

**IN THE SUPREME COURT OF OHIO  
CASE NO. \_\_\_\_\_**

**Original Action in Mandamus  
Election Matter filed Pursuant to S. Ct. Rule 12.04**

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**STATE OF OHIO EX REL. WILLIAM SCHMITT**

4646 Harrison Street  
Bellaire, Ohio 43906

and

**DEAN MICHAEL BARATH**

210 Willow Avenue  
Bridgeport, Ohio 43912

**Relators,**

**V.**

**VILLAGE OF BRIDGEPORT**

City Building, 301 Main Street  
Bridgeport, Ohio 43912

**MAYOR OF VILLAGE OF BRIDGEPORT,**

City Building, 301 Main Street  
Bridgeport, Ohio 43912

**CLERK OF VILLAGE OF BRIDGEPORT**

City Building, 301 Main Street  
Bridgeport, Ohio 43912

and

**BELMONT COUNTY BOARD OF ELECTIONS**

52180 National Road  
St. Clairsville, Ohio 43950

Respondents,

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**PETITION AND VERIFIED COMPLAINT IN  
ORIGINAL ACTION FOR WRIT OF MANDAMUS**

Mark R. Brown (#81941)  
303 East Broad Street  
Columbus, OH 43215  
(614) 236-6590  
[mbrown@law.capital.edu](mailto:mbrown@law.capital.edu)  
*Counsel for Relators*

NOW COME Relators, pursuant to Article IV, § 2(B)(1)(d) of the Ohio Constitution, Ohio Supreme Court Practice Rule 12.04, and R.C. § 733.59, and submit their petition for a Writ of Mandamus and other appropriate relief against Respondents.

### **Parties, Jurisdiction, and Venue**

1. Relator, Dean Michael Barath, is a citizen, resident, qualified elector, and taxpayer of the Village of Bridgeport, Ohio who resides at 210 Willow Avenue in Bridgeport, Ohio 43912.
2. Relator, Dean Michael Barath, is a supporter of the Sensible Marihuana Ordinance Initiative (hereinafter "Initiative"), *see* Attachment 1, that was circulated in the Village of Bridgeport in order to be placed on the November 2, 2021 general election ballot and is ready and able to vote in its favor.
3. Relator, William Schmitt, a citizen, a resident and qualified elector of the State of Ohio, resides at 4646 Harrison Street, Bellaire, Ohio 43906.
4. Relator, William Schmitt, was a circulator of the Initiative, *see* Attachment 1, that Relators have attempted to have placed on the Village of Bridgeport's November 2, 2021 election ballot.
5. Respondent, Mayor of the Village of Bridgeport, is the Mayor of the Village of Bridgeport and was at all relevant times in this matter directing the actions of the Clerk of the Village of Bridgeport.
6. Respondent, Clerk of the Village of Bridgeport, is the Clerk of the Village of Bridgeport and is responsible under Chapter 731 of the Revised Code for accepting the filings of initiatives and supporting signatures on behalf of Respondent-Village of Bridgeport.

7. Respondent, Village of Bridgeport, is a Village organized under Ohio law that is subject to the requirements and duties regarding citizen initiatives imposed by Chapter 731 of the Revised Code.

8. Respondent-Mayor of the Village of Bridgeport and Respondent-Clerk of the Village of Bridgeport are sued in their official capacities under Ohio Rule of Civil Procedure 25(d) and are "described as a party by official title rather than by name" pursuant to Ohio Rule of Civil Procedure 25(D)(2).

9. Respondent, Belmont County Board of Elections, is responsible for verifying the signatures collected by Relators to support the Initiative and for placing the Initiative on the Village of Bridgeport's November 2, 2021 general election ballot.

10. As described more fully below, Respondents, the Village of Bridgeport, the Clerk of the Village of Bridgeport, and the Mayor of the Village of Bridgeport (hereinafter collectively "Respondent-Bridgeport"), have refused to perform their election duties prescribed by Chapter 731 of Ohio law and have accordingly unlawfully refused to perform the tasks required to place Relators' Initiative on the Village of Bridgeport's November 2, 2021 election ballot.

