

NO. 07-1509

IN THE SUPREME COURT OF OHIO

ORIGINAL ACTION IN MANDAMUS AND PROHIBITION
FOR ELECTION-RELATED MATTER

STATE OF OHIO EX REL.
DEBORAH S. REESE

Relator,

v.

CUYAHOGA COUNTY BOARD OF ELECTIONS, *et al.*

Respondents.

MEMORANDUM OF RELATOR IN SUPPORT OF COMPLAINT IN MANDAMUS
AND/OR PROHIBITION/ RESPONSE TO RESPONDENTS' MOTION TO
DISMISS/MOTION FOR JUDGMENT ON THE PLEADINGS

DANIEL P. CARTER (0074848)
Counsel of Record
carter@buckleyking.com
JEFFREY W. RUPLE (00687420)
ruple@buckleyking.com
BUCKLEY KING LPA
1400 Fifth Third Center
600 Superior Avenue, East
Cleveland, OH 44114-2652
(216) 363-1400
(216) 579-1020 (*facsimile*)

Attorney for Relator
Deborah S. Reese

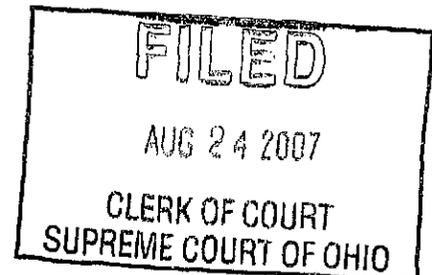


TABLE OF CONTENTS

	<u>Page</u>
I. INTRODUCTION	2
II. FACTS	4
III. LAW AND ARGUMENT	7
A. A WRITE OF MANDAMUS AND/OR PROHIBITION IS RELATOR’S ONLY REMEDY BECAUSE THE GENERAL ELECTION IS LESS THAN NINETY (90) DAYS AWAY.	7
B. JUDGE GRAVENS MUST BE CONSIDERED AN INDEPENDENT CANDIDATE.	9
C. BECAUSE JUDGE GRAVENS MUST BE CONSIDERED AN INDEPENDENT CANDIDATE BY VIRTUE OF THE TYPE OF ELECTION HELD, SHE MUST BE STRICKEN FROM THE GENERAL ELECTION BALLOT	12
IV. RESPONDENTS’ MOTION TO DISMISS SHOULD BE DENIED.....	14
V. NOTICE OF SIMILAR CASE	17
VI. CONCLUSION.....	17

Table of Authorities

Page

Statutes

Ohio Rev. Code Ann. §1901.07.....	4, 11, 12, 17, 18
Ohio Rev. Code Ann. §3501.39(A).....	2
Ohio Rev. Code Ann. §3501.01(J).....	12, 18
Ohio Rev. Code Ann. §3505.04.....	19
Ohio Rev. Code Ann. §3505.05.....	12
Ohio Rev. Code Ann. §3513.257.....	9, 14, 17
Ohio Rev. Code Ann §3516.261.....	5, 17
S. Ct. R. X, §4(B).....	3, 15, 16
S. Ct. R X, Section 9.....	3
1. <i>In re Election Contest of Democratic Primary Election Held May 4, 1999 for Nomination to the Office of Clerk, Youngstown Mun. Ct.</i> (2000), 88 Ohio St.3d 258.....	12
2. <i>Morrison v. Colley</i> (6 th Cir. 2006), 467 F.3d 503.....	2, 7, 13, 14
3. <i>State ex rel. Beck v. Casey</i> (1990), 51 Ohio St.3d 79.....	15
4. <i>State ex rel. Brown v. Butler Cty. Bd. of Elections</i> (2006), 109 Ohio St.3d 63.....	8
5. <i>State ex rel. Choices for Southwestern City Schools v. Anthony</i> (2005), 108 Ohio St.3d 1.....	7, 8
6. <i>State ex rel. City of Toledo v. Lucas Cty. Bd. of Elections</i> (2002), 95 Ohio St.3d 73.....	14
7. <i>State ex rel. Cooker Restaurant Corp. v. Montgomery Cty. Bd. of Elections</i> (1997), 80 Ohio St.3d 302.....	7
8. <i>State ex rel. Donnegan v. Cuyahoga Cty. Bd. Elections</i> (2000), 136 Ohio App.3d 589...	10
9. <i>State ex rel. Essig v. Blackwell</i> (2004), 103 Ohio St.3d 481.....	17
10. <i>State ex rel. Green v. Casey</i> (1990), 51 Ohio St.3d 83.....	15
11. <i>State ex rel. Hackworth v. Hughes</i> (2002), 97 Ohio St.3d 110.....	3, 14
12. <i>State ex rel. Howard v. Skow</i> (2004), 102 Ohio St.3d 423.....	17
13. <i>State ex rel. Jennifer Martinez, et al. v. The Cuyahoga Cty. Bd. Elections</i> (March 27, 2006), Cuyahoga App. No 87880.....	10
14. <i>State ex rel. Smart v. McKinley</i> (1980), 64 Ohio St.2d 5, 6.....	9
15. <i>State ex rel. Steele v. Morrissey</i> (2004), 103 Ohio St.3d 355.....	8
16. <i>State ex rel. Yiamouyiannis v. Taft</i> (1992), 65 Ohio St.3d 205.....	15
17. <i>Tatman v. Fairfield Cty. Bd. of Elections</i> (2004), 102 Ohio St.3d 425.....	8, 9
18. <i>United States v. Gjieli</i> (6 th Cir. 1983), 717 F.2d 968.....	13
Ohio Secretary of State Advisory Opinion 2007-05.....	2, 7, 14

I. INTRODUCTION

Pursuant to Rev. Code §3501.39(A), Relator Deborah S. Reese (“Relator”) submitted and filed two written protest letters with the Respondents Cuyahoga County Board of Elections and individual board members (“Respondents”). These protests challenged Judge Gravens’ candidacy as invalid and in violation of the requirements established by the Sixth Circuit’s decision in *Morrison v. Colley* (6th Cir. 2006), 467 F.3d 503 (Ex. A) and Ohio Secretary of State Advisory Opinion No. 2007-05 (“SOS Opinion”) (Ex. B).

Relator requests this Court to issue a writ of mandamus and/or in the alternative a writ of prohibition to prevent Judge Maureen Adler Gravens (“Judge Gravens”) from appearing on the 2007 General Election Ballot for the position of Rocky River Municipal Court Judge. The basis for the writ arises from the actions of Respondents acting contrary to the SOS Opinion. The SOS Opinion requires independent candidates not to vote in a subsequent party primary after filing an independent petition with the Respondents.

Judge Gravens voted in the May 8, 2007 Democrat Primary, after filing as an independent candidate with the Respondents on May 2, 2007. This is sufficient for Judge Gravens to be removed from the General Election Ballot in accordance with the SOS Opinion and the *Morrison* case. (Exs. A and B)

Contrary to this Court’s prior admonitions that motions for judgment on the pleadings are improper in an expedited election case, Respondents filed a pleading styled “Respondent’s Motion to Dismiss or Motion for Judgment on the Pleadings.” *State ex*

rel. Hackworth v. Hughes (2002), 97 Ohio St.3d 110.¹ Nevertheless, even if Respondent's Motions are entertained by this Court, they must be denied.²

Regarding Respondents' Motion to Dismiss, Relator, in compliance with S. Ct. R. X, Section 4(B) provided not only her own affidavit made on her personal knowledge, but the affidavit of her counsel in support of the facts of her writ of mandamus and/or writ of prohibition made on personal knowledge. Her affidavit specifically sets forth the facts which led to her original protests and eventually the present writ and Relator's testimony before Respondents demonstrates how she gained her personal knowledge.

Respondents' Motion for Judgment on the Pleadings must fail as the undisputed facts demonstrate that a primary election was scheduled by Respondents for the position of Rocky River Municipal Court. Judge Gravens submitted petitions which could be either petitions for an independent candidate or a nonpartisan candidate depending on the type of election (the forms used are identical). However, since this was a partisan election, Judge Gravens only could be considered an independent. By virtue of Judge Gravens' subsequent voting in the Democrat primary for the position of Rocky River Municipal Court Clerk, she must be removed from the ballot.

Therefore, Relator requests her request for writ(s) be granted, requiring Respondents to decertify Judge Gravens as a candidate and/or prohibit her from appearing on the 2007 General Election Ballot as well as removing the filing status

¹ It is also patently unfair to provide Respondents an opportunity to file both a Merit Brief (Motion for Judgment on the Pleadings) and essentially a Reply Brief (Response Brief). As Respondents have already filed a "merit" brief, Relator requests the Court deny Respondents the opportunity to file an additional brief.

² Further, it is noteworthy that Respondents did not serve its Motions through either personal service or facsimile in clear violation of Sup. Ct. R. X, Section 9, it was sent by first class mail.

designation as nonpartisan. Further, Relator requests the Court deny Respondents' improper procedural motions.

II. FACTS

Relator hereby incorporates her Affidavit filed with the Writ of Mandamus/Writ of Prohibition and Affidavit of Counsel also filed with the Writ.

After many years as a nonpartisan election for the Judge of the Rocky River Municipal Court, the election became a partisan election by providing for nomination by primary election. This was due to a change in R.C. §1901.07.³ (See Ex. F: Supplemental Affidavit of Gary F. Barna, ¶D1).

According to the filing deadlines set forth by Respondents, a candidate running in a party primary must have filed his or her petitions no later than February 22, 2007. (Ex. C: Affidavit of Gary F. Barna, Executive Assistant to the Director/Deputy of the Cuyahoga County Board of Elections ("Barna Aff.") ¶ D(11)⁴: BOE Petition Deadlines) Further, Independent Candidates, had up to and through May 7, 2007 to file their petitions. (Ex. C: Barna Aff. at ¶ D(11): BOE Petition Deadlines). As a partisan election, there is no provision for nonpartisan candidates for Rocky River Municipal Court until the General Election, which must be conducted with a nonpartisan ballot, R.C. §1901.07.

³ The statute was amended to read, in pertinent part:

§1901.07 Terms of Office of Judges – nomination, election

(B) All candidates for municipal court judge may be nominated either by nominating petition or by primary election

⁴ Relator does not intend to rely upon the entire "record. The undersigned has made an effort to include virtually the entire file from the Respondents for this Court's convenience as there is no "clerk of courts" to prepare a "record."

Judge Gravens followed the rules for filing as an Independent Candidate by filing her petitions on May 2, 2007. (Ex. C: Barna Aff. ¶ D(11): BOE Petition Deadlines; Ex. C: Barna Aff. ¶ D(12): Gravens Statement of Candidacy and Nominating Petitions; Ex. C: Barna Aff: ¶ D(13): Receipt of Petition for Pre-check; Ex. C Barna Aff. ¶ D(13): Results of Candidate Pre-check; Ex. C: Barna Aff ¶ D(15): Judicial Receipt for Petition filing materials) Subsequently, Judge Gravens voted in the Democratic primary election on May 8, 2007 (Ex. C: Barna Aff. ¶ D(16): Gravens Voting Record; Ex. C: Barna Aff. ¶ D(17) BOE Alphabetical Poll Book from the Primary May 8, 2002). Since there was no provision for filing as a nonpartisan candidate, the only possible scenario is that she was an independent candidate.

It should be noted that in the Ohio Secretary of State's 2007 Candidate Handbook (Ex. D: SOS Handbook), pp. 8-9, the petition to be utilized by both Independent and Nonpartisan Candidates is #3-I. Further, the provision provides:

Signature Requirements:

- Judicial officers that may be nominated in a partisan primary:
 1. Major party (Petition #2-h): 50 valid signatures
 2. Independent (Petition #3-I): 50 valid signatures
- Nonpartisan judicial offices nominated by petition *or* in a nonpartisan primary (Petition #3-I): 50 valid signatures. The Petition #3-I is one that follows the form set forth by R.C. §3513.261.

On August 6, 2007, the Respondents held a hearing on Relator's Protest. (Ex. E: Transcript of August 2006 Cuyahoga County Board of Election Hearing. ("BOE

Transcript”) At the conclusion of the hearing, the Board voted to deny Relator’s protest. (Ex. E: BOE Transcript, pp. 109-112)

Relator testified at the hearing. She testified she was a qualified elector and she filed valid protests with the Respondents. (Ex. E: BOE transcript, pp. 39-40). The source of Relator’s knowledge in no way affects the fact she had and has actual personal knowledge of the facts to support her valid protest. Relator testified as follows, when examined by Board Member Eben O. McNair on this very point:

P. 31, line 18:

MR. MCNAIR: So you have no independent knowledge that, in fact, Judge Gravens filed as an independent? It was only based on what your sister told you?

THE WITNESS: A: I did after discussion.

MR. MCNAIR: I’m sorry?

THE WITNESS: After my sister and I were discussing it, we looked into it further, but it was brought to my attention.

MR. MCNAIR: Well, I’m asking what competent evidence you have that Judge Gravens is an independent.

THE WITNESS: The attachments that were on the letter as far as her application I believe was on that.

MR. MCNAIR: And that’s it?

THE WITNESS: Yes, sir.

MR. MCNAIR: Okay. So you looked at the documents, you made a conclusion she filed as an independent, and that was the basis for filing your letter with us?

THE WITNESS: Yes, Sir.

Relator, after being apprised of the situation, reviewed the documents that were attached to her protest letters. Id. The fact that she did not review Judge Gravens’

petitions is hardly fatal or relevant. Judge Gravens' petitions only declare candidacy, not whether or not the candidate is nonpartisan or independent.

The material reviewed and submitted to Respondents by Relator is more relevant and important to Relator's protest than the petitions themselves. After Relator's review of the materials, she had personal knowledge concerning the process and procedure of Judge Gravens' candidacy, which was the basis for her protest and this matter. One cannot be said to lack personal knowledge because that person learned of the situation from another and then investigated that situation from additional sources.

III. LAW AND ARGUMENT

A. A WRIT OF MANDAMUS AND/OR PROHIBITION IS RELATOR'S ONLY REMEDY BECAUSE THE GENERAL ELECTION IS LESS THAN NINETY (90) DAYS AWAY.

In extraordinary actions, such as a writ of mandamus/prohibition, this Court must determine whether the board acted fraudulently or corruptly, abused its discretion, or clearly disregarded applicable law. *Choices for Southwestern City Schools*, 108 Ohio St.3d 1, ¶32. The issue before this Court is whether Respondents clearly disregarded applicable law.

"An abuse of discretion implies an unreasonable, arbitrary or unconscionable attitude." *State ex rel. Cooker Restaurant Corp. v. Montgomery Cty. Bd. of Elections* (1997), 80 Ohio St.3d 302, 305. Respondents abused their discretion and disregarded applicable law by denying Relator's protest, because Judge Gravens' petition: (1) must be considered to be independent and (2) because she is independent, based on *Morrison* and SOS Opinion 2007-05, Judge Gravens must be removed from the 2007 General

Election Ballot. It is this two pronged analysis of the facts of this case that lead Relator to plead in the alternative.

In order to be entitled to a writ of mandamus, Relator must establish: (1) a clear legal right to the requested relief; (2) a corresponding clear legal duty on the part of respondents to provide it; and, (3) the lack of an adequate remedy in the ordinary course of the law. *State ex rel. Steele v. Morrissey* (2004), 103 Ohio St.3d 355. Relator meets these requirements as set forth below.

