

**IN THE SUPREME COURT OF OHIO**

STATE *ex rel.* SENSIBLE NORWOOD  
and AMY G. WOLFINBARGER

Relators,

v.

HAMILTON COUNTY BOARD OF  
ELECTIONS

Respondent.

\* Case No: 2016-1277  
\*  
\* ORIGINAL ACTION IN MANDAMUS  
\* EXPEDITED ELECTION CASE  
\* PURSUANT TO S.CT.PRAC.R. 12.08  
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**EVIDENCE OF RELATORS SENSIBLE NORWOOD AND AMY G.  
WOLFINBARGER**

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**TABLE OF CONTENTS**

***Exhibit No.***

Copy of the pre-circulation certified “Sensible Marihuana Initiative Petition” for a proposed Ordinance to decriminalize marihuana in Norwood ..... 1

Copy of February 22, 2016 cover letter accompanying pre-circulation filing ..... 2

Copy of July 20, 2016 cover letter accompanying filing of twenty-one petitions ..... 3

Copy of August 1, 2016 cover letter from Norwood City Auditor to Respondent ..... 4

Copy of August 2, 2016 cover letter from Norwood City Auditor to Respondent ..... 5

Copy of draft of August 16, 2016 Board of Elections meeting minutes ..... 6

Copy of transcript of August 16, 2016 Board of Elections meeting ..... 7

Copy of draft of August 22, 2016 Board of Elections meeting minutes ..... 8

Copy of transcript of August 22, 2016 Board of Elections meeting ..... 9

Respectfully submitted,



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**CERTIFICATE OF SERVICE**

I certify that a copy of the foregoing Evidence of Relators Sensible Norwood and Amy G. Wolfinbarger was served by e-mail at dave.stevenson@hcpros.org and cooper.bowen@hcpros.org this 12th day of September, 2016, upon the following counsel:

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# **EXHIBIT 1**

**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:

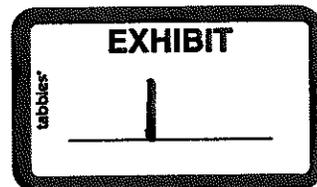
Section 1. The Norwood Municipal code shall be and is hereby amended and supplemented by the repeal of the Norwood Municipal Code Section 501.99, Section 513.01, Section 513.02, Section 513.03, Section 513.05, Section 513.06, Section 513.08, Section 513.12, Section 333.01 be and the same is hereby repealed.

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



DIANE SHULER  
Notary Public, State of Ohio  
My Commission Expires  
Page 1 of 16 on 5/2017

*SWORN AND SUBSCRIBED IN MY  
PRESENCE THIS 24th DAY OF FEBRUARY  
2015*  
*Diane Shuler*



*Amy Waynbarger*  
*2/24/15*

## **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 Wolfbarger  
2412 Kenilworth Avenue #2  
Cincinnati Ohio 45212

Amanda R. Wolfbarger  
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
1				
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#	Signature	Printed Name	Residence in Norwood, OH Street and Number	Date
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40				

**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**

# **EXHIBIT 2**

**COPY**

February 22, 2016

Jim Stith, Auditor  
City of Norwood  
4645 Montgomery Road  
Norwood, Ohio 45212

Amy Wolfenbarger  
Sensible Norwood  
2412 Kenilworth Avenue #2  
Norwood, Ohio 45212  
[amy.sensiblenorwood@gmail.com](mailto:amy.sensiblenorwood@gmail.com)

RECEIVED  
FEB 23 2016

Dear Mr. Stith,

As per Ohio Constitution Article II Section 1f: we submit to you The Norwood Sensible Marihuana ordinance

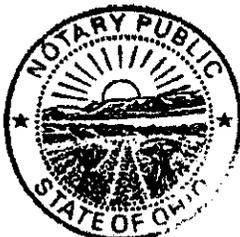
Per Ohio Revised Code 731.32, Sensible Norwood is submitting to Norwood City Auditor this certified original initiative petition, to bring before Norwood voters In the November 2016 election.

Respectfully,

*Amy N. Wolfenbarger*  
Amy Wolfenbarger  
Founder, Sensible Norwood

*SWORN AND SUBSCRIBED IN MY PRESENCE  
THIS 24th DAY OF FEBRUARY, 2016*

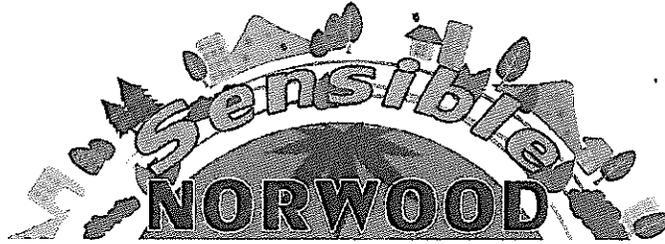
*Diane Shuler*



**DIANE SHULER**  
Notary Public, State of Ohio  
My Commission Expires  
March 5, 2017



# **EXHIBIT 3**



Attn: Norwood City Auditor/City of Norwood

To Whom It May Concern,

On behalf of The Sensible Norwood Decriminalization Initiative, please accept today, Wednesday, July 20<sup>th</sup> 2016, these 21 petitions contained herein. Enclosed are 645 signatures of Norwood City citizens in support of the Sensible Norwood – Sensible Norwood Marihuana Ballot Initiative, for the November 8<sup>th</sup>, 2016 General Election.

Regards,  
Amy Wolfinbarger – Founder  
Sensible Norwood  
513-344-6700  
[amy.sensiblenorwood@gmail.com](mailto:amy.sensiblenorwood@gmail.com)

RECEIVED

JUL 20 REC'D

BY: Gene M. Lute



# **EXHIBIT 4**



James P. Stith II  
City Auditor  
August 1, 2015

Marcus Patterson, MBA  
Deputy Auditor

By hand delivery

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

Re: Enclosed Certified Copy and Petitions

Dear Members of the Board:

Enclosed please find a copy of a document captioned "Initiative Petition" which, pursuant to Ohio Revised Code §731.28, the undersigned authorized signatory for the Auditor of the City of Norwood attests is a true and exact reproduction of the original proposed ordinances or other measures, which were filed in the Auditor's office by Amy Wolfinbarger, on behalf of a group she identified as "Sensible Norwood" on Wednesday, February 24, 2016. Also enclosed are all the original petitions which were filed in our office with the Initiative Petitions on Wednesday, July 20, 2016.

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,

AUDITOR, CITY OF NORWOOD

By: Jane M. Grote

pc: Keith D. Moore, Esq. (w/o enclosures)  
Timothy A. Garry, Jr., Esq. (w/o enclosures)

*jane.grote@norwood-Ohio.com*

*Jane Grote*

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



"Gem of The Highlands"

# **EXHIBIT 5**



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.

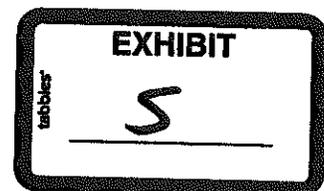
Sincerely,

AUDITOR, CITY OF NORWOOD

By: Jane M. Lute

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

*"Gem of The Highlands"*



# **EXHIBIT 6**

**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**

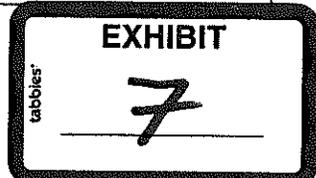
# **EXHIBIT 7**

1 HAMILTON COUNTY BOARD OF ELECTIONS  
 2 AUGUST 16, 2016 BOARD MEETING  
 3 824 BROADWAY, THIRD FLOOR  
 4 COMMENCING AT 10:30 A.M.  
 5  
 6  
 7 APPEARANCES:  
 8 TIMOTHY M. BURKE, ESQ., CHAIRMAN,  
 9 CALEB FAUX  
 10 CHARLES H. GERHARDT, III, ESQ.  
 11 ALEX M. TRIANTAFILOU, ESQ.  
 12 DAVID STEVENSON, ESQ.  
 13 SHERRY POLAND, DIRECTOR  
 14 SALLY KRISSEL, DEPUTY DIRECTOR  
 15  
 16  
 17  
 18  
 19  
 20  
 21  
 22  
 23  
 24  
 25

1 you have a summary of the Staff  
 2 recommendation for the provisional  
 3 ballots cast in August 2016 Special  
 4 Election. There were a total of 42  
 5 provisional ballots issued. Bipartisan  
 6 teams conducted the provisional  
 7 verification process according to  
 8 Secretary of State directive and policy.  
 9 And it's the recommendation of Staff that  
 10 30 of those provisional ballots be  
 11 accepted for counting.  
 12 MR. FAUX: Mr. Chairman, a  
 13 question. Do we know out of the folks  
 14 who, the 11 folks here listed as not  
 15 registered, how many of those are folks  
 16 who had been registered at one time but  
 17 were removed from the rolls as part of  
 18 the supplemental process?  
 19 MS. POLAND: We don't have that  
 20 information now, but that's information  
 21 we can get --  
 22 MR. FAUX: Just curious.  
 23 MS. POLAND: -- to supply to the  
 24 Board.  
 25 CHAIRMAN BURKE: Any other

1 MORNING SESSION, August 16, 2016  
 2 CHAIRMAN BURKE: We will call this  
 3 meeting of the Hamilton County Board of  
 4 Elections to order. Proper notice has  
 5 been given as required by the Ohio  
 6 Sunshine Act.  
 7 The first item on the Agenda is the  
 8 approval of the Board minutes from the  
 9 August 1st and 2nd meeting.  
 10 MR. TRIANTAFILOU: I'll move  
 11 approval.  
 12 MR. FAUX: I'll second.  
 13 CHAIRMAN BURKE: Any discussion on  
 14 the minutes?  
 15 Those in favor of approving the  
 16 minutes signify by saying aye.  
 17 MR. GERHARDT: Aye.  
 18 MR. TRIANTAFILOU: Aye.  
 19 MR. FAUX: Aye.  
 20 CHAIRMAN BURKE: Opposed?  
 21 Motion carries.  
 22 The next item on the Agenda is the  
 23 August 2nd Special Election Provisional  
 24 Ballot Review.  
 25 MS. POLAND: Yes. In your packets

1 questions or comments?  
 2 Is there a motion to approve the  
 3 report?  
 4 MR. TRIANTAFILOU: I will move we  
 5 approve the summary of Staff's  
 6 recommendation for the Provisional Ballot  
 7 Report. I move we approve it.  
 8 MR. FAUX: I'll second.  
 9 CHAIRMAN BURKE: Any further  
 10 discussion?  
 11 One quick question. The one voter  
 12 whose ballot had been rejected because he  
 13 had voted in the wrong precinct and wrong  
 14 location.  
 15 MS. POLAND: That's correct.  
 16 CHAIRMAN BURKE: Are they now  
 17 registered in the correct location, or do  
 18 we even know?  
 19 MS. POLAND: Their address will be  
 20 updated to the address that was provided  
 21 on the provisional envelope.  
 22 CHAIRMAN BURKE: On the provisional  
 23 envelope, okay. Anything else?  
 24 Those in favor of the motion to  
 25 approve the report signify by saying aye.



1 MR. GERHARDT: Aye.  
 2 MR. TRIANTAFILOU: Aye.  
 3 MR. FAUX: Aye.  
 4 CHAIRMAN BURKE: Opposed?  
 5 Motion carries.  
 6 The next item on the Agenda is the  
 7 Special Election Ballot Remakes, if there  
 8 are any?  
 9 MS. POLAND: There are no ballots  
 10 that require remake.  
 11 CHAIRMAN BURKE: Good. The next  
 12 item on the Agenda then is the  
 13 Certification of Questions and Issues for  
 14 the November 8, General Election Ballot.  
 15 And we have a list that is single spaced  
 16 and a page-and-a-half long.  
 17 MS. POLAND: That's correct. It  
 18 was all the questions and issues that  
 19 have been filed to date with the Board.  
 20 Staff is asking that you separate the  
 21 City of Norwood proposed's ordinance  
 22 regarding marijuana, and handle that  
 23 question/issue separately from the others  
 24 listed on the report.  
 25 MR. FAUX: Out of curiosity, when

1 will they assign issue numbers to these?  
 2 MS. POLAND: After four p.m. on  
 3 September 9th. September 9th is the  
 4 deadline for Charter Amendments to be  
 5 filed. So we have to wait until that  
 6 very last deadline. And we will post  
 7 those issue numbers on the website after  
 8 four p.m.  
 9 CHAIRMAN BURKE: Are there any  
 10 questions regarding the list of issues in  
 11 front of us?  
 12 Otherwise, accepting Staff's  
 13 recommendations, is there a motion to  
 14 certify to the ballot all of those issues  
 15 on this list, except for the City of  
 16 Norwood's proposed ordinance dealing with  
 17 marijuana?  
 18 MR. TRIANTAFILOU: I'll make the  
 19 motion.  
 20 MR. FAUX: I'll second.  
 21 CHAIRMAN BURKE: Any discussion?  
 22 Those in favor signify by saying  
 23 aye.  
 24 MR. GERHARDT: Aye.  
 25 MR. TRIANTAFILOU: Aye.

