the Initiative Petition is attached hereto as Exhibit 1.
8. Sensible Norwood, its committee members, and supporters thereafter began to circulate petitions in Norwood to obtain signatures of qualified voters in the City of Norwood.
9. Pursuant to Section 731.28 of the Revised Code, Sensible Norwood was required

to gather the signatures of not less than ten per cent of the number of electors who voted for governor at the most recent general election for the office of governor in the municipal corporation which was determined to be 381 signatures.

10. On July 20, 2016, Sensible Norwood and its committee presented 21 petitions containing a total of 645 signatures to the City of Norwood Auditor.
11. On August 1, 2015 the City of Norwood Auditor delivered to the Board of Elections the Initiative Petition that was filed with the Auditor's Office on February 22, 2016 and all of the original petitions that were filed with the Auditor's Office by Sensible Norwood on Wednesday July 20, 2016.
12. The Board of Elections verified 465 signatures on the petitions as valid, 84 more signatures than the necessary 381.
13. On August 2, 2016, the City of Norwood Auditor sent a letter to the Board of Elections certifying the sufficiency and validity of the Initiative Petition to the Board of Elections. A true and accurate copy of the August 2, 2016 letter is attached hereto as Exhibit 2. The Norwood City Auditor further stated:

The Norwood City Auditor therefore requests that the Board of Elections submit the proposed ordinance contained in the Initiative Petitions for the approval or rejection of the electors of the City of Norwood at the General Election on November 8, 2016.

Exhibit 2.

14. The Board of Elections held a Special Meeting on August 16, 2016 to, among other things, submit the proposed ordinance for the approval or rejection of the electors of the Norwood at the next general election, pursuant to Section 731.28 of the Revised Code.
15. Due to a legal opinion from the Hamilton County Prosecutor's Office that had not

been previously made available to the proponents of the Initiative Petition, the Board of Elections tabled the issue without taking any action on the Initiative Petition at the August 16, 2016 Special Meeting. A copy of the draft Board of Elections minutes from August 16, 2016 are attached hereto as Exhibit 3. No final version of the minutes is available at this time.

16. The Board of Elections scheduled a Special Meeting for August 22, 2016. The sole issue on the agenda was: "Ballot Issue: Proposed Ordinance (By Petition) City of Norwood."
17. On August 22, 2016 the Board of Elections reconvened for its Special Meeting regarding the Initiative Petition. The Board of Elections heard from Realtor Amy G. Wolfinbarger and supports of Sensible Norwood. Assistant Hamilton County Prosecutor David T. Stevenson addressed the Board of Elections and argued against placing the Initiative Petition on the ballot on the theories that the Initiative Petition was outside the authority granted to electors by the Constitution and because the Initiative Petition was administrative, not legislative, in nature.
18. The Board of Elections voted unanimously not to certify the Initiative Petition on the ballot for the November 8, 2016 general election "because it attempts to create a new felony law which is beyond the power of the City of Norwood to enact and because it includes administrative directives instructing the Norwood police and city attorney how to enforce existing Ohio law." A copy of the draft Board of Elections minutes from August 22, 2016 are attached hereto as Exhibit 4. No final version of the minutes is available at this time.

## CLAIM FOR WRIT OF MANDAMUS

19. Relators restate the allegations in paragraphs one (1) through eighteen (18) as if fully restated herein.
20. Respondent had a clear legal duty to place the Initiative Petition on the ballot pursuant to Sections 731.28 and 3519.16 of the Revised Code.
21. The Board of Elections misinterpreted Ohio law including the obligation to liberally construe initiative text, the need to favor permitting, rather than precluding, the placement of an initiative on the ballot, and the rule of administrative versus legislative action.
22. The Board of Elections lacked a legal right to deny certification of the Initiative Petition to the ballot based upon the contents of the proposal.
23. The Board of Elections lacked the authority to review the constitutionality or illegality of the substance of the Initiative Petition.
24. The issues of the constitutionality or illegality of the substance of the Initiative Petition can only be adjudicated by a court of law when the matter is ripe for review.
25. It is long-established that the substance of an Initiative Petition is off-limits to pre-election protest. The Board of Elections' position that it has the legal right to determine that the Initiative Petition was invalid as unconstitutional or illegal is unsupported by applicable law.
26. The Board of Election has misinterpreted and misapplied the law regarding the enactment of legislative versus administrative actions through the initiative process.

27. The writ of mandamus is an extraordinary remedy to address situations in which there is no other avenue for justice. It is the Court's duty to review the actions of the Board of Elections to place limits on the exercise of discretion to ensure that the limited discretion afforded to the Board of Elections is not exercised arbitrarily or abused.
28. Relators were denied justice through the refusal of the Board of Elections to place the proposed Ordinance contained in the Initiative Petition on the ballot for the approval or rejection of the electors of the City of Norwood at the November 8, 2016 general election.
29. The decision of the Board of Elections is final.
30. The decision of the Board of Elections is subject to judicial review for fraud, corruption, abuse of discretion, or clear violation of applicable legal provisions.
31. The Board of Elections' refusal to place the proposed Ordinance contained in the Initiative Petition on the ballot for the public vote was an improper and unlawful abuse of discretion.
32. The Board of Elections had a clear legal duty to place the proposed Ordinance contained in the Initiative Petition on the ballot for the public vote for the November 8, 2016 general election, as was legally sufficient and valid.
33. Relators have a clear legal right to have the proposed Ordinance contained in the Initiative Petition placed on the ballot for the public vote for the November 8, 2016 general election.
34. Relators lack an adequate remedy at law due to the proximity of the November 8, 2016 election.

35. Relators' arguments in support of this Complaint will be included in Relators' brief in support of this writ, to be filed in accordance with S.Ct.Prac.R. 12.08(A).

**WHEREFORE**, Relators request judgment in their favor and that the Court issue a writ of mandamus, or alternatively, an alternate writ, pursuant to O.R.C. Chapter 2731, that requires the Respondent Hamilton County Board of Elections to place the proposed Ordinance contained in the Initiative Petition on the November 8, 2016 general election ballot for a vote by the City of Norwood electorate.

Relators further request to be awarded their costs and reasonable attorneys' fees, and for any such other and further relief at law or in equity as the Court may deem necessary and just in this matter.

Respectfully submitted,



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*COUNSEL FOR RELATORS*

**VERIFYING AFFIDAVIT**

STATE OF OHIO                    )  
  )  
COUNTY OF HAMILTON        )        ss:

I, Amy G. Wolfinbarger, being first duly sworn according to law, depose and state that I have read the foregoing Verified Complaint for Writ of Mandamus, that the statements of fact contained in the Complaint, which are incorporated and made part of this Affidavit as if completely rewritten, are true based upon my personal knowledge, and that the attachments are true and accurate copies of the documents that purport to be, and I am competent to testify to the same.

Amy G. Wolfinbarger  
Amy G. Wolfinbarger

Sworn to and subscribed in my presence this 28<sup>th</sup> day of August, 2016.

Tonji E. Banks  
Notary Public



TONJI E. BANKS  
Notary Public, State of Ohio  
My Commission Expires  
October 15, 2018

**PRAECIPE TO CLERK**

Please issue a summons along with a copy of the Verified Complaint for Writ of Mandamus to the Respondent identified in the caption of the Complaint by certified mail.

  
Edward J. Stechschulte (0085129)

## **INITIATIVE PETITION**

### **NOTICE.**

Whoever knowingly signs this petition more than once, signs a name other than his own, or signs when not a legal voter is liable to prosecution.

**Repealing section 501.99 entitled “Penalties for Misdemeanors”; 513.01 entitled “Definitions”; Section 513.02 entitled “Gift of Marihuana”; Section 513.03 entitled “Drug Abuse: controlled substance possession or use”; Section 513.05 entitled “Permitting drug abuse”; Section 513.06 entitled “Illegal cultivation of Marihuana”; Section 513.08 entitled “illegally dispensing drug samples”; Section 513.12 entitled “Drug paraphernalia”; Section 333.01 entitled “Driving or physical control while under the influence; evidence” and enacting new Section 501.99 entitled “Penalties for Misdemeanors”; 513.01 entitled “Definitions”; Section 513.15 entitled “Marihuana Laws and penalties”**

To the Auditor of the City of Norwood and to the Council of the City of Norwood, Hamilton County, Ohio:

We, the undersigned qualified electors of the City of Norwood, Hamilton County, Ohio, hereby present by initiative petition, a request that there be submitted for consideration of the people and the electors of the City of Norwood, Ohio for their approval or rejection, at an election in accordance with the law, the following Ordinance. A full and correct copy of the title and text of said Ordinance is as follows:

### **THE SENSIBLE MARIHUANA ORDINANCE**

Be it ordained by the people of the City of Norwood that:

Section 1. The Norwood Municipal code shall be and is hereby amended and supplemented by the repeal of the Norwood Municipal Code Section 501.99, Section 513.01, Section 513.02, Section 513.03, Section 513.05, Section 513.06, Section 513.08, Section 513.12, Section 333.01 be and the same is hereby repealed.