Relator is a valid elector for the Rocky River Municipal Court, and has the right to the relief. Respondent erroneously certified Judge Gravens' candidacy for the General Election, despite its clear legal duty to remove her. There is no adequate remedy at law as the general election is less than 90 days away and the Respondents have approved Judge Gravens' candidacy and her designation as nonpartisan.

While Respondent argues that this case is not a prohibition case, the case law indicates otherwise. In both *State ex rel. Brown v. Butler Cty. Bd. of Elections* (2006) 109 Ohio St.3d 63, 66 and *Tatman v. Fairfield Cty. Bd. of Elections* (2004), 102 Ohio St. 3d 425, 428, this Court held that after the board of elections exercised its quasi-judicial power by denying a protest, relief in prohibition is still available to prevent the names or issues on a ballot as long as the election has not yet been held.

In order to be entitled to a writ of prohibition, Relator must establish that: (1) board of elections is about to exercise quasi-judicial power, (2) the exercise of that power is unauthorized by law, and (3) denying the writ will result in injury for which no other adequate remedy exists in the ordinary course of law. *State ex rel. Choices for Southwestern City Schools v. Anthony* (2005), 108 Ohio St.3d 1.

The first and third requirements are readily established. The Respondents exercised quasi-judicial authority by denying Relator's protest after conducting a hearing that included sworn testimony. *Tatman v. Fairfield Cty. Bd. of Elections* (2004), 102 Ohio St. 3d 425. In addition, given the closeness of the election date in this expedited election case, Relator lacks an adequate remedy in the ordinary course of law. *State ex rel. Smart v. McKinley* (1980), 64 Ohio St.2d 5, 6.

The second requirement and dispositive issue of Relator's claim is whether Respondents' act of denying the protest and further changing Judge Gravens' petition from independent to nonpartisan is unauthorized by law. In fact, both were unauthorized.

B. JUDGE GRAVENS MUST BE CONSIDERED AN INDEPENDENT CANDIDATE.

1. Judge Gravens is an Independent Candidate

The partisan election process for the Rocky River Municipal Court left no alternative for Judge Gravens other than to be considered an independent candidate, as she did not participate in a primary election. Her subsequent voting in the Democratic primary six days after her filing disqualifies her from the election.

As set forth in R.C. §3513.257 (Independent Candidates Statement of Candidacy and Nominating Petitions):

Each person desiring to become an independent candidate for an office for which candidates may be nominated at a primary election, ... shall file no later than four p.m. of the day before the day of the primary election immediately preceding the general election at which such candidacy is to be voted for by the voters, a statement of candidacy and nominating petition as provided in section 3513.261 of the Revised Code.

This is exactly what Judge Gravens did.

Respondents rather cavalierly dismiss the “BOE Petition Deadline and filing deadlines set forth by the BOE” as inaccurate information prepared by Board Staff in its motion. This just is not true. There were at last two separate documents that set forth that the candidates are either party nominees as the result of a primary election or independent candidates nominated by petition. (Ex. C: Barna Aff. at ¶D(1) and D(11)).

The cases that Respondents rely upon, relating to inaccurate information from the Board’s Staff, are easy to distinguish from this case. *State of Ohio ex rel. Jennifer Martinez, et al. v. The Cuyahoga Cty. Bd. of Elections* (March 27, 2006), Cuyahoga App. No. 87880, unreported, is based upon a telephone conversation Relator Martinez had with a Board employee regarding a last minute filing. The case of *State ex rel. Donnegan v. Cuyahoga Cty. Bd. of Elections* (2000), 136 Ohio App.3d 589, 595 which *Martinez* cites for the proposition, is based upon a conversation between Relator Donnegan and a Board employee, again this case deals with last minute activity concerning the withdrawal of a candidacy.

Conversations between an individual candidate and a random Board employee are completely different from Board promulgated and published deadlines. These deadlines were for information for all candidates in the relevant election cycle. In addition, candidate Brian Hagan received a letter from the Board setting forth the position that candidates were considered Republican, Democrat or independent. This letter was written on February 2, 2007. The letter even states that this is a Board opinion. (Ex. C: Barna Aff. at ¶D(1)). If this was a mistake, it was ongoing for at least four (4) months. The better and proper interpretation is that the Board/Respondent was following the Ohio law as Relator sets forth in this response.

There is also a legal opinion referenced by the counsel for Relator and author of the brief as an opinion he, Mr. Oradini, authored, but no other information is supplied, nor is the opinion attached. This type of representation should not be considered. Such a representation is as nebulous as the last minute conversations in the cases upon which Respondents rely to say the published material is a mistake.

As set forth in the Ohio Secretary of State's candidate requirement guide for a Municipal Court Judge, the forms to be used for either an independent or nonpartisan candidate is Petition #3-I (Ex. D).

By filing her petitions on May 2, 2007, Judge Gravens could not run as anything but an Independent candidate, by operation of Respondents' deadlines. (Ex. C: Barna Aff., ¶(D11)). There can be no factual dispute that Judge Gravens filed as an Independent candidate for the position of Rocky River Municipal Court Judge. (Ex. C: Barna Aff., ¶(D12)).

2. Judge Gravens Does Not Meet the Definition of a Nonpartisan Candidate.

The Respondents apparently interpreted R.C. §1907.07 to permit a candidate for Municipal Court to be eligible for the General Election by either having been nominated in a party primary or being nonpartisan.

There a number of problems with this approach.

- (a) By statute, a candidate cannot be nonpartisan when there is a primary election held.

Judge Gravens argued and the Respondents agreed that Judge Gravens is a nonpartisan candidate rather than an independent candidate.

Nonpartisan candidate means any candidate whose name is required, pursuant to R.C. §3505.05 of the Revised Code, to be listed on the nonpartisan ballot, including candidates for judicial office, for member of any board of education, for municipal or township offices **in which primary elections are not held for nominating candidates by political parties, and for offices of municipal corporations having charters that provide for separate ballots for elections for these offices.** R.C. §3501.01(J). (emphasis added)

Clearly, the plain language of the statute provides that a candidate is a nonpartisan candidate only when primary elections are not held for nominating candidates. *Id.* Here, there was a primary election scheduled by the Respondents.

(b) Interpreting §1907.07 as the Respondents did, creates a loophole that could not have been intended by the legislature.

If the Respondents' interpretation is upheld, it would mean that §1907.07 provides an absurd result. That is, if every candidate merely declared themselves nonpartisan, would be guaranteed a position on the General Election ballot. As indicated in *In re Election Contest of Democratic Primary Election Held May 4, 1999 for Nomination to the Office of Clerk, Youngstown Mun. Court* (2000), 88 Ohio St.3d 258, 266, it is this Court's duty to construe legislation to avoid unreasonable or absurd results.

C. BECAUSE JUDGE GRAVENS MUST BE CONSIDERED AN INDEPENDENT CANDIDATE BY VIRTUE OF THE TYPE OF ELECTION HELD, SHE MUST BE STRICKEN FROM THE GENERAL ELECTION BALLOT

Both the U.S. Court of Appeals for the Sixth Circuit and the Ohio Secretary of State have made it clear that an independent candidate, must be truly independent. Judge Gravens' subsequent declaration and/or voting in a major primary party requires that the Respondents must prevent Judge Gravens from appearing on the General Election ballot.

In *Morrison v. Colley*, 467 F.3d 503 (6th Cir. 2006) (Ex. A), the Sixth Circuit Court of Appeals set forth that an independent candidate must *actually* be unaffiliated with any political party. *Id.* at 511.

The relevant facts of *Morrison* are as follows: The day before the 2006 primary election, Charles Morrison filed nominating petitions with the Franklin County Board of Elections in order to run as an independent candidate for the office of United States Representative of Ohio's Fifteenth Congressional District. *Id.* at 505. The next day, Mr. Morrison requested a Republican ballot and voted in the Republican primary, and his name also appeared on the ballot for election to the Madison County Republican Party Central Committee and the Ohio Republican Party State Central Committee. *Id.* Three qualified electors filed a written protest with the Board of Elections challenging Mr. Morrison's candidacy as an independent candidate for U.S. Representative. The Board of Elections and the Secretary of State, who voted to break a tie vote by the Board, decided in favor of the protestors and against Mr. Morrison's certification. *Id.* As a result, Mr. Morrison brought suit seeking injunctive relief requesting placement on the November 2006 ballot as an independent candidate. *Id.* at 506.

The Sixth Circuit agreed with the District Court's reasoning that "a person of ordinary intelligence would understand that an aspiring independent candidate must actually be independent, rather than merely claim it." Citing *United States v. Gjeli* (6th Cir. 1983), 717 F.2d 968, 972 (emphasis added). The court continued, "[a] candidate possessing ordinary intelligence and common sense would readily understand that the claim of independence must be made in good faith—otherwise there would be no reason

for having the claim requirement, and none of the state interests animating the claim requirement would be served.” *Id.*

In order to provide guidance to local Boards of Elections after the *Morrison* decision, the Ohio Secretary of State, Jennifer Brunner, promulgated the SOS Opinion (Ex. B). The opinion concluded that the *Morrison* court and R.C. §3513.257 require that (1) “an independent candidate actually be unaffiliated, or disaffiliated from any political party, and (2) “the required claim of unaffiliation by an independent candidate must be in good faith.” *Id.*

The Secretary of State went beyond what was contained in *Morrison* to provide boards of elections with guidelines on how to determine whether or not an independent candidate is actually affiliated with a political party or whether the independent candidate has claimed unaffiliation in good faith. One such guideline says that “if an independent candidate votes in a party primary election after filing as an independent, the candidate is not actually unaffiliated, and the candidate’s claim of independence was either not made in good faith or is no longer current.” *Id.* (Emphasis added.) This is precisely what Judge Gravens did on May 8, 2007, when she voted in the Democratic primary after filing a statement of candidacy and nominating petitions with the Cuyahoga County Board of Elections just six days prior.

IV. RESPONDENTS’ MOTION TO DISMISS SHOULD BE DENIED

This Court has stated on several occasions that motions, such as motions to dismiss and motions for judgment on the pleadings, are inappropriate in expedited election proceedings. *State ex. rel. Hackworth v. Hughes* (2002), 97 Ohio St. 3d 110, 112-113; *State ex rel. City of Toledo v. Lucas Cty. Bd. of Elections* (2002), 95 Ohio St.3d

73, 74; *State ex rel. Yiamouyiannis v. Taft* (1992), 65 Ohio St.3d 205, 206-207, citing *State ex rel. Beck v. Casey* (1990), 51 Ohio St.3d 79, 83 and *State ex rel. Green v. Casey* (1990), 51 Ohio St.3d 83, 84 (allegations in mandamus complaint taken as true where boards of elections move to dismiss complaint and did not contest underlying facts).

Nevertheless, out of an abundance of caution, Relator will respond to Respondents' Motion. Respondents argue that Relator has failed to meet the requirements of S. Ct. R. X, Section 4(B). They first argue that counsel's affidavit is not made on personal knowledge.

First, counsel's affidavit states in paragraph 1 that his affidavit is made on his personal knowledge - not merely that the allegations are the best of his knowledge. It further provides that he has reviewed the allegations contained in the Complaint and that to the best of his knowledge said allegations are true. See Counsel's Affidavit attached to Relator's Writ.

In addition, the Affidavit of Deborah Reese meets the requirements of S. Ct. R. X, Section 4(B). Essentially, there are two key facts to support Relator's writ: (1) a valid protest was filed with the Respondents; and (2) the Respondents denied Relator's protest. Of course, the fact that the protest was denied is a matter of public record, is undisputed, and is contained in the BOE transcript. Further, the fact that the protest was denied is set forth in counsel's affidavit. It would be highly unusual for Courts to require Affidavits as to what ruling an administrative agency made presented through an affidavit rather than an order or a copy of the hearing transcript.

Relator's Affidavit clearly provides that she sent not one, but two, protest letters to the Respondents and that the Respondents responded to the protest. The Affidavit is made with her personal knowledge and she attaches the letters she sent to the Respondents and received from the Respondents. The analysis and issue of whether Relator's affidavit satisfies the requirement of Sup. Ct. Prac. R. should stop here, but again, out of an abundance of caution, the arguments of the Respondents will be further rebutted.

Relator's Affidavit states in paragraph 1 that it is made with personal knowledge. It also states clearly that: she is a qualified elector in Fairview Park, Ohio and she is qualified to vote for the 2007 General Election; how she obtained personal knowledge of the facts set forth in her affidavit; and that after obtaining personal knowledge, what actions she took. (See Relator's Affidavit, ¶¶ 3-7). Finally, it states that at the time of signing the letters that she sent to the Respondents, that she had personal knowledge of the matters contained therein. (Relator's Affidavit, ¶ 8.) S. Ct. R. X, Section 4(B) requests that relator provide an affidavit made on personal knowledge, setting forth facts admissible in evidence, and showing affirmatively that the affiant is competent to testify to all matters stated in the affidavit. The requirement has clearly been met.

Respondents are attacking how Relator obtained personal knowledge of the facts that led to her letter, not the fact that she did submit an affidavit in compliance with S. Ct. R. X, Section 4(B). Unless somebody is omniscient, a person has to obtain personal knowledge through some means. How she obtained the personal knowledge set forth in her affidavit is irrelevant.

Further, Respondents argue that the Hearing held before the Respondents contradicts her affidavit. Actually, it does the opposite. When asked whether she had independent knowledge that Judge Gravens was an independent, Relator responded “I did after discussion.” (Ex. E: BOE Transcript, p. 31)

Finally, while Relator submits that her affidavit and the affidavit of her counsel meet the requirements of Sup. Ct. Rule X, Section 4(B), in determining actions involving extraordinary writs, a court is not limited to considering the facts and circumstances at the time that the writ was requested but can consider the facts and conditions at the time that the writ is considered. *State ex rel. Essig v. Blackwell* (2004), 103 Ohio St.3d 481, 485; *State ex rel Howard v. Skow* (2004), 102 Ohio St.3d 423. If necessary, Relator requests that the Court accept the additional evidence submitted with this merit brief.

V. NOTICE OF SIMILAR CASE

Relator hereby adopts and incorporates the briefs and pleadings filed by Respondent Warren County Board of Elections, currently pending before the Ohio Supreme Court, Case No. 07-1291.

VI. CONCLUSION

In the case at bar, the nominating petitions for Independent and Nonpartisan candidates are identical and follow the form prescribed by R.C. §3513.261. There is no place to declare affiliation or nonaffiliation on those forms. One could not, by an examination of such a petition, determine if a candidate was nonpartisan or independent. §1901.07(b) requires nonpartisans to follow the form of §3513.257, the same as for independents. Therefore, it cannot be the form of nominating petition that controls the

candidates status of Independent or Nonpartisan but the type of election and the date of filing.

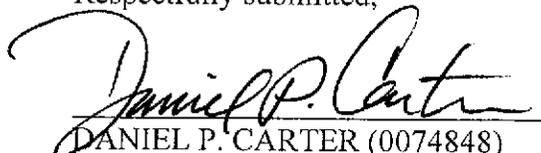
These considerations and this analysis is important because the election for the Rocky River Municipal Court became a partisan election by operation of a change in R.C. §1901.07. The change became effective on 1/2/07 and now provides for party primaries, thus making this part of the process of a partisan election. The Respondents then set the filing deadlines for party primaries and independent candidates in accord with the statute. The election was no longer a nonpartisan election.