1 MR. FAUX: Aye.  
 2 CHAIRMAN BURKE: Opposed?  
 3 Motion carries.  
 4 The next item on the Agenda then I  
 5 guess is the Norwood question.  
 6 MS. POLAND: Yeah, that's correct.  
 7 We received an initiative petition  
 8 regarding the City of Norwood's proposed  
 9 ordinance. The ballot language that was  
 10 proposed in the ordinance was submitted  
 11 to the Secretary of State's Office.  
 12 We received that language back with  
 13 instructions from the Secretary to  
 14 consult our local prosecutor. We then  
 15 sent the packet of information to our  
 16 Prosecutor who gave the opinion that is  
 17 also found in your packet.  
 18 CHAIRMAN BURKE: And this opinion,  
 19 I take it, is now a public record?  
 20 MR. STEVENSON: I would assume it  
 21 is. And I would suggest that it be  
 22 distributed to the proponents of the  
 23 petition.  
 24 CHAIRMAN BURKE: And I gather we  
 25 have a copy of the petition here?

1 UNIDENTIFIED SPEAKER: We are not  
 2 aware of the opinion, so we would like a  
 3 copy of that, please.  
 4 MR. TRIANTAFILOU: The only thing I  
 5 would like to say, just to protect  
 6 ourselves in the future, it's probably  
 7 attorney/client communication that we can  
 8 waive. I'm happy to waive that. I  
 9 wonder if we all ought to go through the  
 10 steps so every legal opinion is  
 11 automatically waived?  
 12 MR. STEVENSON: Under Ohio law,  
 13 that would be attorney/client privilege.  
 14 MR. TRIANTAFILOU: And I'm willing  
 15 to waive.  
 16 CHAIRMAN BURKE: I'll tell you, I  
 17 declined to give it this morning to WVXU  
 18 until we had a determination on this this  
 19 morning. So I would like to see it  
 20 waived so we can provide it.  
 21 MR. TRIANTAFILOU: Do you have any  
 22 objection to that?  
 23 MR. STEVENSON: No, no.  
 24 MR. TRIANTAFILOU: I mean, again,  
 25 for the limited purposes of this, I'll

1 make a motion that we waive the privilege  
2 as it relates to this one opinion from  
3 our Prosecutor so that we can have  
4 disclosure of the legal opinion.

5 MR. FAUX: I'll second.

6 MR. STEVENSON: For the record, I  
7 sent it over in an e-mail and recognized  
8 that --

9 UNIDENTIFIED SPEAKER: Could you  
10 speak up, please?

11 MR. TRIANTAFILOU: He just told us  
12 that there were some typos in the  
13 original e-mails, and that he's corrected  
14 those typos, so we can now distribute it  
15 free of any typographical errors.

16 CHAIRMAN BURKE: Do we have a copy  
17 we can provide the supporters right now?  
18 We have got a couple, Debbie has a couple  
19 of extra copies here.

20 Dave, do you want to summarize just  
21 for everybody's --

22 MR. TRIANTAFILOU: You have a  
23 motion --

24 CHAIRMAN BURKE: I'm sorry, thank  
25 you.

1 language and I agreed with the Secretary  
2 of State's assessment that it does not  
3 accurately reflect the issue that needed  
4 to be voted on.

5 And, in addition, I looked at the  
6 substance of the petition, and what I  
7 determined is that there are some  
8 deficiencies in the petition that  
9 prohibited it being placed on the ballot,  
10 or should prohibit it to be placed on the  
11 ballot.

12 And there are two primary issues.  
13 First of all, municipalities are limited  
14 in what they can do by initiative and  
15 referendum, the matters that  
16 municipalities may exercise under their  
17 legislative authority granted by the  
18 State of Ohio.

19 In the first instance we have in  
20 the petition, the petition purports to  
21 designate certain crimes as felonies,  
22 which are not included currently in the  
23 Norwood cut by ordinances. And  
24 municipalities are limited to making  
25 violations of their ordinances and

1 MR. TRIANTAFILOU: -- that hasn't  
2 been seconded.

3 CHAIRMAN BURKE: I'm sorry. There  
4 is a motion to waive the privilege on  
5 this information. Is there any  
6 discussion on the motion?

7 MR. FAUX: Second.

8 CHAIRMAN BURKE: It's seconded.  
9 Those in favor signify by saying  
10 aye.

11 MR. GERHARDT: Aye.

12 MR. TRIANTAFILOU: Aye.

13 MR. FAUX: Aye.

14 CHAIRMAN BURKE: Opposed?

15 Motion carries.

16 You want to summarize, Dave?

17 MR. STEVENSON: Sure. The ballot  
18 language, as Sherry indicated, has been  
19 rejected by the Secretary of State with  
20 the instructions that they consult the  
21 Prosecutor's Office. And Sherry sent  
22 that -- I don't know whether I'm on or  
23 off? There you go.

24 And Sherry sent it over to me  
25 yesterday, and I looked at the ballot

1 misdemeanors.

2 So the attempt to bootstrap  
3 felonies into the Norwood code for  
4 treatment under the petition, I think is  
5 in excess of the authority granted by the  
6 Ohio Constitution with respect to an  
7 initiative referenda.

8 The second issue that I thought,  
9 and perhaps the most important issue, is  
10 that it currently directs -- well, it  
11 directs the police department to only  
12 refer marijuana charges, including  
13 felonies, that would be felonies under  
14 state and federal law, to the city  
15 attorney, and prohibits the city attorney  
16 from referring those matters to  
17 prosecution. And I believe that's an  
18 administrative function, and not a  
19 legislative function. And the power of  
20 an initiative is only permitted as to  
21 legislative matters and not  
22 administrative matters. That's my  
23 opinion.

24 CHAIRMAN BURKE: Obviously, the  
25 proponents are only now hearing all of

1 this.

2 MR. STEVENSON: That's correct.

3 CHAIRMAN BURKE: If we act today --

4 should we act today, or should we afford

5 some opportunity for them to be heard and

6 perhaps represented by counsel?

7 MR. STEVENSON: I think that that

8 would be the better course of action, to

9 at least set this over for a couple of

10 days so they can consult with a lawyer,

11 if they choose to do so, and make a case

12 if they want to do that.

13 MR. TRIANTAFILOU: What's our

14 deadline?

15 MS. POLAND: Monday.

16 MR. TRIANTAFILOU: I think we

17 should give them more time. It's just a

18 calendar question for me, how about

19 Friday. Other than that --

20 CHAIRMAN BURKE: My problem is I'm

21 out on Thursday. I'm doing an election

22 summary on Thursday up in Ohio.

23 MR. TRIANTAFILOU: I can do

24 something Friday morning relatively

25 early. So I don't know if that works for

1 long as I'm finished by 9:15 a.m. on

2 Friday. I could do something Friday.

3 CHAIRMAN BURKE: I just agreed to

4 do an 8:40 on KRC on Friday morning, that

5 screws that up, unfortunately.

6 MR. TRIANTAFILOU: Saturday works

7 or --

8 MS. POLAND: Sally and I could skip

9 the District meeting Monday.

10 CHAIRMAN BURKE: It sounds like

11 you're looking for an excuse to skip the

12 District meeting on Monday.

13 MS. KRISSEL: Well, we have other

14 things that we wanted to be back here for

15 on Monday as well.

16 MR. TRIANTAFILOU: I'm free Monday.

17 CHAIRMAN BURKE: Does Monday work?

18 UNIDENTIFIED SPEAKER: I'm not --

19 do we not get an opportunity to address

20 today? Is that -- I mean, this is a time

21 sensitive issue.

22 UNIDENTIFIED SPEAKER: He's giving

23 us an opportunity --

24 CHAIRMAN BURKE: It's time

25 sensitive for us, obviously. We have to

1 everybody?

2 MR. FAUX: Could we do this on

3 Monday?

4 MS. POLAND: Sally and I are both

5 scheduled to be at a district meeting,

6 but we could cancel that.

7 MR. TRIANTAFILOU: Dare I suggest

8 we do a Saturday?

9 MR. STEVENSON: I don't see a

10 problem with that.

11 MR. TRIANTAFILOU: No problem with

12 Saturday?

13 CHAIRMAN BURKE: And I could do it

14 on Saturday as well. My preference would

15 be to do it earlier rather than later.

16 MR. TRIANTAFILOU: How does that

17 create a hardship to Staff, building

18 access?

19 MS. POLAND: I think that's really

20 just the Board secretaries that would be

21 the only person, Sally and I, we would

22 need someone at the front desk.

23 MS. KRISSEL: We would need to be

24 open.

25 MR. TRIANTAFILOU: I can do it as

1 make the decision by this coming Monday.

2 UNIDENTIFIED SPEAKER: Oh.

3 UNIDENTIFIED SPEAKER: Okay,

4 Monday.

5 UNIDENTIFIED SPEAKER: We could do

6 Monday.

7 CHAIRMAN BURKE: Alex is indicating

8 if you want to be heard today, we can do

9 it without counsel.

10 UNIDENTIFIED SPEAKER: No, no.

11 UNIDENTIFIED SPEAKER: Yes, we will

12 wait.

13 CHAIRMAN BURKE: Monday work for

14 everybody?

15 MR. GERHARDT: Monday morning?

16 MR. TRIANTAFILOU: Monday morning.

17 MR. FAUX: Me, too.

18 CHAIRMAN BURKE: All right.

19 UNIDENTIFIED SPEAKER: What time?

20 CHAIRMAN BURKE: Eight-thirty.

21 MR. TRIANTAFILOU: Eight-thirty

22 works great for me.

23 UNIDENTIFIED SPEAKER: Would that

24 be in the same location here?

25 CHAIRMAN BURKE: Yes, it will be.

1 UNIDENTIFIED SPEAKER: Okay.  
 2 CHAIRMAN BURKE: So we will defer  
 3 action on this matter until Monday.  
 4 MS. POLAND: Yes.  
 5 CHAIRMAN BURKE: And we will move  
 6 to the next item on the Agenda. And  
 7 that's Certification of Judicial  
 8 Candidates to fill the Unexpired Term  
 9 created by the retirement of Judge Nadine  
 10 Allen.  
 11 MS. POLAND: Yes. The Board  
 12 received two certificates of nominations  
 13 from each major political party, and  
 14 those candidates are listed in your  
 15 packet.  
 16 MR. TRIANTAFILOU: I move we  
 17 certify both Judge Lisa Allen and  
 18 Mr. Michael Mann to the ballot for 2016.  
 19 CHAIRMAN BURKE: Is there a second?  
 20 MR. FAUX: I'll second.  
 21 CHAIRMAN BURKE: Any discussion?  
 22 Those in favor signify by saying  
 23 aye.  
 24 MR. GERHARDT: Aye.  
 25 MR. TRIANTAFILOU: Aye.

1 interest of full disclosure, I am the Law  
 2 Director in the Village of Evendale. I  
 3 am familiar with this situation,  
 4 obviously, and I have discussed it with  
 5 our counsel. I don't think Ms. Robertson  
 6 would be heart broken by not having to  
 7 run this November.  
 8 MR. TRIANTAFILOU: What is your  
 9 advice?  
 10 MR. STEVENSON: My advice is to  
 11 reject the petition. Municipal elections  
 12 are held only on odd number years and the  
 13 statute is specific that general election  
 14 for municipal offices be held in odd  
 15 number years.  
 16 I frankly expected there to be at  
 17 least another follow-up for Evendale and  
 18 a couple for Springdale, because they had  
 19 the same situation going on. But Ms.  
 20 Smiley-Robertson is the incumbent, I  
 21 think she probably took those steps to  
 22 protect herself in the event somebody  
 23 else filed.  
 24 The bottom line is it's been my  
 25 opinion all along, and I shared that with

1 MR. FAUX: Aye.  
 2 CHAIRMAN BURKE: Opposed?  
 3 Motion carries.  
 4 The next item on the Agenda is a  
 5 discussion of the filing by one candidate  
 6 in the Village of Evendale for the  
 7 unexpired term on Village Council.  
 8 MS. POLAND: That's correct. And  
 9 the petition is in the folder in front of  
 10 you. We received the petition that was  
 11 filed by Carolyn Smiley-Robertson. This  
 12 was for a vacancy that was created on  
 13 Evendale's City Council in September of  
 14 2015. That vacancy was created too late  
 15 to hold the election in November of '15.  
 16 MR. FAUX: There's been some  
 17 question as to when the election  
 18 should -- for that unexpired term, should  
 19 be held; this November of 2016 or next  
 20 2017. And I have attached the relevant  
 21 section of the Evendale Charter, Section  
 22 7 in your packet as well as consulted  
 23 with the Prosecutor who cited 3501.02  
 24 Section D for your review.  
 25 CHAIRMAN BURKE: Just in the

1 Springdale and I shared that with  
 2 Mr. Burke as the Law Director for  
 3 Evendale, but no municipal elections are  
 4 to be held in even numbered years.  
 5 MR. TRIANTAFILOU: Is there a  
 6 measure on the ballot to fix this, I  
 7 thought, or not?  
 8 CHAIRMAN BURKE: Yes, there is.  
 9 Among the six Evendale Charter Amendments  
 10 is one that would clarify this provision  
 11 and make it clear that it's the next  
 12 Municipal General Election.  
 13 MR. TRIANTAFILOU: I don't want to  
 14 put you on the spot. Is it fair to say  
 15 the will of Evendale would be to -- or at  
 16 least the people passing the potential  
 17 Charter Amendment would be it not be held  
 18 this year?  
 19 MR. STEVENSON: I think the will of  
 20 Evendale is -- I looked at Evendale's  
 21 Charter, and under the current Charter I  
 22 think the election needs to be held next  
 23 year. But that is -- they had omitted  
 24 some language from their Charter that  
 25 would have clarified that, and I think

1 they have taken the steps to try to fix  
 2 that as Springdale is about to do.  
 3 MR. TRIANTAFILOU: Same thing.  
 4 CHAIRMAN BURKE: Having talked with  
 5 Springdale's counsel, I think they are  
 6 going to do precisely the same thing.  
 7 MR. TRIANTAFILOU: It's your  
 8 opinion we should reject the petition for  
 9 this year as well?  
 10 MR. STEVENSON: Correct, it is.  
 11 MR. TRIANTAFILOU: I'll make a  
 12 motion that we follow the advice of  
 13 counsel and reject the petition for  
 14 election year 2016.  
 15 MR. FAUX: I'll second.  
 16 CHAIRMAN BURKE: Just for the  
 17 record, I am not going to vote on this  
 18 one. But I will call the question,  
 19 unless there are any other questions or  
 20 discussion?  
 21 If not, those in favor signify by  
 22 saying aye.  
 23 MR. GERHARDT: Aye.  
 24 MR. TRIANTAFILOU: Aye.  
 25 MR. FAUX: Aye.