Section 2. The new Norwood Municipal Code Section 501.99, Section 513.01, Section 513.15 be enacted to read as follows:

Relators' Exhibit 1

## **501.99. PENALTIES FOR MISDEMEANORS.**

(a) **Financial Sanctions.** In addition to imposing court costs pursuant to Ohio R.C. 2947.23, the court imposing a sentence upon an offender for a misdemeanor committed under the Codified Ordinances, including a minor misdemeanor, may sentence the offender to any financial sanction or combination of financial sanctions authorized under this section. If the court in its discretion imposes one or more financial sanctions, the financial sanctions that may be imposed pursuant to this section include, but are not limited to, the following:

(1) **Restitution.** Unless the misdemeanor offense is a minor misdemeanor or could be disposed of by the traffic violations bureau serving the court under Traffic Rule 13, restitution by the offender to the victim of the offender's crime or any survivor of the victim, in an amount based on the victim's economic loss. The court may not impose restitution as a sanction pursuant to this section if the offense is a minor misdemeanor or could be disposed of by the traffic violations bureau serving the court under Traffic Rule 13. If the court requires restitution, the court shall order that the restitution be made to the victim in open court or to the adult probation department that serves the jurisdiction or the clerk of the court on behalf of the victim.

If the court imposes restitution, the court shall determine the amount of restitution to be paid by the offender. If the court imposes restitution, the court may base the amount of restitution it orders on an amount recommended by the victim, the offender, a presentence investigation report, estimates or receipts indicating the cost of repairing or replacing property, and other information, provided that the amount the court orders as restitution shall not exceed the amount of the economic loss suffered by the victim as a direct and proximate result of the commission of the offense. If the court decides to impose restitution, the court shall hold an evidentiary hearing on restitution if the offender, victim or survivor disputes the amount of restitution. If the court holds an evidentiary hearing, at the hearing the victim or survivor has the burden to prove by a preponderance of the evidence the amount of restitution sought from the offender.

All restitution payments shall be credited against any recovery of economic loss in a civil action brought by the victim or any survivor of the victim against the offender.

If the court imposes restitution, the court may order that the offender pay a surcharge, of not more than five per cent of the amount of the restitution otherwise ordered, to the entity responsible for collecting and processing restitution payments.

The victim or survivor may request that the prosecutor in the case file a motion, or the offender may file a motion, for modification of the payment terms of any restitution ordered. If the court grants the motion, it may modify the payment terms as it determines appropriate.

(2) **Fines.** A fine in the following amount:

A. For a misdemeanor of the first degree, not more than one thousand dollars (\$1,000);

B. For a misdemeanor of the second degree, not more than seven hundred fifty dollars (\$750.00);

- C. For a misdemeanor of the third degree, not more than five hundred dollars (\$500.00);
- D. For a misdemeanor of the fourth degree, not more than two hundred fifty dollars (\$250.00);
- E. For a minor misdemeanor, not more than one hundred fifty dollars (\$150.00).

(3) Reimbursement of costs of sanctions.

A. Reimbursement by the offender of any or all of the costs of sanctions incurred by the government, including, but not limited to, the following:

1. All or part of the costs of implementing any community control sanction, including a supervision fee under Ohio R.C. 2951.021;

2. All or part of the costs of confinement in a jail or other residential facility, including, but not limited to, a per diem fee for room and board, the costs of medical and dental treatment, and the costs of repairing property damaged by the offender while confined.

B. The amount of reimbursement ordered under subsection (a)(3)A. of this section shall not exceed the total amount of reimbursement the offender is able to pay and shall not exceed the actual cost of the sanctions. The court may collect any amount of reimbursement the offender is required to pay under that subsection. If the court does not order reimbursement under that subsection, confinement costs may be assessed pursuant to a repayment policy adopted under Ohio R.C. 2929.37. In addition, the offender may be required to pay the fees specified in Ohio R.C. 2929.38 in accordance with that section.

(b) Jail Terms.

(1) Except as provided in Ohio R.C. 2929.22 or 2929.23 of the Revised Code, and unless another term is required or authorized pursuant to law, if the sentencing court imposing a sentence upon an offender for a misdemeanor elects or is required to impose a jail term on the offender pursuant to this General Offenses Code, the court shall impose a definite jail term that shall be one of the following:

- A. For a misdemeanor of the first degree, not more than one hundred eighty days;
- B. For a misdemeanor of the second degree, not more than ninety day
- C. For a misdemeanor of the third degree, not more than sixty days;
- D. For a misdemeanor of the fourth degree, not more than thirty days.

(2) A court that sentences an offender to a jail term under this section may permit the offender to serve the sentence in intermittent confinement or may authorize a limited release of the offender as provided in division (B) of Ohio R.C. 2929.26.

(3) If a court sentences an offender to a jail term under this section and the court assigns the offender to a county jail that has established a county jail industry program pursuant to Ohio R.C. 5147.30, the court shall specify, as part of the sentence, whether the offender may be considered for participation in the program. During the offender's term in the county jail, the court retains jurisdiction to modify its specification regarding the offender's participation in the county jail industry program.

(4) If a person is sentenced to a jail term pursuant to this section, the court may impose as part of the sentence pursuant to Ohio R.C. 2929.28 a reimbursement sanction, and, if the local detention facility in which the term is to be served is covered by a policy adopted pursuant to Ohio R.C. 307.93, 341.14, 341.19, 341.21, 341.23, 753.02, 753.04, 753.16, 2301.56, or 2947.19 and Ohio R.C. 2929.37, both of the following apply:

A. The court shall specify both of the following as part of the sentence:

1. If the person is presented with an itemized bill pursuant to Ohio R.C. 2929.37 for payment of the costs of confinement, the person is required to pay the bill in accordance with that section.

2. If the person does not dispute the bill described in subsection (b)(4)A.1. of this section and does not pay the bill by the times specified in Ohio R.C. 2929.37, the clerk of the court may issue a certificate of judgment against the person as described in that section.

B. The sentence automatically includes any certificate of judgment issued as described in subsection (b)(4)A.2. of this section.

(c) Organizations. Regardless of the penalties provided in subsections (a) and (b) hereof, an organization convicted of an offense pursuant to Section 501.11 shall be fined, in accordance with this section. The court shall fix the fine as follows:

<u>Type of Misdemeanor</u>	<u>Maximum Fine</u>
First degree	\$5000.00
Second degree	4000.00
Third degree	3000.00
Fourth degree	2000.00
Minor	1000.00
Misdemeanor not specifically classified	2000.00
Minor misdemeanor not specifically classified	1000.00

(1) When an organization is convicted of an offense that is not specifically classified, and the section defining the offense or penalty plainly indicates a purpose to impose the penalty provided for violation upon organizations, then the penalty so provided shall be imposed in lieu of the penalty provided in this subsection (c).

(2) When an organization is convicted of an offense that is not specifically classified, and the penalty provided includes a higher fine than the fine that is provided in this subsection (c), then the penalty imposed shall be pursuant to the penalty provided for the violation of the section defining the offense.

(3) This subsection (c) does not prevent the imposition of available civil sanctions against an organization convicted of an offense pursuant to Section 501.11, either in addition to or in lieu of a fine imposed pursuant to this subsection (c).

(d)Marihuana offenses covered in section 513.15

(1) All Marihuana offenses in Section 513.15 excluded from Section 501.99. For penalties of offenses of section 513.15, refer to Section 513.15.

### **513.01 . DEFINITIONS.**

(a) “Administer” means the direct application of a drug, whether by injection, inhalation, ingestion or any other means to a person or animal.

(b) “Controlled Substance” means a drug, compound, mixture, preparation or substance included in Schedule I, II, III, IV, or V.

(c) “Dispense” means sell, leave with, give away, dispose of or deliver.

(d) “Distribute” means to deal in, ship, transport or deliver but does not include administering or dispensing a drug.

(e) “Hypodermic” means a hypodermic syringe or needle, or other instrument or device for the injection of a medication.

(f) “Manufacture” means a person who manufactures a controlled substance as “manufacture” is defined in Ohio R.C. 3715.01.

(g) Except as provided in subsection (g)(2) hereof:

(1) “Marihuana” means all parts of a plant of the genus cannabis, whether growing or not, the seeds of a plant of that type; the resin extracted from a part of a plant of that type; and every compound, manufacture, salt, derivative, mixture or preparation of a plant of that type or of its seeds or resin. “Marihuana” does not include the mature stalks of the plant, fiber produced from the stalks, oils or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks, except the resin extracted from the mature stalks, fiber, oil or cake, or the sterilized seed of the plant that is incapable of germination.

(2) “Marihuana” does not include hashish.

(h) (Reserved)

(i) "Official written order" means an order written on a form provided for that purpose by the Director of the United States Drug Enforcement Administration, under any laws of the United States making provision for the order, if the order forms are authorized and required by Federal law.

(j) "Pharmacist" means a person licensed under Ohio R.C. Chapter 4729 to engage in the practice of pharmacy.

(k) "Pharmacy" has the same meaning as in Ohio R.C. 4729.01

(l) "Poison" means any drug, chemical, or preparation likely to be deleterious or destructive to adult human life in quantities of four grams or less.

(m) "Licensed health professional authorized to prescribe drugs", "prescriber" and "prescription" have the same meanings as in Ohio R.C. 4729.01.

(n) "Sale" includes delivery, barter, exchange, transfer or gift, or offer thereof, and each transaction of those natures made by any person, whether as principal, proprietor, agent, servant or employee.

(o) "Schedule I", "Schedule II", "Schedule III", "Schedule IV" and "Schedule V" mean controlled substance Schedules I, II, II, IV, and V respectively, established pursuant to Ohio R.C. 3719.41, as amended pursuant to Ohio R.C. 3719.43 or 3719.44.

(p) "Wholesaler" means a person who, on official written orders other than prescriptions, supplies controlled substances that the person has not manufactured, produced or prepared personally and includes a "wholesale distributor of dangerous drugs" as defined in Ohio R.C. 4729.01

(q) "Drug of abuse" means any controlled substance as defined in subsection (b) hereof, any harmful intoxicant as defined in subsection (x) hereof and any dangerous drug as defined in subsection (r) hereof.