11. Jurisdiction is proper in this Court under Article IV, § 2(B)(1)(d) of the Ohio Constitution and Ohio Supreme Court Practice Rule 12.04.

12. Ohio's general election, from which Relators' Initiative has been excluded by Respondents' action, is scheduled for November 2, 2021.

13. In order for Relators' Initiative to be placed on the Village of Bridgeport November 2, 2021 election ballot Respondent-Bridgeport is required to certify to the Belmont Board of Elections the sufficiency and validity of Relators' Initiative by 4 PM on August 4, 2021.

14. In order to insure that Respondents comply with this August 4, 2021 deadline, Relators are required to deliver the supporting signatures from Village of Bridgeport voters to Respondents no later than July 15, 2021.

15. Relator, William Schmitt, has on three occasions attempted to comply with this July 15, 2021 deadline during regular business hours on June 29, 2021, July 9, 2021, and July 12, 2021 by attempting to hand-deliver to Respondent-Clerk of the Village of Bridgeport the needed petitions and supporting signatures described above.

16. Respondent-Clerk of the Village of Bridgeport, Respondent-Mayor of the Village of Bridgeport, and Respondent-Village of Bridgeport have on all three occasions, in violation of Ohio law, expressly refused and/or otherwise failed to perform their ministerial duties and accept the petitions with supporting signatures Relator, William Schmitt, attempted to deliver.

17. On June 30, 2021, Relators, through counsel, delivered to the Village of Bridgeport's Solicitor a formal, "written request of [a] taxpayer of the municipal corporation" under R.C. § 733.59, *see* Attachment 2, demanding that he "make an[] application provided for in sections 733.56 to 733.58 of the Revised Code," R.C. § 733.59, on behalf of the Village to a court of competent jurisdiction, to force the Village of Bridgeport Clerk to perform his/her duties under Chapter 731 of the Revised Code and accept for filing the petitions with signatures supporting the Initiative that were attempted to be delivered by Relator, William Schmitt, and to then properly transmit those petitions with signatures supporting the Initiative to the Board of Elections after 10 days as required by Ohio law. *See* R.C. § 731.28.

18. The Village of Bridgeport Solicitor has failed to file any action in order to compel Respondent-Bridgeport and/or any other responsible Bridgeport official to perform their ministerial duties under Chapter 731 of the Ohio Revised Code.

19. While the November 2, 2021 election is more than 90 days removed from the filing of this action and Supreme Court Practice Rule 12.08 is not directly applicable, time remains of the essence because of the July 15, 2021 and August 4, 2021 deadlines described above.

20. This election matter should be expedited so that Relators' Initiative may be placed on the November 2, 2021 general election ballot in the Village of Bridgeport.

### **Statement of Facts**

21. On April 28, 2021 Relator, William Schmitt, timely and properly delivered to Respondent-Clerk of the Village of Bridgeport a certified copy of the Initiative as required by R.C. § 731.32.

22. Because Relator, William Schmitt, had fully complied with Ohio law, Respondent-Village of Bridgeport Clerk accepted the Initiative and provided Relator, William Schmitt, a receipt for the filing. *See* Attachment 3.

23. The initial filing of the Initiative on April 28, 2021 with Respondent-Clerk of the Village of Bridgeport satisfied all requirements of Ohio law and thereby authorized the collection of signatures in support of the Initiative.

24. Relator, William Schmitt, along with several other lawful circulators, collected 149 signatures from Village of Bridgeport voters after this required filing on April 28, 2021.

25. Fifty-four valid signatures are needed from qualified electors in the Village of Bridgeport in order to qualify the Initiative for the November 2, 2021 general election ballot.

26. Because the number of signatures collected by Relator, William Schmitt, and the other circulators exceeds 10% of the gubernatorial vote in Bridgeport during the last election, and because the petitions were otherwise timely and in proper order, when delivered to Respondent-

Village Clerk of Bridgeport "[t]he petitions and signatures upon such petitions shall be prima facie presumed to be in all respects sufficient" under Ohio law. R.C. § 731.31.

27. On June 29, 2021, Relator, William Schmitt, attempted to personally hand-deliver these petitions with 149 supporting signatures to Respondent, Clerk of the Village of Bridgeport, during regular business hours at the Clerk's Office.