1 of Women Voters. And we have had some  
 2 calls into our office about problems that  
 3 people have with finding their names with  
 4 the electronic poll book system. And  
 5 these people -- I have already discussed  
 6 it with Staff a little bit; the people  
 7 have double names, either two names --  
 8 say, for example, I, which have my maiden  
 9 name in the middle and/or they are  
 10 hyphenated names. This would refer to  
 11 both men and women.  
 12 And apparently the system makes it  
 13 difficult for the workers to find it  
 14 using the e-Poll Book. And because of  
 15 the way it is listed in their system, I  
 16 don't know, our suggestion is that it  
 17 needs to be reprogrammed, but I don't  
 18 know if that is possible; but, secondly,  
 19 maybe some training with the workers to  
 20 address this specifically. You know, if  
 21 we get samples when we're working with  
 22 the e-Poll Book and we're given samples  
 23 of names of people to put in, John Doe,  
 24 or whatever, apparently it doesn't come  
 25 up right away, you have to do several

1 CHAIRMAN BURKE: I would like that  
 2 to be reported as not voting.  
 3 (Chairman Burke abstained from  
 4 voting.)  
 5 CHAIRMAN BURKE: All right. The  
 6 next item on the Agenda then is to  
 7 certify the results of the August 2nd  
 8 Special Election.  
 9 MS. POLAND: At this point, we're  
 10 waiting for the results to be tabulated.  
 11 They should be out any minute.  
 12 Chuck, would you mind checking on  
 13 them?  
 14 I also want to remind --  
 15 CHAIRMAN BURKE: Because they  
 16 haven't yet counted the provisional  
 17 ballots?  
 18 MS. POLAND: Exactly. The  
 19 provisionals you just voted to accept and  
 20 count. They are tabulating those now.  
 21 CHAIRMAN BURKE: While we are  
 22 waiting, any comments or questions from  
 23 the public?  
 24 Yes, ma'am.  
 25 MS. KOCOSHIS: I'm from the League

1 more steps. And if that would help the  
 2 poll workers, I think that would be a  
 3 suggestion to increase the training. Now  
 4 I think -- I would anticipate your  
 5 questions by saying, I have no idea how  
 6 many people this would apply to across  
 7 the County.  
 8 CHAIRMAN BURKE: Staff?  
 9 MS. POLAND: Finding a voter in the  
 10 e-Poll Book with a hyphenated name is no  
 11 greater of a problem in our opinion than  
 12 the paper book poll. Workers also have  
 13 difficulty finding voters with hyphenated  
 14 names in the paper poll book as well, so  
 15 it's a training issue. So there's  
 16 nothing really -- no need for the e-Poll  
 17 Book to be reprogrammed, it is of a  
 18 training issue that we will work with the  
 19 poll worker on.  
 20 MS. KRISSEL: Additionally, people's  
 21 names are input the way they selected on  
 22 their registration forms, so some people  
 23 may select a double last name. Some  
 24 people may suggest a double last name  
 25 with a hyphen. Some people use their

1 double last name as their middle name.  
 2 So we put it in exactly how the voter  
 3 requests it.  
 4 MS. KOCOSHIS: And we had that  
 5 discussion already, the league members  
 6 with the Staff. And just would make a  
 7 suggestion that maybe some additional  
 8 training would be helpful, because  
 9 people, it's -- people, they are given  
 10 the opportunity to vote a provisional  
 11 ballot. They are registered and have  
 12 lived in the same location for years and  
 13 years, and it is not really acceptable.  
 14 CHAIRMAN BURKE: I understand the  
 15 issue. I think I heard Sherry say  
 16 exactly what you're asking for, that  
 17 additional training.  
 18 UNIDENTIFIED SPEAKER: Right, I  
 19 understand. I had another question. I  
 20 understand you're sending out the request  
 21 for absentee ballots from the Hamilton  
 22 County Board of Elections; is that  
 23 correct?  
 24 CHAIRMAN BURKE: That's correct.  
 25 It's the Secretary of State's Office that

1 CHAIRMAN BURKE: Yes, in the back.  
 2 MS. ROSE: Hi, I'm Diana Rose. I'm  
 3 from Hamilton County DD Services. And I  
 4 have seen several articles about voting  
 5 that really disturbed me, and I don't  
 6 really understand, but all about taking  
 7 names off books for people who have not  
 8 voted in recent elections. And is that  
 9 accurate or how should I state that?  
 10 CHAIRMAN BURKE: Somebody want to  
 11 describe that, how that process works?  
 12 MS. POLAND: Sure. If a voter does  
 13 not have any activity in a two-year  
 14 period, so a voter doesn't vote; they  
 15 don't sign a petition; they haven't  
 16 updated or changed their name and  
 17 address; no activity within a two-year  
 18 period, the Board of Elections sends them  
 19 a confirmation notice, basically, just  
 20 asking a voter, please confirm that  
 21 you're still living at this address, or  
 22 provide us with your updated address.  
 23 If that notice is responded to by  
 24 the voter, nothing more happens, the  
 25 voter is then moved into active status.

1 will be sending them out.  
 2 UNIDENTIFIED SPEAKER: Or they come  
 3 from them, not from you?  
 4 CHAIRMAN BURKE: Correct.  
 5 UNIDENTIFIED SPEAKER: Do you know  
 6 when that date would be?  
 7 MS. POLAND: The first mailing is  
 8 going out just after Labor Day.  
 9 UNIDENTIFIED SPEAKER: Thank you  
 10 very much.  
 11 MS. POLAND: And doing the second  
 12 mailing, based on those who registered in  
 13 between then and the close of  
 14 registration, the second week of October,  
 15 I believe.  
 16 UNIDENTIFIED SPEAKER: Thank you  
 17 very much.  
 18 CHAIRMAN BURKE: Is it accurate,  
 19 though, that they will be -- the  
 20 Secretary of State's Office will only be  
 21 sending those requests to active voters?  
 22 MS. POLAND: Active voters and  
 23 inactive voters that participated in  
 24 either the 2008 or 2012 Presidential  
 25 Elections.

1 when the confirmation notice is sent,  
 2 they are moved to inactive status. They  
 3 can still cast a regular ballot when they  
 4 appear to vote, they don't vote  
 5 provisionally.  
 6 It basically starts a clock then in  
 7 another four years after that, so a total  
 8 of six years. In four years after that  
 9 if the voter still has no activity;  
 10 hasn't signed a petition; didn't respond  
 11 to the confirmation notice, then the  
 12 voter is canceled from the rolls. And  
 13 that process did not take place this  
 14 year. So there have not been voters  
 15 canceled in 2016, based upon that  
 16 process.  
 17 MS. ROSE: These where articles  
 18 that say people have been removed.  
 19 MS. POLAND: They are referring to  
 20 prior years.  
 21 MS. ROSE: Oh, okay.  
 22 CHAIRMAN BURKE: Nobody will be  
 23 removed on this basis between now and the  
 24 November Election.  
 25 MS. ROSE: Okay.

1 CHAIRMAN BURKE: And if people vote  
2 in the November Election, even if they  
3 are on inactive status, they will then be  
4 restored to active status and the clock  
5 will start over again.

6 There is a case currently pending  
7 in the Sixth Circuit Court of Appeals  
8 here in Cincinnati that deals with  
9 precisely this issue, but it's just been  
10 argued. There may very well be a  
11 decision issued by the Court prior to the  
12 Election, but we don't know that for  
13 certain.

14 MS. ROSE: Okay.

15 MR. FAUX: I have a question. Just  
16 to be clear, there was a pretty  
17 substantial number of people removed from  
18 the rolls that voted in 2013 and '15, if  
19 I am not mistaken; is that correct?

20 MS. POLAND: I do not have the  
21 numbers. But we did conduct that  
22 process, yes, in '13 and '15 and '14.

23 MR. FAUX: The question I had is  
24 the Secretary of State released a  
25 statement earlier, maybe a month or two

1 by the Secretary of State's Office to the  
2 press, is what I'm referring to. We have  
3 not heard anything more about that?

4 MS. POLAND: No.

5 CHAIRMAN BURKE: Any other  
6 questions or comments?

7 MS. POLAND: They indicated they  
8 need a few more minutes.

9 MS. KOCOSHIS: I have one more  
10 comment. What the Women's League of  
11 Voters is suggesting is that people look  
12 at what you can do on the website to make  
13 sure that your registration is  
14 up-to-date. And the League offers that  
15 help for you, if you call us, we will  
16 help you and make sure your registration  
17 is updated. You can do it yourself.

18 CHAIRMAN BURKE: And it's easy to  
19 do on the website.

20 MS. KOCOSHIS: Yes.

21 CHAIRMAN BURKE: Any further  
22 updates on the Norwood location?

23 MS. POLAND: We're making progress.  
24 We continue -- Staff continues to meet  
25 with our construction team and vendors

1 ago, partly in response to the lawsuit  
2 Tim was just referring to. And he said  
3 in his statement that what he intended to  
4 do was to mail a letter to any voter in  
5 Ohio who is in confirmation status, as I  
6 understood it, right? Asking them to  
7 update their registration and make sure  
8 it was in good standing.

9 But he also said that what -- he  
10 had a list of people that he believed  
11 were eligible to be registered voters in  
12 the State of Ohio, but who were not --  
13 and that it was his intention to mail a  
14 letter to those people offering them the  
15 opportunity to become registered. But I  
16 heard nothing more about that, and I was  
17 curious if that actually -- is there any  
18 indication that that's actually going to  
19 happen?

20 MS. POLAND: I am not familiar. We  
21 haven't received any direction regarding  
22 that. I don't know if that might be  
23 coming straight from the Secretary of  
24 State's Office versus the Board?

25 MR. FAUX: Yes. It was a statement

1 every other Thursday. And the RSP for  
2 movers is being released. The County is  
3 actually handling that for us, and that  
4 bid is currently out. We should -- I  
5 believe the deadline is at the end of  
6 August.

7 We do have a tentative move  
8 scheduled, which is removing the bulk of  
9 the office over Martin Luther King Day  
10 weekend, over the three-day weekend. But  
11 we will begin the move on January 12th.  
12 And our plan is to be open for business  
13 Tuesday, January 17th, at the Norwood  
14 facility.

15 We will then move the warehouse the  
16 following week, so it will be completely  
17 out of the old facility by January 31st.

18 MR. FAUX: So by the end of the  
19 day, it looks like the construction has  
20 already begun?

21 MS. POLAND: Yes, construction has  
22 begun. I believe a lot of the framing is  
23 completed. Sally and I are doing a  
24 walk-through next week.

25 MR. FAUX: Where do we stand on the

1 sign issue?

2 MS. POLAND: We received quotes  
3 from two different vendors. And we're I  
4 think ready to make a selection on that  
5 vendor, which vendor today.

6 MR. FAUX: So the additional sign  
7 would be --

8 MS. POLAND: Yes. The additional  
9 sign on the building facing Smith. And  
10 then there will also be a monument sign  
11 on that side of the building, too, with  
12 an arrow pointing to the entrance on Wall  
13 Street. And then there will be another  
14 monument sign on Wall Street as well as  
15 lettering on the building as well on Wall  
16 Street. It's just taking a little longer  
17 than what they anticipated.

18 MS. KRISSEL: We learned a lot about  
19 signs.

20 MR. FAUX: Are the signs on the  
21 building going to be lit?

22 MS. POLAND: Yes, yes. The signs  
23 on the building will be illuminated. The  
24 monument signs will have exterior  
25 lighting on that.

1 updated community information; if there's  
2 an Amber Alert, they can have real-time  
3 access to these signs.

4 MS. KOCHER: Poll workers.

5 MR. GERHARDT: So we have a dynamic  
6 process in terms of Election Day AND  
7 registration day, things like that. I  
8 don't know what the traffic is in front  
9 of our building, so...

10 MS. POLAND: It seems to be pretty  
11 hefty traffic. We could look into that.

12 CHAIRMAN BURKE: Anything else?

13 MS. KRISSEL: We're setting up an  
14 extensive voting area on the second  
15 floor. That has been reconfigured, so we  
16 now have a larger in-office voting  
17 experience.

18 CHAIRMAN BURKE: So how many --  
19 what did we have previous, in terms of  
20 number of places where somebody could  
21 come in and get their ballot and what we  
22 now have --

23 MS. KRISSEL: It's doubling.

24 MS. POLAND: It was six before and  
25 we know for sure we can fit 10, possibly

1 MS. KRISSEL: And they are LED in  
2 the sign.

3 MR. FAUX: Solar.

4 MS. POLAND: With a censor.

5 MS. KRISSEL: Yes, with a censor.

6 MS. POLAND: In your packet you  
7 also have an updated organizational  
8 chart. We had a lot of changes with  
9 Staff, so we wanted to provide you with  
10 an updated chart for your review.