(r) "Dangerous drug" means any of the following:

(1) Any drug to which either of the following applies:

A. Under the "Federal Food, Drug, and Cosmetic Act", 52 Stat. 1040(1938), 21 U.S.C.A. 301, as amended, the drug is required to bear a label containing the legend "Caution: Federal law prohibits dispensing without prescription" or "Caution: Federal law restricts this drug to use by or on the order of a licensed veterinarian" or any similar restrictive statement, or the drug may be dispensed only upon a prescription.

B. Under Ohio R.C. Chapter 3715 or 3719, the drug may be dispensed only upon a prescription.

(2) Any drug that contains a Schedule V narcotic drug and that is exempt from Ohio R.C. Chapter 3719 or to which that chapter does not apply;

(3) Any drug intended for administration by injection into the human body other than through a natural orifice of the human body.

(s) "Bulk amount" of a controlled substance means any of the following:

(1) For any compound, mixture, preparation, or substance included in Schedule I, Schedule II or Schedule III, with the exception of marihuana, cocaine, L.S.D., heroin, and hashish and except as provided in subsection (s)(2) or (5) hereof, whichever of the following is applicable:

A. An amount equal to or exceeding ten grams or twenty-five unit doses of a compound, mixture, preparation, or substance that is or contains any amount of a Schedule I opiate or opium derivative;

B. An amount equal to or exceeding ten grams of a compound, mixture, preparation, or substance that is or contains any amount of raw or gum opium;

C. An amount equal to or exceeding thirty grams or ten unit doses of a compound, mixture, preparation, or substance that is or contains any amount of a Schedule I hallucinogen other than tetrahydrocannabinol, or lysergic acid amide, or a Schedule I stimulant or depressant;

D. An amount equal to or exceeding twenty grams or five times the maximum daily dose in the usual dose range specified in a standard pharmaceutical reference manual of a compound, mixture, preparation, or substance that is or contains any amount of a Schedule II opiate or opium derivative;

E. An amount equal to or exceeding five grams or ten unit doses of a compound, mixture, preparation, or substance that is or contains any amount of phencyclidine;

F. An amount equal to or exceeding 120 grams or thirty times the maximum daily dose in the usual dose range specified in a standard pharmaceutical reference manual of a compound, mixture, preparation, or substance that is or contains any amount of a Schedule II stimulant that is in a final dosage form manufactured by a person authorized by the Federal Food, Drug, and Cosmetic Act, 52 Stat. 1040(1938), 21 U.S.C.A. 301, as amended, and the Federal Drug Abuse Control laws as defined in Ohio R.C. 3719.01, that is or contains any amount of a Schedule II depressant substance or a Schedule II hallucinogenic substance;

G. An amount equal to or exceeding three grams of a compound, mixture, preparation, or substance that is or contains any amount of a Schedule II stimulant, or any of its salts or isomers, that is not in a final dosage form manufactured by a person authorized by the Federal Food, Drug, and Cosmetic Act and the Federal Drug Abuse Control laws;

(2) An amount equal to or exceeding one hundred twenty grams or thirty times the maximum daily dose in the usual dose range specified in a standard pharmaceutical reference manual of a compound, mixture, preparation, or substance that is or contains any amount of a Schedule III or IV substance other than an anabolic steroid or a Schedule III opiate or opium derivative;

(3) An amount equal to or exceeding twenty grams or five times the daily dose in the usual dosage range specified in a standard pharmaceutical reference manual of a compound, mixture, preparation, or substance that is or contains any amount of a Schedule III opiate or opium derivative;

(4) An amount equal to or exceeding 250 milliliters or 250 grams of a compound, mixture, preparation, or substance that is or contains any amount of a Schedule V substance.

(5) An amount equal to or exceeding 200 solid dosage units, sixteen grams or sixteen milliliters of a compound, mixture, preparation, or substance that is or contains any amount of a Schedule III anabolic steroid.

(t) "Unit dose" means an amount or unit of a compound, mixture or preparation containing a controlled substance, that is separately identifiable and in a form that indicates that it is the amount or unit by which the controlled substance is separately administered to or taken by an individual.

(u) "Harmful intoxicant" does not include beer or intoxicating liquor, but means any of the following:

(1) Any compound, mixture, preparation or substance the gas, fumes or vapor of which when inhaled can induce intoxication, excitement, giddiness, irrational behavior, depression, stupefaction, paralysis, unconsciousness, asphyxiation or other harmful physiological effects, and includes, but is not limited to, any of the following:

A. Any volatile organic solvent, plastic cement, model cement, fingernail polish remover, lacquer thinner, cleaning fluid, gasoline, or other preparation containing a volatile organic solvent;

B. Any aerosol propellant;

C. Any fluorocarbon refrigerant;

D. Any anesthetic gas.

(2) Gamma Butyrolactone;

(3) 1,4 Butanediol

(v) "Manufacture" means to plant, cultivate, harvest, process, make, prepare or otherwise engage in any part of the production of a drug by propagation, extraction, chemical synthesis or compounding, or any combination of the same, and includes packaging, repackaging, labeling and other activities incident to production.

(w) "Possess" or "possession" means having control over a thing or substance but may not be inferred solely from mere access to the thing or substance through ownership or occupations of the premises upon which the thing or substance is found.

(x) "Sample drug" means a drug or pharmaceutical preparation that would be hazardous to health or safety if used without the supervision of a licensed health professional authorized to prescribe drugs, or a drug of abuse, and that, at one time, had been placed in a container plainly marked as a sample by a manufacturer.

(y) "Standard pharmaceutical reference manual" means the current edition, with cumulative changes if any, of any of the following reference works:

(1) "The National Formulary";

(2) "The United States Pharmacopeia", prepared by authority of the United States Pharmacopeial Convention, Inc.

(3) Other standard references that are approved by the State Board of Pharmacy.

(z) "Juvenile" means a person under eighteen years of age.

(aa) "School" means any school operated by a board of education or any school for which the State Board of Education prescribes minimum standards under Ohio R.C.3301.07, whether or not any instruction, extracurricular activities or training provided by the school is being conducted at the time a criminal offense is committed.

(bb) "School premises" means either of the following:

(1)The parcel of property on which any school is situated, whether or not any instruction, extracurricular activities or training provided by the school is being conducted on the premises at the time a criminal offense is committed.

(2)Any other parcel of real property that is owned or leased by a board of education of a school or the governing body of a school for which the State Board of Education prescribes minimum standards under Ohio R.C. 3301.07 and on which some of the instruction, extracurricular activities or training of the school is conducted, whether or not any instruction, extracurricular activities or training provided by the school is being conducted on the parcel of real property at the time a criminal offense is committed.

(cc) "School building" means any building in which any of the instruction, extracurricular activities or training provided by a school is conducted, whether or not any instruction, extracurricular activities or training provided by the school is being conducted in the school building at the time a criminal offense is committed.

(dd) "Counterfeit controlled substance" means:

(1)Any drug that bears, or whose container or label bears, a trademark, trade name or other identifying mark used without authorization of the owner of rights to that trademark, trade name or identifying mark;  
or

(2)Any unmarked or unlabeled substance that is represented to be a controlled substance manufactured, processed, packed or distributed by a person other than the person that manufactured, processed, packed or distributed it; or

(3)Any substance that is represented to be a controlled substance but is not a controlled substance or is a different controlled substance; or

(4)Any substance other than a controlled substance that a reasonable person would believe to be a controlled substance because of its similarity in shape, size and color, or its marking, labeling, packaging, distribution or the price for which it is sold or offered for sale.

(ee) An offense is "committed in the vicinity of a school" if the offender commits the offense on school premises, in a school building, or within one thousand feet of the boundaries of any school premises, regardless of whether the offender knows the offense is being committed on school premises, in a school building, or within one thousand feet of the boundaries of any school premises.

(ff) An offense is “committed in the vicinity of a juvenile” if the offender commits the offense within one hundred feet of a juvenile or within the view of a juvenile, regardless of whether the offender knows the age of the juvenile, whether the offender knows the offense is being committed within one hundred feet of or within view of the juvenile, or whether the juvenile actually views the commission of the offense.

(gg) “Hashish” means the resin or a preparation of the resin contained in marihuana, whether in solid form or in a liquid concentrate, liquid extract, or liquid distillate form.

(hh) “Public premises” means any hotel, restaurant, tavern, store, arena, hall, or other place of public accommodation, business, amusement, or resort.

(ii) “Methamphetamine” means methamphetamine, any salt, isomer, or salt of an isomer of methamphetamine, or any compound, mixture, preparation, or substance containing methamphetamine or any salt, isomer or salt of an isomer of methamphetamine.

(JJ) “Lawful prescription” means a prescription that is issued for a legitimate medical purpose by a licensed health professional authorized to prescribe drugs, that is not altered or forged, and that was not obtained by means of deception or by the commission of any theft offense.

(kk) “Deception” and “theft offense” have the same meanings as in Ohio R.C. 2913.01.

### **513.15. - MARIHUANA LAWS AND PENALTIES**

(a) No person shall knowingly obtain, possess, or use marihuana or a compound, mixture, preparation, or substance containing marihuana other than hashish, whoever violates this section is guilty of possession of marihuana. The penalty for the offense shall be determined as follows:

(b) Whoever violates section (a) of this section, anywhere inside city limits, is guilty of one of the following:

(1) Except as otherwise provided in (b)(3) of this section, possession of marihuana is a minor misdemeanor drug abuse offense.

(2) If the amount of the drug involved is less than two hundred grams, possession of marihuana is a minor misdemeanor drug abuse offense. Persons convicted of violating this section shall not be fined and no incarceration, probation, nor any other punitive or rehabilitative measure shall be imposed.

