

IN THE SUPREME COURT OF OHIO

CASE NO. 2021-0878

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

STATE OF OHIO EX REL. SCHMITT, et al.,

Relators,

V.

VILLAGE OF BRIDGEPORT, et al.,

Respondents,

**RELATORS' MOTION FOR RECONSIDERATION
AND INCORPORATED MOTIONS TO INCLUDE AFFIDAVIT IN RECORD
AND TAKE JUDICIAL NOTICE OF PUBLIC RECORD**

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MOTION FOR RECONSIDERATION

Relators respectfully move for reconsideration in this original mandamus action filed under S. Ct. Prac. R. 12.02-.04 under S. Ct. Prac. R. 18.02(A) & (B). This Court's decision on the merits, *State ex rel. Schmitt v. Village of Bridgeport*, 2021-Ohio-2664 (Aug. 3, 2021) (Exhibit 1) (hereinafter "slip. op."), was released on August 3, 2021 and this motion for reconsideration is filed within ten days. "This court has the authority to grant motions for reconsideration filed under S. Ct. Prac. R. 18.02 in order to 'correct decisions which, upon reflection, are deemed to have been made in error.'" *State v. D.B.*, 150 Ohio St.3d 452, 453, 2017-Ohio-6952, 82 N.E.3d 1162, 1163 (2017). "[N]ew grounds for the court to consider" may justify reconsideration. *State ex rel. Ethics First--You Decide Ohio Political Action Committee v. DeWine*, 147 Ohio St.3d 373, 378, 2016-Ohio-3144, 66 N.E.3d 689, 695 (2016).

Relators respectfully submit new grounds for the Court to consider in this case. Specifically, Respondent-Bridgeport's Fiscal Officer/Village Clerk, Mary Lyle, made material statements implicitly misrepresenting that she was at all relevant times when Relators were filing and attempting to file their petitions the Fiscal Officer/Village Clerk in this case. She was not. Chris Kirby was the Fiscal Officer/Village Clerk in Bridgeport until July 1, 2021. Chris Kirby did not testify. As explained below, Mary Lyle could have no basis for knowing anything about what happened on April 28, 2021 and June 29, 2021 when Relators filed and attempted to file their petitions.

Lyle's misrepresentations not only (unfortunately) infected this Court's decision, *see, e.g.*, slip op. at 4 ("[t]he fiscal officer [was] Mary Lyle, not Carole Lyle") and *id.* at 6 ("[a]t no point did Schmitt file or attempt to file anything with Mary Lyle, the fiscal officer and village clerk,

whose office is separate from the mayor's office"), but also likely altered the outcome of this case. Respondent-Bridgeport thoroughly utilized Lyle's misrepresentation to repeatedly claim in their Merits Brief that Relators were at fault for never attempting or seeking to file their papers with the Village Clerk, who it claimed was Mary Lyle based on her false affidavit. Compounding the problem presented here is the fact that Respondent-Bridgeport had to have known that Chris Kirby was the true Fiscal Officer/Village Clerk until July 1, 2021, this fact having been recently discussed and reported in Bridgeport's own May 18, 2021 official Council Meeting Minutes.

Yet Respondent-Bridgeport either suppressed or ignored any testimony Chris Kirby might have provided as the true Village Clerk. Respondent-Bridgeport instead falsely substituted Mary Lyle to speak in his stead, while pretending herself to have been the Clerk. No one knows what Chris Kirby, the actual Clerk through most of this case, would have said. The use of false evidence, of course, should not be rewarded. This is especially true when a Court specifically relies upon this kind of evidence, as the Court did here in its opinion. Reconsideration is therefore proper.

Introduction

Relators do not make charges lightly, and they do not do so here. But the knowing use of false evidence is serious. The fact is that Respondents¹ used Mary Lyle to present a false narrative to the Court. That false narrative presented Mary Lyle as the Clerk at all relevant times. It presented Mary Lyle, as the Clerk, disputing all of Relators' filings and attempted filings and insisting that those filings had to be delivered to her on two of the critical dates in this case. On

¹ Relators' references to "Respondents" in this Motion do not include Respondent-Belmont County Board of Elections. References to the Belmont County Board of Elections are specifically to "Respondent-Belmont."

April 28, 2021, when Relators filed their petition with the volunteer clerk, Mary Lyle had no association at all with the Clerk's Office, other than possibly being related to the volunteer clerk. On June 29, 2021, when Relators were turned away from filing by the volunteer clerk and the Mayor, Mary Lyle was still not the Clerk of the Village. Chris Kirby, the long-time Clerk since 2019, and still the Clerk on these dates.

Respondents used Mary Lyle's false representations while insisting that no one ever made any proper attempt to file with her, implying that not only was Mary Lyle the Clerk at all relevant times but that she was always ready and able to accept the filings on the relevant dates. None of this was true. The only attempted filing that she could have had relevant knowledge about occurred on July 12, 2021, which came after Relators' petition had already been rejected. No attempt was made by Respondents to clarify Mary Lyle's relationship with the Clerk's Office on April 28, 2021 and June 29, 2021, even after Relators discovered the true facts and requested that Respondents do so. That is material misrepresentation by act as well as omission, and it must be corrected.

Mary Lyle testified in her affidavit signed on July 22, 2021 that "I am the Clerk of the Village of Bridgeport," Mary Lyle Affidavit at ¶ 1, and that "No one has come to see me or the Village Clerk's office seeking to file the petitions that are the subject of this Complaint." *Id.* at ¶ 4 (emphasis added). The petition papers that are subject of this Complaint span three dates, April 28, 2021, June 29, 2021 and July 12, 2021. Respondents challenged the filing of all three, claiming that none were with the Clerk, Mary Lyle. Mary Lyle's affidavit specifically states that no one came to see her, the Village Clerk, or came to her Office on April 28, 2021, June 29, 2021, or July 12, 2021. She did not differentiate between any of these dates in her affidavit. It applied to all of them.

Respondents' Merits Brief leaves no doubt, if any existed, about what they intended the Court to take from Mary Lyle's affidavit. They wanted the Court to believe that while Mary Lyle was the Clerk, Relators never on April 28, 2021, June 29, 2021 and July 12, 2021 attempted to file anything with her. All of this was premised on Mary Lyle's being the Clerk and having the knowledge as such to testify to these facts. Respondents in their Merits Brief, after stating that "Mary Lyle is the Fiscal Officer of the Village of Bridgeport," Respondents' Brief at 4 (citing only the Mary Lyle Affidavit at ¶ 1), affirmatively used Lyle's affidavit to state that "Relator William Schmitt has never contacted the Village Clerk/Fiscal Officer in connection with his petitions," *id.* (citing only the Mary Lyle Affidavit at ¶ 3) (emphasis added), and that "No one has ever come to the Village Clerk or to the Village Clerk/Fiscal Officer's office seeking to file the petitions that are the subject of this Complaint." *Id.* (citing only Mary Lyle Affidavit at ¶ 4) (emphasis added).² Respondents used the plural for petitions in all contexts. They did not limit these arguments to the single attempted filing on July 12, 2021 when Mary Lyle was finally the Clerk.

Respondents then doubled-down on their argument about June 29, 2021: "On Tuesday, June 29, 2021 ... [o]nce again, Relator had no conversations or communications with the Village Clerk/Fiscal Officer or in the Village Clerk/Fiscal Officer's Office." Village of Bridgeport Merits Brief at 4 (citing only Mary Lyle Affidavit at ¶¶ 3 & 4. (The "once again" plainly implies that Relators did not communicate with the Clerk on April 28, 2021 either.) In the event, Respondents' citation to paragraph 4 of Mary Lyle's affidavit could only be understood as

² Both claims were contradicted by Relator-Schmitt himself, of course, who claimed with the support of the videos he submitted that on April 28, 2021 he specifically asked for and attempted to see the Village Clerk. *See slip op.* at 8 (Brunner, J., concurring and dissenting in part).

specifically representing to the Court that on June 29, 2021, the Village Clerk, who was then Mary Lyle, had no conversations with William Schmitt, nor did Schmitt visit the Village Clerk's (Mary Lyle's) Office on that day.