28. On June 29, 2021 upon arriving at the Clerk's Office, Relator, William Schmitt, was met by a woman who stated that she was the Mayor of the Village of Bridgeport, and another woman who stated that she was the Clerk of the Village of Bridgeport.

29. On June 29, 2021 upon arriving at the Clerk's Office, Relator, William Schmitt, was informed by the Respondent-Mayor of the Village of Bridgeport, and by the Respondent-Clerk of the Village of Bridgeport, without even looking at the petitions and supporting signatures, that the Respondent-Clerk of the Village of Bridgeport and the Respondent-Village of Bridgeport refused to accept for delivery Relators' petitions and signatures supporting the Initiative.

30. Relator, William Schmitt, immediately contacted his attorney.

31. Relator, William Schmitt, through counsel, thereafter on June 29, 2021 telephoned the Respondent-Clerk of the Village of Bridgeport and was informed by the Respondent- Mayor of the Village of Bridgeport, who accepted the phone call, that the Respondent-Clerk of the Village of Bridgeport would not accept the delivery of the petitions and supporting signatures tendered by Relator, William Schmitt, and that Relator, William Schmitt, would have to discuss the matter with the Village of Bridgeport Solicitor, Michael Shaheen.

32. Relator, William Schmitt, through counsel, placed telephone calls on June 29, 2021, June 30, 2021, and July 12, 2021 to the Village Solicitor, Michael Shaheen, and left messages with the

receptionist who answered the calls both describing the events necessitating the phone calls and requesting that the Village Solicitor immediately return the calls.

33. The Village of Bridgeport Solicitor, has not returned or responded to the phone calls.

34. On June 30, 2021, Relator, William Schmitt, and Relator, Dean Michael Barath, through counsel, sent a formal taxpayer demand to the Village of Bridgeport Solicitor. *See Attachment 2.*

35. The Village of Bridgeport Solicitor has neither responded to the June 30, 2021 demand nor to Relators' knowledge has filed the demanded action in any court of competent jurisdiction.

36. On July 9, 2021, Relator, William Schmitt, once again attempted unsuccessfully to personally hand-deliver the petitions with supporting signatures to Respondent-Bridgeport at its Clerk's Office during regular business hours.

37. On July 9, 2021, upon arriving at the Respondent-Clerk of the Village of Bridgeport Office during regular business hours, Relator, William Schmitt, discovered that the Office was locked and no one inside would respond to his knock on the door during regular business hours.

38. On the morning of July 12, 2021 during regular business hours, Relator, William Schmitt, attempted to once again personally hand-deliver the petitions and supporting signatures for the Initiative to Respondent-Clerk of Bridgeport at the Clerk's Office.

39. On the morning of July 12, 2021 during regular business hours, Relator, William Schmitt, was once again informed by the Respondent-Mayor of Bridgeport and the Respondent-Clerk of the Village of Bridgeport, once again without looking at the petitions and supporting signatures, that the Respondent-Clerk of the Village of Bridgeport and Respondent-Village of Bridgeport refused to accept delivery of the petitions and signatures supporting the Initiative.

40. Respondent-Village of Bridgeport has no auditor with whom initiatives and signatures supporting initiatives could alternatively be filed.

41. Respondent-Mayor of the Village of Bridgeport had authority, express or implied, to direct the actions of the Respondent-Clerk of the Village of Bridgeport at all relevant times described in this Complaint.
42. Respondent-Mayor of the Village of Bridgeport had authority, express or implied, to act as and for Respondent-Village of Bridgeport at all relevant times described in this Complaint.
43. Respondent-Clerk of the Village of Bridgeport has repeatedly refused to perform his/her clear legal duty under R.S. §731.28 to accept delivery of the petitions and supporting signatures for the Initiative tendered by Relator, William Schmitt.
44. Respondent-Village of Bridgeport has repeatedly refused to perform its clear legal duty under R.S. §731.28 to accept delivery of the petitions and supporting signatures for the Initiative tendered by Relator, William Schmitt.
45. Relators have no plain or adequate remedy at law in the absence of the issuance of a writ of mandamus.
46. Time is of the essence in this matter because local initiatives must be certified by the appropriate boards of elections by August 4, 2021.
47. Time is of the essence in this matter because in order for local boards of elections to certify local initiatives supporting petitions and signatures must be delivered to and accepted by the targeted municipalities by July 15, 2021.
48. Respondents' repeated refusals on June 29, 2021, July 9, 2021 and July 12, 2021 of the Initiative's petitions and supporting signatures prevent the Respondent-Belmont County Board of Elections' ability from performing its clear legal duties under Chapter 731 of the Revised Code and prevent Relators from exercising their statutory and constitutional rights to place initiatives on local election ballots.