(3) If the amount of the drug involved equals or exceeds two hundred grams, possession of marihuana is a fifth degree felony drug abuse offense. Persons convicted of violating this section shall not be fined and no incarceration, probation, nor any other punitive or rehabilitative measure shall be imposed.

(c) No person shall knowingly obtain, possess, or use hashish or a compound, mixture, preparation, or substance containing hashish, whoever violates this section is guilty of possession of hashish. The penalty for the offense shall be determined as follows:

(d) Whoever violates section (c) of this section, anywhere inside city limits, is guilty of one of the following:

(1) Except as otherwise provided in (d)(3) of this section, possession of hashish is a minor misdemeanor drug abuse offense.

(2) If the amount of the drug involved is less than ten grams of solid hashish or less than two grams of liquid hashish, possession of hashish is a minor misdemeanor drug abuse offense. Persons convicted of violating this section shall not be fined and no incarceration, probation, nor any other punitive or rehabilitative measure shall be imposed.

(3) If the amount of the drug involved is over ten grams of solid hashish or over two grams of liquid hashish, possession of hashish is a fifth degree felony drug abuse offense. Persons convicted of violating this section shall not be fined and no incarceration, probation, nor any other punitive or rehabilitative measure shall be imposed.

(e) No person shall knowingly cultivate or manufacture marihuana. The penalty for the offense shall be as follows:

(f) Whoever violates section (a) of this section, anywhere inside city limits, is guilty of one of the following:

(1) Except as otherwise provided in sections (a)(3) of this section, illegal cultivation of marihuana is a minor misdemeanor drug abuse offense.

(2) If the amount of the drug involved is less than two hundred grams, illegal cultivation of marihuana is a minor misdemeanor drug abuse offense. Persons convicted of violating this section shall not be fined and no incarceration, probation, nor any other punitive or rehabilitative measure shall be imposed.

(3) If the amount of the drug involved equals or exceeds two hundred grams, illegal cultivation of marihuana is a fifth degree felony drug abuse offense. Persons convicted of violating this section shall not be fined and no incarceration, probation, nor any other punitive or rehabilitative measure shall be imposed.

(f) No person shall knowingly give or offer to make a gift of twenty grams or less of marihuana. The penalty for the offense shall be determined as follows:

(g) Whoever violates this section, anywhere inside city limits, is guilty of trafficking in marihuana, a minor misdemeanor drug abuse offense. Persons convicted of violating this section shall not be fined and no incarceration, probation, nor any other punitive or rehabilitative measure shall be imposed.

(h) No person shall knowingly do any of the following:

(1) Sell or offer to sell marihuana or hashish;

(2) Prepare for shipment, ship, transport, deliver, prepare for distribution, or distribute marihuana or hashish, when the offender knows or has reasonable cause to believe that the marihuana or hashish is intended for sale or resale by the offender or another person.

(i) Whoever violates section (e) of this section, anywhere inside city limits, is guilty of trafficking in marihuana.

(j) Trafficking in marihuana shall be a fifth degree felony drug offense. Persons convicted of violating this section shall not be fined and no incarceration, probation, nor any other punitive or rehabilitative measure shall be imposed.

(k) No person shall possess, sell, manufacture or use marihuana or hashish paraphernalia. The penalty for the offense shall be as follows:

(l) Whoever violates section (h) of this section shall be guilty of a minor misdemeanor drug abuse offense. Persons convicted of violating this section shall not be fined and no incarceration, probation, nor any other punitive or rehabilitative measure shall be imposed.

(m) No Norwood police officer, or his or her agent, shall report the possession, sale, distribution, trafficking, control, use, or giving away of marihuana or hashish to any other authority except the Norwood City Attorney; and the City Attorney shall not refer any said report to any other authority for prosecution or for any other reason.

(n) Should the State of Ohio enact lesser penalties than that set forth above, or entirely repeal penalties for the possession, sales, distribution, trafficking, control, use, or giving away of marihuana or hashish, then this ordinance, or the relevant portions thereof, shall be null and void.

(o) Criminal or Civil Asset Forfeiture due to any violation of these sections herein is not authorized and is strictly prohibited by any authority.

(p) Arrest or conviction for a minor misdemeanor violation of this section does not constitute a criminal record and need not be reported by the person so arrested or convicted in response to any inquiries about the person's criminal record, including any inquiries contained in any application for employment, license, or other right or privilege, or made in connection with the person's appearance as a witness.

(ORC 2925.11)

(q) All court costs to be suspended for minor misdemeanor violations of these sections herein.

(r) Severability. The sections of this ordinance are severable. The invalidity of a section shall not affect the validity of the remaining sections. Invalid sections shall be revised to the minimum extent necessary to maintain validity and enforceability.

(s) Drug abuse offenses of this section, while not operating a motor vehicle, shall not constitute a suspension of driver's or commercial driver's license or permit for any length of time.

Section 3. The form of the ballot by which this ordinance shall be submitted to the electors of the City of Norwood at the next regular election shall be as follows:

“Shall the City of Norwood adopt the sensible marihuana ordinance which protects individual citizen’s rights and saves taxpayer’s money by lowering the penalty for marijuana to the lowest penalty allowed by state law?”

	Yes
	No

Section 4. This Ordinance shall become effective on the fifth day after the day on which the board of elections certifies the official vote on such question.

Each of the undersigned electors hereby request that said ordinance hereinbefore set forth be certified to the proper election authorities and submitted to the electors of the City of Norwood, Ohio for approval or rejection, and the proper notices be published, all as required by law.

The undersigned hereby designate the following electors of the City of Norwood, Ohio signers of this petition as proponents of this Petition and as the Committee in charge thereof:

Amy Gene Wolfinbarger  
2412 Kenilworth Avenue #2  
Cincinnati Ohio 45212

Amanda R. Wolfinbarger  
2412 Kenilworth Avenue #2  
Cincinnati Ohio 45212

Nicholas Adam Balzer  
2009 Williams Avenue  
Cincinnati Ohio 45212

Charles R. Jones III  
4206 Lafayette Avenue #3  
Cincinnati Ohio 45212

Robert H Ryan  
1706 Sherman Avenue  
Cincinnati Ohio 45212

#	Signature	Printed Name	Residence in Norwood, OH Street and Number	Date
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#	Signature	Printed Name	Residence in Norwood, OH Street and Number	Date
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**AFFIDAVIT OF CIRCULATOR**

The State of Ohio, Hamilton County, ss,

I, \_\_\_\_\_, being duly sworn, deposes and say that  
*(Printed name of Circulator)*

I reside at the address appearing below my signature hereto: that I am the circulator of the forgoing paper containing \_\_\_\_\_ signatures: that I witnessed the affixing of each signature, that that all signers were to the best of my knowledge and belief qualified to sign, and that every signature is to the best of my knowledge and belief the signature of the person whose signature it purports to be.

Signed \_\_\_\_\_

Address \_\_\_\_\_  
\_\_\_\_\_

**WHOEVER COMMITS ELECTION FALSIFICATION IS GUILTY OF A FELONY OF THE FIFTH DEGREE**



James P. Stith II  
City Auditor

Marcus Patterson, MBA  
Deputy Auditor

4645 Montgomery Road  
Norwood, Ohio 45212  
Ph. (513) 458-4570  
Fax (513) 458-4571

August 2, 2016

Hamilton County Board of Elections  
Attn: Kathy Curran  
824 Broadway  
Cincinnati, OH 45202

Dear Kathy:

The City of Norwood Auditor's Office has received verification from the Hamilton County Board of Elections that the Initiative Petitions filed with the Board of Elections on August 1, 2016 contain the number of signatures that meets or exceeds the amount required by ORC sec.731.28 to place the issue contained in the petitions before the voters. The City of Norwood Auditor therefore requests that the Board of Elections submit the proposed ordinance contained in the Initiative Petitions for the approval or rejection of the electors of the City of Norwood at the General Election on November 8, 2016.

Once the wording for the ballot has been determined, please send a copy of the language to the undersigned so that it can be reviewed.

Thank you for your assistance in this matter.

Sincerely,

AUDITOR, CITY OF NORWOOD

By: Jane M. Stote

pc: Keith D. Moore, Esq.  
Timothy A. Garry, Jr. Esq.

*"Gem of The Highlands"*

2016 AUG 2 11 09 AM  
Relators' Exhibit 2

**HAMILTON COUNTY BOARD OF ELECTIONS  
MEETING HELD  
August 16, 2016 AT 10:30AM**

The meeting of the Hamilton County Board of Elections was called to order at 10:30am by Chairman Burke. Present were members Mr. Triantafilou, Mr. Gerhardt and Mr. Faux. Also present: Director Sherry Poland, Deputy Director Sally Krisel and Dave Stevenson.

Chairman Burke noted that proper notice was duly provided as required by O.R.C. 121.22.

**I. APPROVE BOARD MEETING MINUTES: AUGUST 1 & 2, 2016**

Mr. Triantafilou made a motion to approve the Board meeting minutes from August 1 & 2, 2016; Mr. Faux seconded. The motion passed unanimously.

**II. AUGUST 2, 2016 SPECIAL ELECTION PROVISIONAL BALLOT REVIEW**

The Provisional Ballot report and staff recommendation was presented to the Board based upon bipartisan review in accordance with the Secretary of State Directive and Board policy. The staff recommendation was as follows:

Accept	30	
Reject	12	
Not registered:		11
Voted wrong precinct/wrong location:		1

Mr. Triantafilou made a motion to accept the staff recommendation and approve the Provisional Ballot Summary report; Mr. Faux seconded. The motion passed unanimously.