This Court relied upon Respondents' misrepresentations, express and implicit, to conclude that throughout the case "[t]he fiscal officer [was] Mary Lyle, not Carole Lyle." Slip. op. at 4. Further, it relied on Respondents' false narrative to conclude that "[a]t no point did Schmitt file or attempt to file anything with Mary Lyle, the fiscal officer and village clerk, whose office is separate from the mayor's office." *Id.* at 6. "Thus," this Court ultimately concluded, "Schmitt did not comply with the requirement in R.C. 731.28 that he file the signed petition with the village clerk." *Id.*

Respondents' plan worked. Relators were fooled. The Court was fooled. Mary Lyle was the Clerk, after all, and she better than anyone would know whether she was in the Office on the relevant dates in the Complaint, whether Relators attempted to contact her, and whether anyone in the building or in her Office on the relevant dates could have acted in her stead.

Mary Lyle, however, was not the Village Clerk on April 28, 2021, nor on June 29, 2021. Chris Kirby, who did not testify, was. Mary Lyle did not become Clerk until July 1, 2021, as the Village of Bridgeport's official Council Meeting Minutes from May 18, 2021 make clear. *See* Bridgeport Council Meeting Minutes, May 18, 2021, Attachment to Exhibit 2, (stating that Mary Lyle will "assume Fiscal Officer position July 1"). At all other relevant times in this case, Chris Kirby was the Fiscal Officer/Village Clerk, a position he retained until the end of the day on June 30, 2021. *See* Carri Graham, *Lack of members leaves vote short*, THE TIMES LEADER, May 19,

2021³ ("Mary Lyle was interviewed during an executive session [on May 18, 2021] that was called to discuss personnel. Following the session, Teasdale made a recommendation that council hire Lyle for the position. Council unanimously approved the recommendation that council hire Lyle for the position. Lyle's start date to act as a '*fiscal officer in training*' is June 1. She will take the position of fiscal officer on July 1 Current Fiscal Officer Chris Kirby's last day is set for June 30.").⁴

Mary Lyle and Respondents falsely led this Court to believe that on April 28, 2021 or June 29, 2021 Mary Lyle was the Clerk. She was not. Chris Kirby was. Her testimony about what happened or did not happen on those dates, and any inferences to be drawn, must therefore be disregarded. Respondents' arguments in their Merits Brief premised on Mary Lyle's testimony must also be disregarded. It is all based on the false assumption, created by Mary Lyle in her affidavit and Respondents in their Merits Brief, that Mary Lyle was the Clerk on April 28, 2021 and June 29, 2021. That is the basis for her knowledge about what happened and what did not happen on these dates. She was not, however, the Clerk she purported to be. She thus had no identified basis for testifying about what and what did not happen on April 28, 2021 and June 29, 2021.

Contrary to Respondents' false narrative, Relators could not have filed or failed to file anything on April 28, 2021 and June 29, 2021 "with Mary Lyle, the fiscal officer and village clerk," slip op. 6, as this Court stated in its opinion. Mary Lyle simply was not the Clerk on these

³ Courts may take "judicial notice of matters of a general public nature," including newspaper articles. *Government of Rwanda v. Rwanda Working Group*, 227 F. Supp.2d 45, 60 n.6 (D.D.C. 2002) (citing *Marshall County Health Care Auth. v. Shalala*, 988 F.2d 1221, 1226 (D.C. Cir.1993); *Phillips v. Bureau of Prisons*, 591 F.2d 966, 969 (D.C. Cir.1979)).

⁴ <https://www.timesleaderonline.com/news/local-news/2021/05/lack-of-members-leaves-vote-short/>.

dates. Further, no one knows what the real Clerk, Chris Kirby, would have said or done. No one knows whether he authorized the Mayor's and the volunteer clerk's actions on April 28, 2021. No one knows whether he was in his Office available to accept filings on April 28, 2021 or June 29, 2021. No one knows whether he could have or would have testified, as Mary Lyle did, that "No one has come to see me or the Village Clerk's office seeking to file the petitions that are the subject of this Complaint."

Unlike their actions on April 28, 2021 and June 29, 2021, Respondents' use of false testimony cannot be explained as a "misunderstanding between Schmitt and the village officials and the officials' lack of awareness about the citizen-initiative process." Slip op. at 6. Respondents' action here must be called what it is, a fraud upon Relators and the Court. One that they refuse to correct.

Argument

Relators had no knowledge of who the Bridgeport Clerk actually was on any of the relevant dates when they filed this case. They thus were forced to use Ohio Rule of Civil Procedure 25(D)(2) and just name the Office. When they submitted their Evidence to the Court on July 23, 2021, Relators still had no knowledge who the actual Clerk was. They thus could not have anticipated Respondents' Evidence (submitted on July 26, 2021) and its representation that Mary Lyle was the Clerk on all those dates. Nor could Relators have anticipated Respondents' argument in its Merits Brief that while Mary Lyle was the Clerk on April 28, 2021 and June 29, 2021 on one attempted to file Relators' petitions with her. Nor could Relators have anticipated anything Mary Lyle said or Respondents' represented she said to the Court. Relators' discovery of the true facts surrounding Mary Lyle, her testimony, and Respondents' misrepresentations is

all new. Reconsideration based on this new evidence is therefore proper. *State ex rel. Ethics First--You Decide Ohio Political Action Committee v. DeWine*, 147 Ohio St.3d 373, 378, 2016-Ohio-3144, 66 N.E.3d 689, 695 (2016).

Relators only learned of the true facts after this Court rendered its decision on August 3, 2021. On August 10, 2021, Relators were made aware of a news report stating that Chris Kirby would remain as Clerk until June 30, 2021. Relators then scrambled to confirm this report by obtaining a copy of the Bridgeport City Council's Meeting Minutes for May 18, 2021. *See Village of Bridgeport, May 18, 2021 Regular Council Meeting Minutes, Attachment to Affidavit of William Schmitt*. This public record confirmed the news report. Mary Lyle was not even interviewed for the position until May 18, 2021, two weeks after April 28, 2021 when Relators filed their petition with the volunteer clerk. Chris Kirby, Relators learned, was the Village Clerk/Fiscal Officer on April 28, 2021 and June 29, 2021 and continued to serve as such through June 30, 2021 (even after Mary Lyle was offered the position on May 18, 2021 and went into training).

Relators immediately on August 10, 2021, through counsel, contacted counsel for Respondent-Bridgeport and presented to him these newly discovered facts, including a description of the May 18, 2021 Council Meeting Minutes. The undersigned asked Respondent-Bridgeport for an opportunity to question Mary Lyle, under oath, in order to perhaps dispel the obvious implications of what Relators had discovered. Maybe there was an explanation, Relators thought. Counsel for Respondent-Bridgeport refused to make Mary Lyle available for any form of questioning.

Relators then, again through counsel, requested that Respondents themselves bring the Minutes and news report casting serious doubt on the truthfulness of Mary Lyle and

Respondents' arguments in their Merits Brief to the attention of the Court. Counsel for Bridgeport refused. Relators were thus left with no choice but to bring this matter to the Court's attention in this Motion for Reconsideration.

I. Mary Lyle's Misrepresentation that She Was the Fiscal Officer on April 28, 2021 and June 29, 2021 and Respondents' Use of that Testimony Were Material.