## Ohio Law

49. Ohio Revised Code § 731.32 states that "Whoever seeks to propose an ordinance or measure in a municipal corporation by initiative petition or files a referendum petition against any ordinance or measure shall, before circulating such petition, file a certified copy of the proposed ordinance or measure with the city auditor or the village clerk."

50. Upon filing the proposed measure, here the Initiative, with the Clerk, section 731.28 of the Revised Code requires that circulators supporting the proposed measure collect signatures from local voters "of not less than ten per cent of the number of electors who voted for governor at the most recent general election for the office of governor in the municipal corporation."

51. Village Clerks, or alternatively Village Auditors when they exist, are under a clear legal duty to fulfill the requirements of Chapter 731. *State ex rel. Harris v. Rubino*, 155 Ohio St.3d 123, 127, 119 N.E.3d 1238, 1243 (2018) (ordering locality to perform its legal duty under § 731.28).

52. Section 731.28 of the Revised Code states that "When a petition is filed with the city auditor or village clerk, signed by the required number of electors proposing an ordinance or other measure, such auditor or clerk shall, after ten days, transmit a certified copy of the text of the proposed ordinance or measure to the board of elections."

53. Section 731.28 of the Revised Code states that once the Clerk has performed this ministerial duty, "The board [of elections] shall examine all signatures on the petition to determine the number of electors of the municipal corporation who signed the petition. The board shall return the petition to the auditor or clerk within ten days after receiving it, together with a statement attesting to the number of such electors who signed the petition."

54. Upon receipt of the verified signatures from the Board of Elections, § 731.28 then provides that "after the auditor or clerk certifies the sufficiency and validity of the initiative petition to the board of elections," the proposed measure (here the Initiative) shall then be "submit[ted] ...for the approval or rejection of the electors of the municipal corporation at the next general election occurring subsequent to ninety days" after the Clerk's certification of sufficiency and validity.

55. The Ohio Supreme Court succinctly described this process in *State ex rel. Harris v. Rubino*, 155 Ohio St.3d 123, 127, 119 N.E.3d 1238, 1243 (2018):

The statute thus sets out the following procedure: (1) petitioners submit the municipal initiative petition to the city auditor, (2) the auditor holds the petition for 10 days, (3) the auditor transmits the petition to the board of elections to determine the number of valid signatures, (4) the board certifies the number of valid signatures and returns the petition to the auditor, (5) the auditor certifies to the board the validity and sufficiency of the petition, and (6) the board submits the petition to the electors at the next election occurring 90 days after the auditor's certification.

56. For the November 2, 2021 general election, ninety days before the election falls on August 4, 2021.

57. In order to ensure compliance with the two ten day deadlines found in R.C. § 731.28 for the Clerk and Board of Elections, respectively, supporters of proposed measures (here the Initiative) must file supporting signatures with the Clerk twenty days before August 4, 2021, meaning no later than July 15, 2021 in the present case.

58. The Clerk of a municipality and the municipality itself are under a clear legal duty to accept the submission of petitions and supporting signatures as reflected not only in this Court's many holdings, *see, e.g., State ex rel. Harris v. Rubino*, 155 Ohio St.3d 123, 127, 119 N.E.3d 1238, 1243 (2018) (ordering locality to perform its legal duty under § 731.28); and R.C. § 731.31

("[t]he petitions and signatures upon such petitions shall be prima facie presumed to be in all respects sufficient").

59. On three occasions, Relator, William Schmitt, attempted during regular business hours to personally hand-deliver to the Village of Bridgeport Clerk petitions supporting the Initiative that included 149 voters' signatures, which is more than 10% of gubernatorial vote in the Village during the last election as required by Ohio law.