**III. AUGUST 2, 2016 SPECIAL ELECTION BALLOT REMAKES**

There were no ballots required to be remade

**IV. CERTIFICATION OF QUESTIONS AND ISSUES FOR THE NOVEMBER 8, 2016 GENERAL ELECTION**

The list of Questions and Issues for the November 8, 2016 General Election was presented to the Board. Staff recommended the Board separate the City of Norwood proposed ordinance regarding marijuana from the list of Questions and Issues and approve the remainder of the list.

Mr. Triantafilou made a motion to accept the staff recommendation to separate the City of Norwood proposed ordinance from the list and certify the remaining items to the November 8, 2016 General Election Ballot; Mr. Faux seconded. The motion passed unanimously.

A discussion regarding the City of Norwood proposed ordinance followed. The Board was advised that the ballot language which was proposed in the ordinance was submitted to the Ohio Secretary of State; the Secretary of State returned the language to the BOE with instructions to consult with the Hamilton County Prosecutor's office. The relevant information was then forwarded to the Prosecutor's office and an opinion was issued. It was discussed that the legal opinion was an attorney/client communication and may not be released without expressed permission by the Board.

Mr. Triantafilou made a motion to waive the attorney/client privilege as it relates to this legal opinion from the Hamilton County Prosecutor's office; Mr. Faux seconded. The motion passed unanimously.

Mr. Stevenson summarized the legal opinion to the Board. As the proponents of this legislation were previously unaware of this development, it was suggested that this issue be tabled to provide them the opportunity to speak with counsel. The Board agreed to hold a special meeting on Monday, August 22, 2016 for the purpose of addressing this issue.

**V. CERTIFICATION OF JUDICIAL CANDIDATES TO THE NOVEMBER 8, 2016 GENERAL ELECTION: HAMILTON COUNTY COURT OF COMMON PLEAS UNEXPIRED TERM**

Mr. Triantafilou made a motion to certify Judge Lisa Allen and Mr. Michael Mann to the 2016 General Election Ballot; Mr. Faux seconded. The motion passed unanimously.

**VI. DISCUSSION: EVENDALE CITY COUNCIL UNEXPIRED TERM ELECTION**

The Board discussed the petition filed by Carolyn Smiley-Robertson to fill an unexpired term on the Evendale Village Council. The vacancy was created in September, 2015. Pursuant to the charter of the Village of Evendale, the election to fill the unexpired term shall take place at the “next” general election. In this situation, the vacancy occurred too late to be included in the November, 2015 General Election. Ms. Smiley-Robertson filed her petition under the assumption the vote to fill the unexpired term would be in the November 2016 General Election. The Board was advised by Mr. Stevenson that pursuant to law, Municipal Elections are to occur in odd numbered years and therefore the “next” general election for this unexpired term will be November 2017. Mr. Stevenson advised Staff to reject the petition. Mr. Burke stated for the record that he was the law director for the Village of Evendale and as such was aware of this situation. He stated that an Evendale Charter Amendment was on the November 2016 ballot which would clarify the wording of the Charter to specify the next “Municipal” election.

Mr. Triantafilou made a motion to follow the advice of counsel and reject the petition for the 2016 General Election; Mr. Faux seconded. Mr. Burke – abstain; Mr. Triantafilou – aye; Mr. Faux – aye; Mr. Gerhardt –aye. The motion carried.

**VII. CERTIFY RESULTS OF THE AUGUST 2, 2016 SPECIAL ELECTION**

The Board entertained various questions and discussions while waiting for the results of the August 2, 2016 Special Election to be tabulated.

Mr. Triantafilou made a motion to stand in recess; Mr. Faux seconded. The motion passed unanimously.

Mr. Triantafilou made a motion to return to session; Mr. Faux seconded. The motion passed unanimously.

The results of the August 2, 2016 Special election were presented to the Board. Mr. Triantafilou made a motion to certify the results; Mr. Faux seconded. The motion passed unanimously.

**There being no further business to come before the Board, Mr. Triantafilou made a motion to adjourn; Mr. Faux seconded. The motion passed unanimously.**

**APPROVED:**

**DATE:** \_\_\_\_\_

**CHAIRMAN:**

**DIRECTOR:**

\_\_\_\_\_  
**TIMOTHY M. BURKE**

\_\_\_\_\_  
**SHERRY L. POLAND**

**HAMILTON COUNTY BOARD OF ELECTIONS  
MEETING HELD  
August 22, 2016 AT 8:30AM**

**The meeting of the Hamilton County Board of Elections was called to order at 8:30am by Chairman Burke. Present were members Mr. Triantafilou, Mr. Gerhardt and Mr. Faux. Also present: Director Sherry Poland, Deputy Director Sally Krisel and Dave Stevenson.**

**Chairman Burke noted that proper notice was duly provided as required by O.R.C. 121.22.**

**I. BALLOT ISSUE: PROPOSED ORDINANCE (BY PETITION) CITY OF NORWOOD**

**The Board heard the matter of the City of Norwood Ballot Issue: Proposed Ordinance (by petition). A transcript of the proceedings is attached hereto.**

**Mr. Brice Keller, Keller Law Office LLC, presented on behalf of the petitioners. Mr. Keller read a prepared statement, attached as reference, and provided a testimonial statement to the Board.**

**The Board also heard testimonial statements from the following proponents of the issue:**

**Chad Thompson, Resident of the State of Ohio; not a resident of the City of Norwood**

**Amy Wolfinbarger, Founder, Sensible Norwood; Resident of Norwood**

**Jason Durham, Resident of Michigan, formerly Ohio resident**

**Mr. Timothy Garry, Assistant Law Director, City of Norwood Department of Law presented on behalf of the City of Norwood. Mr. Garry presented a prepared statement, attached as reference, and provided a testimonial statement to the Board.**

**Upon hearing the statements and questioning the speakers, the Board sought counsel from Mr. Stevenson. Mr. Stevenson's opinion statement is attached as reference.**

**Mr. Triantafilou moved and Mr. Faux seconded a motion that the matter not be certified to the November ballot because it attempts to create a new felony law which is beyond the power of the City of Norwood to enact and because it includes administrative directives instructing the Norwood police and city attorney how to enforce existing Ohio law. The motion passed unanimously.**

**There being no further business to come before the Board, Mr. Triantafilou made a motion to adjourn; Mr. Faux seconded. The motion passed unanimously.**

**APPROVED:**

**DATE: \_\_\_\_\_**

**CHAIRMAN:**

**DIRECTOR:**

\_\_\_\_\_  
**TIMOTHY M. BURKE**

\_\_\_\_\_  
**SHERRY L. POLAND**

937-5400-LAW  
937-938-6585 Fax

Keller Law Office LLC  
Brice@BriceKellerLaw.com

7480 Mad River Rd  
Dayton, OH 45459

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To: Hamilton County Board of Elections  
Date: Aug 22, 2016  
RE: Sensible Norwood Initiative Petition

To Whom It May Concern:

I, Michael Brice Keller, of Keller Law Office LLC, have been retained by petitioners of the Initiative Petition "The Sensible Marihuana Ordinance."

In response to "opinion" submitted/presented by Counsel/Assistant Prosecuting Attorney, David T. Stevenson, petitioners assert the following as dispositive information requiring inclusion on the November 8, 2016 Ohio Ballot, as presented to the citizens of Norwood.

Concerning the assertion that the proposed ballot language is "misleading and does not accurately reflect the substance of the issue to be voted upon," this is a common challenge and remedied by a simple hearing where petitioners and Board of Elections may resolve any confusion as to the language. The Proposed Language in the case at issue is, however, not deficient as proposed because it is substantially similar to language presented in a similar successful petition and substantially similar to language presented in other local petitions.

As to the deficiencies cited as First and Second, Petitioners present the following responses...

First, any deficiencies as to whether the municipality may adjust, amend or affect felony level laws are subject to a severability provision in the Initiative itself. (r) Severability. The sections of this ordinance are severable. The invalidity of a section shall not affect the validity of the remaining sections. Invalid sections shall be revised to the minimum extent necessary to maintain validity and enforceability.

This requires the conclusion that the initiative remains without the offending language. Further, in the present case, the issue as to effect as to reducing felonious exposure for citizens is subject to ongoing litigation in other jurisdictions in Ohio. Additionally, upon information and belief, as to where similar adjustments to felony issues have been included, the main thrust concerning misdemeanor decriminalization remains in effect.

Interestingly, *State ex rel. Walker v. Husted*, 2015-Ohio-3749 speaks directly to this issue as part of its holding in declining authority to both the Board of Elections and the Secretary of State in an important regard. Walker states at paragraph 15 that "this authority to determine whether a ballot measure is within the scope of constitutional power of referendum (or initiative) does *not* permit election officials to sit as arbiters of the legality or constitutionality of a ballot measure's substantive terms." *Id.* ¶15 This is

Michael "Brice" Keller, Attorney at Law, OH Bar # 0090210

controlling guidance from the Supreme Court concerning the issue of inclusion of the felony issues in the ballot language. If there were an offending provision not cured by severability it remains that neither the Secretary of State or Board of Elections would stand to withhold placement on the ballot for that reason, because it is entirely a question of illegality or constitutionality that is at issue.

Second, the presentation of “administrative vs. legislative” discussions in the present case are substantially strained. The main thrust of the petition is plain on its face and in effect. To this end, the initiative contains proposed ballot language identifying the same to wit: ...”by lowering the penalty for marijuana to the lowest penalty allowed by state law?”