Because Mary Lyle was not the Village Clerk or even associated with the Clerk's Office on April 28, 2021, any part of her affidavit suggesting anything about what happened or did not happen on April 28, 2021 is plainly false. She simply could not have known. Further, because she was not the Village Clerk on June 29, 2021, she could not use this official position to support her factual basis (she offered nothing else) for somehow knowing what happened with Relators' petition on that date. To the extent she holds herself out as the Clerk on that date, her testimony is false. To the extent she claims to know anything about that date, in the absence of an explanation about how she could, her testimony is not credible.

Specifically, and most importantly, because she was not the Village Clerk on April 28, 2021 and June 29, 2021, and proffered no alternative basis for her knowledge, she could not offer any credible evidence that the Clerk/Fiscal Officer, Chris Kirby, was physically in his Office on April 28, 2021 and June 29, 2021 and thus ready and able to file Relators' petition papers.

Mary Lyle's misrepresentations and the inferences drawn from them were material to this case. This Court relied upon them to erroneously conclude that "[t]he fiscal officer [was] Mary Lyle, not Carole Lyle," slip op. at 4, and to erroneously state that "[a]t no point did Schmitt file or attempt to file anything with Mary Lyle, the fiscal officer and village clerk, whose office is separate from the mayor's office." *Id.* at 6. "False evidence is material 'if there is any reasonable

likelihood that the false [evidence] could have affected the judgment of the jury.” *Hein v. Sullivan*, 601 F.3d 897, 908 (9th Cir. 2010) (quoting *United States v. Bagley*, 473 U.S. 667, 678 (1985)). Here, the false statements not only "could have affected the judgment," they did, as evidenced by the Court's using Respondents' and Lyle's false narrative in its opinion.

II. Mary Lyle's Misrepresentations and Respondents' Use of those Misrepresentations Were Prejudicial and Likely Altered the Outcome In This Case.

In the absence of Mary Lyle's false testimony that she was the Village Clerk on April 28, 2021 and June 29, 2021, there is no evidence in the record to establish that Relators could have filed petition papers with the true Fiscal Officer/Village Clerk, Chris Kirby, on either of those days. There is no evidence that there was anyone in Kirby's Office to accept the filings. Even if Mary Lyle were there, she was not the Fiscal Officer/Village Clerk and she could not have performed the task, as made clear by Respondents' insistence that the actual Clerk must accept filings and this Court's conclusion in this case.

The law does not require futile acts. *See, e.g., State ex rel. Cotterman v. St. Mary's Foundry*, 46 Ohio St.3d 42, 44, 544 N.E.2d 887, 889 (1989). If Chris Kirby were not physically present during regular business hours on April 28, 2021 and June 29, 2021, Relators would not have been physically or legally capable of filing their papers with the Village Clerk. It would have been impossible. Any attempt would have been futile.

Because Mary Lyle's testimony must be excluded, there is no evidence even suggesting that Relators could have filed with the Clerk, Chris Kirby, on either April 28, 2021 or June 29, 2021. There is no testimony from Respondents that Relators failed to attempt to file with Chris Kirby, and no inference may be drawn that Kirby was able and willing to accept the filings on those dates. For their part, Relator-Schmitt testified that he arrived at the municipal building on

those days seeking to file and attempting to file with the Village Clerk. The video evidence corroborates this. Relators cannot be blamed for not finding and filing with somebody who was not there. There is nothing suggesting that Chris Kirby was there.

The affidavits of the Mayor and the volunteer cannot fill the gap created by Mary Lyle's false testimony. Neither included any statement in their affidavits like Mary Lyle's. Neither testified that Relators did not attempt to file with the Village Clerk. Indeed, the video evidence established that when he entered the building on April 28, 2021 Schmitt specifically asked for and attempted to see the Village Clerk. *See slip op.* at 8 (Brunner, J., concurring and dissenting in part). Neither the Mayor nor the volunteer clerk testified, moreover and most importantly, that anyone, let alone the Clerk, was in the Fiscal Office that day and could have accepted the filing. There is absolutely no evidence he was in the Fiscal Office. There is reason, given what happened with the volunteer clerk, to believe he was not.

The acceptance of the petition on April 28, 2021 by the volunteer clerk must therefore be considered a proper filing under R.C. § 731.28. There is no evidence that Chris Kirby ever disavowed the actual filing that took place and no inference to that effect can be drawn without Mary Lyle's testimony. While one might infer from Mary Lyle's affidavit and Respondents' arguments relying on that affidavit that Mary Lyle did not acquiesce in this filing, Mary Lyle simply was not the Clerk on April 28, 2021. She did not even work in the building.

The Mayor's and volunteer clerk's rejection of the June 29, 2021 filing, meanwhile, in the absence of Mary Lyle being Clerk on that date (which she was not) and her testimony tied to that status, can only be understood as being authorized by Chris Kirby. In the absence of any evidence from Chris Kirby that no one other than he could accept and reject filings, and in the

absence of any evidence from Chris Kirby that he was physically present in the Office that day willing and able to accept filings, and in the absence of any evidence that Chris Kirby disavowed the Mayor's and volunteer clerk's actions, one can only conclude that those who were in the Office that day had authority to act in Kirby's stead. Someone during regular business hours, after all, had to be available to accept filings. The volunteer clerk's previous self-identification as the Clerk on April 28, 2021 and initial willingness to accept the petition (until she learned it involved marijuana) proves this. Chris Kirby never disavowed her actions on either date.

Rejection on June 29, 2021 of Relators' filing under these circumstances can only be considered as a rejection authorized by that Clerk, Chris Kirby, in violation of R.C. § 731.28. Kirby never disavowed it. He never even bothered to testify on Respondents' behalf. Without Mary Lyle's falsely substituted testimony for Chris Kirby's, Respondents' case collapses.

Given this violation on June 29, 2021, Relators' subsequent unsuccessful attempts at filing on July 9, 2021 and July 12, 2021 become irrelevant. So is the Village's belated (after the deadline had passed and only after learning of this lawsuit) offer on July 17, 2021 to accept the filing. The violation occurred on June 29, 2021, and it is that violation that must be corrected through mandamus.

III. The Court Should Accept and Make Part of the Record Relators' Attached Affidavit and Included Public Record.

As explained above, Relators had no knowledge of who the Clerk actually was on any of the relevant dates in this case. They did not even know who the Clerk actually was when they filed the Complaint on July 16, 2021. When they submitted their Evidence to the Court on July 23, 2021, Relators still had no knowledge who the actual Clerk was or is. They thus could not have anticipated Respondents' Evidence submitted on July 26, 2021 nor their argument using this

Evidence that same day to claim that Mary Lyle was the Clerk at all relevant times in this case. No one anticipates false evidence being presented to the Court. Relators only discovered Respondents' use of false testimony after this Court rendered judgment. Good cause therefore exists to add Schmitt's affidavit to the record, and Relators respectfully move that the Court do so as part of their Motion for Reconsideration.

IV. The Village of Bridgeport's May 18, 2021 Minutes Are Public Record Justifying Judicial Notice.

Even should the Court refuse to add Schmitt's Affidavit to the record, the Court is free to and should take judicial notice of the Village of Bridgeport's May 18, 2021 Council Meeting Minutes. They are a public record. "A court may take judicial notice of public records" *In re Adoption of M.G.B.-E.*, 154 Ohio St.3d 17, 28, 2018-Ohio-1787, 110 N.E.3d 1236, 1247 (2018). "[J]udicial notice of a fact 'may be taken at any stage of the proceeding'" *Hannah's Ohio Acquisition Co. v. Cuyahoga County Board of Revision*, 154 Ohio St.3d 340, 348, 2018-Ohio-2909, 114 N.E.3d 192, 200 (2018) (quoting Ohio Evid. R. 201(F)). Because Respondents continue to rely upon demonstrably false arguments and materially false evidence in this case, taking judicial notice of the public record that exposes Respondents' misrepresentations is doubly important. Relators as part of their Motion for Reconsideration respectfully move that the Court do so.