R.C. §1901.07(B) takes into account this distinction: the second paragraph in §1901.07(B) applies to partisan elections and the third paragraph applies to the municipalities that have nonpartisan elections. These are elections in which all nominations are made by the prescribed petition.

Respondent cannot consider or declare Judge Gravens to be a nonpartisan candidate as doing such is in violation of R.C. §3501.01(J). The definition of a nonpartisan candidate is any candidate for the enumerated offices in an election in which primary elections are not held.

All of the enumerated offices are required to be elected from a nonpartisan ballot as specified in R.C. §3505.04.

Respectfully submitted,



DANIEL P. CARTER (0074848)

carter@buckleyking.com

JEFFREY W. RUPLE (0068742)

ruple@buckleyking.com

1400 Fifth Third Center

600 Superior Avenue, East

Cleveland, Ohio 44114-2652

(216) 363-1400

(216) 579-1020 (*facsimile*)

OF COUNSEL:

BUCKLEY KING LPA

Attorneys for Relator

Deborah S. Reese

CERTIFICATE OF SERVICE

A copy of the foregoing Memorandum of Relator in Support of Complaint in Mandamus and/or Prohibition/Response to Respondents' Motion to Dismiss/Motion for Judgment on the Pleadings has been served by hand-delivery on Reno J. Oradini, Jr., Esq., Attorney for Respondents, Justice Center, Courts tower, 1200 Ontario Street, Cleveland, Ohio 44113, this 24th day of August, 2007.


DANIEL P. CARTER (0074848)

8129\001\Pldg\017writmemo4.doc

NO. 07-1509

IN THE SUPREME COURT OF OHIO

ORIGINAL ACTION IN MANDAMUS AND PROHIBITION
FOR ELECTION-RELATED MATTER

STATE OF OHIO EX REL.
DEBORAH S. REESE

Relator,

v.

CUYAHOGA COUNTY BOARD OF ELECTIONS, *et al.*

Respondents.

EXHIBITS A – D

MEMORANDUM OF RELATOR IN SUPPORT OF COMPLAINT IN MANDAMUS
AND/OR PROHIBITION/ RESPONSE TO RESPONDENTS' MOTION TO
DISMISS/MOTION FOR JUDGMENT ON THE PLEADINGS

DANIEL P. CARTER (0074848)
Counsel of Record
carter@buckleyking.com
JEFFREY W. RUPLE (00687420)
ruple@buckleyking.com
BUCKLEY KING LPA
1400 Fifth Third Center
600 Superior Avenue, East
Cleveland, OH 44114-2652
(216) 363-1400
(216) 579-1020 (*facsimile*)

Attorney for Relator
Deborah S. Reese

Westlaw

467 F.3d 503

Page 1

467 F.3d 503, 2006 Fed.App. 0373P
(Cite as: 467 F.3d 503)

H

Morrison v. Colley
C.A.6 (Ohio),2006.
2006 FED.App. 0373P

United States Court of Appeals,Sixth Circuit.
Charles R. MORRISON, Donald E. Eckhart, and
Alexander Smith, Plaintiffs-Appellants,
v.

Michael F. COLLEY, Carolyn C. Petree, William
A. Anthony, Jr., Kimberly E. Marinello, and
Franklin County Board of Elections,
Defendants-Appellees.
No. 06-4216.

Argued: Sept. 20, 2006.

Decided and Filed: Sept. 22, 2006.^{FN*}

FN* An interim opinion was filed in this matter on September 22, 2006. The court is now filing this more detailed opinion.

Background: Prospective congressional candidate brought § 1983 action against county board of elections (BOE), alleging that his exclusion from the ballot, under Ohio statute, on ground that he did not qualify as an independent candidate because of his association with a political party, violated his First and Fourteenth Amendment rights. The United States District Court for the Southern District of Ohio at Columbus, George C. Smith, J., denied prospective candidate's motion for preliminary injunction and entered judgment in favor of BOE. Prospective candidate appealed.

Holdings: The Court of Appeals, Griffin, Circuit Judge, held that:

(1) strict scrutiny did not apply;

(2) Ohio statute did not violate First Amendment right to associate; and

(3) statute was not void for vagueness, as would violate due process.

Affirmed.
West Headnotes

[1] Federal Courts 170B 776

170B Federal Courts

170BVIII Courts of Appeals

170BVIII(K) Scope, Standards, and Extent

170BVIII(K)1 In General

170Bk776 k. Trial De Novo. Most

Cited Cases

Federal Courts 170B 850.1

170B Federal Courts

170BVIII Courts of Appeals

170BVIII(K) Scope, Standards, and Extent

170BVIII(K)5 Questions of Fact, Verdicts

and Findings

170Bk850 Clearly Erroneous Findings

of Court or Jury in General

170Bk850.1 k. In General. Most

Cited Cases

An appellate court reviews the district court's legal conclusions de novo and its factual findings for clear error.

[2] Constitutional Law 92 1461

92 Constitutional Law

92XVII Political Rights and Discrimination

92k1461 k. Elections in General. Most Cited

Cases

(Formerly 92k91)

Unless a state election regulation places a heavy or severe burden on a party, a state's important regulatory interests will usually be enough to justify reasonable, nondiscriminatory restrictions on the First Amendment right to association. U.S.C.A. Const.Amend. 1.

467 F.3d 503

Page 2

467 F.3d 503, 2006 Fed.App. 0373P
(Cite as: 467 F.3d 503)

[3] Constitutional Law 92 ↻1465

92 Constitutional Law
92XVII Political Rights and Discrimination
92k1465 k- Political Parties in General. Most Cited Cases
(Formerly 92k91)

Constitutional Law 92 ↻1467

92 Constitutional Law
92XVII Political Rights and Discrimination
92k1467 k. Ballots and Ballot Access. Most Cited Cases
(Formerly 92k91)

For purpose of analyzing a claim for violation of First Amendment right to political association, states may, and inevitably must, enact reasonable regulations of parties, elections, and ballots to reduce election-related and campaign-related disorder. U.S.C.A. Const.Amend. 1.

[4] Constitutional Law 92 ↻1461

92 Constitutional Law
92XVII Political Rights and Discrimination
92k1461 k. Elections in General. Most Cited Cases
(Formerly 92k91)

Constitutional Law 92 ↻4230

92 Constitutional Law
92XXVII Due Process
92XXVII(G) Particular Issues and Applications
92XXVII(G)9 Elections, Voting, and Political Rights
92k4230 k. In General. Most Cited Cases
(Formerly 92k274.2(1))

When deciding whether a state election law violates First and Fourteenth Amendment associational rights, a court weighs the character and magnitude of the burden the state's rule imposes on those rights against the interests the state contends justify that burden, and considers the extent to which the state's concerns make the burden necessary. U.S.C.A. Const.Amend. 1, 14.

[5] Constitutional Law 92 ↻1461

92 Constitutional Law
92XVII Political Rights and Discrimination
92k1461 k. Elections in General. Most Cited Cases
(Formerly 92k91)

Election regulations imposing severe burdens on First Amendment associational rights must be narrowly tailored and advance a compelling state interest. U.S.C.A. Const.Amend. 1.

[6] Constitutional Law 92 ↻1468

92 Constitutional Law
92XVII Political Rights and Discrimination
92k1468 k. Nominations; Primary Elections. Most Cited Cases
(Formerly 92k91)

Ohio election statute requiring independent congressional candidates to file statement of candidacy and nominating petition on the day preceding the primary election did not impose a severe burden on independent candidates' or voters' First Amendment associational rights, so that strict scrutiny did not apply to § 1983 claim brought by prospective congressional candidate alleging that the statute violated the First Amendment. U.S.C.A. Const.Amend. 1; 42 U.S.C.A. § 1983; Ohio R.C. § 3513.257.

[7] Constitutional Law 92 ↻1468

92 Constitutional Law
92XVII Political Rights and Discrimination
92k1468 k. Nominations; Primary Elections. Most Cited Cases
(Formerly 92k91)

Elections 144 ↻120

144 Elections
144VI Nominations and Primary Elections
144k120 k. Constitutional and Statutory Provisions. Most Cited Cases
Ohio election statute, requiring independent congressional candidates to file statement of candidacy and nominating petition on the day preceding the primary election, advanced important

© 2007 Thomson/West. No Claim to Orig. U.S. Govt. Works.

467 F.3d 503

Page 3

467 F.3d 503, 2006 Fed.App. 0373P
(Cite as: 467 F.3d 503)

state interests of protecting its electoral process and reducing voter confusion; thus, the statute did not violate the First Amendment right to political association. Ohio R.C. § 3513.257.

[8] Constitutional Law 92 ⇨1464

92 Constitutional Law
92XXVII Political Rights and Discrimination
92k1464 k. Right to Run for Public Office in General; Candidacy. Most Cited Cases
(Formerly 92k91)

A state may, consistent with the First Amendment right to associate, ban fusion or multi-party candidates in order to reduce election disorder. U.S.C.A. Const.Amend. 1.

[9] Constitutional Law 92 ⇨4232

92 Constitutional Law
92XXVII Due Process
92XXVII(G) Particular Issues and Applications
92XXVII(G)9 Elections, Voting, and Political Rights
92k4232 k. Voters, Candidates, and Elections. Most Cited Cases
(Formerly 92k274.2(2), 92k274.2(1))

Elections 144 ⇨120

144 Elections
144VI Nominations and Primary Elections
144k120 k. Constitutional and Statutory Provisions. Most Cited Cases
Ohio election statute, requiring independent congressional candidates to file statement of candidacy and nominating petition on the day preceding the primary election, was not void for vagueness, as would violate due process; statute gave a person of ordinary intelligence an understanding of what an aspiring independent congressional candidate was required to do. U.S.C.A. Const.Amend. 14; OhioR.C. § 3513.257.

[10] Constitutional Law 92 ⇨3905

92 Constitutional Law
92XXVII Due Process

92XXVII(B) Protections Provided and Deprivations Prohibited in General

92k3905 k. Certainty and Definiteness; Vagueness. Most Cited Cases
(Formerly 92k251.4)

To comply with due process requirements, a statute must give the person of ordinary intelligence a reasonable opportunity to know what is prohibited or, what is required. U.S.C.A. Const.Amend. 14.

[11] Statutes 361 ⇨209

361 Statutes
361VI Construction and Operation
361VI(A) General Rules of Construction
361k204 Statute as a Whole, and Intrinsic Aids to Construction
361k209 k. Same or Different Language. Most Cited Cases
Typically, identical words used in different parts of the same legislative act are intended to have the same meaning.

***504 ARGUED:** David R. Langdon, Langdon & Hartman LLC, Cincinnati, Ohio, for Appellants. Patrick J. Piccininni, Prosecuting Attorney's office for the County of Franklin, Columbus, Ohio, for Appellees. **ON BRIEF:** David R. Langdon, Curt C. Hartman, Joshua B. Bolinger, Langdon & Hartman LLC, Cincinnati, Ohio, Christopher P. Finner, Finney, Stagnaro, Saba & Klusmeier Co., L.P.A., Cincinnati, Ohio, for Appellants. Patrick J. Piccininni, Nick A. Soulas, Jr., Prosecuting Attorney's Office for the County of Franklin, Columbus, Ohio, for Appellees.

Before SILER, GILMAN, and GRIFFIN, Circuit Judges.

OPINION

GRIFFIN, Circuit Judge.
Plaintiff-appellant Charles R. Morrison sought to run as an independent candidate for the office of United States Representative in Ohio's Fifteenth Congressional District ("CD") in the November 7, 2006, election. Defendants-appellees Franklin County Board of Elections ("BOE"), *et al.*, excluded Morrison from the ballot on the ground

467 F.3d 503, 2006 Fed.App. 0373P
(Cite as: 467 F.3d 503)

that, under Ohio election law, he *505 did not qualify as an independent candidate because he was affiliated with a political party. Morrison filed an action in the United States District Court for the Southern District of Ohio seeking preliminary and permanent injunctions requiring the BOE to place him on the ballot. Morrison claimed that the Ohio statutory provision violated his First and Fourteenth Amendment rights and those of his would-be voters because it was allegedly overbroad, illegally discriminatory, and void for vagueness. After the district court denied Morrison all relief, Morrison appealed to this court. We granted Morrison's motion to expedite the appeal and heard oral argument on September 20, 2006. On September 22, 2006, we issued a per curiam interim opinion unanimously affirming the district court, stating, "despite any constitutional infirmities that *may* exist in the relevant Ohio statutes as they might apply to others, there is no reasonable basis for Morrison to claim in good faith that he is not affiliated with a political party." (Emphasis added.) Today we explain our holding in greater detail.

I.

In December 2005 and January 2006, Morrison began circulating petitions seeking placement on the May 2, 2006, ballot for the Madison County Republican Party Central Committee and the Ohio Republican Party State Central Committee. Morrison filed his petitions, was certified as a candidate in the Republican primary for the state and county committee positions, and appeared on the May 2, 2006, Republican primary ballot. He lost both races.

Morrison filed his declaration of candidacy for the county committee on a form that stated, "This petition shall be circulated only by a member of the same political party as stated above by the candidate." Morrison signed the declaration, which also required him to state, under penalty of "election falsification," that he was a member of the Republican Party. Likewise as to the state committee, Morrison signed a declaration of candidacy that required him to state, under penalty of election falsification, that he was a member of

the Republican Party.

Approximately three weeks before the May 2, 2006, Republican primary, Morrison purchased local newspaper advertisements supporting his state and county committee candidacies. In his ads, Morrison stated that he was a Republican. On May 2, 2006, Morrison requested a Republican ballot and voted in the Republican primary.

On May 1, 2006, the day before Morrison's name appeared on the ballot in the Republican primary, he filed nominating petitions with the BOE to run as an independent candidate in Ohio's Fifteenth CD.

On May 22, 2006, three residents and qualified electors from the Fifteenth CD filed a written protest challenging Morrison's congressional candidacy on the ground that he was not an independent under Ohio law, and the BOE responded by holding a protest hearing. After receiving briefs and hearing argument at the hearing, the BOE deadlocked 2-2 on whether to certify Morrison as an independent candidate. Pursuant to Ohio Rev.Code § 3501.05, the matter was referred to the Ohio Secretary of State, who voted in favor of the protestors and against certification.

Morrison brought suit in the district court under 42 U.S.C. § 1983, and thereafter the district court held a hearing on the merits.

II.

[1] Because Morrison alleged the violation of rights recognized by the First and *506 Fourteenth Amendments to the U.S. Constitution, the district court had federal-question jurisdiction under 28 U.S.C. § 1331. Regarding our jurisdiction, the district court consolidated the hearing on Morrison's preliminary injunction application with the hearing on the merits, and its order disposed of Morrison's complaint and request for permanent injunctive relief. Accordingly, the district court's order is final and immediately appealable. We review the district court's legal conclusions *de novo* and its factual findings for clear error. *Planned*

467 F.3d 503, 2006 Fed.App. 0373P
(Cite as: 467 F.3d 503)

Parenthood Cincinnati Region v. Taft, 444 F.3d 502, 507 (6th Cir.2006) (citing *Taubman Co. v. Webfeats*, 319 F.3d 770, 774 (6th Cir.2003)).

