

IN THE SUPREME COURT OF OHIO

STATE <i>ex rel.</i> SENSIBLE NORWOOD, <i>et al.</i>	:	Case No. 2016-1277
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Relators,	:	
	:	
v.	:	ANSWER OF RESPONDENT HAMILTON
	:	COUNTY BOARD OF ELECTIONS
HAMILTON COUNTY BOARD OF ELECTIONS	:	
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	:	
Respondent.	:	
	:	
	:	

ANSWER OF RESPONDENT HAMILTON COUNTY BOARD OF ELECTIONS

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Respondent Board of Elections of Hamilton County, Ohio (herein "Board") states as its Answer to Relators' Complaint as follows:

ANSWER

1. Paragraph 1 of the Complaint is a jurisdictional statement that does not appear to require a response from the Board. To the extent that a response is required, the Board admits that Relators seek the relief mentioned in said paragraph and deny that they are entitled to same.

2. In response to paragraph 2 of the Complaint, the Board admits only that an initiative petition proposing an ordinance for the City of Norwood, Ohio was submitted to it for placement on the ballot for the November 8, 2016 General Election.

3. In response to paragraph 3 of the Complaint, the Board admits that Relator is a political action committee and that it submitted an initiative petition to the Board proposing an ordinance for the City of Norwood, Ohio, for placement on the ballot for the November 8, 2016 General Election and denies all remaining allegations in said paragraph for want of knowledge.

4. In response to paragraph 4 of the Complaint, the Board admits that Relator Wolfinbarger is a resident and an elector of the City of Norwood and that she is one of five committee members designated on the initiative petition submitted to the Board and denies any remaining allegations in said paragraph for want of knowledge.

5. In response to Paragraph 5 of the Complaint, the Board admits that it is the Board of Elections of Hamilton County, Ohio, and denies that it has a legal duty to perform the relief requested by Relators.

6. The Board admits the allegations in paragraph 6 and states further that the right of initiative within the City of Norwood is governed by Section 1f of Article II of the Ohio Constitution and the provisions of Sections 731.28 through 731.41 of the Revised Code.

7. In response to paragraph 7 of the Complaint, the Board admits only that it received from the City of Norwood an initiative petition for placement on the ballot for the November 8, 2016 General Election and denies all remaining allegations in said paragraph for want of knowledge.

8. The Board denies the allegations in paragraph 8 for want of knowledge.

9. In response to paragraph 9 of the Complaint, the Board admits only that the initiative petition at issue in this case was timely submitted to the Board with sufficient valid signatures to be placed upon the ballot for the November 8, 2016 General Election.

10. In response to paragraph 10 of the Complaint, the Board admits only that the initiative petition at issue in this case was timely submitted to the Board with sufficient valid signatures to be placed upon the ballot for the November 8, 2016 General Election.

11. In response to paragraph 11 of the Complaint, the Board admits only that the initiative petition at issue in this case was timely submitted to the Board with sufficient valid signatures to be placed upon the ballot for the November 8, 2016 General Election.

12. The Board admits the allegations in paragraph 12 of the Complaint.

13. In response to paragraph 13 of the Complaint, the Board admits only that the initiative petition at issue in this case was timely submitted to the Board with sufficient valid signatures to be placed upon the ballot for the November 8, 2016 General Election and that the documents attached to the Complaint as exhibits say what they say.

14. In response to paragraph 13 of the Complaint, the Board admits that it held a Special Meeting as mentioned in said paragraph and that the Norwood initiative petition was discussed at said meeting. The Board states further that such initiative petitions are considered under the provisions of the Ohio Constitution and the Revised Code of Ohio in addition to R.C. § 731.28.

15. In response to paragraph 15 of the Complaint, the Board admits that upon instruction from the Secretary of State of Ohio, it asked for and received legal advice regarding the initiative petition from the Hamilton County Prosecuting Attorney's office and that the draft minutes of the August 16, 2016 Special Meeting are as stated in Exhibit 3 to the Complaint.

16. The Board admits the allegations in paragraph 16 of the Complaint.

17. In response to paragraph 17 of the Complaint, the Board admits that a Special Meeting of the Board was convened as indicated on August 22, 2016 and that the Board heard statements in support of the initiative petition from Relator Wolfinbarger, attorney M. Brice Keller, and other supporters of the petition. The Board heard also from the City of Norwood in opposition the initiative petition and from counsel for the board. Written statements were submitted by Mr. Keller in support of the petition, by Assistant Law Director Timothy Garry in opposition, and the opinion written by Assistant Prosecutor Stevenson.

18. The Board admits the allegations in paragraph 18 of the Complaint.

19. In response to paragraph 19 of the Complaint, the Board restates its responses to paragraphs 1-18 as if completely rewritten here.

20. The Board denies the allegations in paragraph 20 of the Complaint and states further that it bears an affirmative duty to refrain from placing the initiative at issue on the ballot.