V. Meaningful Relief May Still Be Provided to Relators.

Notwithstanding that the August 4, 2021 certification deadline for local ballot initiatives has now passed, meaningful relief can still be provided. The Court has the authority to direct Respondents to certify the validity and sufficiency of the Initiative to Respondent-Belmont and direct Respondent-Belmont to include the initiative on the November 2021 ballot.

State ex rel. Harris v. Rubino, 155 Ohio St.3d 123, 127, 2018-Ohio-3609, 119 N.E.3d 1238, 1243 (2018), makes this clear. In *Rubino*, which is very much like the present case, an initiative was filed with the city auditor on June 29, 2018 in order to allow circulation of petitions. *Id.* at 124, 119 N.E.3d at 1240. On July 12, 2018, supporting petitions with signatures were delivered to the auditor, which were duly accepted for filing. *Id.* The auditor held the petitions for ten days, as required by R.C. § 731.28, and then delivered them on July 23, 2018 to the board of elections. *Id.* On July 30, the board certified that the petition contained 870 valid signatures, more than the number necessary to qualify the petition for the ballot under R.C. § 731.28. *Id.* On July 31, 2018 the city retrieved the petition and certification from the board, but then refused to anything more. It refused to certify the petition's validity and sufficiency. *Id.* at 125, 119 N.E.3d at 1241.

The Court concluded that the city auditor "abused his discretion by failing to certify the sufficiency and validity of the petition to the board of elections by the August 8 deadline." *Rubino*, 155 Ohio St.3d at 131, 119 N.E.3d at 1246. Because the city and auditor had missed that deadline, the Court on September 7, 2018 "order[ed] Rubino to certify the sufficiency and validity of the initiative petition to the board for placement on the November 2018 ballot." *Id.*

The Court can do the same thing here. Just as in *Rubino*, the proximity of the election means that Relators have no adequate remedy at law. Just as in *Rubino*, the Respondent-Clerk of Bridgeport is responsible under R.C. § 731.28 for timely accepting delivery of the petition and timely transmitting it to the board of elections. His (Chris Kirby's) failure to do so as requested on June 29, 2021 meant that Relators' Initiative could not be placed on the November 2, 2021 ballot. This Court can correct that by ordering the Initiative onto that ballot.

Alternatively, the Respondent-Clerk of Bridgeport can be ordered to accept the petition, hold it for ten days, and then deliver to the Respondent-Belmont under the terms of R.C. § 731.28. Even though the time has passed to certify the Initiative for the November 2, 2021 ballot, completing the process that Respondents refused to begin on June 29, 2021 would allow the Initiative to appear on the next election ballot in 2022.

Conclusion

Relators respectfully request reconsideration to correct the material and prejudicial false evidence presented and resulting erroneous representations made by Respondents to the Court.

Respectfully submitted,

/s Mark R. Brown

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CERTIFICATE OF SERVICE

I certify that the foregoing Motion with Exhibits was served upon Mark Landes, Attorney for Respondents, mlandes@isaacwiles.com, and David Liberati, Attorney for Respondent-Belmont County Board of Elections, david.liberati@belmont.oh.us, on August 12, 2021.

/s/ Mark R. Brown

Mark R. Brown

EXHIBIT 1

[Until this opinion appears in the Ohio Official Reports advance sheets, it may be cited as *State ex rel. Schmitt v. Bridgeport*, Slip Opinion No. 2021-Ohio-2664.]

NOTICE

This slip opinion is subject to formal revision before it is published in an advance sheet of the Ohio Official Reports. Readers are requested to promptly notify the Reporter of Decisions, Supreme Court of Ohio, 65 South Front Street, Columbus, Ohio 43215, of any typographical or other formal errors in the opinion, in order that corrections may be made before the opinion is published.

SLIP OPINION NO. 2021-OHIO-2664

THE STATE EX REL. SCHMITT ET AL. v. THE VILLAGE OF BRIDGEPORT ET AL.

[Until this opinion appears in the Ohio Official Reports advance sheets, it may be cited as *State ex rel. Schmitt v. Bridgeport*, Slip Opinion No. 2021-Ohio-2664.]

Mandamus—Writ of mandamus sought to compel a village clerk to certify to a board of elections the sufficiency and validity of an initiative petition or to compel the board of election to place the initiative directly on the November 2021 ballot—Relators failed to establish that they filed the petition with the proper official and thus failed to establish a clear legal right to the relief sought—Writ denied.

(No. 2021-0878—Submitted July 28, 2021—Decided August 3, 2021.)

IN MANDAMUS.

Per Curiam.

{¶ 1} Relators, William Schmitt and Dean Michael Barath (collectively, “Schmitt”), seek a writ of mandamus against respondents, the village of Bridgeport,

the clerk of the village, and the mayor of the village (collectively, “village respondents”) and the Belmont County Board of Elections.

{¶ 2} Schmitt asks us to compel the village clerk to certify to the elections board the sufficiency and validity of an initiative petition. In the alternative, Schmitt seeks a writ compelling the elections board to place the initiative directly on the November 2021 ballot. He also seeks an award of costs and attorney fees under R.C. 733.61 from the village respondents (but not the elections board). He has filed a motion to establish the amount of security for costs.

{¶ 3} Because Schmitt failed to file the petition with the village clerk, we deny the writ. We also deny the request for attorney fees and costs, and we deny as moot the motion to establish the amount of security for costs.

I. BACKGROUND

A. R.C. 731.28

{¶ 4} R.C. 731.28 allows municipal ordinances to be proposed by initiative petition. Before such a petition may be circulated, its proponents must file a certified copy of the proposed ordinance. R.C. 731.32. Then, to qualify the initiative for the ballot, proponents must file the petition containing the valid signatures of no less than 10 percent of the number of electors who voted for governor in the municipality at the most recent general gubernatorial election. R.C. 731.28.

{¶ 5} Crucially for this case, R.C. 731.28 requires the proponents to file the completed petitions with the city auditor or village clerk. That statute provides, “*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.*” (Emphasis added.) Bridgeport has no auditor, so Schmitt was required to file with the village clerk.

{¶ 6} After the clerk transmits the petition to the elections board, that board has ten days to verify the signatures and return the petition to the clerk with a statement attesting to the number that are valid. R.C. 731.28. If appropriate, the clerk then certifies to the elections board the “sufficiency and validity” of the petition, and the elections board places the initiative on the ballot at the next general election occurring “subsequent to ninety days” after the clerk’s certification. *Id.*

B. Schmitt’s Visits to the Village Office

{¶ 7} This case involves a “Sensible Marihuana Ordinance” initiative petition in the village of Bridgeport. The petition seeks to place an initiative on the November 2021 ballot to enact an ordinance limiting the penalty for the possession or cultivation of certain quantities of marijuana or hashish within the village to a fine of \$0. In his affidavit, relator Schmitt avers that he was a circulator of the petition.

{¶ 8} Schmitt brought a copy of the proposed ordinance to the Bridgeport Village offices on April 28, 2021. When he inquired about filing a citizen initiative petition, an unknown person directed Schmitt to the mayor’s office, and when he arrived at that office, he asked a woman at the desk if she was the “clerk.” She responded affirmatively, and after some discussion, she accepted his copy of the proposed ordinance and provided a receipt. Later in that conversation, she clarified that she was merely a “volunteer clerk.”

{¶ 9} Schmitt returned to the mayor’s office on June 29 seeking to file the petition. According to his affidavit, he was met there by the village mayor and “another unknown woman who held herself out as” the village clerk. He avers that both refused to accept the petition.