60. On three occasions the Respondent-Village of Bridgeport, Respondent-Clerk of the Village of Bridgeport, and Respondent-Mayor of the Village of Bridgeport, refused to accept delivery of the petitions supporting the Initiative.

61. Respondent-Bridgeport continue to refuse to accept the petitions supporting the Initiative in violation of their clear legal duties under Chapter 731 of the Ohio Revised Code rendering futile any further attempt to deliver the Initiatives' petitions and supporting signatures to Respondent-Clerk of the Village of Bridgeport.

62. Almost-identical versions of the Initiative have been filed, voted on and passed into law in several municipalities in Ohio. *See, e.g., Schmitt v. LaRose*, 933 F.3d 628 (6th Cir. 2019).

**Claim for Relief: Respondents' Repeated Refusal to Perform their Ministerial Duties and Timely Accept the Petitions Supporting the Initiative Violates R.C. § 731.28.**

63. Relators incorporate herein the foregoing paragraphs.

64. The Clerk of a municipality and the municipality itself are under a clear legal duty to accept delivery and/or submission of petitions and supporting signatures for initiatives, including the Initiative in this case. *See State ex rel. Harris v. Rubino*, 155 Ohio St.3d 123, 127, 119 N.E.3d 1238, 1243 (2018) (ordering locality to perform its legal duty under § 731.28).

65. On three occasions, Relator, William Schmitt, attempted during regular business hours to personally hand-deliver to Respondent-Clerk of the Village of Bridgeport proper petitions supporting the Initiative that included 149 voters' signatures, which is more than 10% of gubernatorial vote in the Village during the last election as required by Ohio law.

66. On two occasions the Respondent-Clerk of the Village of Bridgeport, acting at the direction of Respondent-Mayor of the Village of Bridgeport, expressly refused to accept the delivery of the petitions and signatures supporting the Initiative.

67. On a third occasion the Respondent-Clerk of the Village of Bridgeport's Office was closed and locked during regular business hours thereby preventing the delivery by Relator, William Schmitt, of the petitions and supporting signatures supporting the Initiative.

68. Relators remain ready and able to deliver the petitions with supporting signatures for the Initiative to Respondent-Clerk of the Village of Bridgeport but Respondent-Clerk of the Village of Bridgeport has made clear that she will not (in violation of her clear legal duty under Chapter 731 of the Ohio Revised Code) accept delivery of the petitions and signatures supporting the Initiative

69. Delivery of the petitions with supporting signatures for the Initiative by Relator, William Schmitt, has been rendered impossible by Respondent-Clerk of the Village of Bridgeport's and Respondent-Village of Bridgeport's express and repeated refusals to accept the petitions with supporting signatures.

70. Relators have no plain or adequate remedy at law in the absence of the issuance of a writ of mandamus.

WHEREFORE, Relators respectfully pray that the Court:

- A. Issue an Order, Judgment and/or Writ of Mandamus ordering Respondent-Clerk of the Village of Bridgeport to immediately certify the sufficiency and validity of the Initiative to Respondent-Board of Elections for placement on the November 2, 2021 election ballot;
- B. In the alternative, issue an Order, Judgment and/or Writ of Mandamus directing Respondent-Belmont Board of Elections to timely place the Initiative on the November 2, 2021 election ballot;
- C. Issue a Peremptory Writ of Mandamus ordering the relief set forth above after the filing of the Answer to the Complaint;
- D. Issue an Alternative Writ or other Order submitting the Initiative to Respondent-Board of Elections for placement on the November 2, 2021 election ballot.
- E. Assess the costs of this action against Respondent-Clerk of the Village of Bridgeport, Respondent-Mayor of the Village of Bridgeport, and Respondent-Village of Bridgeport;
- F. Award Relators their attorneys' fees and expenses, including pursuant to R.C. §733.61, from Respondent-Clerk of the Village of Bridgeport, Respondent-Mayor of the Village of Bridgeport, and Respondent-Village of Bridgeport; and
- H. Award such other relief as in the Court's judgment may be appropriate.