III.

[2] Recently, in *Clingman v. Beaver*, 544 U.S. 581, 125 S.Ct. 2029, 161 L.Ed.2d 920 (2005), the Supreme Court emphasized that not all election regulations that burden First Amendment rights are subject to a strict scrutiny analysis. Rather, unless a state election regulation places a heavy or severe burden on a party, "a State's important regulatory interests will usually be enough to justify reasonable, nondiscriminatory restrictions." *Id.* at 587, 125 S.Ct. 2029 (quoting with approval *Timmons v. Twin Cities Area New Party*, 520 U.S. 351, 358, 117 S.Ct. 1364, 137 L.Ed.2d 589 (1997)).

In holding that an Oklahoma statute allowing political parties to open their primary elections to only their own party members and voters registered as independents did not violate the First Amendment, the Supreme Court refused to apply a strict scrutiny analysis because the burden was not "severe":

[O]ur cases since *Tashjian [v. Republican Party of Conn.]*, 479 U.S. 208, 107 S.Ct. 544, 93 L.Ed.2d 514 (1986)] have clarified [that] strict scrutiny is appropriate only if the burden is severe. [*California Democratic Party v. Jones*, 530 U.S. 567, 120 S.Ct. 2402, 147 L.Ed.2d 502 (2000)], *supra*, at 582, 530 U.S. 567, 120 S.Ct. 2402, 147 L.Ed.2d 502; *Timmons*, 520 U.S. at 358, 117 S.Ct. 1364, 137 L.Ed.2d 589.

* * *

[3] Many electoral regulations, including voter registration generally, require that voters take some action to participate in the primary process. *See, e.g., Rosario v. Rockefeller*, 410 U.S. 752, 760-62, 93 S.Ct. 1245, 36 L.Ed.2d 1 (1973) (upholding requirement that voters change party registration 11 months in advance of the primary election). Election laws invariably "affect [t]-at least to some

degree-the individual's right to vote and his right to associate with others for political ends." *Anderson v. Celebrezze*, 460 U.S. 780, 788, 103 S.Ct. 1564, 75 L.Ed.2d 547 (1983).

These minor barriers between voter and party do not compel strict scrutiny. *See Bullock v. Carter*, 405 U.S. 134, 143, 92 S.Ct. 849, 31 L.Ed.2d 92 (1972). To deem ordinary and widespread burdens like these severe would subject virtually every electoral regulation to strict scrutiny, hamper the ability of States to run efficient and equitable elections, and compel federal courts to rewrite state electoral codes. The Constitution does not require that result, for it is beyond question "that States may, and inevitably must, enact reasonable regulations of parties, elections, and ballots to reduce election- and campaign-related disorder." *Timmons, supra*, 520 U.S. at 358, 117 S.Ct. 1364, 137 L.Ed.2d 589; *Storer v. Brown*, 415 U.S. 724, 730, 94 S.Ct. 1274, 39 L.Ed.2d 714 (1974). Oklahoma's semiclosed primary system does *507 not severely burden the associational rights of the state's citizenry.

C

[4][5] When a state electoral provision places no heavy burden on associational rights, "a State's important regulatory interests will usually be enough to justify reasonable, nondiscriminatory restrictions." *Timmons, supra*, at 358, 520 U.S. 351, 117 S.Ct. 1364, 137 L.Ed.2d 589 (internal quotation marks omitted); *Anderson, supra*, at 788, 460 U.S. 780, 103 S.Ct. 1564, 75 L.Ed.2d 547.

Clingman, 544 U.S. at 592-93, 125 S.Ct. 2029. *Clingman* follows, and is consistent with, *Timmons*, which likewise refused to apply strict scrutiny to a challenge to a Minnesota election law prohibiting multi-party or "fusion" candidates from appearing on the ballot. In rejecting a claim that the Minnesota regulation violated the plaintiff's First and Fourteenth Amendment rights, the Supreme Court stated,

[I]t is also clear that States may, and inevitably must, enact reasonable regulations of parties, elections, and ballots to reduce election- and campaign-related disorder. *Burdick [v. Takushi]*,

467 F.3d 503, 2006 Fed.App. 0373P
(Cite as: 467 F.3d 503)

504 U.S. 428, 112 S.Ct. 2059, 119 L.Ed.2d 245 (1992)], *supra*, at 433, 112 S.Ct. 2059 (“ [A]s a practical matter, there must be a substantial regulation of elections if they are to be fair and honest and if some sort of order, rather than chaos, is to accompany the democratic process’ ”) (quoting *Storer v. Brown*, 415 U.S. 724, 730, 94 S.Ct. 1274, 39 L.Ed.2d 714 (1974)); *Tashjian, supra*, at 217, 107 S.Ct. 544 (The Constitution grants States “ broad power to prescribe the ‘Time, Places and Manner of holding elections for Senators and Representatives’, Art. I, § 4, cl. 1, which power is matched by state control over the election process for state offices”).

When deciding whether a state election law violates First and Fourteenth Amendment associational rights, we weigh the “ ‘character and magnitude’ ” of the burden the State’s rule imposes on those rights against the interests the State contends justify that burden, and consider the extent to which the State’s concerns make the burden necessary. *Burdick, supra*, at 434, 112 S.Ct. 2059 (quoting *Anderson v. Celebrezze*, 460 U.S. 780, 789, 103 S.Ct. 1564, 75 L.Ed.2d 547 (1983)). Regulations imposing severe burdens on plaintiffs’ rights must be narrowly tailored and advance a compelling state interest. Lesser burdens, however, trigger less exacting review, and a State’s “ ‘important regulatory interests’ ” will usually be enough to justify “ ‘reasonable, nondiscriminatory restrictions.’ ” *Burdick, supra*, at 434, 112 S.Ct. 2059 (quoting *Anderson, supra*, at 788, 103 S.Ct. 1564); *Norman [v. Reed]*, 502 U.S. 279, 112 S.Ct. 698, 116 L.Ed.2d 711 (1992)], *supra*, at 288-289, 112 S.Ct. 698 (requiring “corresponding interest sufficiently weighty to justify the limitation”). No bright line separates permissible election-related regulation from unconstitutional infringements on First Amendment freedoms. *Storer, supra*, at 730, 94 S.Ct. 1274 (“[N]o litmus-paper test ... separat[es] those restrictions that are valid from those that are invidious.... The rule is not self-executing and is no substitute for the hard judgments that must be made.”).

Timmons, 520 U.S. at 358-59, 117 S.Ct. 1364.

[6][7] The district court concluded correctly that Ohio Rev.Code § 3513.257 does not impose a

severe restriction on the First and Fourteenth Amendment rights of Morrison or other potential independent candidates or voters. *See Lawrence v. Blackwell*, 430 F.3d 368 (6th Cir.) (Ohio *508 statute requiring independent congressional candidates to file statement of candidacy and nominating petition on the day preceding the primary election, did not impose a severe burden on independent candidates’ or voters’ constitutional rights, so strict scrutiny was not warranted), *cert. denied*, --- U.S. ---, 126 S.Ct. 2352, 165 L.Ed.2d 278 (2006). The election regulation at issue is merely a reasonable, nondiscriminatory regulation to require would-be independent candidates to claim, no later than 4:00 p.m. of the day before the primary elections, that they are free of affiliation with any political party. Therefore, Ohio need only show that this requirement advances an important state interest, not a compelling state interest. *Id.* For the reasons stated by the district court, the non-affiliation requirement passes muster under this deferential standard. In addition, the statute itself specifies the following important state interests furthered by the election regulation:

The purpose of establishing a filing deadline for independent candidates prior to the primary election immediately preceding the general election at which the candidacy is to be voted on by the voters is to recognize that the state has a substantial and compelling interest in protecting its electoral process by encouraging political stability, ensuring that the winner of the election will represent a majority of the community, providing the electorate with an understandable ballot, and enhancing voter education, thus fostering informed and educated expressions of the popular will in a general election. The filing deadline for independent candidates required in this section prevents splintered parties and unrestrained factionalism, avoids political fragmentation, and maintains the integrity of the ballot. The deadline, one day prior to the primary election, is the least drastic or restrictive means of protecting these state interests. The general assembly finds that the filing deadline for independent candidates in primary elections required in this section is reasonably related to the state’s purpose of ensuring fair and honest elections while leaving unimpaired the political, voting, and associational rights secured by the first and

467 F.3d 503, 2006 Fed.App. 0373P
(Cite as: 467 F.3d 503)

fourteenth amendments to the United States Constitution.

Ohio Rev.Code § 3513.257.

[8] As the Supreme Court recognized in *Timmons*, a state may, consistent with the First Amendment, ban “fusion” or multi-party candidates in order to reduce election disorder. *Cf. Libertarian Party of Ohio v. Blackwell*, 462 F.3d 579 (6th Cir.2006).

In summary, we hold that the First and Fourteenth Amendments do not prohibit the Ohio General Assembly from requiring independent candidates to claim on the day before the primary that they are not affiliated with any political party.

IV.

[9] Next, Morrison argues that the statute is void for vagueness because it allegedly fails to specify what a putative independent candidate must do to get on the ballot, and because it does not provide objective standards for enforcement. His argument is wholly unpersuasive under the facts of this case.

[10] Under *Grayned v. City of Rockford*, 408 U.S. 104, 108, 92 S.Ct. 2294, 33 L.Ed.2d 222 (1972), a statute must “give the person of ordinary intelligence a reasonable opportunity to know what is prohibited” or, in this case, what is required. In addition, the statute “must provide explicit standards for those who apply them.” *Id. Cf. *509 Risbridger v. Connelly*, 275 F.3d 565, 572 (6th Cir.2002) (“[T]he void-forvagueness doctrine requires that a penal statute define the criminal offense with sufficient definiteness that ordinary people can understand what conduct is prohibited and in a manner that does not encourage arbitrary and discriminatory enforcement.”) (quoting *Kolender v. Lawson*, 461 U.S. 352, 357, 103 S.Ct. 1855, 75 L.Ed.2d 903 (1983)).

The district court rejected Morrison's argument that the statute “creates confusion as to ... whether a person desiring to become an independent candidate can merely claim not to be affiliated with a political party or whether they must truly be unaffiliated with

a political party.” The district court reasoned, “a person of ordinary intelligence, when considering O.R.C. § 3513.257 [which requires the candidate to claim independence] and O.R.C. § 3501.01(I) [which defines an ‘independent’ candidate as one ‘who claims not to be affiliated with any political party’] in the whole legislative scheme, would understand that an aspiring independent candidate ‘must actually be independent, rather than merely claim it.’ ” A candidate possessing ordinary intelligence and common sense would readily understand that the claim of independence must be made in good faith—otherwise there would be no reason for having the claim requirement, and none of the state interests animating the claim requirement would be served. *See United States v. Gjijeli*, 717 F.2d 968, 972 (6th Cir.1983).

[11] In addition to the common-sense meaning of “claim” in Ohio Rev.Code § 3513.257, other sections of the Ohio election code put Morrison on notice that his actions were incompatible with his contemporaneous claim that he was not affiliated with any political party. Provisions of the Ohio election code other than § 3513.257 discuss political party affiliation and specify how it may be determined when challenged. This is significant, because typically “identical words used in different parts of the same act are intended to have the same meaning.” *OfficeMax, Inc. v. United States*, 428 F.3d 583, 591 (6th Cir.2005) (quoting *Gustafson v. Alloyd Co., Inc.*, 513 U.S. 561, 570, 115 S.Ct. 1061, 131 L.Ed.2d 1 (1995)).^{FN1}

FN1. *See also Lewis v. Philip Morris, Inc.*, 355 F.3d 515, 536 (6th Cir.2004) (Moore, J., for the court, joined in pertinent part by Katz, U.S.D.J.) (referring to “[t]he usual presumption that ‘the same words used twice in the same act have the same meaning’ ”) (quoting 2A Norman J. Singer, *Sutherland On Statutes And Statutory Construction*, § 46.06, at 193 (6th ed.2000)), *cert. denied*, 543 U.S. 821, 125 S.Ct. 61, 160 L.Ed.2d 31 (2004); *Lake Cumberland Trust, Inc. v. EPA*, 954 F.2d 1218, 1222 (6th Cir.1992) (“We must presume that words used more than once in

467 F.3d 503, 2006 Fed.App. 0373P
(Cite as: 467 F.3d 503)

the same statute have the same meaning.”)
(citation omitted).

First, Ohio Rev.Code § 3513.19(A)(3) provides that a person's right to vote in a party's primary can be challenged on the basis that he “is not affiliated with or is not a member of” that party. That section also states, in pertinent part, that “[s]uch party affiliation shall be determined by examining the elector's voting record for the current year and the immediately preceding two calendar years as shown on the voter's registration card, using the standards of affiliation specified in the seventh paragraph of section 3513.05 of the Revised Code.” Ohio Rev.Code. § 3513.19(A)(3). In turn, § 3513.05 ¶ 7 considers a voter to be affiliated with a party if he was registered with that party and voted in that party's primaries during the current year and the two preceding years. Morrison has never denied that he was registered as a Republican and voted in the May 2, 2006, Republican primary, nor has he claimed that he was ever registered*510 as something other than a Republican or that he voted in non-Republican primaries during the preceding two calendar years.

Moreover, the next subsection of the statute, Ohio Rev.Code § 3513.19(B), provides:

When the right of a person to vote is challenged upon the ground set forth in division (A)(3) of this section, membership in or political affiliation with a political party shall be determined by the person's statement, *made under penalty of election falsification*, that the person desires to be affiliated with and supports the principles of the political party whose primary ballot the person desires to vote.

(Emphasis added.) By registering as a Republican and then affirmatively requesting and voting the Republican Party primary ballot on May 2, 2006, Morrison necessarily evinced a desire to be affiliated with the Republican Party at that time. Indeed, when Morrison presented himself as eligible to vote in the Republican primary on May 2, 2006, Ohio law required him to be prepared to prove, *under penalty of punishment for false statement*, that he was affiliated with the Republican Party: Before any challenged person shall be allowed to vote at a primary election, the person

shall make a statement, *under penalty of election falsification*, before one of the precinct officials ... stating that the person desires to be affiliated with and supports the principles of the political party whose ballot the person desires to vote; and giving all other facts necessary to determine whether the person is entitled to vote in that primary election. The statement shall be returned to the office of the board with the pollbooks and tally sheets.

Ohio Rev.Code § 3513.20.

If there were any doubt whether registering Republican, running as a Republican in the primary, and voting in the Republican primary precluded a good faith claim to be unaffiliated with any party, Morrison's own Federal Election Commission (“FEC”) filing dispels it. Morrison conceded that his own congressional campaign committee's statement of organization, FEC Form 1, listed him as affiliated with the Republican Party.