{¶ 10} The two women Schmitt spoke with in the mayor’s office that day were Norma Teasdale, the village mayor, and Carole Lyle, who avers that she is a volunteer secretary and clerk for the mayor but is not the village clerk. Rather, pursuant to R.C. 733.262, Bridgeport has consolidated the duties of village clerk

and village treasurer into one appointed position called “fiscal officer,” whose office is across the hall from the mayor’s office. The fiscal officer is Mary Lyle, not Carole Lyle. (The record does not disclose whether the two Lyles are related.) Teasdale and Carole Lyle aver that Teasdale did not refuse to accept Schmitt’s petitions on June 29 but stated that she said she needed to speak to legal counsel first. Schmitt left with the petition.

{¶ 11} Schmitt states that later that same day, his Columbus-based attorney telephoned the mayor, who said she would not accept the petition and that Schmitt would have to discuss the matter with the village solicitor. He further states that his attorney telephoned the solicitor on June 29 (and again on June 30 and July 12) but the solicitor did not return the calls. However, Schmitt’s affidavit does not explain how Schmitt had personal knowledge of these telephone calls placed by his attorney.

{¶ 12} On June 30, Schmitt, through counsel, sent a “taxpayer demand” letter asking the village solicitor to bring a lawsuit to compel the clerk to accept the petition. He claims that the solicitor neither responded to the letter nor brought the requested lawsuit.

{¶ 13} Schmitt returned to file his petition on July 9, but the office was closed during regular business hours. However, in his brief, Schmitt concedes that the office was legitimately closed for business that day.

{¶ 14} Schmitt returned again on July 12, but he avers that the mayor and the other woman in the office again refused to accept the petition, despite Schmitt’s informing them that he had calculated that in order for the initiative to make the November 2021 ballot, the petition had to be filed by July 15. Teasdale and Carole Lyle maintain that Teasdale did not refuse to accept the petition but said she needed

to speak to legal counsel first.¹ Again, Schmitt took the petition with him when he left.

{¶ 15} On July 16, Schmitt filed this action, seeking a writ of mandamus compelling the village clerk to certify to the elections board the sufficiency and validity of the petition. In the alternative, he seeks a writ compelling the elections board to place the initiative directly on the November 2021 ballot. He also seeks costs and attorney fees under R.C. 733.61 due to the village solicitor’s failure to bring suit in response to his taxpayer-demand letter.

{¶ 16} On July 17, the mayor called Schmitt and stated that the village would accept the petition if he delivered it. However, because it was after July 15, Schmitt chose not to file the petition on the advice of counsel. To date, he has not filed the petition.

II. ANALYSIS

A. *Mandamus Standard*

{¶ 17} “To be entitled to a writ of mandamus, a party must establish, by clear and convincing evidence, (1) a clear legal right to the requested relief, (2) a clear legal duty on the part of the respondent to provide it, and (3) the lack of an adequate remedy in the ordinary course of the law.” *State ex rel. Save Your Courthouse Commt. v. Medina*, 157 Ohio St.3d 423, 2019-Ohio-3737, 137 N.E.3d 1118, ¶ 33.

B. *Schmitt Has Not Established Entitlement to a Writ of Mandamus*

{¶ 18} R.C. 731.28 conditions the obligations of the village clerk and board of elections to advance an initiative petition on the proponent’s having filed the petition with the village clerk. The evidence before us establishes that Schmitt

1. In his affidavit, Schmitt provides the URLs for YouTube videos purporting to depict his interactions with Bridgeport officials on April 28, June 29, and July 12. No party has objected to the videos being accessed in this format or disputed their authenticity, so we conclude that Schmitt’s videos may be considered in this case.

attempted to file the petition with Mary Teasdale (the mayor) and Carole Lyle, an unpaid volunteer clerk in the mayor's office. At no point did Schmitt file or attempt to file anything with Mary Lyle, the fiscal officer and village clerk, whose office is separate from the mayor's office. Thus, Schmitt did not comply with the requirement in R.C. 731.28 that he file the signed petition with the village clerk.

{¶ 19} We acknowledge that Schmitt's confusion regarding which office the village clerk was located in stemmed in part from a misunderstanding between Schmitt and the village officials and the officials' lack of awareness about the citizen-initiative process. Nonetheless, Schmitt had an obligation to file the petition with the proper official, and he has not established that he satisfied that obligation.

C. Schmitt Has Not Established Entitlement to Costs and Attorney Fees

{¶ 20} R.C. 733.61 provides that if the court hearing a taxpayer suit

is satisfied that the taxpayer had good cause to believe that his allegations were well founded, or if they are sufficient in law, it shall make such order as the equity of the case demands. In such case the taxpayer shall be allowed his costs, and, if judgment is finally ordered in his favor, he may be allowed, as part of the costs, a reasonable compensation for his attorney.

{¶ 21} Because we do not award judgment in Schmitt's favor, we deny his request for attorney fees. We also conclude that Schmitt did not have good cause to believe his allegations were well founded, for the reasons set forth above. We therefore deny the request for costs. This renders moot the motion to establish security for costs.

III. CONCLUSION

{¶ 22} For the foregoing reasons, we deny the writ. We also deny the request for costs and attorney fees, and we deny as moot the motion to establish the amount of security for costs.

Writ denied.

O’CONNOR, C.J., and KENNEDY, FISCHER, DEWINE, DONNELLY, and STEWART, JJ., concur.

BRUNNER, J., concurs in part and dissents in part, with an opinion.

BRUNNER, J., concurring in part and dissenting in part.

{¶ 23} The majority concludes that relator William Schmitt failed to file an initiative petition for a proposed ordinance with respondent Bridgeport Village clerk as required by statute and that relators, Schmitt and Dean Michael Barath, would not be entitled to relief even if the proposed ordinance had been filed according to statute. It is from these decisions that I respectfully dissent. I agree that relators’ requests for (1) an order for the village clerk to immediately certify the sufficiency and validity of the initiative petition to respondent Belmont County Board of Elections for placement on the November ballot and (2) an order for the board to place the proposed ordinance directly on that ballot go beyond the legal duties imposed upon the village clerk, the board, and respondents, the village and the mayor of the village, and thus I agree that relators are not entitled to a writ of mandamus against respondents on those bases. However, I do believe that relators are entitled to a limited writ against the village clerk under their request for other relief that this court might find appropriate.

{¶ 24} That Schmitt did not file his paperwork with the correct village official is the basis for the majority’s denial of relators’ request for a writ of mandamus and ultimately, relators’ access to the ballot. I believe, based on my review of the video evidence presented by relators, that it is indisputable that the

village of Bridgeport persistently misled Schmitt and stonewalled his attempts to properly file paperwork, and I would not reward that behavior by denying any relief. Rather, I would grant relators a limited writ ordering the village clerk (1) to ratify acceptance of the proposed ordinance under R.C. 731.32 and (2) to accept the part petitions containing signatures and then discharge her duties under R.C. 731.28.

{¶ 25} The majority adequately acknowledges and recounts some of the evidence filed in this case, and I will not repeat those facts here. However, missing from the majority’s analysis is a crucial item that gives context to the averments submitted by the parties—video of what happened when Schmitt visited the Bridgeport municipal building on April 28, June 29, and July 12, 2021.²

{¶ 26} During Schmitt’s first visit to the Bridgeport village offices, on April 28, he sought to “file a certified copy of the proposed ordinance” with the village clerk as required by R.C. 731.32. Video taken by Schmitt, posted on YouTube by Schmitt, and referenced in Schmitt’s affidavit, which has been filed as evidence in this case with the clerk of this court, shows that when Schmitt entered the building, the following exchange occurred:

Schmitt: “Hello, ma’am. Is the village clerk in today?”
Unknown Female: “What?”
Schmitt: “The village clerk in today?”
Unknown Female: “Mayor’s Office.”
Schmitt: “In the mayor’s office? Oh, okay.”

Schmitt turned to face the door of the mayor’s office but, before he even entered that office, he apparently saw another person (in an affidavit filed as part of

2. April 28 <https://youtu.be/ss6pyWqO6GQ>, June 29 (according to the affidavits it is the 29th but the video title suggests it is the 28th) https://youtu.be/u9dh4V_5_fc, and July 12 <https://youtu.be/2buMLPyLIR8>.