It is clear that the lowering of a penalty is the function of the initiative and that effect is wholly legislative. The inclusion of administrative guidance as to how, by what means, or other issues to effect the legislative end are incidental. The “Walker” case referred to by Attorney Stevenson, upon cursory inspection is one concerning “fracking” which discussed “administrative vs. legislative” because of Husted’s claim concerning the exclusive regulatory authority of the Ohio Government of the Gas and Oil Industry. *State ex rel. Walker v. Husted*, 2015-Ohio-3749. This however is all discussion and not the holding as it was decided on alternative grounds. *Id.* discussion at ¶16- 18, alternative basis ¶22, holding at ¶24-25. The Walker case rested on a deficiency as to providing for a form a government and procedural or technical defects. *Id.* at ¶ 24-25.

As to the test, so cited by Attorney Stevenson, it begins, “The test for determining the action of a legislative body is”... I propose to point out that this is a test for determinations as it relates to actions of a legislative body, as opposed to the determination of actions as it relates to a petition, initiative, or referendum, the latter type fundamentally requiring administrative components to have effect.

Of note is the case of *Donnelly v. City of Fairview Park*, 13 Ohio St. 2d 1 (1968) in which the Supreme Court did identify administrative action where there was action by trustees in denying a petition for the incorporation of a village. *See Donnelly v. City of Fairview Park*. Here the initiative petition, The Sensible Marijuana Ordinance, repeals, replaces, modifies, and/or enacts changes in particular sections of the local code. This is on its face legislative.

I propose for analysis that if the petition was to establish a no Parking Zone, that the petition would undoubtedly contain some administrative discussion as to that the law would be recorded, that an employee would be directed to place a sign and even possibly that someone would be directed to make resources available. In any event, the function would be legislative in prohibiting an activity. Conversely, a petition that required the Town Council to approve a building permit would be administrative. I hope that we can consider both issues resolved, but further we remain prepared to more properly present arguments to the court on these issues.

Michael “Brice” Keller, Attorney at Law, OH Bar # 0090210

937-5400-LAW  
937-938-6585 Fax

Keller Law Office LLC  
Brice@BriceKellerLaw.com

7480 Mad River Rd  
Dayton, OH 45459

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On behalf of the petitioners of The Sensible Marihuana Ordinance of Norwood, we humbly request that the question of whether Norwood should adopt The Sensible Marihuana Ordinance be presented at the November 8, 2016 election. Counsel for petitioners, requests opportunity to prepare, review, and discuss in more detail any issues related to Attorney Stevenson's concerns "First" and "Second" should those concerns not have be addressed and disposed of by this letter.

As to the proposed ballot language, petitioners are prepared to discuss and resolve any issues as your earliest convenience.

All The Best,



**Michael Brice Keller**  
Attorney at Law, 90210  
Keller Law Office LLC  
BriceKellerLaw.com  
Brice@BriceKellerLaw.com  
765-760-1344  
937-938-6585 Fax

Michael "Brice" Keller, Attorney at Law, OH Bar # 0090210



## DEPARTMENT OF LAW

KEITH D. MOORE  
LAW DIRECTOR

TIMOTHY A. GARRY, JR.  
ASSISTANT LAW DIRECTOR

NORWOOD CITY HALL  
4645 MONTGOMERY ROAD  
NORWOOD, OHIO 45212  
TELEPHONE: (513) 458-4585  
FAX: (513) 458-4586

August 22, 2016

By hand delivery

Hamilton County Board of Elections  
824 Broadway Street  
Cincinnati, Ohio 45202

Re: Sensible Norwood Initiative Petitions

Dear Members of the Board:

Thank you for the opportunity to summarize the Norwood Law Department's electoral concerns about the Sensible Norwood Initiative Petitions which were filed in the City of Norwood's Auditor's Office July 20, 2016. In addition to our electoral concerns, the Law Department also has grave constitutional concerns, about the contents of the ordinances proposed in this initiative, but we believe those constitutional concerns will be addressed through civil litigation if the initiative is placed on the ballot and passes, so they will only be addressed, in passing, here.

1. Problems with the Question posed to Voters. The Law Department questions the truth of the proposed question posed to voters:

"Shall the City of Norwood adopt the sensible marijuana ordinance **which protects individual citizens's rights and saves taxpayer's money by lowering the penalty for marijuana to the lowest penalty allowed by state law (emphasis added)?**"

a. Repealing the City of Norwood's current ordinances prohibiting the use, possession and sales of marijuana in Norwood would not save taxpayers any money. Rather the Norwood Police could, and probably would, simply charge criminal offenders under the Ohio Revised Code, which would likely reduce the amount of fines and court costs coming into the Norwood Mayor's Court, for example. Charging marijuana possession and trafficking crimes solely under the Ohio Revised Code, would require court appearances in the Hamilton County

Municipal Court, reducing the convenient access to Courts for many accused people who could otherwise contest the charges against them in the Norwood Mayor's Court, rather than in the Hamilton County Municipal Court, which sits in Cincinnati, etc. In addition, it would likely take on-duty officers who would have to appear in the Hamilton County Municipal Court, which normally cannot resolve contested cases as quickly as does the Norwood Mayor's Court, away from their duties to patrol Norwood streets, and to respond to calls for service within the City of Norwood, longer. In addition, it would likely require at least as much police officer overtime as currently required to enforce Norwood's marijuana prohibitions in the Norwood Mayor's Court, probably more.

b. The penalties proposed by this ordinance are not, in fact, allowed by state law. Therefore, taxpayer's money would not be saved, In addition, there will be a high likelihood of civil litigation to the Common Pleas, Court of Appeals, and possibly Supreme Court of Ohio levels, probably requiring the involvement of not only the courts, but also staff attorneys from the Ohio Attorney General's Office, possibly the Hamilton County Prosecutor's Office, almost certainly the City of Norwood's Law Department, and/or special counsel for those entities, and the payment of court costs, probably by the City of Norwood.

2. The proposed ordinance appears to be missing multiple subsections, which can only lead to confusion among voters, litigants, attorneys and the Courts.

a. Specifically, Section 513.15(e), page 11, reads "No person shall knowingly cultivate or manufacture marihuana. The penalty for the offense shall be as follows:" One problem with the proposed ordinance is that nothing follows the colon, so this sentence about the penalty is incomplete, so it makes no sense.

b. Section 513.15(k), page 12, has the same problem as Section 513.15(e). 513.15(k) reads: "No person shall possess, sell, manufacture or use marihuana or hashish paraphernalia. The penalty for the offense shall be as follows:" The problem with this subsection is that nothing follows the colon, so this sentence about the penalty is incomplete, and makes no sense.

3. Major portions of the proposed ordinance appear to be administrative, rather than legislative, specifically directing city officials and officers, authorized by the Ohio Revised Code as to how they must do their jobs.

a. Section 513.15(m) of the proposed ordinances says:

"No Norwood police officer, or his or her agent, shall report the possession, sale, distribution, trafficking, control, use or giving away of marihuana or hashish to any other authority except the Norwood City Attorney; and the City Attorney shall not refer any said report to any other authority for prosecution or for any other reason."

All Norwood Police officers, the Norwood Law Director and the Assistant Law Director have all taken oaths to uphold and defend the constitutions of the United States and the State of Ohio, the laws of the United States, the State of Ohio, and the City of Norwood. An ordinance purporting to prohibit them from reporting crimes, including felonies to other law enforcement authorities for investigation and prosecution would be an improper exercise of administrative power. This provision would purport to prohibit both the Norwood Police and the Norwood Law Director from reporting felony drug trafficking conduct to the Hamilton County Prosecutor's Office, the Hamilton County Grand Jury, the Federal Bureau of Investigation or the DEA, or the United States Attorney.

The City of Norwood's Law Department supports and defends the Ohio Constitution, including Art. II, §1f which says:

"The initiative and referendum powers are hereby reserved to the people of each municipality on all questions which such municipalities may now or hereafter be authorized by law to control by legislative action; such powers shall be exercised in the manner now or hereafter provided by law."

However, legislatively interfering with Norwood Police officers' and City Attorneys' administration of the law, is not a power which is reserved to the people of a municipality.

4. Large portions of a similar ordinance passed by referendum in the City of Toledo, Ohio have been found unconstitutional.

On February 23, 2016, Judge Dean Mandros, of the Lucas County Court of Common Pleas, in a civil case captioned State of Ohio, et al. v. City of Toledo, Case No. G-4081-CI-2015-4290-000, granted the State of Ohio, et al.'s request for declaratory and permanent injunctive relief, finding and declaring several sections of the ordinance that established the Sensible Marihuana Ordinance, to be in conflict with the general laws of the State of Ohio, and unconstitutional, unenforceable, without effect and null and void. Toledo's Sensible Marihuana Ordinance appears to have similar provisions to those found in the Norwood Sensible Marihuana Ordinance. The Court permanently enjoined Defendant City of Toledo and the City of Toledo Law Director from enforcing, observing, or complying with specific Ordinance provisions. An intervenor named Chad M. Thompson is appealing Judge Mandros's decision to Ohio's Sixth Circuit Court of Appeals. I have attached a pdf of the relevant pages of the Lucas County Court of Appeal's docket essentially stating Judge Mandros's orders.

Our specific concerns about the legality and constitutionality of The Norwood Sensible Marihuana ordinance initiative, include, but are not limited to, section 513.15 Marihuana Laws and Penalties sections (b)(2) and (3)(page 10); (d) (2) and (3), (e), (f)(2) and (3), (g)(page 11), and (j)(l) (m)(o)(q)(s)(page 12). Some of our specific concerns are based on the reasoning of the Ohio case law to which Judge Mandros cited in his rulings against the City of Toledo's Sensible Marihuana ordinance.