Morrison cannot complain if his own campaign committee's express statement of his party affiliation is considered and used to rule against him. *Cf. In re El-Amin*, 252 B.R. 652, 659 (Bankr.E.D.Va.2000) (“The party who made the admission cannot complain that they [sic] were prejudiced by their own words.”); *Levy v. United States*, 1858 WL 4645, at *27 (Ct.Cl. May 4, 1858) (“The petitioner cannot object to this conclusion, because it is in exact accordance with his own export manifest, rendered on his own oath.”).^{FN2}

FN2. *Cf. also United States v. Beal*, 940 F.2d 1159, 1162 (8th Cir.1991) (“[D]efendant cannot complain if his own admissions ... [are] received in evidence against him.”); *United States v. Alvarez*, 810 F.2d 879, 889 (9th Cir.1987) (“The defendant cannot complain when his own testimony fixes the time of his arrest.”); *Courtney v. United States*, 518 F.2d 514, 517 (4th Cir.1975) (“[T]he defendant cannot be heard to complain that he was convicted on the basis of his own testimony.”);

467 F.3d 503, 2006 Fed.App. 0373P
(Cite as: 467 F.3d 503)

United States v. Bates, 141 F.2d 436, 439 (7th Cir.1944) (“Defendant cannot complain if the jury accepted at their face value his own statements ...”), *vac’d on other grounds*, 323 U.S. 15, 65 S.Ct. 15, 89 L.Ed. 13 (1944);

The Eroee, 9 Ben. 191, 8 F. Cas. 774, 775 (E.D.N.Y.,1877) (No. 4,521) (“[T]he respondents can resort to this bill rendered . . . there being no other proof, it must be taken of evidence of the amount of such difference. Of this the consignees cannot complain, as it is their own bill.”), *aff’d*, 17 Blatchf. 16, 8 F. Cas. 775 (C.C.S.D.N.Y.1879) (No. 4,522).

*511 Most importantly, under Ohio law, if Morrison was unaffiliated with any political party on May 1, 2006, as he contends, he could not also claim in good faith to be a Republican at the same time without risking consequences more serious than exclusion from the ballot. Specifically, Ohio Rev.Code § 3599.11(A) provides the following criminal penalties for false swearing: “No person shall knowingly swear or affirm falsely upon a lawful examination by or before any registering officer; or make, print, or issue, any false ... certificate of registration.... No person shall ... knowingly make any false statement on any form for registration or change of registration.... Whoever violates this division is guilty of a felony of the fifth degree.”

A person of ordinary intelligence in the position of Morrison is put on notice that “claims” of party affiliation or non-affiliation must be made in good faith; otherwise the person is subject to criminal prosecution.

We conclude that the statutes at issue gave Morrison sufficient notice that his claims of party affiliation or non-affiliation had to be made in good faith when he filed his independent congressional candidacy petition on May 1, 2006. Further, under the undisputed facts of this case, Morrison’s claim of unaffiliation with a political party was not made in good faith.

For these reasons, we hold that, under the facts of

this case, Ohio Rev.Code § 3513.257 is not void for vagueness. *Cf. McEntee v. Merit Sys. Prot. Bd.*, 404 F.3d 1320, 1333-34 (Fed.Cir.2005), *cert. denied*, --- U.S. ---, 126 S.Ct. 381, 163 L.Ed.2d 167 (2005). In addition, for the reasons stated by the district court, we hold that Ohio Rev.Code § 3513.257 is not overbroad, nor was it applied in a manner that illegally discriminated against Morrison.

V.

In conclusion, we affirm the district court’s denial of Morrison’s application for preliminary and permanent injunctive relief. Morrison has not provided grounds to enjoin defendants from excluding him from the November 2006 congressional ballot due to his non-compliance with Ohio Rev.Code § 3513.257.

Affirmed.

C.A.6 (Ohio),2006.
Morrison v. Colley
467 F.3d 503, 2006 Fed.App. 0373P

END OF DOCUMENT



JENNIFER BRUNNER
OHIO SECRETARY OF STATE

180 East Broad Street, 15th floor
Columbus, Ohio 43215-3726 USA
Tel.: 1-614-466-2655
Fax: 1-614-644-0649
www.sos.state.oh.us

ADVISORY NO. 2007-05
June 4, 2007

To: All County Boards of Elections
Re: Independent Candidates and Party Affiliation

It has come to the attention of the Secretary of State's office that the United States Court of Appeals for the Sixth Circuit decided a case in September of 2006 that has a direct impact upon the function of Ohio's boards of elections and the candidacies of some independent candidates in Ohio. The case is *Morrison v. Colley*, 467 F.3d 503 (6th Cir. 2006) (attached). The ruling in *Morrison* changes longstanding practice in Ohio, and this Advisory is intended to inform boards of elections of this change.

Longstanding practice in Ohio and the interpretations of R.C. 3513.257 made by former Ohio Secretaries of State required only that the *candidacy* of an independent candidate be independent of political party affiliation, but not that the *individual* himself or herself be entirely unaffiliated. The *Morrison* case now requires that independent candidates actually be unaffiliated and that when an unaffiliation is claimed, it must be claimed in good faith.

Facts and History of Morrison

In December 2005 and January 2006 Charles Morrison circulated petitions seeking election to the Madison County Republican Party Central Committee and to the Ohio Republican Party State Central Committee. Mr. Morrison subsequently filed his petitions and appeared on the ballot in the May 2006 Republican primary ballot for these positions. To appear on the ballot in these races Mr. Morrison affirmed his affiliation with the Republican Party under penalty of election falsification. Additionally, Mr. Morrison advertised his candidacy as a Republican in a newspaper advertisement.

On May 1, 2006, the day before the primary, Mr. Morrison filed as an "independent" candidate in the race for the Ohio 15th U.S. Congressional District. By filing as an independent Mr. Morrison affirmed, under penalty of election falsification, that he had no affiliation with a political party. Mr. Morrison also filed documents with the Federal Election Commission, related to his "independent" candidacy, clearly stating his affiliation with the Republican Party.

On May 2, 2006 Mr. Morrison voted in the Republican primary election in Madison County. By voting in the Republican primary Mr. Morrison again affirmed his affiliation with the Republican Party under penalty of election falsification.

On May 22, 2006 three electors protested Mr. Morrison's candidacy for the congressional seat in the 15th District, alleging that Mr. Morrison was not independent of political party affiliation under Ohio law. The Franklin County Board of Elections (the most populous county) held a protest hearing, and the Board tied 2-2 on the protest. The Board certified the tie vote to this office, and former Assistant Secretary of State Monty Lobb, presumably acting on behalf of then

AUG22'07 AM11:05 DIR

Secretary of State Blackwell, broke the tie vote in favor of the protest and against certification of Mr. Morrison's candidacy. Assistant Secretary Lobb based his rationale for not certifying Mr. Morrison's petition on Mr. Morrison's failure to disaffiliate himself from the Republican Party and thereby be truly independent of political party affiliation:

[T]he relevant law clearly requires a more definitive representation to demonstrate one's status as an independent candidate for elected office in Ohio. R.C. §3501.01 (I). Because the Supreme Court permits Ohio to determine and devise its own standard for saying when a member of a major political party has transitioned into the status of being an independent, and therefore no longer a member of that party, and because R.C. §3501.01 (I) provides that standard, the law and the facts show that Mr. Morrison was never *truly independent* at any point relevant to this matter.

Mr. Morrison filed suit in the U.S. District Court for the Southern District of Ohio seeking preliminary and permanent injunctions to preclude the Board from invalidating his candidacy and alleging that R.C. 3513.257 was unconstitutional. The district court upheld Assistant Secretary Lobb's decision, and Mr. Morrison appealed.

The Appellate Court's Analysis

It is important to note at the outset that the *Morrison* court did not attempt to set forth specific guidelines for boards of elections to follow when determining the validity and sufficiency of independent candidates' nominating petitions. Rather, the court simply determined, under the facts of the case, that R.C. 3513.257 was not unconstitutional. However, the portion of the court's opinion relating to Mr. Morrison's claim that the statute was "void for vagueness" does indicate that there are certain threshold requirements an independent candidate must meet in order to be actually "independent." Further, the opinion indicates that the facts of each case will determine whether or not the candidate in question is actually independent and whether or not a candidate made his or her claim of unaffiliation in good faith.

The *Morrison* circuit court noted, and extended, the district court's reasoning:

a person of ordinary intelligence, when considering O.R.C. § 3513.257 which requires the candidate to claim independence and O.R.C. § 3501.01(I) which defines an 'independent' candidate as one who claims not to be affiliated with any political party in the whole legislative scheme, would understand that an aspiring independent candidate must actually be independent, rather than merely claim it. A candidate possessing ordinary intelligence and common sense would readily understand that the claim of independence must be made in good faith – otherwise there would be no reason for having the claim requirement, and none of the state interests animating the claim requirement would be served.

Morrison, F.3d at 509 (internal quotations omitted).

In reaching its conclusion, the circuit court noted that the statutory scheme in Ohio recognizes only voter history as a means to determine party affiliation. However, the court also noted that even if some doubt existed as to Mr. Morrison's affiliation after considering that he had voted Republican prior to 2006 as well as in the 2006 Republican primary election, and had run in the 2006 Republican primary, all doubt was dispelled by Mr. Morrison's own FEC filings (for his "independent candidacy"). Those filings indicated his affiliation with the Republican Party, and the court stated that "Morrison cannot complain if his own campaign committee's express statement of his party affiliation is considered and used to rule against him." Thus, the court concluded that because Mr. Morrison had voted in past Republican primaries, and most importantly, in the Republican primary held the day after he filed as an independent candidate, and because so voting required him to state under penalty of criminal prosecution for election falsification that he was affiliated with the Republican party, Mr. Morrison could not claim in good faith that he actually was independent of party affiliation.

The court also stated that, "most importantly, under Ohio law, if Morrison was unaffiliated with any political party on May 1, 2006," as indicated by his filing as an independent, "he could not also claim in good faith to be a Republican at the same time," as indicated by his voting in the Republican primary the next day, "without risking consequences more serious than exclusion from the ballot" such as criminal prosecution under, among other statutes, R.C. 3599.11(A).

The Court concluded that under the facts of the case, Morrison had not provided grounds to enjoin the Franklin County Board of Elections from excluding him from the ballot because he had, in fact, failed to comply with the requirements of R.C. 3513.257.

Conclusion

We advise, as indicated by the *Morrison* court, that R.C. 3513.257 requires that:

- an independent candidate actually be unaffiliated, or disaffiliated from any political party; and
- the required claim of unaffiliation by an independent candidate must be made in good faith.

However, as mentioned above, the *Morrison* court did not provide clear guidelines for determining when an independent is actually affiliated with a political party, or how to determine whether an independent candidate has claimed unaffiliation in good faith.

Absent direction from the General Assembly or a court, this office is attempting to provide some guidance on this matter to the boards of elections. Thus:

- If an independent candidate votes in a party primary election after filing as an independent, the candidate is not actually unaffiliated, and the candidate's claim of independence was either not made in good faith or is no longer current; and
- If an independent candidate was on a political party's central or executive committee at the time he or she filed as an independent candidate, or becomes such a committee member at any time during his or her independent candidacy, the candidate is not

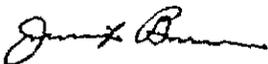
actually unaffiliated, and the candidate's claim of independence was either not made in good faith or is no longer current.

Additionally, as indicated by the *Morrison* court, indications of party affiliation such as past voting history, information submitted on required election-related filings, political advertisements, participation as a political party officer or member, or holding a public office for which the office holder was nominated through a political party's primary election and elected on a partisan ticket may serve as evidence, though not necessarily conclusive evidence, of party affiliation to support a protest against an independent candidate's candidacy. For example, voting *history*, alone, is an insufficient basis on which to disqualify an independent candidate because Ohioans are freely entitled to change or revoke their party affiliation at any time. However, voting history, together with other facts tending to indicate party affiliation, may be sufficient grounds to disqualify an independent.

Finally, please note that it is well established that boards of elections may accept filed petitions at face value. That is, because candidates file their petitions under penalty of election falsification, a board may accept the declaration of the candidate without further inquiry. However, if a board has personal knowledge or reason to believe that the declaration made by a candidate is false, or a protest is filed against an independent candidate, the board may inquire further to determine whether sufficient grounds exist to invalidate the candidate's petition and disqualify the candidate from running as an independent.

If you have additional questions or concerns please feel free to direct them to your assigned Elections Counsel at (614) 466-2585, or by e-mail to any of them.

Sincerely,



Jennifer Brunner
Ohio Secretary of State

AFFIDAVIT

STATE OF OHIO)
)
COUNTY OF CUYAHOGA) SS:

Now comes Gary F. Barna being of sound mind, of the age of majority, and having first been duly sworn according to law and states as follows:

A. I am Executive Assistant to the Director/Deputy at the Cuyahoga County, Ohio Board of Elections.

B. I have personal knowledge that the documents attached hereto are true and accurate copies of the records filed with or originated from the Cuyahoga County Board of Elections regarding Deborah Reese's Protest to the filing of Judge Maureen Adler Gravens as an Independent candidate for Judge of Rocky River Municipal Court for the November 6, 2007 General Election.

C. The copies are complete and accurate and were prepared under proper supervision from the records which were made and maintained in the course of business by persons authorized by the Cuyahoga County Board of Elections.

D. The records attached are as follows:

1. Letter dated February 2, 2007 from Brent E. Lawler, Assistant Manager, Campaign Finance and Petitions to Brian Hagan regarding partisan primary to be scheduled, with attached amended calendar page reflecting changes;

2. Letter dated June 25, 2007 from Jane M. Platten to Deborah S. Reese regarding status of letter from Reese to Jane Platten, Director, Board of Elections;

3. Letter dated June, 19, 2007 from Deborah S. Reese to Jane Platten, Director, Board of Elections regarding Maureen Adler Gravens petition to be an Independent Candidate for Judge including:

(a) Secretary of State opinion: Advisory No. 2007-05;

(b) *Morrison v. Colley* (6th Cir. 2006), App No. 06-4216;

(c) Article: David Skolnick, *Board Removes Eight From Ballot*, Vindy.com, June 15, 2007;

(d) Article: Janice Morse, *Judge Hopefuls' Status at Issue*, The Enquirer, June 14, 2007;

4. Letter dated July 2, 2007 from Jane M. Platten to The Honorable Maureen Alder Gravens noticing the protest hearing August 6, 2007;
5. Letter dated July 2, 2007 from Jane M. Platten to Deborah S. Reese noticing the protest hearing August 6, 2007;
6. July 12, 2007 two-page letter to Jane Platten from Deborah S. Reese regarding Candidacy of Maureen Adler Gravens;
7. July 16, 2007 letter from Michael P. Butler to Jane Platten regarding Brief of Maureen Adler Gravens;
8. Brief of Maureen Adler Gravens dated July 16, 2007;
9. July 16, 2007 letter to Jane M. Platten from Daniel Carter regarding Challenge to Maureen Adler Gravens;
10. Brief of Deborah Reese in Support of Challenge to Independent Candidate Maureen Adler Gravens filed by Buckley King;
11. Board of Election 2007 Petition Filing Deadline Dates for Candidates;
12. Maureen Alder Gravens' Statement of Candidacy and Nominating Petitions;
13. Cuyahoga County Board of Elections Receipt of Petition for Pre-Check;
14. Results of Candidate Petition Pre-Check;
15. Cuyahoga County Board of Elections Judicial Receipt for Petition Filing Materials;
16. Maureen Alder Gravens Voting Record;
17. Cuyahoga County Board of Elections Alphabetical Poll Book from the Primary of May 8, 2007;
18. *Morrison v. Colley* (6th Cir. 2006), App No. 06-4216;
19. Secretary of State opinion: Advisory No. 2007-05;
20. Article: David Skolnick, *Board Removes Eight From Ballot*, Vindy.com, June 15, 2007;

21. Article: Callahan, *Allen Wants Mason Municipal Court Candidacy Certified*, The Western Star, 2007;

22. Article: Janice Morse, *Judge Hopefuls' Status at Issue*, The Enquirer, June 14, 2007;

23. Stephen Oravec, *Independents' Day Over at Polls Elections Board Nixes 7 Hopefuls*, Tribune-Chronicle, June 11, 2007;

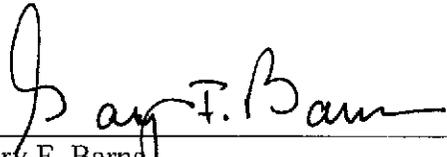
24. July 23, 2007 letter to Jane M. Platten from Daniel P. Carter regarding Challenge of Maureen Adler Gravens;

25. Reply Brief of Deborah Reese;

26. Reply Brief of Maureen Adler Gravens; and

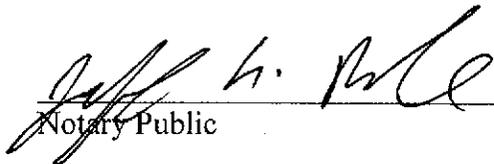
27. Declaration of Candidacy – Brian Hagan;

FURTHER AFFIANT SAYETH NAUGHT.