Bridgeport’s evidence, Carole Lyle admits that she was the person Schmitt encountered). This exchange then occurred:

Schmitt: “Yes, I got a citizen’s initiative petition I need to turn in. Are you the clerk?”

Lyle: “Yes.”

Schmitt: “Oh, okay. Good.”

{¶ 27} Schmitt then entered the office and began to explain how the initiative-petition-process works, to which Lyle responded that she thought that the mayor should be the one to accept the documents. Schmitt stated that, as a matter of law, he was “supposed to turn it in to a village clerk.” Lyle then expressed the opinion that the ordinance would have to go to council. Schmitt again attempted to explain, and Lyle responded that before she accepted it, she wanted to talk to the village solicitor to make sure that she was the one to do what was asked of her. The two then discussed how the full initiative process works and what the proposed ordinance’s purpose was. At the end of that explanation, Lyle signed the receipt to indicate acceptance and handed it back to Schmitt.

{¶ 28} Immediately after signing to indicate receipt and acceptance of the certified copy of the proposed ordinance and handing the receipt to Schmitt, Lyle told Schmitt, “Yeah, cause I’m just a volunteer clerk. So I don’t really hold any power.” To which Schmitt responded, “Yeah, yeah. And I mean, really, honestly, that’s all you do. And if you wouldn’t have accepted it I would have just put it in the drop box outside because I video recorded, um, and really all we—this is just proof that we turned in the petition before we started collecting signatures.” Then Lyle asked some further questions about how the process worked and Schmitt offered further explanation. At the end of that discussion, the conversation concluded:

Lyle: “I’ll just accept it and that’s it.”

Schmitt: “All right. Well, I do appreciate your time very much. Thank you very much.”

{¶ 29} On June 29, 2021, Schmitt returned to the same office with signed part petitions to file with the village clerk in compliance with R.C. 731.28, and again he made a video record of what transpired. Upon entering the doorway of the office, Schmitt explained that he was there to turn in 14 part petitions containing signatures for submission and validation by the board of elections for the initiative he had filed some weeks before. An occupant of the office that day (either Carole Lyle or the mayor, Norma Teasdale) interrupted to state, “I’m not signing any petition whatsoever.” She then questioned why Schmitt did not just take the petitions directly to the board of elections. Schmitt responded that this was not the process prescribed by the Ohio Revised Code and encouraged her to contact the board of elections or Schmitt’s attorney if she had any questions about the process.

{¶ 30} After some further discussion about the substantive purpose of the petition (to decriminalize marijuana) she asked if before accepting the petitions she could contact the village solicitor. Schmitt agreed that this was fine but noted that the matter was time sensitive. She promised to contact the solicitor that day and to follow up with Schmitt. Schmitt said that would be “perfectly fine,” noting that local governments often have questions about this because not many people know that citizens can change the law themselves. She then took his information and promised to get back to him by Wednesday (which would have been June 30). Schmitt responded at that point that he was happy to have her contact the village solicitor but would appreciate a response by the next day. He also argued for the reasonableness of that request by noting that, technically, he had proof of attempting to submit the petitions in the form of the video he was recording and that all he really had to do was leave them on the counter. At that point, she committed to contact Schmitt the following day:

Schmitt: “But like I said, it is time sensitive—”

Teasdale or Lyle: “I understand that.”

Schmitt: “—so if you could get back to me by tomorrow, sometime?”

Teasdale or Lyle: “Yeah.”

Schmitt: “Could we do that please?”

Teasdale or Lyle: “Yes.”

{¶ 31} But no one from Bridgeport contacted Schmitt or his attorney the next day, or any day, in fact, until after this action was filed, despite attempts by Schmitt’s counsel to contact the village solicitor directly.

{¶ 32} On July 12, 2021, Schmitt returned to the same office to which he had been directed on April 28, 2021, when he stated that he was looking for the village clerk. He again encountered Carole Lyle (who had previously stated that she was the clerk or a volunteer clerk) and the mayor, Norma Teasdale. Schmitt indicated that he was once again asking if they would accept the part petitions. Teasdale responded, “Oh, that has to go through my—our solicitor. He has not gotten back to me. They were * * *—out of town last week.” Schmitt then explained that when he left a message at the solicitor’s office on his machine, he was informed that the solicitor would get back to him after the Fourth-of-July weekend, but that he had not done so so far. Teasdale then reiterated that she had not heard from him: “Okay, they were on vacation and I haven’t talked to him since—and our phones err—we just got a new phone system. They’re not working. I just got done talking to the company about our phones. I can’t even call the solicitor yet until they come back to me and tell me that our phones are correct. So, I—up until that time whenever he tells me what to do.”

{¶ 33} Schmitt then stated, “Okay. Well, I’ve felt I’ve given you guys adequate time.” Teasdale responded, “I’m sorry, I can’t do anything without talking to the solicitor.” Schmitt then asked, “Was she [indicating Lyle] the lady that I turned in the paperwork to the first time?” Teasdale then said, “I don’t think

you turned in anything.” Then she asked Lyle, “Did he turn in anything.” “Just a request, I think it was,” responded Lyle. “Yeah,” Schmitt reminded her, “you signed the paper and then I left you a petition.” “And we sent it to the solicitor,” Lyle added, “so, I don’t want to be involved in it.” Schmitt then said that he did not want to take the village to court. Mayor Teasdale said she understood and was not trying to be “nasty or anything,” but that she would not take any action until told to do so by the solicitor.

{¶ 34} Schmitt then asked for Lyle’s name. Lyle refused to give it, asking, “What do you need my name for?” When Schmitt tried to explain that it was for court purposes, the mayor excused the refusal, saying, “She’s just a volunteer. She has nothing to do with the village itself.” Teasdale again asked, “Did he turn in paperwork? I didn’t think he turned anything in outside of talking to you.” This time, in conformity with what the mayor had said, Lyle stated, “I don’t know. I don’t know. It was so hectic that day when he came in.” “Yeah,” the mayor added, “we had a big meeting going off at the same time.” Schmitt responded, “Yeah, you guys had a lot in and that’s why I had her sign the paper that she received the petition, left it here, and then I went and collected the signatures.” Teasdale again insisted, “I don’t recall that petition being left.”

{¶ 35} Again citing the solicitor’s vacation, noting the recent holiday, adding the fact that no one in the village works on Friday, mentioning the solicitor’s court schedule, and volunteering that she had a funeral to go to, Teasdale indicated that it was unlikely she would know anything further until Wednesday or Thursday (the 14th or 15th of July). Schmitt indicated that if that was the case and relators were unsuccessful in getting in contact with the village solicitor to resolve things, the matter would likely be resolved in court. The conversation thereafter ended cordially.

{¶ 36} When relators received no further contact from the village, they filed this action on Friday, July 16, 2021. Only after that, on Saturday, July 17, did the

village mayor contact Schmitt and tell him that the petition and signatures would be accepted.

{¶ 37} The majority takes the position that Schmitt filed his paperwork with the wrong person and, for that reason, he is not entitled to relief. It is apparently true that Carole Lyle was not the village clerk. Bridgeport has no village clerk or clerk's office, only a fiscal officer (Mary Lyle³) who performs the duties of clerk, as permitted by R.C. 733.262(A). So it may be true that Schmitt handed his initiative petition to the wrong person and thereafter tried to get the wrong person to accept the part petitions with signatures, but what happened to Schmitt was not a problem of his making by any stretch. Both of these two public servants, the mayor and the volunteer clerk, were informed that Schmitt was trying to file an initiative petition to place an issue on the ballot. Either or both of them could have directed him to the village fiscal officer in this small village where the officers were housed in the same building. They did not do so. Instead, they made excuses, with one even attempting to deny what happened on April 28 when Schmitt had filed, and Lyle had accepted, the certified copy of the proposed ordinance. Denying a writ of mandamus to disqualify the petition on a technicality created by village officials rewards ignorance at best and malfeasance at worse.