11 MR. GERHARDT: Mr. Chairman, would  
12 you consider like a video sign so that we  
13 could, on a real-time basis, provide  
14 information. An LED, they have LED signs  
15 that you can put messaging out there --

16 MS. POLAND: Hmm-hmm.

17 MR. GERHARDT: -- to communicate to  
18 the public.

19 MS. POLAND: That was not something  
20 we thought about. It's something we can  
21 look into.

22 MR. GERHARDT: Those monument  
23 signs, there are communities that are  
24 utilizing those monument signs as -- for  
25 a community billboard that provide

1 12 locations.

2 MS. KRISSEL: Plus an area  
3 specifically designated for people who  
4 sit down and vote at the tables without  
5 being amidst of all the booths.

6 MS. POLAND: And it also creates a  
7 larger area for people to wait in the  
8 queue, so hopefully we have more people  
9 inside than we need outside.

10 MS. KRISSEL: And we met yesterday  
11 with the Sheriff's Department and  
12 Emergency Management Services to talk  
13 about what we needed for the Election.

14 MS. POLAND: We are receiving  
15 assistance from both the Sheriff and EMA  
16 regarding security on Election Day.

17 CHAIRMAN BURKE: EMA?

18 MS. POLAND: Emergency Management  
19 Agency. It has to do with Homeland  
20 Security.

21 CHAIRMAN BURKE: Yes, ma'am.

22 MS. KOCHER: I know this isn't your  
23 regular meeting, but I'm just dying to  
24 know, how is poll worker recruitment  
25 coming?

1 MS. POLAND: Sure, I can give you  
2 an update on that. We don't have  
3 specific numbers, meaningful numbers yet,  
4 because we won't have that information  
5 until the confirmation packets are mailed  
6 to the poll workers and we know which  
7 ones are not returning. So we don't have  
8 significant numbers or nearly meaningful  
9 numbers yet.

10 Our goal is to recruit 120  
11 additional poll workers, in addition to  
12 our needs, 60 from each party. So we  
13 will have a pool of poll workers that  
14 will be trained and report here to the  
15 Board of Elections Election morning, in  
16 the event they can go out if we have  
17 shortages. That's our goal.

18 MS. MAYER: That's your goal. I  
19 love it.

20 MS. POLAND: And our recruiters  
21 have been working both on our Partners in  
22 Democracy Program and Youth at the Booth.  
23 Right now it looks very good to have 15  
24 companies actually partnered with us as  
25 our Partners in Democracy to recruit poll

1 giving it a few more weeks, you know,  
2 they are just starting back to school  
3 right now, and we will give the teachers  
4 a little time to settle in. So our  
5 mailing for the Youth at the Booth is  
6 scheduled to go out the second week of  
7 November.

8 MR. GERHARDT: And too whom will  
9 those letters be sent?

10 CHAIRMAN BURKE: They are sent to  
11 the Government teachers, but this time  
12 we're also going to target the school  
13 administrators or principals.

14 MS. KRISEL: And they have  
15 already -- the recruiters have been  
16 contacting the high schools and talking  
17 to people and set up some presentations.  
18 They went to an event yesterday where  
19 they recruited poll workers as well as  
20 obtained voter registrations. So they  
21 are really kind of jumping on all the  
22 leads that they have and working them.

23 MS. MAYER: That's great.

24 MS. KOCHER: That's great.

25 MR. TRIANTAFILOU: Is there a

1 workers from their companies.

2 And we also are in the process of  
3 reaching out to the school, high schools  
4 again for our Youth at the Booth. Our  
5 goal is to have one in every polling  
6 location, so that would be about 360 high  
7 school seniors. And we did have close to  
8 200 in the March Primary. So it's a  
9 possibility we may reach that goal.

10 We're also trying to come up with  
11 some ideas to challenge the high schools,  
12 to provide the most students to work the  
13 polls. We haven't had anything nailed  
14 down yet, but some of the things we're  
15 looking at is perhaps pizza parties to  
16 the school that provides the most  
17 students, something to that effect.  
18 Trying to look for ways to make it  
19 competition.

20 MR. FAUX: Is Walnut Hills part of  
21 this?

22 MS. POLAND: Hmm-hmm, yeah. I  
23 don't know how many they have provided in  
24 the past, but we do reach out to them.  
25 This is sort of a difficult time. We're

1 prohibition, a nepotism problem if our  
2 sons, if we challenge our sons? Is there  
3 any objection?

4 MR. GERHARDT: The Republican Youth  
5 Committee is alive and well at St. X High  
6 School.

7 MR. STEVENSON: I think the only  
8 prohibition is you can't serve as a poll  
9 worker in a polling location where a  
10 family member is on the ballot.

11 MR. FAUX: Actually, I have  
12 somewhat of a related question. I spoke  
13 with somebody yesterday, I don't remember  
14 her name, but she is an election  
15 official, I think she's been Deputy  
16 Judge. And she indicated that she had  
17 been told that in her capacity as an  
18 election official, that she was  
19 prohibited from engaging in any kind of  
20 campaign work prior to Election Day.  
21 That didn't quite sound right.

22 MS. POLAND: No.

23 MS. KRISEL: No.

24 MR. FAUX: She indicated she was  
25 told that by Gina. It just surprised me.

1 MS. KRISSEL: I'll check with her,  
2 but it had to have been misunderstood.  
3 That certainly isn't anything we -- yeah,  
4 I'll check on that.

5 CHAIRMAN BURKE: Yes, ma'am.

6 MS. MAYER: I just had a question  
7 of Sherry. When will those packets go  
8 out, you know, to find out who's working?  
9 MS. POLAND: Right. Shortly after  
10 Labor Day.

11 MS. MAYER: Shortly after Labor  
12 Day?

13 MS. POLAND: Yes.

14 MS. KOCHER: Just a comment. I saw  
15 yesterday a push on Facebook about the  
16 need for poll workers. Yay. I assumed  
17 Twitter got it as well?

18 MS. POLAND: Yes. Yes.

19 MS. KOCHER: You can do that --

20 MS. POLAND: Yes, they are  
21 scheduled. We scheduled those basically  
22 for a whole month, whatever is posted to  
23 Facebook also is released on Twitter as  
24 well. Yes, we have several scheduled.

25 MR. TRIANTAFILOU: I'll be on the

1 worked well, I mean, I hadn't heard any  
2 feedback except right after that we were  
3 all excited that we thought it went well.

4 MS. POLAND: We received a lot of  
5 positive feedback regarding the  
6 troubleshooters from the March Election.

7 MS. MAYER: So that should stay the  
8 same kind of?

9 MS. POLAND: It is staying the  
10 same. We're actually increasing a little  
11 bit. We're training ten additional  
12 troubleshooters to again act as backups  
13 in case a troubleshooter may drop at the  
14 last minute.

15 MS. KOCHER: Are you going to be  
16 using the printers?

17 MS. POLAND: Our plan is to slowly  
18 introduce those again in 2017.

19 MS. KOCHER: Okay.

20 CHAIRMAN BURKE: Do we want to  
21 recess for a few minutes?

22 MR. TRIANTAFILOU: Fine with me.

23 MR. FAUX: That's fine.

24 MR. TRIANTAFILOU: I move that we  
25 stand in recess until we get the results

1 radio tomorrow morning pushing as well.

2 MS. KOCHER: Okay. Good, terrific.

3 MS. MAYER: One more question.

4 CHAIRMAN BURKE: I'm sorry.

5 MS. MAYER: This is for Sherry,  
6 too. Of all the things that both you and  
7 Sally did for the primary, is everything,  
8 training, whatever, you know, most  
9 everything staying in place that you did?  
10 You know, are there any big changes or  
11 pretty much the same?

12 MS. KRISSEL: There's been some  
13 changes to some of the screens on the  
14 e-Poll Book, but they are more enhanced.

15 MS. MAYER: Okay.

16 MS. KRISSEL: They are not radically  
17 different or anything.

18 MS. POLAND: You may not even  
19 notice it. As a poll worker, you may not  
20 notice it. Just a few minor things that  
21 we needed to tweak after the March  
22 Election; but, no, it's our goal to keep  
23 things as much as possible the same.

24 MS. MAYER: The same. So when all  
25 the technical people, you know, that

1 of the certification.

2 MR. FAUX: Second.

3 CHAIRMAN BURKE: Motion was made  
4 and seconded.

5 Those in favor signify by saying  
6 aye.

7 MR. GERHARDT: Aye.

8 MR. TRIANTAFILOU: Aye.

9 MR. FAUX: Aye.

10 CHAIRMAN BURKE: We are in recess.  
11 (Whereupon the Board meeting stood  
12 in recess at 11:15 a.m.)

13 THE CHAIRMAN: We have a motion to  
14 return from recess?

15 MR. TRIANTAFILOU: I'll make a  
16 motion we return from recess.

17 MR. FAUX: Second.

18 CHAIRMAN BURKE: Those in favor  
19 signify by saying aye.

20 MR. TRIANTAFILOU: Aye.

21 MR. FAUX: Aye.

22 CHAIRMAN BURKE: Motion carries.  
23 (Whereupon the Board returned from  
24 recess at 11:20 a.m.)

25 CHAIRMAN BURKE: We have now been

1 provided with the cumulative official  
 2 report of the August Special Election.  
 3 Any comments?  
 4 MS. POLAND: No. You have a  
 5 signature -- two signature forms in front  
 6 of you that needs to be signed. These  
 7 are the official results.  
 8 CHAIRMAN BURKE: Is there a motion  
 9 to certify the official results?  
 10 MR. TRIANTAFILOU: I move we  
 11 certify the official results.  
 12 MR. FAUX: Second.  
 13 CHAIRMAN BURKE: Any discussion?  
 14 Those in favor signify by saying aye.  
 15 MR. GERHARDT: Aye.  
 16 MR. TRIANTAFILOU: Aye.  
 17 MR. FAUX: Aye.  
 18 CHAIRMAN BURKE: Opposed?  
 19 Motion carries.  
 20 Is there any other business to come  
 21 before the Board?  
 22 MS. POLAND: No.  
 23 CHAIRMAN BURKE: We already had  
 24 public comment. You helped us kill time,  
 25 we appreciate it.

1 CERTIFICATE  
 2 I, BARBARA LAMBERS, RMR, the  
 3 undersigned, an Official Court Reporter for the  
 4 Hamilton County Court of Common Pleas, do  
 5 hereby certify that at the same time and place  
 6 stated herein, I recorded in stenotype and  
 7 thereafter transcribed the within 46 pages, and  
 8 that the foregoing Transcript of Proceedings is  
 9 a true, complete, and accurate transcript of my  
 10 said stenotype notes.  
 11 IN WITNESS WHEREOF, I hereunto set my  
 12 hand this 18th day of August, 2016.  
 13  
 14  
 15  
 16  
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 18  
 19  
 20  
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 23  
 24  
 25

BARBARA LAMBERS, RMR  
 Official Court Reporter  
 Court of Common Pleas  
 Hamilton County, Ohio

1 Is there a motion to adjourn?  
 2 MR. TRIANTAFILOU: I'll move that  
 3 we adjourn.  
 4 MR. FAUX: Second.  
 5 CHAIRMAN BURKE: Those in favor  
 6 signify by saying aye.  
 7 MR. GERHARDT: Aye.  
 8 MR. TRIANTAFILOU: Aye.  
 9 MR. FAUX: Aye.  
 10 CHAIRMAN BURKE: Opposed? Motion  
 11 carries.  
 12 (The Board meeting concluded at  
 13 11:21 a.m.)  
 14  
 15  
 16  
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 25

# EXHIBIT 8

**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:**

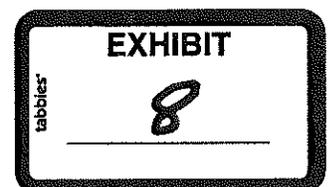
**Chad Thompson, Resident of the State of Ohio; not a resident of the City of Norwood**

**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**

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

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.