Gary F. Barna

SWORN TO before me and signed in my presence this 22nd day of August, 2007.



Notary Public



CUYAHOGA COUNTY
BOARD OF ELECTIONS

Robert T. Bennett
Chairman

Edward C. Coaxum, Jr.

Sally D. Florkiewicz

Loree K. Soggs

L. Michael Vu
Director

Gwendolyn Dillingham
Deputy Director

February 2, 2007

via regular and certified mail

Dear Brian Hagan,

As we discussed, please be advised that legal counsel for the Cuyahoga County Board of Elections has advised that a partisan primary is to be scheduled for both Judge and Clerk of Courts in the Rocky River Municipal Court District.

As a result of this opinion a partisan filing deadline of February 22, 2007 – 4:00 pm has been established. The independent filing deadline remains on May 7, 2007 at 4:00 pm.

Please find enclosed the amended 2007 calendar page that reflects the change noted above for the Rocky River Municipal Court District. Also enclosed are Secretary of State generic partisan petitions if you choose to run as a partisan candidate. The petition given to you earlier for an independent candidate remain valid for the Rocky River Municipal Court races.

Please notify me via mail or email as to your intentions on how you wish to be listed on the candidate list (party candidate – indicate Democrat, Republican or Independent).

Thank you for your understanding and patience. Please contact me if you have any questions or I can assist you in any way.

Sincerely,

Brent E. Lawler, Assistant Manager
Campaign Finance & Petitions

Office phone: 216.443.6509

Office fax: 216.443.3299

Office email: bebel@cuyahogacounty.us

AUG22'07 AM11:00 DIR



ROCKY RIVER MUNICIPAL COURT
PARTY PRIMARY MAY 8, 2007 (see bottom of page)

PETITION NUMBER: **2H (PRIMARY - PARTY CANDIDATE)**
 LAST FILING DATE: FEBRUARY 22, 2007 - 4:00 P.M. (75 days before primary)
 PETITION NUMBER: **3-3I (GENERAL - INDEPENDENT CANDIDATE)** (Formerly 3-3D)
 LAST FILING DATE: MAY 7, 2007 - 4:00 P.M. (day before scheduled primary date)
 FILING FEE: \$50.00 + \$30.00 OEC Fee = Total Fee \$80.00

ELECTED OFFICES			NO. OF SIGNATURES	
POSITION and NUMBER IN OFFICE	TERM LENGTH	ELECT 2007	*PRIMARY O.R.C. 1901.07	*GENERAL O.R.C. 1901.07(B)
2 Judge	6 Years	Yes (1)	Min. 50 Max. 150	Min. 50 Max. 150
1 Clerk	6 Years	Yes (1)	Min. 50 Max. 150	Min. 50 Max. 150

*Pursuant to R.C. 1901.07 (B), partisan and nonpartisan candidates in the Rocky River Municipal Court Districts are required to submit petitions signed by at least 50 electors, and not more than 150, electors of the territory of the court.

INCUMBENT JUDGE TO BE ELECTED IN 2007:

Maureen Adler Gravens Full Term Commencing 1/1/2008

INCUMBENT CLERK TO BE ELECTED IN 2007:

William Gareau Full Term Commencing 1/1/2008

SALARY (As of January 2007)

Judge: \$111,000

Clerk of Courts: \$ 94,350

MUNICIPALITIES OF COURT DISTRICT

Bay Village 8,178

Fairview Park 8,093

North Olmsted 14,485

Rocky River 9,684

Westlake 13,764

Total Votes 54,204

Candidates for this office cannot use the Local Candidate Waiver form.

PRIMARY ELECTION

Party Primary held only if:

Judge: Two or more candidates from same party files.

AUG22'07 AM11:00 DIR



CUYAHOGA COUNTY BOARD OF ELECTIONS

Jeff Hastings
Interim Chairman

Inajo Davis Chappell
Member

Robert S. Frost
Member

Eben O. (Sandy) McNair, IV
Member

June 25, 2007

Ms. Deborah S. Reese
4277 West 214th Street
Fairview Park, Ohio 44126

Dear Ms. Reese:

Please know that I am in receipt of your letter dated June 19, 2007 relative to the filing of Judge Maureen Adler Gravens as an Independent candidate for Judge of Rocky River Municipal Court for the November 6, 2007 General Election.

I have shared your letter and information with our board members and I have also referred your letter to our County Prosecutor's office for review.

We will provide to you a follow up response once I have a status to report to you. Thank you for your letter relative to this matter.

Cordially,

Jane M. Platten
Director

- CC: Inajo Davis Chappell, Board Member
- Robert S. Frost, Board Member
- Jeff Hastings, Chairman
- Eben O. (Sandy) McNair, IV, Board Member
- Reno Oradini, Assistant County Prosecutor

AUG22'07 AM 11:00 DIR

June 19, 2007

Jane Platten, Director
Cuyahoga County Board of Elections
2925 Euclid Avenue
Cleveland, Ohio 44115

Dear Ms. Platten,

I would like to make the Cuyahoga County Board of Elections aware of a situation that needs to be addressed by the Board.

Maureen Adler Gravens filed petitions to be an Independent Candidate for Judge of the Rocky River Municipal Court on May 2, 2007.

On May 8, 2007, Maureen Adler Gravens voted in the Democratic Primary for the Clerk of Courts position in the Rocky River Municipal Court.

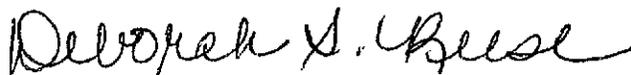
On May 29, 2007, the Cuyahoga County Board of Elections certified Maureen Adler Gravens as an Independent candidate for judge.

I enclose the Advisory No. 2007-05 dated June 4, 2007 from Secretary of State Jennifer Brunner which addresses the situation when an Independent candidate votes in a party primary election after filing as an independent.

I also enclose newspaper articles relative to other Board of Elections and their addressing similar situations.

I trust that the Cuyahoga County Board of Elections will follow the directive of the Secretary of State.

Sincerely,



Deborah S. Reese
4277 West 214th Street
Fairview Park, Ohio 44126

CC: Inajo Davis Chapell
Robert S. Frost
Jeff Hastings
Eben Sandy McNair

AUG22'07 AM11:01 DIR

JUN19'07 AM11:40 BDE

TRANSMISSION VERIFICATION REPORT

TIME : 06/29/2007 14:58
NAME :
FAX :
TEL :
SER.# : BROM5J406247

DATE, TIME	06/29 14:41
FAX NO./NAME	96218369
DURATION	00:06:26
PAGE(S)	18
RESULT	OK
MODE	STANDARD ECM

AUG22'07 AM11:00 DIR



JENNIFER BRUNNER
OHIO SECRETARY OF STATE

180 East Broad Street, 15th floor
 Columbus, Ohio 43215-3726 USA
 Tel.: 1-614-466-2655
 Fax: 1-614-644-0649
 www.sos.state.oh.us

ADVISORY NO. 2007-05

June 4, 2007

To: All County Boards of Elections
 Re: Independent Candidates and Party Affiliation

It has come to the attention of the Secretary of State's office that the United States Court of Appeals for the Sixth Circuit decided a case in September of 2006 that has a direct impact upon the function of Ohio's boards of elections and the candidacies of some independent candidates in Ohio. The case is *Morrison v. Colley*, 467 F.3d 503 (6th Cir. 2006) (attached). The ruling in *Morrison* changes longstanding practice in Ohio, and this Advisory is intended to inform boards of elections of this change.

Longstanding practice in Ohio and the interpretations of R.C. 3513.257 made by former Ohio Secretaries of State required only that the *candidacy* of an independent candidate be independent of political party affiliation, but not that the *individual* himself or herself be entirely unaffiliated. The *Morrison* case now requires that independent candidates actually be unaffiliated and that when an unaffiliation is claimed, it must be claimed in good faith.

Facts and History of Morrison

In December 2005 and January 2006 Charles Morrison circulated petitions seeking election to the Madison County Republican Party Central Committee and to the Ohio Republican Party State Central Committee. Mr. Morrison subsequently filed his petitions and appeared on the ballot in the May 2006 Republican primary ballot for these positions. To appear on the ballot in these races Mr. Morrison affirmed his affiliation with the Republican Party under penalty of election falsification. Additionally, Mr. Morrison advertised his candidacy as a Republican in a newspaper advertisement.

On May 1, 2006, the day before the primary, Mr. Morrison filed as an "independent" candidate in the race for the Ohio 15th U.S. Congressional District. By filing as an independent Mr. Morrison affirmed, under penalty of election falsification, that he had no affiliation with a political party. Mr. Morrison also filed documents with the Federal Election Commission, related to his "independent" candidacy, clearly stating his affiliation with the Republican Party.

On May 2, 2006 Mr. Morrison voted in the Republican primary election in Madison County. By voting in the Republican primary Mr. Morrison again affirmed his affiliation with the Republican Party under penalty of election falsification.

On May 22, 2006 three electors protested Mr. Morrison's candidacy for the congressional seat in the 15th District, alleging that Mr. Morrison was not independent of political party affiliation under Ohio law. The Franklin County Board of Elections (the most populous county) held a protest hearing, and the Board tied 2-2 on the protest. The Board certified the tie vote to this office, and former Assistant Secretary of State Monty Lobb, presumably acting on behalf of the

AUG22'07 AM 11:01 UIR

Secretary of State Blackwell, broke the tie vote in favor of the protest and against certification of Mr. Morrison's candidacy. Assistant Secretary Lobb based his rationale for not certifying Mr. Morrison's petition on Mr. Morrison's failure to disaffiliate himself from the Republican Party and thereby be truly independent of political party affiliation:

[T]he relevant law clearly requires a more definitive representation to demonstrate one's status as an independent candidate for elected office in Ohio. R.C. §3501.01 (I). Because the Supreme Court permits Ohio to determine and devise its own standard for saying when a member of a major political party has transitioned into the status of being an independent, and therefore no longer a member of that party, and because R.C. §3501.01 (I) provides that standard, the law and the facts show that Mr. Morrison was never *truly independent* at any point relevant to this matter.

Mr. Morrison filed suit in the U.S. District Court for the Southern District of Ohio seeking preliminary and permanent injunctions to preclude the Board from invalidating his candidacy and alleging that R.C. 3513.257 was unconstitutional. The district Court upheld Assistant Secretary Lobb's decision, and Mr. Morrison appealed.

The Appellate Court's Analysis

It is important to note at the outset that the *Morrison* court did not attempt to set forth specific guidelines for boards of elections to follow when determining the validity and sufficiency of independent candidates' nominating petitions. Rather, the court simply determined, under the facts of the case, that R.C. 3513.257 was not unconstitutional. However, the portion of the court's opinion relating to Mr. Morrison's claim that the statute was "void for vagueness" does indicate that there are certain threshold requirements an independent candidate must meet in order to be actually "independent." Further, the opinion indicates that the facts of each case will determine whether or not the candidate in question is actually independent and whether or not a candidate made his or her claim of unaffiliation in good faith.

The *Morrison* circuit court noted, and extended, the district court's reasoning:

a person of ordinary intelligence, when considering O.R.C. § 3513.257 which requires the candidate to claim independence and O.R.C. § 3501.01(I) which defines an 'independent' candidate as one who claims not to be affiliated with any political party in the whole legislative scheme, would understand that an aspiring independent candidate must actually be independent, rather than merely claim it. A candidate possessing ordinary intelligence and common sense would readily understand that the claim of independence must be made in good faith -- otherwise there would be no reason for having the claim requirement, and none of the state interests animating the claim requirement would be served.

AUG22'07 AM11:01 DIR

Morrison, F.3d at 509 (internal quotations omitted).

In reaching its conclusion, the circuit court noted that the statutory scheme in Ohio recognizes only voter history as a means to determine party affiliation. However, the court also noted that even if some doubt existed as to Mr. Morrison's affiliation after considering that he had voted Republican prior to 2006 as well as in the 2006 Republican primary election, and had run in the 2006 Republican primary, all doubt was dispelled by Mr. Morrison's own FEC filings (for his "independent candidacy"). Those filings indicated his affiliation with the Republican Party, and the court stated that "Morrison cannot complain if his own campaign committee's express statement of his party affiliation is considered and used to rule against him." Thus, the court concluded that because Mr. Morrison had voted in past Republican primaries, and most importantly, in the Republican primary held the day after he filed as an independent candidate, and because so voting required him to state under penalty of criminal prosecution for election falsification that he was affiliated with the Republican party, Mr. Morrison could not claim in good faith that he actually was independent of party affiliation.

The court also stated that, "most importantly, under Ohio law, if Morrison was unaffiliated with any political party on May 1, 2006," as indicated by his filing as an independent, "he could not also claim in good faith to be a Republican at the same time," as indicated by his voting in the Republican primary the next day, "without risking consequences more serious than exclusion from the ballot" such as criminal prosecution under, among other statutes, R.C. 3599.11(A).

The Court concluded that under the facts of the case, Morrison had not provided grounds to enjoin the Franklin County Board of Elections from excluding him from the ballot because he had, in fact, failed to comply with the requirements of R.C. 3513.257.

Conclusion

We advise, as indicated by the *Morrison* court, that R.C. 3513.257 requires that:

- an independent candidate actually be unaffiliated, or disaffiliated from any political party; and
- the required claim of unaffiliation by an independent candidate must be made in good faith.

However, as mentioned above, the *Morrison* court did not provide clear guidelines for determining when an independent is actually affiliated with a political party, or how to determine whether an independent candidate has claimed unaffiliation in good faith.

Absent direction from the General Assembly or a court, this office is attempting to provide some guidance on this matter to the boards of elections. Thus:

- If an independent candidate votes in a party primary election after filing as an independent, the candidate is not actually unaffiliated, and the candidate's claim of independence was either not made in good faith or is no longer current; and
- If an independent candidate was on a political party's central or executive committee at the time he or she filed as an independent candidate, or becomes such a committee member at any time during his or her independent candidacy, the candidate is not

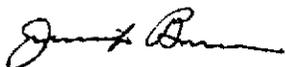
actually unaffiliated, and the candidate's claim of independence was either not made in good faith or is no longer current.