{¶ 38} I would hold that by installing Carole Lyle in the municipal building, by permitting her to refer to herself as the clerk, and by not correcting the representation that she was the clerk in the building, Bridgeport and the mayor of Bridgeport clothed her with apparent authority to accept the certified copy of the proposed ordinance, enabling Schmitt to begin collecting signatures. *See State v. Billingsley*, 133 Ohio St.3d 277, 2012-Ohio-4307, 978 N.E.2d 135, ¶ 26, quoting *Master Consol. Corp. v. BancOhio Natl. Bank*, 61 Ohio St.3d 570, 575 N.E.2d 817 (1991), syllabus (“a principal is still bound by the acts of the agent under the theory

3. As the majority notes, it is unclear from the record whether Mary Lyle is any relation to Carole Lyle.

of apparent authority when (1) ‘the principal held the agent out to the public as possessing sufficient authority to embrace the particular act in question, or knowingly permitted him to act as having such authority, and (2) * * * the person dealing with the agent knew of those facts and acting in good faith had reason to believe and did believe that the agent possessed the necessary authority’ ” [ellipsis added in *Billingsley*]).

{¶ 39} Once Schmitt cleared the hurdle of R.C. 731.32, the village clerk (or fiscal officer) had the duty to fulfill her responsibilities under R.C. 731.28. That relators also seek “such other relief as in the Court’s judgment may be appropriate” permits this court to issue a limited writ of mandamus ordering the village clerk (1) to ratify her acceptance of the proposed ordinance under R.C. 731.32 and (2) to accept the part petitions containing signatures and then discharge its duties under R.C. 731.28. The village clerk is required to then transmit the part petitions to the Belmont County Board of Elections to examine the signatures. After the board does so, it must return the petition to the fiscal officer to certify the sufficiency and validity of the petition and transmit the petition to the board to be placed on the ballot.

{¶ 40} As for the remainder of relators’ complaint for relief, I agree with the majority that relators are not entitled to the specific writs of mandamus that they have requested because they seek more relief than they are now entitled to under the law. For the reasons stated, relators are not entitled to the requested order requiring (1) “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” or (2) “directing Respondent-Belmont Board of Elections to timely place the Initiative on the November 2, 2021 election ballot.” R.C. 731.28 and 731.32 does not permit us, as the majority notes, to short-circuit or rewrite the statutory process that is intended to ensure that a petition contains the requisite number of signatures required to reach the ballot.

{¶ 41} This court should recognize the cloak of apparent authority that the village permitted Carole Lyle to wear in accepting the certified copy of the proposed ordinance and issue a writ of mandamus ordering the village clerk to immediately and timely comply with her legal duties under R.C. 731.28. I would not reward the evasive and unacceptable conduct by the village officials in this case. By refusing to issue a writ, the majority permits an Ohio municipality to deny voters the right to self-governance and allows officials who have sworn to do their duty to their village to thwart those and the village voters' rights. Insofar as the majority does not take the actions I have described, I respectfully dissent.

{¶ 42} The majority declines to issue a writ with respect to the Belmont County Board of Elections, and I concur in that decision. To the extent that this dissent were to be the majority opinion of the court, I would award fees and costs to relators.

Mark R. Brown, for relators.

Isaac, Wiles & Burkholder, L.L.C., Mark Landes, Donald C. Brey, and C. Awele Nwajei, for respondents the village of Bridgeport, the mayor of village of Bridgeport, and the clerk of village of Bridgeport.

J. Kevin Flanagan, Belmont County Prosecuting Attorney, and David K. Liberati, Assistant Prosecuting Attorney, for respondent Belmont County Board of Elections.

EXHIBIT 2

IN THE SUPREME COURT OF OHIO

STATE *ex rel.* SCHMITT, et al.,

Relators,

V.

CASE NO. 2021-0878

**ORIGINAL ACTION
IN MANDAMUS**

VILLAGE OF BRIDGEPORT, et al.,

Respondents.

Affidavit of Relator, William Schmitt

NOW COMES Relator, William Schmitt, pursuant to Article IV, § 2(B)(1)(d) of the Ohio Constitution, and Ohio Supreme Court Practice Rules 12.06 and 12.10, and submits the following Affidavit.

In support of this Affidavit, Relator, William Schmitt, hereby states that he is over the age of eighteen years and competent to testify as to the allegations contained therein. He has reviewed the statements contained therein and swears based on his personal knowledge that they are true and correct. He has personally examined the Attachment and swears under S. Ct. Prac. R. 12.06 that the Attachment is what it purports to be, and that it was hand-delivered to him by the Mayor of the Village of Bridgeport Ohio on August 10, 2021 in response to his request for a copy of the Village of Bridgeport's May 18, 2021 Council Meeting Minutes.

1. Relator, William Schmitt, a citizen, a resident and qualified elector of the State of Ohio, resides at 4646 Harrison Street, Bellaire, Ohio 43906.
2. Relator, William Schmitt, was a circulator of the Sensible Marihuana Initiative for Respondent, the Village of Bridgeport, (hereinafter "the Initiative"), that Relators have attempted to have placed on the Village of Bridgeport's November 2, 2021 election ballot and is a Relator in this case.
3. On August 10, 2021 Relator-Schmitt went to the Village of Bridgeport's Mayor's Office during regular business hours and requested from her, as the legal guardian of the Village's official Minutes, a copy of the Village of Bridgeport's May 18, 2021 Regular Council Minutes.
4. Respondent- Mayor of Bridgeport and her volunteer secretary hand-delivered to Relator-Schmitt a copy of those May 18, 2021 Regular Council Minutes on August 10, 2021, a copy of which is attached. See Attachment.
5. Relator-Schmitt swears that the attached copy of the May 18, 2021 Regular Council Minutes is a true accurate reproduction/copy of the public record that was hand-delivered to me by Respondent-Mayor of Bridgeport and her volunteer secretary on August 10, 2021.

Verification

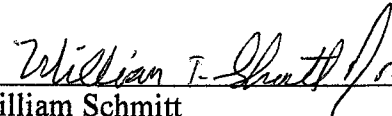
I, William Schmitt, having first been duly sworn and cautioned according to law, hereby state that I am over the age of eighteen years and competent to testify as to the allegations in the foregoing document. I have reviewed the statements contained in the document and state based on my personal knowledge that they are true. Further, I have personally examined the Attachment to the document and state that it is a true and accurate copy of what it purports to be, that is a public record of the Village of Bridgeport, Ohio. I was the circulator in *State ex rel. Schmitt v. Village of Bridgeport*, No. 2021-0878, and I am a Relator in this action.

1. Relator, William Schmitt, a citizen, a resident and qualified elector of the State of Ohio, resides at 4646 Harrison Street, Bellaire, Ohio 43906.
2. Relator, William Schmitt, was a circulator of the Sensible Marihuana Initiative for Respondent, the Village of Bridgeport, (hereinafter "the Initiative"), that Relators have attempted to have placed on the Village of Bridgeport's November 2, 2021 election ballot and is a Relator in this case.
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5. Relator-Schmitt swears that the attached copy of the May 18, 2021 Regular Council Minutes is a true accurate reproduction/copy of the public record that was hand-delivered to me by Respondent-Mayor of Bridgeport and her volunteer secretary on August 10, 2021.

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 document. I have reviewed the statements contained in the document and state based on my personal knowledge that they are true. Further, I have personally examined the Attachment to the document and state that it is a true and accurate copy of what it purports to be, that is a public record of the Village of Bridgeport, Ohio. I was the circulator in *State ex rel. Schmitt v. Village of Bridgeport*, No. 2021-0878, and I am a Relator in this action.