Respectfully submitted,

*/s Mark R. Brown*

Mark R. Brown (#81941)  
303 East Broad Street  
Columbus, OH 43215  
Tel: (614) 236-6590  
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E-mail: mbrown@law.capital.edu

*Counsel for Relators*

Verification

I, William Schmitt, having first been duly sworn and cautioned according to law, hereby state that I am over the age of eighteen years and competent to testify as to the allegations in the foregoing Petition and Complaint for Writ of Mandamus. I have reviewed the allegations contained in the Complaint and state based on my personal knowledge that they are true. Further, I have personally examined all Attachments to the Complaint and state that they are true and accurate copies of what they purport to be. I was a circulator of the Initiative described in the Complaint and I am a Relator in this action.

FURTHER AFFIANT SAYETH NAUGHT

  
William Schmitt

Sworn to and before me and subscribed in presence this 14 day of July, 2021.



  
Notary Public

My Commission Expires: 12/8/2025

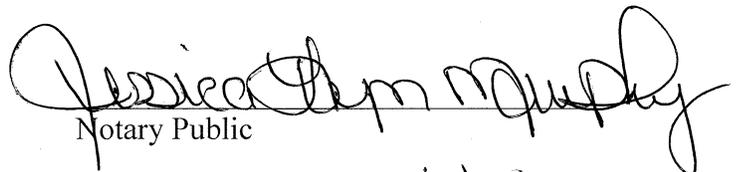
Verification

I, Dean Michael Barath, having first been duly sworn and cautioned according to law, hereby state that I am over the age of eighteen years and competent to testify as to the allegations in the foregoing Petition and Complaint for Writ of Mandamus. I have reviewed the allegations contained in the Complaint and state based on my personal knowledge that they are true. Further, I have personally examined all Attachments to the Complaint and state that they are true and accurate copies of what they purport to be. I was a supporter of the Initiative described in the Complaint, am a taxpayer residing in the Village of Bridgeport, and I am a Relator in this action.

FURTHER AFFIANT SAYETH NAUGHT

  
\_\_\_\_\_  
Dean Michael Barath

Sworn to and before me and subscribed in presence this 16<sup>th</sup> day of July, 2021.

  
\_\_\_\_\_  
Notary Public

My Commission Expires: 4/10/22



JESSICA LYN MURPHY  
Notary Public, State of Ohio  
My Commission Expires April 10, 2022

# **Attachment 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.

**Enacting new Ordinance 420-2021 entitled “Marihuana laws and penalties” to the Village of Bridgeport Codified Ordinances. All ordinances or parts of ordinances in conflict with this Ordinance are hereby repealed or invalid.**

To the Village Clerk of the Village of Bridgeport, Belmont County, Ohio:

We, the undersigned qualified electors of the Village of Bridgeport, Belmont County, Ohio, hereby present by initiative petition, a request that there be submitted for consideration of the people and electors of the Village of Bridgeport, Ohio for their approval or rejection, at an election in accordance with the laws of the State of Ohio, 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 Village of Bridgeport that:

The new Bridgeport village ordinance 420-2021 be enacted to read as follows:

#### **420-2021 . 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:

(1) 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 be fined \$0.00.

(b) 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:

(1) 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 be fined \$0.00.

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

(1) 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 be fined \$0.00.

(d) 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:

(1) Whoever violates this section, anywhere inside village limits, is guilty of trafficking in marihuana, a minor misdemeanor drug abuse offense. Persons convicted of violating this section shall be fined \$0.00.

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

(1) Whoever violates this section shall be guilty of a minor misdemeanor drug abuse offense. Persons convicted of violating this section shall be fined \$0.00.

(f) All court costs shall be \$0.00 for violations of sections herein.

(g) 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.

(h) Definitions

(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, or 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; except that it does not include hashish.

(2) "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.

The form of the ballot by which this ordinance shall be submitted to the electors of the Village of Bridgeport at the next regular election shall be substantially as follows:

Shall the Village of Bridgeport adopt the sensible marihuana ordinance, which lowers the penalty for misdemeanor marijuana offenses to the lowest penalty allowed by State Law.