The proposed ordinance is 16 pages long, and is loaded with mistakes, misstatements, and other problems. This Board would not do the people of the City of Norwood any service whatsoever, to simply place this initiative ordinance on the ballot and hope that the voters can sort it out. This initiative petition should be corrected so that it does not misstate law, misstate facts, or interfere with the administrative discretion of sworn police officers and city attorneys, who not only

have the duty to enforce Norwood ordinances, but also the Ohio Revised Code, the United States Code and the Ohio and United States Constitutions.

If you have any questions or comments regarding this matter, please feel free to contact our office or the City of Norwood's Law Department at 458-4585. Thank you.

Sincerely,

NORWOOD LAW DIRECTOR

By:   
Timothy A. Garry, Jr.  
Assistant Law Director

pc: Keith D. Moore, Esq., Law Director  
Hon. Thomas Williams, Mayor  
Norwood City Council

Public Documents

LUCAS COUNTY COURT OF COMMON PLEAS  
J. BERNIE QUILTER, CLERK  
700 ADAMS STREET  
TOLEDO, OHIO

TIME: 11:09:37 AM  
DATE: 8/15/2016

CASE: G-4801 -CI -201504290-  
000

TITLE: THE STATE VS CITY OF TOLEDO

JUDGE: DEAN MANDROS

FILING DATE: 10/6/2015

CASE TYPE: CI CIVIL

STATUS: CLOSED/TERM'D

MONETARY AMOUNT:

DOCKET/PAGE:

ORIGINAL COURT:

TAX TYPE:

PREVIOUS CASE NUMBER:

STATE OF OHIO NUMBER:

**Party**

**Counsel**

PLAINTIFF 1:

THE STATE OF OHIO EX REL  
OHIO ATTORNEY GENERAL  
MIKE DEWINE  
30 EAST BROAD STREET 17TH  
FLOOR  
COLUMBUS, OH 43215

FREDERICK D NELSON  
6147284947  
30 EAST BROAD ST  
17TH FL  
COLUMBUS, OH 43215

PLAINTIFF 1:

MICHAEL L STOKES  
4192452550  
OHIO ATTY GENERAL'S OFFICE  
ONE GOVERNMENT CENTER, STE 1340  
TOLEDO, OH 436042261

PLAINTIFF 2:

LUCAS COUNTY PROSECUTOR  
JULIA R BATES  
700 ADAMS STREET STE 250  
TOLEDO, OH 43604

KEVIN A. PITUCH  
4192132051  
LUCAS CTY PROSECUTORS OFFICE CIVIL DIVISION  
711 ADAMS ST 2ND FL  
TOLEDO, OH 436242420

PLAINTIFF 2:

EVY M. JARRETT  
4192132001  
LUCAS COUNTY PROSECUTORS OFFICE  
700 ADAMS STE 250  
TOLEDO, OH 43604

PLAINTIFF 3:

LUCAS COUNTY SHERIFF  
JOHN THARP  
1622 SPIELBUSCH AVENUE  
TOLEDO, OH 43604

EVY M. JARRETT  
4192132001  
LUCAS COUNTY PROSECUTORS OFFICE  
700 ADAMS STE 250  
TOLEDO, OH 43604

PLAINTIFF 3:

KEVIN A. PITUCH  
4192132051  
LUCAS CTY PROSECUTORS OFFICE CIVIL DIVISION  
711 ADAMS ST 2ND FL  
TOLEDO, OH 436242420

DEFENDANT 1:

CITY OF TOLEDO  
ONE GOVERNMENT CENTER STE  
2250  
TOLEDO, OH 43604

ADAM W. LOUKX  
4192451020  
CITY OF TOLEDO DEPT OF LAW  
ONE GOVERNMENT CTR STE 2250  
TOLEDO, OH 436042230

DEFENDANT 2:

LOUKX ADAM

- 12/7/2015 1 Title : ORD:ORDER  
 The Ohio Supreme Court held in McNary v. State, 128 Ohio St. 497, 191 N.E. 733 (1934), at paragraph one of syllabus, that "[a] statute is not a criminal statute unless a penalty is provided for its violation." See also, State v. Kosloff Fisheries, 1960 Ohio Misc. Lexis 230, 86 Ohio L. Abs. 442, 174 N.E.2d 640 ("A statute creating a penal offense and which contains no penalty for its violations, has been held not enforceable."); State v. Knecht, 21 Ohio Misc. 91, 253 N.E.2d 324, 1969 Ohio Misc. Lexis 247 ("It is fundamental that a criminal statute is of no force and effect if no penalty whatever is provided for its violation \* \* \*."); State v. Schoepf, 17 Ohio Dec. 671, 1907 Ohio Misc. Lexis 158.  
 It is ORDERED that the parties shall have until December 31, 2015, to submit briefs addressing what impact, if any, the above caselaw has on the positions raised in their previously-filed briefs.  
 /S/ JUDGE DEAN MANDROS  
**PARTY : -**
- 12/7/2015 2 Title : EVT:ORDER FILE & JOURN EFF6/13  
 E JOURNALIZED 12-8-15  
 PERTAINING TO: IT IS ORDERED THAT THE PARTIES SHALL HAVE UNTIL 12-31-15 TO SUBMIT BRIEFS ADDRESSING WHAT IMPACT IF ANY THE CASELAW HAS ON THE POSITIONS RAISED IN THEIR PREVIOUSLY FILED BRIEFS  
 Sent via email to P-3's attorney on 2015-12-08 11:26:07 AM:  
 KEVIN A. PITUCH  
 kpituch@co.lucas.oh.us  
 Sent via email to D-1's attorney on 2015-12-08 11:26:07 AM:  
 ADAM W. LOUKX  
 adam.loukx@toledo.oh.gov  
 Sent via email to P-3's attorney on 2015-12-08 11:26:07 AM:  
 EVY M. JARRETT  
 ejarrett@co.lucas.oh.us  
 Sent via email to P-1's attorney on 2015-12-08 11:26:07 AM:  
 MICHAEL L STOKES  
 michael.stokes@ohioattomeygeneral.gov  
 Sent via email to P-1's attorney on 2015-12-08 11:26:07 AM:  
 FREDERICK D NELSON  
 frederick.nelson@ohioattomeygeneral.gov  
 Sent via email to P-1's attorney on 2015-12-08 11:26:07 AM:  
 BRIDGET E COONTZ  
 bridget.coontz@ohioattomeygeneral.gov  
**PARTY : P1 - THE STATE OF OHIO EX REL OHIO ATTORNEY GENERAL**
- 12/8/2015 1 Title : MIS:CRTRROOM SENT ORDINARY MAIL  
 COPY OF ORDER FILED 12/7/15 MAILED TO:  
 CHAD M THOMPSON  
 4926 SWANBROOK CT  
 TOLEDO OH 43614  
 RITA E PERKINS  
 2110 SOUTH AVE  
 TOLEDO OH 43609  
 DAVID A DANIEL  
 510 MAPLEWOOD AVE  
 DELTA OH 43515  
 BRYAN THOMAS KOTH  
 1770 CR 213  
 FREMONT OH 43420

**PARTY : -**

- 12/30/2015 1 Title : PLD:RESPONSE  
TO ORDER FILED ON 12/7/15 BY DAVID A DANIEL  
**PARTY : -**
- 12/30/2015 2 Title : PLD:BRIEF  
DEFENDANTS BRIEF PURSUANT TO COURT ORDER OF 12/7/2015  
**PARTY : D1 - CITY OF TOLEDO**
- 12/30/2015 3 Title : PLD:RESPONSE  
PLAINTIFFS RESPONSE TO COURT INQUIRY OF DECEMBER 7 2015  
**PARTY : P1 - THE STATE OF OHIO EX REL OHIO ATTORNEY GENERAL**
- 1/4/2016 1 Title : PLD:NOTICE WITHDRAWAL COUNSEL  
NOTICE OF WITHDRAWAL OF CO-COUNSEL FOR PLAINTIFF  
**PARTY : P1 - THE STATE OF OHIO EX REL OHIO ATTORNEY GENERAL**
- 1/4/2016 2 Title : PLD:RESPONSE  
TO ORDER FILED ON 12-7-15 BY CHAD M THOMPSON  
**PARTY : -**
- 1/4/2016 3 Title : PLD:RESPONSE  
TO ORDER FILED ON 12-7-15 FILED BY BRYAN T KOTH  
AMENDED FILING  
**PARTY : -**
- 1/5/2016 1 Title : PLD:ANSWER  
TO ORDER BY CHAD M THOMPSON  
**PARTY : -**
- 2/12/2016 1 Title : ORD:OPINION ISSUED SEE JE  
Identified provisions of the recently-enacted Toledo  
Sensible Marihuana Ordinance ("Ordinance") conflict with  
state general laws by eliminating criminal penalties for  
possession and trafficking of marihuana and hashish,  
converting state law felony offenses involving Schedule  
III, IV, and V drugs into third-degree misdemeanors, and  
prohibiting law enforcement officers from reporting felony  
drug law violations to anyone empowered to prosecute them.  
In addition, the Ordinance provisions are fundamentally  
nugatory -- mere bruta fulmina -- as they prohibit  
criminal conduct but impose no penalty. Accordingly,  
these Ordinance provisions are unconstitutional and  
unenforceable, and Plaintiffs' Motion for Preliminary  
Injunction must be granted....  
JOURNAL ENTRY  
It is ORDERED that Plaintiffs' Motion for Preliminary  
Injunction is GRANTED. The Court hereby preliminarily  
enjoins Defendants the City of Toledo and City of Toledo  
Law Director Adam Loukx from enforcing, observing, or  
complying with the provisions of the City of Toledo's  
newly adopted drug ordinance (the "Sensible Marihuana  
Ordinance") that establish Toledo Municipal Code Sections  
513.15(j), 513.15(e)-(g), 513.15(b)(3) and (d)(3), and  
513.03.  
This Preliminary Injunction Order shall continue in full  
force and effect, unless modified by further order of this  
Court, until a final judgment is entered on the merits of  
this action. Pursuant to Civ.R. 65(C), and in light of the  
nature of this case, no bond or other security is  
required, and this Preliminary Injunction has immediate  
effect.  
It is further ORDERED that all submissions filed in this

case by Brian Thomas Koth, Rita E. Perkins, David A. Daniel, and Chad M. Thompson shall be stricken from the record.