21. The Board denies the allegations in paragraph 21 of the Complaint.

22. The Board denies the allegations in paragraph 22 of the Complaint and states further that it bears an affirmative duty to refrain from placing the initiative at issue on the ballot.

23. In response to paragraph 23 of the Complaint, the Board denies that it acted in a manner in excess of its authority and further states that it bears an affirmative duty to refrain from placing the initiative at issue on the ballot.

24. Paragraph 24 of the Complaint states a legal conclusion that does not call for a response from the board. To the extent that a response is required, the Board denies that it acted in a manner in excess of its authority and further states that it bears an affirmative duty to refrain from placing the initiative at issue on the ballot.

25. The Board denies the allegations in paragraph 25 of the Complaint.

26. The Board denies the allegations in paragraph 26 of the Complaint.

27. Paragraph 27 of the Complaint states a legal conclusion that does not call for a response from the Board. To the extent that a response is required, the Board denies that it acted in a manner in excess of its authority and further states that it bears an affirmative duty to refrain from placing the initiative at issue on the ballot.

28. The Board denies the allegations in paragraph 28 of the Complaint.

29. The Board admits the allegations in paragraph 29 of the Complaint.

30. Paragraph 30 of the Complaint states a legal conclusion that does not call for a response from the Board. To the extent that a response is required, the Board denies that it acted in a manner in excess of its authority and further states that it bears an affirmative duty to refrain from placing the initiative at issue on the ballot.

31. The Board denies the allegations in paragraph 31 of the Complaint.

32. The Board denies the allegations in paragraph 32 of the Complaint.

33. The Board denies the allegations in paragraph 33 of the Complaint.
34. The Board denies the allegations in paragraph 34 of the Complaint.
35. Paragraph 35 is a statement of Relators' future intent that does not call for a response from the Board.

ADDITIONAL DEFENSES

36. The Complaint does not state a cause of action upon which relief may be granted.
37. The Board denies any allegation within the Complaint that is not specifically admitted to be true, whether such allegation is express or implied, contained within a numbered paragraph or elsewhere, or purports to state a cause of action against or demand relief from the Board.
38. The Board acted at all times in the performance of its duties under the Constitution and Revised Code of the State of Ohio.
39. The Board may only certify to the ballot local ordinances propounded by initiative petition that municipalities are authorized by law to control by legislative action.
40. The initiative petition at issue purports to enact felony crimes in excess of the authority granted municipalities.
41. The initiative petition at issue purports to suspend the operation of certain provisions of the Revised Code of Ohio pertaining to marihuana and hashish. The power to suspend laws is granted exclusively to the General Assembly.
42. The initiative petition at issue constitutes administrative action in that it directs how state-certified peace officers in the Norwood Police Department shall perform their duties in enforcing and administering existing state and federal felony and misdemeanor criminal laws related to the possession, sale, distribution, trafficking, control, use, or giving away of marihuana

and hashish by denying them the administrative discretion to refer such crimes for state or federal prosecution.

43. The initiative petition at issue constitutes administrative action in that it directs how the Norwood City Attorney shall perform his duties in enforcing and administering existing state felony and misdemeanor criminal laws related to the possession, sale, distribution, trafficking, control, use, or giving away of marihuana and hashish by denying him the administrative discretion to refer such crimes for state or federal prosecution.

44. The initiative petition at issue constitutes administrative action in that it prohibits the use of criminal or civil asset forfeiture of money, property, weapons or other contraband that are proceeds of, or used in, the violation of existing state and federal felony and misdemeanor criminal laws related to the possession, sale, distribution, trafficking, control, use, or giving away of marihuana and hashish.

45. The initiative petition at issue denies the City Attorney the administrative discretion granted by law to determine whether a violation of the Norwood General Offenses related to the possession, sale, distribution, trafficking, control, use, or giving away of marihuana and hashish Code will be prosecuted in the Norwood Mayor's Court or in the appropriate state or federal court under the corresponding state or federal law.

46. Relators' Complaint is barred by laches.

47. Service of process of the Complaint was not made in accordance with S.Ct.Prac.R. 12.08(C).

WHEREFORE, having fully answered, Respondent Board of Elections of Hamilton County, Ohio, demands that Relators' Complaint be dismissed with prejudice at Relators' costs and an order for such other relief as may be appropriate.

Respectfully submitted,

JOSEPH T. DETERS (0012084)
PROSECUTING ATTORNEY
HAMILTON COUNTY, OHIO

By:

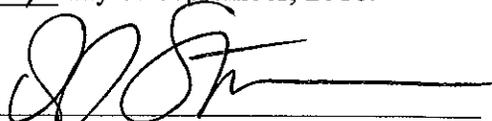


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Counsel for Respondent Hamilton County Board
of Elections

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Answer was served upon counsel for Relators by facsimile transmission and email on this 7 day of September, 2016.



David T. Stevenson (0030014)