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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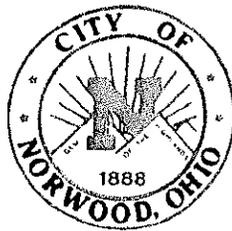
On behalf of the petitioners of The Sensible Marihuana Ordinance of Norwood, we humbly request that the question of whether Norwood should adopt The Sensible Marihuana Ordinance be presented at the November 8, 2016 election. Counsel for petitioners, requests opportunity to prepare, review, and discuss 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



## 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 my 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.

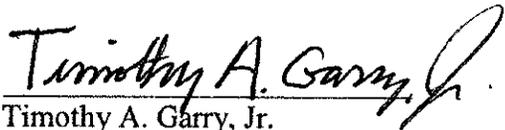
The proposed ordinance is 16 pages long, and is loaded with mistakes, misstatements, and other problems. This Board would not do the people of the City of Norwood any service whatsoever, to simply place this initiative ordinance on the ballot and hope that the voters can sort it out. This initiative 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@ohioattorneygeneral.gov  
 Sent via email to P-1's attorney on 2015-12-08 11:26:07 AM:  
 FREDERICK D NELSON  
 frederick.nelson@ohioattorneygeneral.gov  
 Sent via email to P-1's attorney on 2015-12-08 11:26:07 AM:  
 BRIDGET E COONTZ  
 bridget.coontz@ohioattorneygeneral.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

# **EXHIBIT 9**

1 HAMILTON COUNTY BOARD OF ELECTIONS  
 2 AUGUST 22, 2016 BOARD MEETING  
 3 824 BROADWAY, THIRD FLOOR  
 4 COMMENCING AT 8:30 A.M.  
 5  
 6  
 7 APPEARANCES:  
 8 TIMOTHY M. BURKE, ESQ., CHAIRMAN  
 9 CALEB FAUX  
 10 CHARLES H. GERHARDT, III, ESQ.  
 11 DAVID STEVENSON, ESQ.  
 12 ALEX M. TRIANTAFILOU, ESQ.  
 13 SHERRY POLAND, DIRECTOR  
 14 SALLY KRISSEL, DEPUTY DIRECTOR  
 15  
 16  
 17  
 18  
 19  
 20  
 21  
 22  
 23  
 24  
 25

1 it May Concern: I, Michael Brice Keller,  
 2 of Keller Law Office, have been retained  
 3 by the petitioners of the Initiative  
 4 Petition, The Sensible Marijuana  
 5 Ordinance.  
 6 In response to an opinion submitted  
 7 or presented by Counsel, Assistant  
 8 Prosecuting Attorney, David Stevenson,  
 9 the petitioner does assert the following  
 10 as dispositive information requiring  
 11 inclusion on the November 8, 2016 Ohio  
 12 Ballot, as presented to the citizens of  
 13 Norwood.  
 14 Concerning the assertion that the  
 15 proposed ballot language is misleading  
 16 and does not accurately reflect the  
 17 substance of the issue to be voted upon,  
 18 this is a common challenge and remedied  
 19 by a simple hearing where petitioners and  
 20 Board of Elections may resolve any  
 21 confusion as to the language. The  
 22 proposed language in the case at issue  
 23 is, however, not deficient as proposed  
 24 because it is substantially similar to  
 25 language presented in a similar

1 MORNING SESSION, August 22, 2016  
 2 CHAIRMAN BURKE: We will call this  
 3 meeting of the Hamilton County Board of  
 4 Elections to order. Proper notice has  
 5 been given as required by the Ohio  
 6 Sunshine Act.  
 7 The only purpose for this meeting  
 8 today is to consider the proposed ballot  
 9 issue, which is an initiative petition to  
 10 place THE proposed ordinance on the  
 11 ballot in the City of Norwood that would  
 12 deal with marijuana.  
 13 I do you understand Mr. Brice  
 14 Keller is here as counsel for the  
 15 petitioners. And it's probably  
 16 appropriate to hear from the petitioners  
 17 first.  
 18 MR. STEVENSON: I would agree.  
 19 CHAIRMAN BURKE: Mr. Keller.  
 20 MR. KELLER: I have prepared a  
 21 statement that I'll read and go through,  
 22 but I have copies for everyone. May it  
 23 please the Court?  
 24 CHAIRMAN BURKE: Please.  
 25 MR. KELLER: I'll begin. To whom

1 successful petition and substantially  
 2 similar in language presented in other  
 3 local petitions.  
 4 As to the deficiencies cited as  
 5 first and second, petitioners present the  
 6 following responses: First, any  
 7 deficiencies as to whether the  
 8 municipality may adjust, amend, or affect  
 9 felony level laws are subject to a  
 10 severability provision in the Initiative  
 11 itself -- so if you refer to (r),  
 12 Severability. The sections of this  
 13 ordinance are severable. The invalidity  
 14 of the section shall not affect the  
 15 validity of the remaining sections. And  
 16 invalid sections shall be revised to the  
 17 minimum extent necessary to maintain  
 18 validity and enforceability.  
 19 This requires the conclusion that  
 20 the initiative remains without the  
 21 offending language. Further, in the  
 22 present case, the issue is to the effect  
 23 as to reducing felonious exposure for  
 24 citizens is subject to ongoing litigation  
 25 in other jurisdictions in Ohio.



1 Additionally, upon information and  
2 belief, as to where similar adjustments  
3 to felony issues have been included, the  
4 main thrust concerning misdemeanor  
5 decriminalization remains in effect.

6 Interestingly, *walker v Husted*,  
7 speaks directly to this issue as part of  
8 its holding in declining authority to  
9 both the Board of Elections and the  
10 Secretary of State, and in an important  
11 regard. *walker* states at paragraph 15  
12 that "this authority to determine whether  
13 a ballot measure is within the scope of  
14 constitutional power or referendum or  
15 initiative does not permit election  
16 officials to sit as arbitrators --  
17 arbiters of the legality or  
18 constitutionality of the ballot measure's  
19 substantive terms.

20 This is controlling guidance from  
21 the Supreme Court concerning the issue of  
22 inclusion of the felony issues in the  
23 ballot language. If there were an  
24 offending provision not cured by  
25 severability, it remains that neither the

1 concerning fracking which discussed  
2 administrative versus legislative because  
3 of *Husted's* claim concerning the  
4 exclusive regulatory authority of the  
5 Ohio government of the gas and oil  
6 industry. This, however, is all  
7 discussion and the not holding as it was  
8 decided on alternative grounds.

9 You will see in -- if you refer to  
10 the case, in paragraphs 16 to 18 is a  
11 discussion of the alternative basis of  
12 paragraphs one and two and in the holding  
13 at 24 to 25. The *walker* case rested on a  
14 deficiency as to providing for a form of  
15 government and additionally procedural  
16 technical defects.

17 As to the test, so cited by  
18 Attorney *Stevenson*, it begins: "The test  
19 for determining the action of the  
20 legislative body is" -- I propose to  
21 point out that this is a test for  
22 determinations as it relates to the  
23 actions of the legislative body as  
24 opposed to actions as related to a  
25 petition, initiative, or referendum. The

1 Secretary of State nor the Board of  
2 Elections would stand to withhold  
3 placement on the ballot for that reason,  
4 because it is entirely the question of  
5 illegality or constitutionality as to  
6 that issue.

7 Second, the presentation of the  
8 administrative versus legislative  
9 discussions in the present case are  
10 substantially strained. The main thrust  
11 of the petition is plain on its face and  
12 in effect. To this end, the initiative  
13 contains proposed ballot language  
14 identifying the same, to wit; by lowering  
15 the penalty for marijuana to the lowest  
16 penalty allowed by state law.

17 It is clear that the lowering of  
18 the penalty is the function of the  
19 initiative and that effect is wholly  
20 legislative. The inclusion of  
21 administrative guidance as how, by what  
22 means, or other issues to effect the  
23 legislative end are incidental. The  
24 *walker* case referred to by Attorney  
25 *Stevenson*, upon cursory inspection is one

1 latter type fundamentally requiring that  
2 administrative component to have effect.

3 Of note is the case of *Donnelly*  
4 versus *City of Fairview Park*, in which  
5 the Supreme Court did identify  
6 administrative action where -- in by the  
7 trustees in denying a petition for  
8 incorporation into the village. Here the  
9 initiative petition, *The Sensible*  
10 *Marijuana Ordinance*, repeals, relaces,  
11 modifies, or enacts changes in particular  
12 sections of the local code. This is on  
13 its face legislative.

14 I propose for analysis that if the  
15 petition was to establish a no parking  
16 zone, the petition would undoubtedly  
17 contain some administrative discussion as  
18 to where the law would be recorded, that  
19 an employee would be directed to place a  
20 sign and even possibly that someone would  
21 be directed to make resources available.  
22 And in any event, the function would be  
23 legislative and prohibiting an activity.

24 Conversely, a petition that  
25 requires the town council to approve a

1 building permit would be administrative.  
 2 I hope we can consider both these issues  
 3 resolved, but further, we remain prepared  
 4 to more properly present arguments to the  
 5 court on these issues.

6 On behalf of the petitioners of The  
 7 Sensible Marijuana Ordinance in Norwood,  
 8 we humbly request that the question of  
 9 whether Norwood should adopt The Sensible  
 10 Marijuana Ordinance be presented at the  
 11 November 8, 2006 election. Counsel for  
 12 the petitioners request an opportunity to  
 13 prepare, review, and discuss in more  
 14 detail any issues related to Attorney  
 15 Stevenson's concerns first and second,  
 16 should those concerns not have been  
 17 addressed and disposed of by this letter.

18 As to the proposed ballot language,  
 19 the petitioners are prepared to discuss  
 20 and resolve any issues at your earliest  
 21 convenience.

22 That's the conclusion of my  
 23 prepared statement. And I wanted to  
 24 point out at the beginning of the  
 25 discussion, the points on the issue, that

1 must be included, notwithstanding the  
 2 felony issue.

3 I would like to read briefly just  
 4 some discussion from that case. As we  
 5 had said that -- as I said in my  
 6 statement: "The authority to determine  
 7 whether a ballot measure falls within the  
 8 scope of constitutional power" --

9 CHAIRMAN BURKE: You are in the  
 10 Walker decision?

11 MR. KELLER: YES.

12 CHAIRMAN BURKE: Which paragraph?

13 MR. KELLER: Oh, sorry. Beginning  
 14 on paragraph 15.

15 CHAIRMAN BURKE: Thank you.

16 MR. KELLER: "But this authority to  
 17 determine whether the ballot measure  
 18 falls within the scope of constitutional  
 19 power of referendum or initiative, does  
 20 not permit election officials to sit as  
 21 arbiters of the legality or  
 22 constitutionality of the ballot's  
 23 measured substantive terms."

24 CHAIRMAN BURKE: Why don't you back  
 25 up for a minute --

1 to really understand what the difference  
 2 is between the administrative versus  
 3 legislative, the petition doesn't force  
 4 an administrative body to affect some  
 5 sort of thing that they are doing.

6 Like in the scenario of the  
 7 building permit, if the petition said for  
 8 the building inspector to interpret the  
 9 current rule and issue the building  
 10 permit, that would be forcing a  
 11 legislative thing. But even if the  
 12 proposed new law is only about  
 13 administrative issues, it's still  
 14 legislative in that it's making new law.

15 So it's a very strained point that  
 16 is not applicable to this type of  
 17 petition. This type of petition and its  
 18 fundamental element reduces the penalty,  
 19 and that is wholly legislative in its  
 20 entirety. It's interesting that the  
 21 Walker case was cited, and in their  
 22 declamation to give Husted and the Board  
 23 of Elections authority on the illegality  
 24 and constitutionality issue, that seems  
 25 to be controlling to the extent that it

1 MR. KELLER: Yeah.

2 CHAIRMAN BURKE: -- and look at  
 3 paragraph 13.

4 MR. KELLER: Yes.

5 CHAIRMAN BURKE: The Supreme Court  
 6 says we have a duty to act as  
 7 gatekeepers, specifically on the issue of  
 8 administrative measures, doesn't it?

9 MR. KELLER: That is what is --  
 10 that is what it says, absolutely.

11 CHAIRMAN BURKE: It is what it  
 12 says.

13 MR. KELLER: Yes. And that is what  
 14 Attorney Stevenson included in his  
 15 opinion or statement on the issue.  
 16 However, it is important to understand  
 17 that the Supreme Court said that despite  
 18 being gatekeepers, despite their  
 19 interpretation of the law, that there is  
 20 a duty to nullify administrative, and  
 21 that -- and that it necessarily follows  
 22 that Board's have the discretion to  
 23 determine whether it's administrative or  
 24 legislative. The holding was that in  
 25 this case it was a question of illegality

1 and constitutionality, which was the --

2 CHAIRMAN BURKE: I agree. I think  
3 you will find that none of us disagree  
4 with the fact that we're not here to  
5 judge the legality of the ordinance or  
6 its constitutionality.

7 MR. KELLER: Right.

8 CHAIRMAN BURKE: What we're  
9 struggling with -- at least what I'm  
10 struggling with are two things; one,  
11 would the City of Norwood's counsel have  
12 the authority to eliminate the felony  
13 penalty; two, are the provisions with  
14 regard to how you instruct Prosecutor's  
15 to operate, or police to operate, are  
16 those administrative in nature?

17 MR. KELLER: Okay. So the first  
18 part is that the City of Norwood does not  
19 have the ability to create a felony level  
20 offense. Does the City of Norwood have  
21 the ability to withhold prosecution of a  
22 felony offense; maybe, probably. But in  
23 any event --

24 CHAIRMAN BURKE: Can you cite to  
25 any law that justifies your statement of

1 enjoined as to the felony issue?

2 MR. KELLER: Because of the  
3 inability of municipalities to establish  
4 a felony level offense, the reverse, as  
5 you're concluding, is what they're  
6 suggesting would be the result, but we  
7 don't necessarily know that for sure.

8 CHAIRMAN BURKE: We know Common  
9 Pleas Court issued a decision in that  
10 regard, correct?

11 MR. KELLER: I do not know that.  
12 I'm sorry, I am not -- but Chad,  
13 Mr. Thompson, was involved with the  
14 Toledo initiative and can present more  
15 information as to that regard.

16 But, in any event, I believe that  
17 the felony issue is one of illegality and  
18 constitutionality is not ripe. If I may  
19 continue, concerning that issue in the  
20 holding regarding that issue in the  
21 Walker case. And if we move to paragraph  
22 16: "An unconstitutional proposal may  
23 still be a proper item for referendum for  
24 initiative."

25 CHAIRMAN BURKE: You win that

1 probably?