(See Opinion and Journal Entry for full text)

/s/ Judge Dean Mandros

**PARTY : -**

- 2/12/2016 2 Title : EVT:OPIN & JE FILED & JOURN  
E-JOURNALIZED 2/16/16  
PERTAINING TO PLTFS MOTION FOR PRELIMINARY INJUNCTION IS GRANTED  
Sent via email to P-3's attorney on 2016-02-16 02:38:03 PM:  
KEVIN A. PITUCH  
kpituch@co.lucas.oh.us  
Sent via email to D-1's attorney on 2016-02-16 02:38:03 PM:  
ADAM W. LOUKX  
adam.loukx@toledo.oh.gov  
Sent via email to P-3's attorney on 2016-02-16 02:38:03 PM:  
EVY M. JARRETT  
ejarrett@co.lucas.oh.us  
Sent via email to P-1's attorney on 2016-02-16 02:38:03 PM:  
MICHAEL L STOKES  
michael.stokes@ohioattorneygeneral.gov  
Sent via email to P-1's attorney on 2016-02-16 02:38:03 PM:  
FREDERICK D NELSON  
frederick.nelson@ohioattorneygeneral.gov  
**PARTY : P1 - THE STATE OF OHIO EX REL OHIO ATTORNEY GENERAL**
- 2/22/2016 1 Title : PLD:STIPULATION  
OF SUBMISSION FOR FINAL RESOLUTION (BY ALL PARTIES) AND  
PROPOSED ORDER (SUBMITTED BY PLAINTIFFS)  
**PARTY : -**
- 2/23/2016 1 Title : PRO:JUDGMENT ENTRY GRANTED  
This matter comes before the Court on the record as submitted by the parties and on Plaintiffs' request for final declaratory relief and permanent injunction. The Court having reviewed fully the arguments and other submissions in this matter, in keeping with all applicable legal standards, and for reasons including those expressed in its Opinion and Journal Entry of February 12, 2016, determines that Plaintiffs have demonstrated under the applicable law of this State that they are entitled to the relief they seek. Plaintiffs have shown by clear and convincing evidence that injunction is necessary to prevent irreparable harm and that they lack an adequate remedy at law, that no third party will be unjustifiably harmed by permanent injunction, and that the public interest is served by such injunction.  
**JOURNAL ENTRY**  
The Court enters judgment in fav or of Plaintiffs and against Defendants on each count of Plaintiffs' Complaint and GRANTS Plaintiffs' request for declaratory and permanent injunctive relief.  
The Court finds and declares that the provisions of the City of Toledo's newly adopted drug ordinance (the "Sensible Marihuana Ordinance") that establish Toledo Municipal Code Sections 513.15(j), 513.15(e)-(g), 513.5(b)(3) and (d)(3), and 513.03 (to the extent that this Section reaches State felony drug offenses) and in conflict with the general laws of the State of Ohio are unconstitutional, unenforceable, without effect, and null

and void.

The Court hereby permanently enjoins Defendant the City of Toledo and the City of Toledo Law Director from enforcing, observing, or complying with those specified Ordinance provisions as recited above. This Permanent Injunction has immediate effect.

This is a final and appealable Order, and there is no just cause for delay.

/s/ JUDGE DEAN MANDROS

**PARTY :-**

- 2/23/2016 2 Title : CLS:JUDGMENT FOR PLAINTIFF  
**PARTY :-**
- 2/23/2016 4 Title : EVT:J.E. FILED & JOURNALIZED  
E-JOURNALIZED 2/25/16  
PERTAINING TO JUDGMENT GRANTED IN FAVOR OF PLTFs  
Sent via email to P-3's attorney on 2016-02-25 02:12:33 PM:  
KEVIN A. PITUCH  
kpituch@co.lucas.oh.us  
Sent via email to D-1's attorney on 2016-02-25 02:12:33 PM:  
ADAM W. LOUKX  
adam.loukx@toledo.oh.gov  
Sent via email to P-3's attorney on 2016-02-25 02:12:33 PM:  
EVY M. JARRETT  
ejarrett@co.lucas.oh.us  
Sent via email to P-1's attorney on 2016-02-25 02:12:33 PM:  
MICHAEL L STOKES  
michael.stokes@ohioattorneygeneral.gov  
Sent via email to P-1's attorney on 2016-02-25 02:12:33 PM:  
FREDERICK D NELSON  
frederick.nelson@ohioattorneygeneral.gov  
**PARTY : P1 - THE STATE OF OHIO EX REL OHIO ATTORNEY GENERAL**
- 3/24/2016 1 Title : PLD:ENTRY OF APPEARANCE  
OF COUNSEL FOR INTERVENOR CHAD M THOMPSON  
(EDWARD J STECHSCHULTE)  
**PARTY :-**
- 3/24/2016 2 Title : SRV:COPIES MAILED  
EDWARD J STECHSCHULTE ATTORNEY ON RECORD FOR INTERVENOR  
APPELLANT CHAD M THOMPSON. MAILED NOTICE OF APPEAL DOCKETING  
STATEMENT AND PRAECIPE TO:  
FREDERICK D NELSON  
30 EAST BROAD STREET  
17TH FLOOR  
COLUMBUS OHIO 43215  
MICHAEL L STOKES  
ADAM W LOUKX  
ONE GOVERNMENT CENTER  
TOLEDO OHIO 43604  
KEVIN A PITUCH  
711 ADAMS STREET  
2ND FLOOR  
TOLEDO OHIO 43604  
EVY M JARRET  
700 ADAMS STREET  
TOLEDO OHIO 43604  
**PARTY :-**
- 3/24/2016 3 Title : PLD:NOTICE OF APPEAL FILED  
BY INTERVENOR CHAD M THOMPSON  
**PARTY :-**

The proposed ballot language is misleading and does not accurately reflect the substance of the issue to be voted upon. This is secondary, however, to deficiencies in the petition itself which render it invalid.

First:

Initiative petitions may only contain questions which a municipality is authorized by law to control by legislative action. OH Const. Art. II, § 1f; *State ex rel. Rhodes v. Bd. of Elections of Lake Cty.*, 12 Ohio St.2d 4, 230 N.E.2d 347, 348 (1967). A municipality may make the violations of its ordinances misdemeanors. R.C. 715.67. The initiative petition purports, while it prohibits penalties for such violations, to create classes of crimes that are denominated as felonies (and are in fact felonies under Ohio and federal law). See proposed section 513.15 (b)(3), (d)(3), (f)(3) and (j). As Ohio municipalities have no authority by ordinance to enact and punish felonies, the initiative petition is outside the authority granted municipalities under the Ohio Constitution.

Second:

Section 513.15(m) of the proposed ordinance is entirely administrative and not legislative in nature. Section 1f, Article II of the Ohio Constitution authorizes initiative and referendum power only on those questions that municipalities "may now or hereafter be authorized by law to control by legislative action." (Emphasis added.) "Conversely, '[p]ursuant to Section 1f, Article II of the Ohio Constitution, actions taken by a municipal legislative body, whether by ordinance, resolution, or other means, that constitute administrative action, are not subject to [initiative or] referendum proceedings.' *State ex rel. Citizen Action for a Livable Montgomery v. Hamilton Cty. Bd. of Elections*, 115 Ohio St.3d 437, 442-43, 2007-Ohio-5379, 875 N.E.2d 902, 908-09, ¶¶ 34-36 (2007); see also: *Buckeye Community Hope Found. v. Cuyahoga Falls*, 82 Ohio St.3d 539, 697 N.E.2d 181 (1998). The test for determining whether the action of a legislative body is legislative or administrative is whether the action taken is one enacting a law, ordinance or regulation, or executing or administering a law, ordinance or regulation already in existence. *Id.*

513.15(m) prohibits Norwood police officers and their agents from reporting the possession, sale, distribution, trafficking, control, use, or giving away of marijuana or hashish to any authority but the City Attorney, and further prohibits the City Attorney from referring any report to any other authority for prosecution. Under Ohio law, city law directors have broad discretion as to what matters will be prosecuted in Mayor's Court, or referred elsewhere. R.C. 733.53. If enacted, conduct proscribed by the initiative petition will still remain a violation of state and/or federal law. See eg. R.C. 2925.11. By attempting to limit the report of such crimes and thereby the venue in which such crimes are to be tried, the initiative petition is executing or administering state and/or federal laws already in existence.

Elections officials, in this case the Board, "serve as gatekeepers, to ensure that only those measures that actually constitute initiatives or referenda are placed on the ballot." *State ex rel., Walker v Husted* 144 Ohio St.3d 361, 2015-Ohio-3749 at {13}. Boards have discretion to determine which actions are administrative and which are legislative. *Id.*

**From:** Dave Stevenson [<mailto:Dave.Stevenson@hcpros.org>]  
**Sent:** Tuesday, August 16, 2016 9:04 AM  
**To:** Poland, Sherry  
**Subject:** 00496048.docx

Sherry

Here is a clean copy of the opinion in the email I sent yesterday.

David T. Stevenson  
Assistant Prosecuting Attorney  
230 East Ninth Street, Suite 4000  
Cincinnati, Ohio 45202  
(513) 946-3120