<input type="checkbox"/>	For the Ordinance
<input type="checkbox"/>	Against the Ordinance

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 Village of Bridgeport, Ohio for approval or rejection, and the proper notices be published, all as required by law and the provisions of the State of Ohio.

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**AFFIDAVIT OF CIRCULATOR**

The State of Ohio, Belmont 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**

# **Attachment 2**

**Mark R. Brown**  
**Attorney at Law**

303 E. Broad Street  
Columbus, OH 43215

mbrown@law.capital.edu  
(614) 236-6590

June 30, 2021

Michael Shaheen  
Bridgeport Solicitor  
Bridgeport, Ohio

Office@SLGjustice.com

Re: Sensible Marihuana Ordinance Initiative

Dear Mr. Shaheen,

I represent a local voter/taxpayer in Bridgeport, Ohio and several sponsors/circulators of an initiative, the Sensible Marihuana Ordinance, that was filed with the Village Clerk in order to have that proposed Ordinance included on the next general election ballot on November 2, 2021. After being duly filed with the Village Clerk supporting signatures were then attempted to be filed by one of my clients, Bill Schmitt, but were refused by the Bridgeport Clerk. The Clerk informed my client to contact your Office, which I have attempted to do on his behalf the last two days.

I believe if you look at Chapter 731 of the Revised Code you will find the procedure mandated by Ohio law for filing local initiatives. Section 731.28 of the Revised Code states the duty of the Village Clerk when he or she is presented with petitions supporting proposed initiatives: "When a petition is filed with the city auditor or village clerk, signed by the required number of electors proposing an ordinance or other measure, such auditor or clerk shall, after ten days, transmit a certified copy of the text of the proposed ordinance or measure to the board of elections." O.R.C. § 731.28.

Section 731.28 then states that "[t]he board shall examine all signatures on the petition to determine the number of electors of the municipal corporation who signed the petition. The board shall return the petition to the auditor or clerk within ten days after receiving it, together with a statement attesting to the number of such electors who signed the petition." *Id.*

Neither the Village Clerk nor the Board of Elections has any measure of discretion in either of these matters. The Village Clerk is under a ministerial duty to accept the petitions with supporting signatures and then after ten days forward them to the Board of Elections. The Board then has a ministerial duty to verify the signatures within ten days. All of this must be completed by 4 pm on August 4, 2021. *See State ex rel. Harris v. Rubino*, 155 Ohio St.3d 123, 127, 119 N.E.3d 1238, 1243 (2018) (stating

the Clerk has a ministerial duty to complete these tasks in timely fashion and if does not may result in Village being held liable for costs and attorney's fees). *See also State ex rel. Thurn v. Cuyahoga County Board of Elections*, 72 Ohio St.3d 289, 649 N.E.2d 1205 (1995) ("we have held that the act of placing issues on the ballot is ministerial").

This is a formal, "written request of [a] taxpayer of the municipal corporation" under R.C. § 733.59 to you as the Bridgeport Solicitor "to make an[] application provided for in sections 733.56 to 733.58 of the Revised Code," R.C. § 733.59, on behalf of the Village to a court of competent jurisdiction, to force the Village Clerk to perform his/her duties under Chapter 731 of the Revised Code and accept for filing the signatures supporting the Sensible Marihuana Initiative and then properly transmitting them to the Board of Elections after 10 days.

Please be aware that if you refuse to timely fulfill this written request and file the appropriate action, my client will himself then have the authority to file an appropriate action in a court of competent jurisdiction in the name of the municipality to achieve this relief, and will be entitled to recover costs and reasonable attorney's fees from the Village for doing so under Ohio law. *See State ex rel. Harris v. Rubino*, 155 Ohio St.3d 123, 127, 119 N.E.3d 1238, 1243 (2018).

Sincerely,

/s/ Mark R. Brown

Attorney at Law

# **Attachment 3**

Received H-28-2021

To the Village Clerk of Bridgeport  
Ohio, in Belmont County.

I am submitting a certified copy  
of a citizens initiative petition in  
accordance with Ohio Revised Code.

I attest this is a true and exact  
reproduction of the original proposed  
ordinance.

Thank you

Bill Schmitt Jr.

Bill Schmitt Jr

740-310-3239

420kidd@gmail.com