2 MR. THOMPSON: I can clear this up,  
3 if you don't mind?

4 CHAIRMAN BURKE: Hang on. I don't  
5 know who you are anyway.

6 MR. KELLER: So inherently,  
7 prosecutorial discretion would include an  
8 evaluation of state interest. So, in  
9 that scenario, the prosecutor may decline  
10 enforcement in a particular capacity, but  
11 that's not my role to decide.

12 What I'm suggesting is that to the  
13 extent that it's presented, it is  
14 something that is in debate as -- from my  
15 understanding, Toledo had similar issues  
16 contained when it -- within its proposal  
17 last year, and those things are currently  
18 being litigated between the Attorney  
19 General and the parties --

20 CHAIRMAN BURKE: And what is the  
21 status of that litigation?

22 MR. KELLER: Currently, I believe  
23 it's enjoined as to the felony issue and  
24 preparing briefs.

25 CHAIRMAN BURKE: Why was it

1 argument here, at least in my mind, that  
2 was the only issue you win.

3 MR. KELLER: And that's the felony  
4 issue.

5 CHAIRMAN BURKE: No, it's not. Not  
6 if the municipality doesn't have the  
7 authority.

8 MR. KELLER: I guess I don't agree  
9 with that analysis. I think that what  
10 has happened, absolutely as a matter of  
11 practice is that, that that is discussed  
12 or determined by the court and,  
13 furthermore, there is a severability  
14 provision. So even if --

15 CHAIRMAN BURKE: But we're not here  
16 to sever any of the portions of the  
17 proposed ordinance. We have to take it  
18 as a whole, do we not?

19 MR. KELLER: It would be presented  
20 as a whole, but should it be found to  
21 exceed constitutionality or to be found  
22 to have illegality in it, it would still  
23 be effective to the extent that it wasn't  
24 severed.

25 CHAIRMAN BURKE: Are you familiar

1 with State ex rel. City of Youngstown  
2 versus Mahoning County Board of  
3 Elections?

4 MR. KELLER: I am not.

5 CHAIRMAN BURKE: It was cited the  
6 day after the Husted case was cited.

7 MR. KELLER: I am not. And I  
8 apologize, because my primary focus in  
9 law is that I have been, I'm working as  
10 appointed counsel in criminal defense,  
11 and I'm doing my best to respond to the  
12 issue at hand.

13 The fundamental premise, the  
14 fundamental premise is that there are  
15 citizens of Norwood that have done the  
16 best they can do to meet the substantive  
17 requirements that you impose on them.  
18 And it's a situation where the equities  
19 seem to indicate that inclusion would be  
20 the more appropriate.

21 And I think that that -- I think in  
22 the voice of the walker opinion, which  
23 seems to be the -- for whatever reason  
24 important from Mr. Stevenson's -- I don't  
25 know Mr. Stevenson, from his opinion, I

1 MR. GERHARDT: Mr. Chairman?

2 CHAIRMAN BURKE: Yes.

3 MR. GERHARDT: We can't have people  
4 just chiming in the audience, if you have  
5 something to say --

6 MS. WOLFINBARGER: Okay.

7 MR. GERHARDT: This is all on the  
8 record. Just so you know, this is all on  
9 the record, so knowing who is saying  
10 what, who you represent is important to  
11 us as we go through that.

12 MS. WOLFINBARGER: We understand.

13 MR. KELLER: Sincerest apology.

14 MR. GERHARDT: That's all right.

15 CHAIRMAN BURKE: I'm looking at the  
16 Youngstown case, which was decided a day  
17 after the Husted case.

18 MR. KELLER: Okay.

19 CHAIRMAN BURKE: In that case, what  
20 was proposed was a local ordinance to ban  
21 fracking.

22 MR. KELLER: Okay.

23 CHAIRMAN BURKE: The Board of  
24 Elections declined to allow that matter  
25 to go to the ballot, arguing that there

1 think that there seems to be a  
2 presumption in favoring inclusion.

3 If we need to come up with more  
4 complex briefs to demonstrate it to you,  
5 that's fine, but I think that this is a  
6 situation where they're really doing all  
7 they can do to comply with all the  
8 substantive requirements.

9 And this is being -- similar  
10 petitions are going to be on the ballot  
11 in several other jurisdictions, and a  
12 very similar petition was the same,  
13 almost the same language was approved  
14 last year -- I mean, not identical  
15 language, because obviously it has got to  
16 stay within the ordinance of each  
17 particular place where it's presented.

18 CHAIRMAN BURKE: The Toledo  
19 ordinance --

20 MR. KELLER: Yeah. I'm talking  
21 about Toledo from last year. But I don't  
22 know the names of all the ones -- I can't  
23 remember all the names.

24 MS. WOLFINBARGER: Rosedale, Bel  
25 Air, Newark and --

1 was already a state law that would  
2 invalidate such an ordinance. And the  
3 Supreme Court said the Board of Elections  
4 was wrong to not allow it to go to the  
5 ballot, because the position of deciding  
6 whether or not the ordinance is illegal  
7 is up to the courts to decide after it's  
8 been approved by the voters.

9 But what the Court also said in its  
10 opinion is this: 3501.11(K), "Empowers a  
11 Board of Elections to determine whether a  
12 ballot measure falls within the scope of  
13 the constitutional power of referendum or  
14 initiative. For example, the right of  
15 referendum does not exist with respect to  
16 a measure approved by City Council acting  
17 in its administrative capacity rather  
18 than legislative capacity."

19 I'm going to skip the citation.  
20 "Because a referendum on an  
21 administrative matter is a nullity, the  
22 Boards of Election only have discretion  
23 -- not only discretion, but the  
24 affirmative duty to keep such items off  
25 the ballot."

1 So what the Supreme Court is saying  
2 is we have an affirmative duty. An  
3 affirmative duty according to the Supreme  
4 Court to keep administrative matters off  
5 the ballot.

6 MR. KELLER: And I understand that  
7 that language has been presented by the  
8 Supreme Court. However, this is not  
9 administrative, this is fundamentally  
10 legislative.

11 CHAIRMAN BURKE: A lot of it is,  
12 but portions of it would appear to be  
13 clearly administrative, and that's what  
14 this is talking about.

15 MR. KELLER: The difference between  
16 legislative and administrative is that it  
17 is whether it creates new law, a new  
18 language, new instruction, new -- amends,  
19 appeals, or adjust penalties.

20 CHAIRMAN BURKE: You used the  
21 example before of the direction given to  
22 a building commissioner. This ordinance  
23 is giving direction to the police and to  
24 the prosecutor, how is that different?

25 MR. KELLER: In the case of the

1 decided by the Supreme Court in 1968.  
2 They said that the prevailing rule as  
3 succinctly stated in Kelley v John, but  
4 the substance of it is, "The crucial test  
5 for determining which is legislative from  
6 that which is administrative or  
7 executive, is whether the action was  
8 taken making a law or executing and  
9 administering a law already in  
10 existence."

11 The law as it exists now is that  
12 there are certain penalties for  
13 marijuana. The ordinance establishes  
14 that there are different penalties for  
15 marijuana.

16 CHAIRMAN BURKE: Help me out.

17 MR. KELLER: Okay.

18 CHAIRMAN BURKE: The law only  
19 establishes the penalties for Norwood  
20 City ordinances, doesn't it? Or are you  
21 saying that it also establishes the  
22 penalties for violation of Ohio law?

23 MR. KELLER: No, it affects the  
24 local city ordinance. It does not --

25 CHAIRMAN BURKE: So there is an

1 building permit, as I suggested, if  
2 someone had a referendum or initiative to  
3 say that, please direct the building  
4 commissioner or the building inspector to  
5 approve my permit consistent with the  
6 current practices or procedures, and  
7 doesn't change those procedures, but just  
8 says it so shall be that the building  
9 inspector will interpret the law to issue  
10 my permit, that would be administrative.

11 However, if the rule says that the  
12 building commissioner or so and so, shall  
13 do his or her duties in a different way,  
14 that is fundamentally legislative. I  
15 understand that we think of things in  
16 administrative versus legislative as to  
17 what it is that we're doing, but that's  
18 not the analysis here. And, if I may,  
19 the crucial test, and this comes from  
20 Kelley v John -- I'm sorry, if I may  
21 confer for just a moment.

22 Okay. I'm sorry, I have the same  
23 case in my file, but it's printed on a  
24 different format. Okay. So in Donnelly  
25 versus City of Fairview Park, which is

1 Ohio law that is already in existence and  
2 the ordinance is instructing the police  
3 and the City Attorney, the City  
4 Prosecutor what they can and can't do  
5 with regard to that Ohio statute that's  
6 already in existence.

7 MR. KELLER: The city council --  
8 and to that end, the mayor could direct  
9 the police chief or the police  
10 commissioner to make an ordinance of  
11 their own choosing, or whatever, to  
12 determine what the policies are as  
13 regard -- as it regards officer  
14 discretion for misdemeanor offenses.

15 So I think that that is incidental  
16 and strained, because we understand the  
17 concept that state police and county  
18 officers and other law enforcement  
19 officials have conflicting issues with  
20 marijuana laws, but, I mean, that -- we  
21 can go all the way to arguing about the  
22 Department of Justice and the federal  
23 rules and everything if it's going to be  
24 that strained.

25 I mean, we're really just talking

1 about -- we're not talking about what  
2 happens when there would be no reasonable  
3 incentive or reasonable practice model  
4 that would suggest that a police officer  
5 in Norwood would not be enforcing the law  
6 as the local law would suggest, I mean,  
7 it would be -- it's just not logical.

8 CHAIRMAN BURKE: Okay. Do you have  
9 anything else?

10 MR. KELLER: One moment to confer,  
11 and then we will conclude.

12 CHAIRMAN BURKE: We do have cards  
13 for some other speakers.

14 MR. TRIANTAFILOU: Everybody is  
15 going to get heard.

16 MR. KELLER: Thank you for your  
17 time, and I'll be available for questions  
18 as you require.

19 CHAIRMAN BURKE: Appreciate it.

20 MR. KELLER: You have my contact  
21 information.

22 MR. TRIANTAFILOU: Before I get to  
23 the next speaker, can I ask counsel, the  
24 issue of severability -- Mr. Keller makes  
25 the point here that there are

1 MS. WOLFINBARGER: Yes.

2 CHAIRMAN BURKE: And Jason Durham.  
3 Is there anybody else in favor of this  
4 who wants to speak today? Then we will  
5 go to Mr. Thompson.

6 MR. THOMPSON: Thank you so much.  
7 My name is Chad Thompson. I'm here as an  
8 Ohio citizen. I think that I can answer  
9 any questions you may have regarding any  
10 issues that you feel would allow you to  
11 prevent this from going to the ballot.

12 To your point, you do have a very  
13 thin, narrow obligation to keep  
14 initiatives off the ballot in a very  
15 specific case, administrative versus  
16 legislative being the real issue here. I  
17 know that felonies were mentioned, and  
18 there are several issues so I'm just  
19 going to tackle them one at a time.

20 I know felonies were mentioned. Is  
21 it agreed that the felonies are there and  
22 you have no right to dispute that, and  
23 that is not what's keeping it off the  
24 ballot, is that your position?

25 MR. TRIANTAFILOU: I am not sure we

1 deficiencies. It says -- he tells us the  
2 "invalid sections shall be revised to the  
3 minimum extent necessary to maintain  
4 validity and enforceability." I'm  
5 asking, Mr. Stevenson, he doesn't say --  
6 can you talk about severability?

7 MR. STEVENSON: The question of  
8 severability deals precisely with the  
9 legality and constitutionality of the  
10 ordinance and that's an issue for the  
11 court to decide.

12 The question that the Board is  
13 being asked to decide is whether or not  
14 the power exists in enacting felonies and  
15 control prosecutorial discretion. That's  
16 the question, severability in this  
17 instance right now is really kind of a  
18 red herring.

19 MR. TRIANTAFILOU: I wanted to  
20 cover that.

21 CHAIRMAN BURKE: I have three cards  
22 from other speakers. I think they are  
23 all in favor. Let me just ask, Chad  
24 Thompson, I know who you are. Amy  
25 Wolfinbarger?

1 have taken one just yet. We're here to  
2 figure it out.

3 MR. THOMPSON: Okay, thank you.  
4 So it had mentioned in the opinion  
5 provided that I received that the  
6 petition contains felonies, which local  
7 ballot initiatives do not have the right  
8 to affect felonies. That fact does not  
9 give the Board of Elections the right to  
10 keep the ballot from, or the initiative  
11 from the ballot. That's my position.

12 And I guess if we're agreed, I am  
13 not even going to go into -- and I guess  
14 that -- well, I guess let me just go  
15 ahead. That is long held case law that  
16 the legality of a local ballot initiative  
17 cannot be determined before the electors  
18 vote it in. At that point, that is when  
19 it can be challenged, and that's when the  
20 severability issue would come into play.

21 State -- in *DeBrosse v Cool*, 1999:  
22 "Any claims alleging unconstitutionality  
23 or legality of the substance of the  
24 proposed initiative to be taken when  
25 enacted are premature before its approval

1 by the electorate." That's an Ohio  
2 Supreme Court case. So then that brings  
3 us to the issue of legislative versus  
4 administrative.

5 CHAIRMAN BURKE: Mr. Thompson, can  
6 I ask a quick question, are you an  
7 attorney?

8 MR. THOMPSON: I am not an  
9 attorney, no.

10 CHAIRMAN BURKE: Thank you.

11 MR. THOMPSON: But I'm very  
12 experienced with this language. I'm very  
13 experienced with local ballot  
14 initiatives.