FURTHER AFFIANT SAYETH NAUGHT

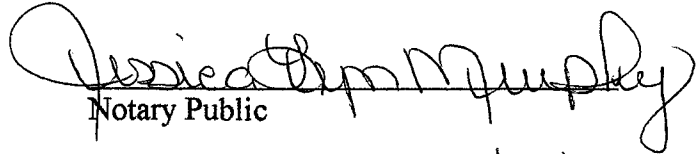


William Schmitt

Sworn to and before me and subscribed in presence this 10th day of August, 2021.



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



Notary Public
My Commission Expires: 4/10/22

Respectfully submitted,

/s Mark R. Brown

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ATTACHMENT

Village of Bridgeport City Council Minutes

May 18, 2021

VILLAGE OF BRIDGEPORT
301 MAIN STREET
BRIDGEPORT, OHIO 43912

May 18, 2021 Regular Council Meeting

A regular meeting of village council was held Tuesday, May 18, 2021 at 6 P.M. in the Bridgeport Municipal Building with Acting Mayor Norma Teasdale presiding. Council members present were Mrs. Michelle Lucarelli, Mr. Loyal Springer and Mr. Ben Lenz. Mr. Joseph Lyle was absent due to being out of town.

Other village officials present were: Police Chief John Bumba, Solicitor Michael Shaheen, Board of Public Affairs President, Chuck Husted and Fiscal Officer, Chris Kerby.

Mayor Teasdale opened the meeting followed by the pledge of allegiance.

CITIZENS CONCERNS

Staff Sergeant Willie Clegg asked council for approval to use council chambers one day a week (Thursday) for recruiting for the U.S. Army. Mr. Lenz moved to approve use of council chambers one day a week; second by Mrs. Lucarelli. Roll call: Mrs. Lucarelli, aye; Mr. Springer, aye; Mr. Lenz, aye. Motion carried.

John Marshall, representing Ohio National Road Association, asked council to approve a mile marker be installed at our memorial park. There will be no cost to the village and ODOT will install. Council gave their approval. Mr. Shaheen asked Mr. Marshall to let us know when it will be installed.

Three residents, Willie Clegg, David Lofton and Robert Bennington were present and are interested in the open council seat left by the resignation of David Rice. There was no action taken since council lacked a quorum. Council seat will be filled next meeting, June 15

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READING OF MINUTES

Minutes of regular meeting April 20, 2021 were presented to council. Mr. Lenz moved to approve minutes; second by Mrs. Lucarelli. Roll call: Mrs. Lucarelli, aye; Mr. Springer, aye; Mr. Lenz, aye. Motion carried.

UNFINISHED BUSINESS

NEW BUSINESS

Mayor Teasdale reported the village will be getting a new phone system that will save the village approximately \$200.00 per month. Current phones are from the 1990's. The five year contract is with Full Service Network. Rental of equipment price is included in monthly rate and will be installed as soon as possible.

COMMITTEE REPORTS — None

PAYMENT OF BILLS

Mrs. Lucarelli moved to pay all authorized bills; second by Mr. Lenz. Roll call: Mrs. Lucarelli, aye; Mr. Springer, aye; Mr. Lenz, aye. Motion carried.

POLICE CHIEF'S REPORT

Chief Bumba reported 81 calls, 11 charges filed and 63 citations for the month of April, 2021.

FINANCIAL REPORT

Mr. Kirby gave financial report stating departments will have to continue to watch expenses and not go over budget. Recovery Plan will be reviewed after June. Justin Sloan will lead this discussion. Water connection will also be discussed. Have received 51% of real estate taxes.

BOARD OF PUBLIC AFFAIRS

Mr. Husted reported they are still having to rent equipment.

STREET COMMISSIONER - Nothing

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Mr. Lenz moved to go into executive session to discuss personnel; second by Mrs. Lucarelli. Roll call: Mrs. Lucarelli, aye; Mr. Springer, aye; Mr. Lenz, aye. Motion carried. At 6:25 P.M. council went into executive session. Council went back into regular session at 7:12 P.M.

ORDINANCES & RESOLUTIONS

Mr. Shaheen read Resolution No. 2021-28 approving the hiring of Mary K. Lyle as Village Fiscal Officer for the Village of Bridgeport effective June 1. Mrs. Lyle will be Fiscal Officer in Training the month of June and assume Fiscal Officer position July 1. Mr. Lenz moved for passage of Resolution No. 2021-28; second by Mr. Springer. Roll call: Mrs. Lucarelli, aye; Mr. Springer, aye; Mr. Lenz, aye. Motion carried

Mrs. Lyle was sworn in by Solicitor Michael Shaheen.

Mr. Shaheen read Resolution No 2021-29 awarding the contract for a Water Department Excavator to Bridgeport Equipment and Tool at a cost of \$60,538.51. Mr. Lenz moved for passage of Resolution No. 2021-29; second by Mr. Springer. Roll call: Mrs. Lucarelli, aye; Mr. Springer, aye; Mr. Lenz, aye; Motion carried.

Mr. Shaheen read Ordinance No. 2021-30, an ordinance requesting the Auditor of Belmont County to certify the necessary documentation for a new Police Levy to be placed on the ballot for the Village of Bridgeport, Ohio and declaring an emergency. Mr. Lenz moved for suspension of rules; second by Mrs. Lucarelli. Roll call: Mrs. Lucarelli, aye; Mr. Springer, aye; Mr. Lenz, aye. Motion carried. Mr. Lenz then moved for passage of Ordinance No. 2021-30; second by Mrs. Lucarelli. Roll call: Mrs. Lucarelli, aye; Mr. Springer, aye; Mr. Lenz, aye. Motion carried.

Mr. Shaheen read Resolution No. 2021-31 changing the employment status of Andrew Miller from part-time to full-time police officer for the Village of Bridgeport. Mr. Lenz moved for passage of Resolution No. 2021-31; second by Mr. Springer. Roll call: Mrs. Lucarelli, aye; Mr. Springer, aye; Mr. Lenz, aye. Motion carried.

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Mr. Shaheen read Ordinance No. 2021-32 replacing Ordinance 2020-20
And any subsequent amendment to the same, establishing the hourly and
salaried compensation of village employees for the Village of Bridgeport and
declaring an emergency. Mr. Lenz moved for suspension of rules; second by Mrs.
Lucarelli. Roll call: Mrs. Lucarelli, aye; Mr. Springer, aye; Mr. Lenz, aye. Motion
carried. Mr. Lenz then moved for passage; second by Mr. Springer. Roll call: Mrs.
Lucarelli, aye; Mr. Springer, aye; Mr. Lenz, aye. Motion carried.

Mr. Shaheen read Ordinance No. 2021-33 granting approval and consent to the
Director of the Ohio Department of Transportation authority to apply, maintain
and repair standard longitudinal pavement markings and erect regulatory and
warning signs on state highways inside village corporate limits.

Giving consent of the Village for the Ohio Department of Transportation to
remove snow and ice and use snow and ice control material on state highways
inside the village corporate limits and

Giving consent of the Village for the Ohio Department of Transportation to
perform maintenance and/or repair on state highways inside the Village
corporation and declaring the same an emergency.

Mr. Lenz moved for suspension of rules; second by Mr. Springer. Roll call: Mrs.
Lucarelli, aye; Mr. Springer, aye; Mr. Lenz, aye. Motion carried. Mr. Lenz then
moved for passage of Ordinance No. 2021-33; second by Mr. Springer. Roll call:
Mrs. Lucarelli, aye; Mr. Springer, aye; Mr. Lenz, aye. Motion carried.

There being no further business, Mrs. Lucarelli moved to adjourn; second by Mr.
Springer. Meeting adjourned at 7:29 P.M..