Additionally, as indicated by the *Morrison* court, indications of party affiliation such as past voting history, information submitted on required election-related filings, political advertisements, participation as a political party officer or member, or holding a public office for which the office holder was nominated through a political party's primary election and elected on a partisan ticket may serve as evidence, though not necessarily conclusive evidence, of party affiliation to support a protest against an independent candidate's candidacy. For example, voting *history*, alone, is an insufficient basis on which to disqualify an independent candidate because Ohioans are freely entitled to change or revoke their party affiliation at any time. However, voting history, together with other facts tending to indicate party affiliation, may be sufficient grounds to disqualify an independent.

Finally, please note that it is well established that boards of elections may accept filed petitions at face value. That is, because candidates file their petitions under penalty of election falsification, a board may accept the declaration of the candidate without further inquiry. However, if a board has personal knowledge or reason to believe that the declaration made by a candidate is false, or a protest is filed against an independent candidate, the board may inquire further to determine whether sufficient grounds exist to invalidate the candidate's petition and disqualify the candidate from running as an independent.

If you have additional questions or concerns please feel free to direct them to your assigned Elections Counsel at (614) 466-2585, or by e-mail to any of them.

Sincerely,



Jennifer Brunner
Ohio Secretary of State

LEXSEE 467 F3D 503

CHARLES R. MORRISON, DONALD E. ECKHART, and ALEXANDER SMITH,
Plaintiffs-Appellants, v. MICHAEL F. COLLEY, CAROLYN C. PETREE,
WILLIAM A. ANTHONY, JR., KIMBERLY E. MARINELLO, and FRANKLIN
COUNTY BOARD OF ELECTIONS, Defendants-Appellees.

No. 06-4216

UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

06a0373p.06;

467 F.3d 503; 2006 U.S. App. LEXIS 25416; 2006 FED App. 0373P (6th Cir.)

September 20, 2006, Argued
September 22, 2006, Decided
September 22, 2006, Filed *

* An interim opinion was filed in this matter on September 22, 2006. The court is now filing this more detailed opinion.

PRIOR HISTORY: [**1] Appeal from the United States District Court for the Southern District of Ohio at Columbus. No. 06-00644. George C. Smith, District Judge. *Morrison v. Colley*, 2006 U.S. App. LEXIS 24028 (6th Cir.) (6th Cir. Ohio, 2006)

DISPOSITION: Affirmed.

CASE SUMMARY:

PROCEDURAL POSTURE: Seeking preliminary and permanent injunctions, plaintiff candidate sued defendants, a county elections board and several individuals, under 42 U.S.C.S. § 1983, alleging violation of the candidate's rights under the First and Fourteenth Amendments to the Constitution of the United States. The United States District Court for the Southern District of Ohio at Columbus denied the candidate all relief. The candidate appealed.

OVERVIEW: The candidate alleged defendants violated his constitutional rights by excluding him from a ballot as an independent candidate for a congressional seat because he was affiliated with a political party. In an interim order, the instant court upheld the trial court's decision denying the candidate injunctive relief. In the instant order, the court expounded on that decision. *Ohio Rev. Code Ann. § 3513.257* did not impose a severe restriction on an independent candidate's First and Fourteenth Amendment rights, so the statute only had to survive review for reasonableness. The First and Fourteenth Amendments did not prohibit a state from requiring independent candidates to claim on the day before a primary that they were not affiliated with any political party. *Ohio Rev. Code §§ 3513.19(A)(3); 3513.05*, para. 7; 3513.19(B); 3513.20; and § 3599.11(A) put the candidate on notice that "claims" of party affiliation or nonaffiliation must be made in good faith. When the candidate declared that he was not affiliated with a political party, he had already made sworn statements to the contrary. Under the facts of the case, *Ohio Rev. Code Ann. § 3513.257* was not overbroad or void for vagueness.

OUTCOME: The court affirmed the judgment of the district court.

AUG22'07 AM11:01 DIR

COUNSEL: SARGUED: David R. Langdon, LANGDON & HARTMAN LLC, Cincinnati, Ohio, for Appellants.

Patrick J. Piccininni, PROSECUTING ATTORNEY'S OFFICE FOR THE COUNTY OF FRANKLIN, Columbus, Ohio, for Appellees.

ON BRIEF: David R. Langdon, Curt C. Hartman, Joshua B. Bolinger, LANGDON & HARTMAN LLC, Cincinnati, Ohio, Christopher P. Finner, FINNEY, STAGNARO, SABA & KLUSMEIER CO., L.P.A., Cincinnati, Ohio, for Appellants.

Patrick J. Piccininni, Nick A. Soulas, Jr., PROSECUTING ATTORNEY'S OFFICE FOR THE COUNTY OF FRANKLIN, Columbus, Ohio, for Appellees.

JUDGES: Before: SILER, GILMAN, and GRIFFIN, Circuit Judges.

OPINION BY: Griffin

OPINION:

[*504] GRIFFIN, Circuit Judge. Plaintiff-appellant Charles R. Morrison sought to run as an independent candidate for the office of United States Representative in Ohio's Fifteenth Congressional District ("CD") in the November 7, 2006, election. Defendants-appellees Franklin County Board of Elections ("BOE"), *et al.*, excluded Morrison from the ballot on the ground that, under Ohio election law, he [*505] did not [**2] qualify as an independent candidate because he was affiliated with a political party. Morrison filed an action in the United States District Court for the Southern District of Ohio seeking preliminary and permanent injunctions requiring the BOE to place him on the ballot. Morrison claimed that the Ohio statutory provision violated his *First* and *Fourteenth Amendment* rights and those of his would-be voters because it was allegedly overbroad, illegally discriminatory, and void for vagueness. After the district court denied Morrison all relief, Morrison appealed to this court. We granted Morrison's motion to expedite the appeal and heard oral argument on September 20, 2006. On September 22, 2006, we issued a per curiam interim opinion unanimously affirming the district court, stating, "despite any constitutional infirmities that *may* exist in the relevant Ohio statutes as they might apply to others, there is no reasonable basis for Morrison to claim in good faith that he is not affiliated with a political party." (Emphasis added.) Today we explain our holding in greater detail.

I.

In December 2005 and January 2006, Morrison began circulating petitions seeking placement on the May 2, 2006, ballot [**3] for the Madison County Republican Party Central Committee and the Ohio Republican Party State Central Committee. Morrison filed his petitions, was certified as a candidate in the Republican primary for the state and county committee positions, and appeared on the May 2, 2006, Republican primary ballot. He lost both races.

Morrison filed his declaration of candidacy for the county committee on a form that stated, "This petition shall be circulated only by a member of the same political party as stated above by the candidate." Morrison signed the declaration, which also required him to state, under penalty of "election falsification," that he was a member of the Republican Party. Likewise as to the state committee, Morrison signed a declaration of candidacy that required him to state, under penalty of election falsification, that he was a member of the Republican Party.

Approximately three weeks before the May 2, 2006, Republican primary, Morrison purchased local newspaper advertisements supporting his state and county committee candidacies. In his ads, Morrison stated that he was a Republican. On May 2, 2006, Morrison requested a Republican ballot and voted in the Republican primary. [**4]

On May 1, 2006, the day before Morrison's name appeared on the ballot in the Republican primary, he filed nominating petitions with the BOE to run as an independent candidate in Ohio's Fifteenth CD.

On May 22, 2006, three residents and qualified electors from the Fifteenth CD filed a written protest challenging Morrison's congressional candidacy on the ground that he was not an independent under Ohio law, and the BOE responded by holding a protest hearing. After receiving briefs and hearing argument at the hearing, the BOE deadlocked 2-2 on whether to certify Morrison as an independent candidate. Pursuant to *Ohio Rev. Code § 3501.05*, the matter was referred to the Ohio Secretary of State, who voted in favor of the protestors and against certification.

Morrison brought suit in the district court under *42 U.S.C. § 1983*, and thereafter the district court held a hearing on the merits.

II.

Because Morrison alleged the violation of rights recognized by the *First* and [*506] *Fourteenth Amendments to the U.S. Constitution*, the district court had federal-question jurisdiction under 28 U.S.C. § 1331. Regarding [**5] our jurisdiction, the district court consolidated the hearing on Morrison's preliminary injunction application with the hearing on the merits, and its order disposed of Morrison's complaint and request for permanent injunctive relief. Accordingly, the district court's order is final and immediately appealable. We review the district court's legal conclusions de novo and its factual findings for clear error. *Planned Parenthood Cincinnati Region v. Taft*, 444 F.3d 502, 507 (6th Cir. 2006) (citing *Taubman Co. v. Webfeats*, 319 F.3d 770, 774 (6th Cir. 2003)).

III.

Recently, in *Clingman v. Beaver*, 544 U.S. 581, 125 S. Ct. 2029, 161 L. Ed. 2d 920 (2005), the Supreme Court emphasized that not all election regulations that burden *First Amendment* rights are subject to a strict scrutiny analysis. Rather, unless a state election regulation places a heavy or severe burden on a party, "a State's important regulatory interests will usually be enough to justify reasonable, nondiscriminatory restrictions." *Id.* at 587 (quoting with approval *Timmons v. Twin Cities Area New Party*, 520 U.S. 351, 358, 117 S. Ct. 1364, 137 L. Ed. 2d 589 (1997)).

In holding [**6] that an Oklahoma statute allowing political parties to open their primary elections to only their own party members and voters registered as independents did not violate the *First Amendment*, the Supreme Court refused to apply a strict scrutiny analysis because the burden was not "severe":

[O]ur cases since *Tashjian [v. Republican Party]*, 479 U.S. 208, 107 S. Ct. 544, 93 L. Ed. 2d 514 (1986) have clarified [that] strict scrutiny is appropriate only if the burden is severe. [*California Democratic Party v. Jones*, 530 U.S. 567, 120 S. Ct. 2402, 147 L. Ed. 2d 502 (2000)], *supra*, at 582, 147 L. Ed. 2d 502, 120 S. Ct. 2402; *Timmons*, 520 U.S. at 358, 137 L. Ed. 2d 589, 117 S. Ct. 1364.

* * *

Many electoral regulations, including voter registration generally, require that voters take some action to participate in the primary process. *See, e.g., Rosario v. Rockefeller*, 410 U.S. 752, 760-62, 36 L. Ed. 2d 1, 93 S. Ct. 1245 (1973) (upholding requirement that voters change party registration 11 months in advance of the primary election). Election laws invariably "affect -- at least to some degree -- the individual's [**7] right to vote and his right to associate with others for political ends." *Anderson v. Celebrezze*, 460 U.S. 780, 788, 75 L. Ed. 2d 547, 103 S. Ct. 1564 (1983).

These minor barriers between voter and party do not compel strict scrutiny. *See Bullock v. Carter*, 405 U.S. 134, 143, 31 L. Ed. 2d 92, 92 S. Ct. 849 (1972). To deem ordinary and widespread burdens like these severe would subject virtually every electoral regulation to strict scrutiny, hamper the ability of States to run efficient and equitable elections, and compel federal courts to rewrite state electoral codes. The Constitution does not require that result, for it is beyond question "that States may, and inevitably must, enact reasonable regulations of parties, elections, and ballots to reduce election- and campaign-related disorder." *Timmons, supra*, 520 U.S. at 358, 137 L. Ed. 2d 589, 117 S. Ct. 1364; *Storer v. Brown*, 415 U.S. 724, 730, 39 L. Ed. 2d 714, 94 S. Ct. 1274 (1974). Oklahoma's semiclosed primary system does [*507] not severely burden the associational rights of the state's citizenry.

C

When a state electoral provision places [**8] no heavy burden on associational rights, "a State's important regulatory interests will usually be enough to justify reasonable, nondiscriminatory restrictions." *Timmons, supra*, at 358, 137 L. Ed. 2d 589, 117 S. Ct. 1364 (internal quotation marks omitted); *Anderson, supra*, at 788, 75 L. Ed. 2d 547, 103 S. Ct. 1564.

Clingman, 544 U.S. at 592-93. *Clingman* follows, and is consistent with, *Timmons*, which likewise refused to apply strict scrutiny to a challenge to a Minnesota election law prohibiting multi-party or "fusion" candidates from appearing

AUG22 '07 11:01 AM

467 F.3d 503, *; 2006 U.S. App. LEXIS 25416, **;
2006 FED App. 0373P (6th Cir.)

on the ballot. In rejecting a claim that the Minnesota regulation violated the plaintiff's *First* and *Fourteenth Amendment* rights, the Supreme Court stated,

[I]t is also clear that States may, and inevitably must, enact reasonable regulations of parties, elections, and ballots to reduce election- and campaign-related disorder. *Burdick v. Takushi*, 504 U.S. 428, 119 L. Ed. 2d 245, 112 S. Ct. 2059 (1992)], *supra*, at 433 ("[A]s a practical matter, there must be a substantial regulation of elections if they are to be fair and honest and if some sort [**9] of order, rather than chaos, is to accompany the democratic process") (quoting *Storer v. Brown*, 415 U.S. 724, 730, 94 S. Ct. 1274, 39 L. Ed. 2d 714 (1974)); *Tashjian, supra*, at 217 (The Constitution grants States "broad power to prescribe the 'Time, Places and Manner of holding elections for Senators and Representatives', Art. I, § 4, cl. 1, which power is matched by state control over the election process for state offices").

When deciding whether a state election law violates *First* and *Fourteenth Amendment* associational rights, we weigh the "character and magnitude" of the burden the State's rule imposes on those rights against the interests the State contends justify that burden, and consider the extent to which the State's concerns make the burden necessary. *Burdick, supra*, at 434 (quoting *Anderson v. Celebrezze*, 460 U.S. 780, 789, 103 S. Ct. 1564, 75 L. Ed. 2d 547 (1983)). Regulations imposing severe burdens on plaintiffs' rights must be narrowly tailored and advance a compelling state interest. Lesser burdens, however, trigger less exacting review, and a State's "important regulatory interests" will usually be enough to justify [**10] "reasonable, nondiscriminatory restrictions." *Burdick, supra*, at 434 (quoting *Anderson, supra*, at 788); *Norman v. Reed*, 502 U.S. 279, 116 L. Ed. 2d 711, 112 S. Ct. 698 (1992)], *supra*, at 288-289 (requiring "corresponding interest sufficiently weighty to justify the limitation"). No bright line separates permissible election-related regulation from unconstitutional infringements on *First Amendment* freedoms. *Storer, supra*, at 730 ("[N]o litmus-paper test . . . separat[es] those restrictions that are valid from those that are invidious The rule is not self-executing and is no substitute for the hard judgments that must be made.").

Timmons, 520 U.S. at 358-59.