15 MR. GERHARDT: Mr. Chairman? Just  
16 following up on that, are you a resident  
17 of Norwood, Mr. Thompson?

18 MR. THOMPSON: I'm a resident of  
19 Ohio. I'm acting as an advocate for the  
20 citizens.

21 MR. GERHARDT: I am not trying --  
22 I'm just curious about who's speaking  
23 before us.

24 MR. THOMPSON: Sure.

25 MR. GERHARDT: This isn't a trick

1 legislative versus administrative, so  
2 this is something that's very clear.  
3 When you look up and think of those  
4 words, outside of case law,  
5 administrative means you do something,  
6 right, you administrate something.  
7 Legislative means you make a rule. Well,  
8 this is a decided test, the Supreme Court  
9 decided the test here, and it was  
10 mentioned by Mr. Keller.

11 So really, the only thing I think  
12 that is of issue here is whether or not  
13 section 513.15(m) is in fact legislative  
14 or administrative, and I argue it is not  
15 administrative. I argue that the entire  
16 initiative is legislative, because it's  
17 all a new law.

18 The Supreme -- the Ohio  
19 Constitution gives us a right to initiate  
20 an issue to direct police powers locally.  
21 That's a law given to us by the Ohio  
22 Constitution. So we're allowed to affect  
23 police powers. If this was currently a  
24 law and we were just telling you how to  
25 direct it, it's already established law.

1 question, are you a resident of the City  
2 of Norwood?

3 MR. THOMPSON: No.

4 MR. GERHARDT: It was intimated  
5 that, you just acknowledged yourself,  
6 that you have a great deal of experience  
7 with this issue and ballot issues  
8 specifically, are you with an  
9 organization that is specifically pushing  
10 marijuana legalization or sentencing  
11 reform or just -- I just want to know who  
12 you are, so --

13 MR. THOMPSON: Sure, yeah,  
14 absolutely. I do belong to some pro  
15 cannabis organizations in the State of  
16 Ohio, NORML. That's an organization to  
17 reform Ohio laws. But really, I think  
18 myself as an Ohio citizen, but I do have  
19 an association in a pro cannabis  
20 organization.

21 MR. GERHARDT: And what's the name  
22 of that organization?

23 MR. THOMPSON: Ohio NORML.

24 MR. GERHARDT: Okay, thanks.

25 MR. THOMPSON: No problem. So

1 That's administrative. What's being  
2 proposed here is completely new law.  
3 It's a new law. That makes it  
4 legislative. There's no questions.

5 The crucial test for determining  
6 negligence legislative from what's that  
7 of administrative or executive is whether  
8 the action taken was, one, making a new  
9 law, or executing or administrating a law  
10 already in existence. If then the action  
11 of a legislative body creates a law, that  
12 action is legislative. But if the action  
13 of the body consists of executing an  
14 existing law, the action is  
15 administrative.

16 That's very clear to me, a new law  
17 is being proposed. Currently there is no  
18 local ordinance that directs Norwood  
19 police officers to not report a marijuana  
20 offense. It's not there. So just  
21 because it gives an administrative duty,  
22 you can't get confused with the  
23 traditional definition of administrative.  
24 There's only one test, and it's whether  
25 the law is already established, or if

1 it's a new law. This is clearly a new  
2 law.

3 So, therefore, I think there's no  
4 question that the emphasis here is really  
5 this should be passed forward to the  
6 ballot. There's no grounds to keep it  
7 off the ballot. Your very narrow  
8 obligation, and that's really  
9 administrative versus legislative. That  
10 section is a new law, therefore, it's  
11 legislative.

12 To act as a gatekeeper, that Walker  
13 v Husted case was referenced, and it  
14 actually says that you are enacted as a  
15 gatekeeper in very specific  
16 circumstances. I would argue outside of  
17 what we have here. Obviously, you have  
18 not engaged to determine if it's  
19 administrative or legislative. It's just  
20 clear that this is not administrative.  
21 This is wholly legislative. The entire  
22 ordinance is a brand new ordinance, all  
23 laws are new.

24 CHAIRMAN BURKE: Any question for  
25 counsel? Thank you.

1 those signatures were valid. I would  
2 also like to point out that 12, only 12  
3 signers of our initiative were not  
4 currently registered to vote.

5 I would also like to point out that  
6 we registered numerous citizens of Ohio  
7 to vote through our election -- or our  
8 signature gathering drive as well. So we  
9 would hope today that you would listen to  
10 the voters of -- citizens of Norwood who  
11 signed the initiative and allow this to  
12 go to the ballot.

13 That's why we're here today. We  
14 would like this to go to ballot. We  
15 understand that challenges come after,  
16 but today we're here to get us to the  
17 ballot, that's why we gathered the  
18 signatures and that's why we worked so  
19 hard. And, as I said, there are 628 --  
20 or 645 signers in the City of Norwood  
21 that want to see this on the ballot, and  
22 I feel like it's their right to be able  
23 to cast their vote, yes or no. That's  
24 what this process is here for, and that's  
25 what we're using it for.

1 MR. THOMPSON: No questions?  
2 CHAIRMAN BURKE: No questions.  
3 Thank you.  
4 Amy Wolfinbarger.  
5 MS. WOLFENBARGER: Hi. My name is  
6 Amy Wolfinbarger. I'm the founder and  
7 President of Sensible Norwood. I'm here  
8 today to speak on behalf of the 645  
9 signers who signed the petition. We feel  
10 that we are enacting our rights under the  
11 Ohio Constitution, rights that are given  
12 to us through local ballot initiative.

13 We followed the process as we knew  
14 to the letter of the law. We began our  
15 signature gathering campaign -- well, let  
16 me back up a little bit. We submitted an  
17 original copy of the initiative petition  
18 to the City Auditors Office in Norwood,  
19 February 22nd, I believe it was.

20 We began our signature gathering  
21 campaign on March 15th. Worked really  
22 hard to gather signatures presented on  
23 July 20th to the City Auditor's Office,  
24 645 signatures. Six hundred twenty-eight  
25 of those signatures were verified, 465 of

1 CHAIRMAN BURKE: Any questions?  
2 Thank you.  
3 MS. WOLFENBARGER: Thank you.  
4 MR. TRIANTAFILOU: Thank you.  
5 CHAIRMAN BURKE: Jason Durham.  
6 MR. DURHAM: Good evening,  
7 everybody. My name is Jason Durham. I'm  
8 just here to show support for the ballot  
9 initiative. I strongly urge you guys to  
10 listen to the people and let us decide.  
11 And I appreciate your time, if you guys  
12 have any questions?

13 MR. TRIANTAFILOU: Are you a  
14 citizen of Norwood?

15 MR. DURHAM: I am not currently a  
16 citizen of Norwood. I'm currently a  
17 medical refugee to the State of Michigan.  
18 I have medical cannabis prescribed from a  
19 doctor that saved my life with opiates.  
20 And any opportunity I get to help  
21 citizens with this life saving medicine,  
22 I mean, the government has a patent on  
23 it. The patent number is 6,630,507, if  
24 you would like to look that up.

25 Clearly it states that this

1 cannabis is potentially life saving  
 2 medicine and, you know, there's a  
 3 petition to collect signatures all over  
 4 the state and also in Michigan, the  
 5 people, we just want a chance to decide,  
 6 the opportunity to have our voices heard  
 7 and in the polls the numbers will show.  
 8 And I believe that if this goes to the  
 9 ballot, the citizens of Norwood are more  
 10 than capable of making a responsible  
 11 decision of what's best for Norwood.

12 CHAIRMAN BURKE: Thank you.

13 MR. TRIANTAFILOU: Thank you.

14 MR. GERHARDT: Mr. Chairman?

15 CHAIRMAN BURKE: Yes.

16 MR. GERHARDT: Mr. Durham, you  
 17 currently reside in Michigan?

18 MR. DURHAM: Yes, sir. I have been  
 19 a resident of the State of Michigan for  
 20 four months now.

21 MR. GERHARDT: And where did you  
 22 live before that?

23 MR. DURHAM: In Woodlawn, about  
 24 five minutes from the City of Norwood.

25 MR. GERHARDT: Here, in Ohio, okay.

1 cards we have for speakers in support.  
 2 We have one card in opposition, and  
 3 that's from Tim Garry, Assistant Law  
 4 Director of the City of Norwood.

5 Mr. Garry.

6 MR. GARRY: Thank you. Appreciate  
 7 the opportunity to speak before the  
 8 Board. I'm going to be brief. First of  
 9 all, the City of Norwood has no issue at  
 10 all with the question of whether the  
 11 referendum and initiative powers are  
 12 reserved for the people of the, of each  
 13 municipality. That's clear, we have no  
 14 question about that. We have nothing but  
 15 respect for it.

16 The real issue that the City of  
 17 Norwood has is a great number of problems  
 18 with this 16-page ordinance. The most  
 19 important of which are the administrative  
 20 obligations that it imposes on both  
 21 Norwood Police as well as the Law  
 22 Department.

23 I just want to read briefly this  
 24 section that's in question. Section  
 25 513.15(m) of this proposed ordinance

1 MR. DURHAM: Yes.

2 MR. GERHARDT: So prior to that you  
 3 were a resident of Ohio?

4 MR. DURHAM: Correct. And I was  
 5 also a resident of Norwood in 2002.

6 MR. GERHARDT: And the reason you  
 7 live in Michigan now is because of your  
 8 medical condition, is what you're telling  
 9 us?

10 MR. DURHAM: Yes. I have two rods,  
 11 ten bolts in my spine holding me up,  
 12 together. I have nerve damage. I'm able  
 13 to fully function. I took my son to ride  
 14 Thomas the Train. We go to the park and  
 15 play. I'm a really great example, I  
 16 would like to think, of someone who is  
 17 fully functional and able to take care of  
 18 all their responsibilities. As an adult,  
 19 be a productive citizen under medical  
 20 cannabis. My doctor prescribes it for  
 21 me, and I do it responsibly.

22 MR. GERHARDT: Thank you.

23 MR. DURHAM: Thank you, I  
 24 appreciate it.

25 CHAIRMAN BURKE: Those are all the

1 says: "No Norwood police officer or his  
 2 agent shall report the possession, sale,  
 3 distribution, trafficking, control, use  
 4 or giving away of marijuana or hashish to  
 5 any other authority except the Norwood  
 6 City Attorney. And the Norwood City  
 7 Attorney shall not refer any such support  
 8 to any other authority for prosecution or  
 9 for any other reasons." That is baldly,  
 10 completely administrative.

11 The City of -- Norwood Police take  
 12 an oath when they become commissioned  
 13 police officers, and they swear to uphold  
 14 the Constitution of the United States and  
 15 the State of Ohio and the laws of the  
 16 United States and the State of Ohio and  
 17 the ordinances of the City of Norwood.  
 18 This administrative proposal puts them in  
 19 conflict between federal law, Ohio law  
 20 and city ordinance, and that shouldn't  
 21 be. It does the same thing to the Law  
 22 Department, frankly, and that shouldn't  
 23 be.

24 Let's assume this thing were to be  
 25 placed on the ballot and were to pass on

1 November 8th. Let's assume further that  
 2 the Court -- or that the Board were to  
 3 certify the results of a passage on  
 4 November 29th. On November 29th, the  
 5 police would be coming to me saying, how  
 6 do I avoid the dereliction of duty  
 7 statute, which is Ohio Revised Code  
 8 Section 2921.44. And it says, among  
 9 other things: "No law enforcement  
 10 officer shall negligently do any of the  
 11 following: Fail to prevent or halt the  
 12 commission of an offense or apprehend an  
 13 offender when it is the law enforcement  
 14 officer's power to do so alone or with  
 15 available assistance."

16 Now if an officer observes  
 17 marijuana or hashish trafficking or  
 18 possession or any other violation of Ohio  
 19 or federal law, he has a sworn duty to  
 20 stop it. And by imposing this  
 21 administrative responsibility on him that  
 22 conflicts with his sworn duty, and that  
 23 shouldn't be. And that goes beyond, you  
 24 know, the constitutionality of it. It  
 25 goes to the constitutionality of whether

1 citizen's rights and saves taxpayers  
 2 money by lowering the penalty for  
 3 marijuana to the lowest penalty allowed  
 4 by state law." I submit that the  
 5 penalties that are suggested in this  
 6 ordinance are not even allowed by state  
 7 law, and that this is -- will not save  
 8 the taxpayers a nickel. What it would --  
 9 what functionally the police will do, I  
 10 expect, would be to enforce the law under  
 11 the Ohio Revised Code and under the  
 12 federal law.

13 CHAIRMAN BURKE: Tim, to be  
 14 clear --

15 MR. GARRY: Yes.

16 CHAIRMAN BURKE: -- the proposed  
 17 ballot language has already been rejected  
 18 by the Secretary of State --

19 MR. GARRY: Okay.

20 CHAIRMAN BURKE: -- and sent back  
 21 to us. The problem with the ballot  
 22 language is it's argumentative in  
 23 nature --

24 MR. GARRY: Right.

25 CHAIRMAN BURKE: -- and

1 it's administrative or legislative. But  
 2 it's so clearly administrative. It's  
 3 telling these officers how they may do  
 4 their jobs, and how they may not do their  
 5 jobs.

6 And the same is true of the Law  
 7 Department. For example, we couldn't --  
 8 if we got notice that, you know, the  
 9 largest marijuana trafficking entity in  
 10 the state was operating in the City of  
 11 Norwood, if we were to have to follow  
 12 this ordinance, we would be prohibited  
 13 from telling anybody; from telling the  
 14 County Prosecutor from presenting to the  
 15 Grand Jury, from presenting to the DEA or  
 16 FBI or anybody else. It just baldly is  
 17 administrative. And they can call it,  
 18 you know, any ordinance legislative, but  
 19 that doesn't make it so. This is  
 20 administrative, and it's the very -- it's  
 21 a very important part of this ordinance.

22 In addition to that, even the  
 23 proposed question, "shall the City of  
 24 Norwood adopt The Sensible Marijuana  
 25 Ordinance, which protects individual

1 inappropriate. That doesn't invalid the  
 2 petition process, it just means if we  
 3 thought this was a valid petition, we  
 4 have to come up with better ballot  
 5 language.

6 MR. GARRY: I apologize for that, I  
 7 didn't understand that procedurally.

8 CHAIRMAN BURKE: No, that's --

9 MR. GARRY: We have concern about  
 10 that, of course. We also have concern  
 11 about portions of the ordinance that  
 12 appear to be incomplete. But the main  
 13 concern that we have got is  
 14 administrative, frankly.

15 MR. FAUX: Mr. Chair, a quick  
 16 question. First of all, I'm the only  
 17 member of this Board who is not an  
 18 attorney, so I am trying to follow the  
 19 legal arguments here. But as I  
 20 understand it, what you are saying here  
 21 about Section 513.15 is that that is  
 22 administrative as opposed to legislative?

23 MR. GARRY: Yes, absolutely.

24 MR. FAUX: The distinction is being  
 25 drawn, if I understand it correctly, the

1 voters through the referendum initiative  
2 process can propose legislation, but they  
3 cannot propose administrative action; is  
4 that correct?

5 MR. GARRY: That's my  
6 understanding, sir.

7 MR. FAUX: But the City Council  
8 does have the ability to vote --

9 MR. STEVENSON: That's not correct.

10 MR. GARRY: I don't agree with  
11 that. And I wouldn't draft something  
12 like this and present it to Council,  
13 because it puts the police and the Law  
14 Department in conflict with existing  
15 federal and state law.

16 MR. FAUX: I understand. You  
17 wouldn't propose to take something to  
18 Norwood Council --

19 MR. GARRY: I don't think they have  
20 the authority to pass it.

21 MR. FAUX: So if the Norwood  
22 Council were to pass such a thing, you're  
23 saying that would be challengeable in  
24 court?

25 MR. GARRY: Absolutely.

1 proceed?

2 CHAIRMAN BURKE: Go ahead.

3 MR. GERHARDT: Mr. Stevenson, the  
4 premise that was laid out before us by  
5 Mr. Keller and Mr. Thompson essentially  
6 comes down to whether this is directing a  
7 legislative -- creating new legislation  
8 or executing an existing law. Do you  
9 agree that's the, sort of the crux of the  
10 matter before us?

11 MR. STEVENSON: No.

12 MR. GERHARDT: Is that one of the  
13 issues?

14 MR. STEVENSON: That's one of the  
15 issues before you, but --

16 MR. GERHARDT: What are the others?  
17 Just if you could enlighten us real  
18 quick.

19 MR. STEVENSON: The crux of the  
20 issue with this is not whether or not the  
21 citizens of Norwood have a right to  
22 repeal existing misdemeanors that exist  
23 under the Norwood General Code, they do,  
24 all right. What they cannot do is enact  
25 felonies, which they purport to do here.

1 MR. FAUX: Okay. I just wanted to  
2 make sure.

3 MR. STEVENSON: Or ignored by  
4 administrative law.

5 CHAIRMAN BURKE: Any other  
6 questions for Mr. Garry?

7 MR. TRIANTAFILOU: No.

8 CHAIRMAN BURKE: Chip?

9 MR. GERHARDT: No, Mr. Chairman.

10 CHAIRMAN BURKE: Anything else,  
11 Mr. Garry?

12 MR. GARRY: Just to say that this  
13 is a 16-page ordinance. It's fraught  
14 with mistake. We have heard already  
15 that, you know, there's issues with the  
16 felony stuff. I don't think it is fair,  
17 quite frankly, to the City of Norwood's  
18 voters to put this on the ballot with all  
19 the problems it's already got and  
20 especially the administrative ones.  
21 Thank you.

22 CHAIRMAN BURKE: Thank you.  
23 Questions before us?

24 MR. GERHARDT: Mr. Chairman, I have  
25 a number of questions, I would like to

1 The other thing they cannot do is  
2 direct administrative officers in the  
3 function of their duties with respect to  
4 existing state and federal laws, which  
5 they also do here. Those are the only  
6 two issues that I see with the case.

7 When they are talking about the  
8 fact that the legality and severability,  
9 constitutionality, all that stuff is fine  
10 and dandy. The question boils down to  
11 this, do the citizens of Norwood have the  
12 authority to enact legislation which they  
13 would not be authorized to do under the  
14 Constitution of the State of Ohio and  
15 state law, and the answer to that is no,  
16 and they don't have a right to initiate  
17 such ordinance either. The fact of the  
18 matter is, that this ordinance purports  
19 to enact new felony sections, which is  
20 the sole province of the General Assembly  
21 and not the province of City Council of  
22 the City of Norwood.

23 The other thing is that it purports  
24 to direct administrative officers and  
25 executive officers in functions of their

1 sworn duty. Under Ohio law, the City  
2 Attorney has the authority to determine  
3 which cases shall be tried in Mayor's  
4 Court of the City of Norwood or in  
5 Municipal Court in Hamilton County, or in  
6 a Common Pleas Court in Hamilton County,  
7 that is up to him. That is an  
8 administrative function.

9 The fact is, is that this takes  
10 away that discretion from the City  
11 Attorney and prosecutorial discretion is  
12 an administrative matter, and to some  
13 extent a judicial matter, but it is not a  
14 legislative matter.

15 MR. TRIANTAFILOU: Can I follow-up?

16 MR. GERHARDT: Sure.

17 MR. TRIANTAFILOU: You're also  
18 confident, Mr. Stevenson, the law gives  
19 us the gatekeeping responsibility?

20 MR. STEVENSON: Absolutely.

21 MR. GERHARDT: Mr. Chairman?

22 Mr. Stevenson, Mr. Garry brought up  
23 an example of discovering a large cash of  
24 marijuana that may be found in Norwood.

25 MR. STEVENSON: I don't think you

1 for a court to decide at some future  
2 time.

3 CHAIRMAN BURKE: Anything else?

4 MR. GERHARDT: Nothing further.

5 Thank you.

6 CHAIRMAN BURKE: Caleb?

7 MR. FAUX: No.

8 MR. TRIANTAFILOU: Nothing else.

9 CHAIRMAN BURKE: In looking at the  
10 ordinance, the second last page of the  
11 ordinance, it is clear that subsection J  
12 it is establishing a fifth degree felony.

13 MR. STEVENSON: Correct.

14 CHAIRMAN BURKE: That's direct in  
15 the provision.

16 MR. TRIANTAFILOU: I'm prepared to  
17 make a motion. Before I make it, I'm  
18 just going to make a brief point that it  
19 is not -- I think we're about to agree  
20 it's not this Board's responsibility to  
21 discuss the merits of marijuana  
22 legalization. It's our obligation to  
23 determine what's appropriate for the  
24 voters to consider as they go to the  
25 ballot or as they go to the polls in

1 need to go there, okay. You have to look  
2 at section m, which respects the City  
3 Attorney's discretion, okay, and that's  
4 really it.

5 I understand the question, but to  
6 me, hypotheticals deal with something  
7 that's not what this Board is to  
8 determine. The question that this Board  
9 is to determine is whether or not they  
10 have the authority to enact felony  
11 provisions under the law, and they don't.  
12 And the authority to control the City  
13 Attorney and Police Department in the  
14 exercise of their administrative function  
15 according to the state laws in existence.  
16 Those are the two questions.

17 MR. GERHARDT: Thank you. One of  
18 the -- he brought up the dereliction of  
19 duty concept with respect to the Norwood  
20 Police Department, which certainly is an  
21 interesting point.

22 MR. STEVENSON: It is an  
23 interesting point, but I don't think it  
24 goes to this Board's authority to get  
25 this on or keep it off. That's something

1 November, so that's not our position. It  
2 has nothing really to do with marijuana  
3 or it's legalization, other than the fact  
4 that it's the underlying issue that's  
5 driving the debate, I suppose.

6 But with that, I have made the  
7 determination in my own mind, as  
8 gatekeepers here this is an overreach and  
9 that the ordinance is flawed in several  
10 ways that have already been enumerated.  
11 So for that reason, I'm going to make a  
12 motion that we deny this ordinance on the  
13 ballot.

14 CHAIRMAN BURKE: Is there a second?

15 MR. FAUX: I will second.

16 CHAIRMAN BURKE: Discussion?

17 I will say, I'm going to vote in  
18 favor of this motion, but I do so with  
19 some reluctance, because I believe very  
20 strongly in the right of citizens to  
21 petition government. I am aware though  
22 of our responsibility to ensure that we  
23 are following the directives from the  
24 Ohio Supreme Court. And I think the  
25 Court has been very clear -- if this were

1 just a matter of constitutionality of the  
2 ordinance, that's not for us to decide,  
3 it would go to the ballot, and the Court  
4 later on would make a determination.

5 But I think the law is clear that  
6 citizens only have the authority to  
7 propose what their -- as a city  
8 ordinance, what their city council can  
9 legally do. And the Norwood City  
10 Council, as powerful as it may be,  
11 doesn't have the authority to establish a  
12 felony. And on that grounds alone, I  
13 think the ordinance doesn't make it to  
14 the ballot.

15 I think the administrative argument  
16 is also a substantial one. I  
17 understand -- I thought you did a very  
18 good job with the argument, but where I  
19 thought the argument failed is state law  
20 exists. You're not changing state law,  
21 you cannot change state law, but you have  
22 directed in this ordinance how both your  
23 police, the Norwood Police, and the  
24 Norwood Law Director is to respond, and  
25 that is giving administrative

1 unfortunately, the way to do it.

2 CHAIRMAN BURKE: Are we ready for a  
3 vote? Alex, would you restate your  
4 position.

5 MR. TRIANTAFILOU: Yes. It is that  
6 we -- I guess that we deny the proposed  
7 ordinance by petition, that it not be  
8 placed on the ballot, I guess that's my  
9 motion. A yes vote would me that we deny  
10 placement on the ballot, the initiative  
11 on to the ballot in November. Not great,  
12 clear enough.

13 MR. STEVENSON: Clear enough.

14 CHAIRMAN BURKE: Since this is all  
15 on the record, do we need to provide any  
16 further explanation or have we  
17 essentially done that?

18 MR. STEVENSON: I think the record  
19 has provided the explanation required.

20 CHAIRMAN BURKE: Okay. Those in  
21 favor of the motion signify by saying  
22 aye.

23 MR. GERHARDT: Aye.

24 MR. TRIANTAFILOU: Aye.

25 MR. FAUX: Aye.

1 instructions as to how to enforce an  
2 existing law, the state law, and that I  
3 don't think you can do.

4 MR. TRIANTAFILOU: I want to also  
5 just agree with what you just talked  
6 about in terms of being reluctant. We  
7 agree -- we don't always agree, but we  
8 agree that we should empower citizens to  
9 make those changes when it's appropriate.  
10 And we don't face this issue very often.

11 But I am like you, I'm a little  
12 reluctant sometimes to turn away citizens  
13 on an initiative, but I think the law  
14 here is fairly clear. As I indicated  
15 when I made the motion, it seems to me  
16 that the proposal was just a little bit  
17 of an overreach, so that's where I am.

18 MR. FAUX: And just another  
19 comment. I too am reluctant in my second  
20 and my vote to not put this on the ballot  
21 for some of the same reasons just  
22 mentioned. I would also add that I have  
23 some sympathy with the notion that our  
24 laws with respect to marijuana probably  
25 need to change, but this is not,

1 CHAIRMAN BURKE: Opposed?

2 Motion carries. The petition will  
3 not certify to the ballot. You are  
4 always free to seek what was done in the  
5 Mahoning County case, the Supreme Court  
6 approval to put the matter on the ballot.

7 MR. TRIANTAFILOU: Given the  
8 special limited agenda, can we adjourn,  
9 Mr. Chairman?

10 CHAIRMAN BURKE: We certainly can.

11 MR. TRIANTAFILOU: I move we  
12 adjourn.

13 MR. FAUX: Second.

14 CHAIRMAN BURKE: Those in favor  
15 signify by saying aye.

16 MR. GERHARDT: Aye.

17 MR. TRIANTAFILOU: Aye.

18 MR. FAUX: Aye.

19 CHAIRMAN BURKE: Opposed?  
20 Motion carries.

21 (Proceedings concluded at  
22 9:33 a.m.)  
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CERTIFICATE

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I, BARBARA LAMBERS, RMR, the undersigned, an Official Court Reporter for the Hamilton County Court of Common Pleas, do hereby certify that at the same time and place stated herein, I recorded in stenotype and thereafter transcribed the within 56 pages, and that the foregoing Transcript of Proceedings is a true, complete, and accurate transcript of my said stenotype notes.

IN WITNESS WHEREOF, I hereunto set my hand this 23rd day of August, 2016.

BARBARA LAMBERS, RMR  
Official Court Reporter  
Court of Common Pleas  
Hamilton County, Ohio

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