The district court concluded correctly that *Ohio Rev. Code § 3513.257* does not impose a severe restriction on the *First* and *Fourteenth Amendment* rights of Morrison or other potential independent candidates or voters. See *Lawrence v. Blackwell*, 430 F.3d 368 (6th Cir.) (Ohio [*508] statute requiring independent congressional candidates to file statement of candidacy and nominating [**11] petition on the day preceding the primary election did not impose a severe burden on independent candidates' or voters' constitutional rights, so strict scrutiny was not warranted), *cert. denied*, ___ U.S. ___, 126 S. Ct. 2352, 165 L. Ed. 2d 278 (2006). The election regulation at issue is merely a reasonable, nondiscriminatory regulation to require would-be independent candidates to claim, no later than 4:00 p.m. of the day before the primary elections, that they are free of affiliation with any political party. Therefore, Ohio need only show that this requirement advances an important state interest, not a compelling state interest. *Id.* For the reasons stated by the district court, the non-affiliation requirement passes muster under this deferential standard. In addition, the statute itself specifies the following important state interests furthered by the election regulation:

The purpose of establishing a filing deadline for independent candidates prior to the primary election immediately preceding the general election at which the candidacy is to be voted on by the voters is to recognize that the state has a substantial and compelling interest [**12] in protecting its electoral process by encouraging political stability, ensuring that the winner of the election will represent a majority of the community, providing the electorate with an understandable ballot, and enhancing voter education, thus fostering informed and educated expressions of the popular will in a general election. The filing deadline for independent candidates required in this section prevents splintered parties and unrestrained factionalism, avoids political fragmentation, and maintains the integrity of the ballot. The deadline, one day prior to the primary election, is the least drastic or restrictive means of protecting these state interests. The general assembly finds that the filing deadline for independent candidates in primary elections required in this section is reasonably related to the state's purpose of ensuring fair and honest elections.

200209 11102 DIR

while leaving unimpaired the political, voting, and associational rights secured by the *first* and *fourteenth* amendments to the United States Constitution.

OHIO REV. CODE § 3513.257.

As the Supreme Court recognized in *Timmons*, a state may, consistent with the *First Amendment*, ban [**13] "fusion" or multi-party candidates in order to reduce election disorder. *Cf. Libertarian Party of Ohio v. Blackwell*, 462 F.3d 579, 462 F.3d 579, 2006 U.S. App. LEXIS 22639 (6th Cir. 2006).

In summary, we hold that the *First* and *Fourteenth Amendments* do not prohibit the Ohio General Assembly from requiring independent candidates to claim on the day before the primary that they are not affiliated with any political party.

IV.

Next, Morrison argues that the statute is void for vagueness because it allegedly fails to specify what a putative independent candidate must do to get on the ballot, and because it does not provide objective standards for enforcement. His argument is wholly unpersuasive under the facts of this case.

Under *Grayned v. City of Rockford*, 408 U.S. 104, 108, 92 S. Ct. 2294, 33 L. Ed. 2d 222 (1972), a statute must "give the person of ordinary intelligence a reasonable opportunity to know what is prohibited" or, in this case, what is required. In addition, the statute "must provide explicit standards for those who apply them." *Id. Cf. Risbridger v. Connelly*, 275 F.3d 565, 572 [*509] (6th Cir. 2002) ("[T]he void-for-vagueness doctrine requires that a penal statute define the criminal [**14] offense with sufficient definiteness that ordinary people can understand what conduct is prohibited and in a manner that does not encourage arbitrary and discriminatory enforcement.") (quoting *Kolender v. Lawson*, 461 U.S. 352, 357, 103 S. Ct. 1855, 75 L. Ed. 2d 903 (1983)).

The district court rejected Morrison's argument that the statute "creates confusion as to . . . whether a person desiring to become an independent candidate can merely claim not to be affiliated with a political party or whether they must truly be unaffiliated with a political party." The district court reasoned, "a person of ordinary intelligence, when considering *O.R.C. § 3513.257* [which requires the candidate to claim independence] and *O.R.C. § 3501.01(I)* [which defines an 'independent' candidate as one 'who claims not to be affiliated with any political party'] in the whole legislative scheme, would understand that an aspiring independent candidate 'must actually be independent, rather than merely claim it.'" A candidate possessing ordinary intelligence and common sense would readily understand that the claim of independence must be made in [**15] good faith -- otherwise there would be no reason for having the claim requirement, and none of the state interests animating the claim requirement would be served. *See United States v. Gjeli*, 717 F.2d 968, 972 (6th Cir. 1983).

In addition to the common-sense meaning of "claim" in *Ohio Rev. Code § 3513.257*, other sections of the Ohio election code put Morrison on notice that his actions were incompatible with his contemporaneous claim that he was not affiliated with any political party. Provisions of the Ohio election code other than § 3513.257 discuss political party affiliation and specify how it may be determined when challenged. This is significant, because typically "identical words used in different parts of the same act are intended to have the same meaning." *OfficeMax, Inc. v. United States*, 428 F.3d 583, 591 (6th Cir. 2005) (quoting *Gustafson v. Alloyd Co., Inc.*, 513 U.S. 561, 570, 115 S. Ct. 1061, 131 L. Ed. 2d 1 (1995)). n1

n1 *See also Lewis v. Philip Morris, Inc.*, 355 F.3d 515, 536 (6th Cir.) (Moore, J., for the court, joined in pertinent part by Katz, U.S.D.J.) (referring to "[t]he usual presumption that 'the same words used twice in the same act have the same meaning'" (quoting 2A NORMAN J. SINGER, SUTHERLAND ON STATUTES AND STATUTORY CONSTRUCTION, § 46.06, at 193 (6th ed. 2000)), *cert. denied*, 543 U.S. 821, 125 S. Ct. 61, 160 L. Ed. 2d 31 (2004); *Lake Cumberland Trust, Inc. v. EPA*, 954 F.2d 1218, 1222 (6th Cir. 1994) ("We must presume that words used more than once in the same statute have the same meaning.") (citation omitted).

[**16]

First, *Ohio Rev. Code § 3513.19(A)(3)* provides that a person's right to vote in a party's primary can be challenged on the basis that he "is not affiliated with or is not a member of" that party. That section also states, in pertinent part, that "[s]uch party affiliation shall be determined by examining the elector's voting record for the current year and the

AUG22'07 AM11:02 DIR

immediately preceding two calendar years as shown on the voter's registration card, using the standards of affiliation specified in the seventh paragraph of *section 3513.05* of the Revised Code." *OHIO REV. CODE. § 3513.19(A)(3)*. In turn, *§ 3513.05 P 7* considers a voter to be affiliated with a party if he was registered with that party and voted in that party's primaries during the current year and the two preceding years. Morrison has never denied that he was registered as a Republican and voted in the May 2, 2006, Republican primary, nor has he claimed that he was ever registered [*510] as something other than a Republican or that he voted in non-Republican primaries during the preceding two calendar years.

Moreover, the next subsection of the statute, *Ohio Rev. Code § 3513.19(B)* [**17] , provides:

When the right of a person to vote is challenged upon the ground set forth in division (A)(3) of this section, membership in or political affiliation with a political party shall be determined by the person's statement, *made under penalty of election falsification*, that the person desires to be affiliated with and supports the principles of the political party whose primary ballot the person desires to vote.

(Emphasis added.) By registering as a Republican and then affirmatively requesting and voting the Republican Party primary ballot on May 2, 2006, Morrison necessarily evinced a desire to be affiliated with the Republican Party at that time. Indeed, when Morrison presented himself as eligible to vote in the Republican primary on May 2, 2006, Ohio law required him to be prepared to prove, *under penalty of punishment for false statement*, that he was affiliated with the Republican Party:

Before any challenged person shall be allowed to vote at a primary election, the person shall make a statement, *under penalty of election falsification*, before one of the precinct officials . . . stating that the person desires to be affiliated [**18] with and supports the principles of the political party whose ballot the person desires to vote; and giving all other facts necessary to determine whether the person is entitled to vote in that primary election. The statement shall be returned to the office of the board with the poll-books and tally sheets.

OHIO REV. CODE § 3513.20.

If there were any doubt whether registering Republican, running as a Republican in the primary, and voting in the Republican primary precluded a good faith claim to be unaffiliated with any party, Morrison's own Federal Election Commission ("FEC") filing dispels it. Morrison conceded that his own congressional campaign committee's statement of organization, FEC Form 1, listed him as affiliated with the Republican Party.

Morrison cannot complain if his own campaign committee's express statement of his party affiliation is considered and used to rule against him. *Cf. In re El-Amin*, 252 B.R. 652, 659 (*Bankr. E.D. Va. 2000*) ("The party who made the admission cannot complain that they [sic] were prejudiced by their own words."); *Levy v. United States*, 1858 U.S. Ct. Cl. LEXIS 58, 1858 WL 4645, at *27 (Ct. Cl. May 4, 1858) [**19] Morrison cannot complain if his own campaign committee's express statement of his party affiliation is considered and used to rule against him. *Cf. In re El-Amin*, 252 B.R. 652, 659 (*Bankr. E.D. Va. 2000*) ("The party who made the admission cannot complain that they [sic] were prejudiced by their own words."); *Levy v. United States*, 1858 U.S. Ct. Cl. LEXIS 58, 1858 WL 4645, at *27 (Ct. Cl. May 4, 1858) [**19] ("The petitioner cannot object to this conclusion, because it is in exact accordance with his own export manifest, rendered on his own oath."). n2

n2 *Cf. also United States v. Beal*, 940 F.2d 1159, 1162 (8th Cir. 1991) ("[D]efendant cannot complain if his own admissions . . . [are] received in evidence against him.");

United States v. Alvarez, 810 F.2d 879, 889 (9th Cir. 1987) ("The defendant cannot complain when his own testimony fixes the time of his arrest.");

Courtney v. United States, 518 F.2d 514, 517 (4th Cir. 1975) ("[T]he defendant cannot be heard to complain that he was convicted on the basis of his own testimony.");

467 F.3d 503, *, 2006 U.S. App. LEXIS 25416, **;
2006 FED App. 0373P (6th Cir.)

United States v. Bates, 141 F.2d 436, 439 (7th Cir.) ("Defendant cannot complain if the jury accepted at their face value his own statements . . ."), *vac'd on other grounds*, 323 U.S. 15, 65 S. Ct. 15, 89 L. Ed. 13 (1944);

The Eroe, 9 Ben. 191, 8 F. Cas. 774, 775, F. Cas. No. 4521 (E.D.N.Y. 1877) (No. 4,521) ("[T]he respondents can resort to this bill rendered . . . there being no other proof, it must be taken of evidence of the amount of such difference. Of this the consignees cannot complain, as it is their own bill."), *aff'd*, 17 Blatchf. 16, 8 F. Cas. 775, F. Cas. No. 4522 (C.C.S.D.N.Y. 1879) (No. 4,522).

[**20]

[*511] Most importantly, under Ohio law, if Morrison was unaffiliated with any political party on May 1, 2006, as he contends, he could not also claim in good faith to be a Republican at the same time without risking consequences more serious than exclusion from the ballot. Specifically, *Ohio Rev. Code § 3599.11(A)* provides the following criminal penalties for false swearing: "No person shall knowingly swear or affirm falsely upon a lawful examination by or before any registering officer; or make, print, or issue, any false . . . certificate of registration No person shall . . . knowingly make any false statement on any form for registration or change of registration Whoever violates this division is guilty of a felony of the fifth degree."

A person of ordinary intelligence in the position of Morrison is put on notice that "claims" of party affiliation or non-affiliation must be made in good faith; otherwise the person is subject to criminal prosecution.

We conclude that the statutes at issue gave Morrison sufficient notice that his claims of party affiliation or non-affiliation had to be made in good faith when he filed his independent congressional [**21] candidacy petition on May 1, 2006. Further, under the undisputed facts of this case, Morrison's claim of unaffiliation with a political party was not made in good faith.

For these reasons, we hold that, under the facts of this case, *Ohio Rev. Code § 3513.257* is not void for vagueness. *Cf. McEntee v. MSPB*, 404 F.3d 1320, 1333-34 (Fed. Cir.), *cert. denied*, ___ U.S. ___, 126 S. Ct. 381, 163 L. Ed. 2d 167 (2005). In addition, for the reasons stated by the district court, we hold that *Ohio Rev. Code § 3513.257* is not overbroad, nor was it applied in a manner that illegally discriminated against Morrison.

V.

In conclusion, we affirm the district court's denial of Morrison's application for preliminary and permanent injunctive relief. Morrison has not provided grounds to enjoin defendants from excluding him from the November 2006 congressional ballot due to his non-compliance with *Ohio Rev. Code § 3513.257*.

Affirmed.

the secretary of state's office issued the advisory opinion.

"It's unfortunate when someone wants to run for office, and we can't let them," said Mark Munroe, the elections board's vice chairman. "It is disappointing, and we're certainly not happy."

Common practice

Before the court decision, the long-standing practice in Ohio was to let candidates run as independents regardless of political affiliation.

"We're getting penalized for something that's been happening in Ohio for years," said Maggy Lorenzi, who was an independent candidate for the 6th Ward. Lorenzi was the only candidate among the eight disqualified who attended Thursday's elections board meeting.

"You're changing past practices," she told the board. "I'm sick and tired of the people being responsible for following the law, but there's no consequences, none, for government when it doesn't follow the law. It took a federal court to tell the state of Ohio to follow its law."

Lorenzi said she plans to run as a write-in candidate. But Green said state law forbids those who file declarations of candidacy or submit nominating petitions for partisan state, county and municipal positions to then run for that same office as a write-in if they are disqualified. The law took effect Dec. 23, 2003, and was upheld by the Ohio Supreme Court in an Oct. 25, 2005, decision, after a legal challenge.

The secretary of state's office has told Mahoning elections officials they can't accept write-in petitions from disqualified candidates, McCabe said.

Other candidacies in question

With the disqualifications, the only competitive Youngstown council races in November are in the 1st, 3rd and 7th Wards. There are seven wards in the city.

Trumbull County has seven independent candidates who voted in the May 8 Democratic primary. Their eligibility is in question. That county's board of elections is planning to certify the independent candidates July 10.

AUG22'07 AM11:02 DIR

In Columbiana County, two independent candidates — Ginny Hanlon, running for East Liverpool mayor, and Donald E. Brown, running for Wellsville mayor — voted in the May 8 primary, said Lois Gall, the county's elections board director. That county's elections board will vote to certify independent candidates July 5.

skolnick@vindy.com

AUG22'07 AM11:02 DIR

 Print |  Close Window

THE ENQUIRER

Last Updated: 6:03 pm | Thursday, June 14, 2007

Judge hopefuls' status at issue Three declared as 'independent'

BY JANICE MORSE | JMORSE@ENQUIRER.COM

MASON - The five-way field for municipal judge here - which includes controversial incumbent George Parker - could shrink if officials declare that Parker or other independent candidates aren't truly "independent."

The Warren County elections board has asked the county prosecutor's office whether any of the independent candidates should be disqualified, said Michael E. Moore, county elections director. He hopes Assistant Prosecutor Keith Anderson will have an opinion ready in time for the election board's July 3 meeting.

For now, the candidates include Republican D. Andrew Batche, Democrat Valerie Finn-Deluca and three independents: Parker and local attorneys James Whitaker and Mitchell Allen.

The Municipal Court judgeship is a six-year term that oversees traffic cases, misdemeanors, and the initial stages of more serious felony cases that occur in Mason and Deerfield Township. The question about whether any of the independents should be disqualified arose after Ohio Secretary of State Jennifer Brunner issued a June 3 advisory to all county elections boards.

A federal appeals court decision "changes longstanding practice in Ohio," Brunner said. Previously, the state only required an independent candidate's campaign to be unaffiliated with a political party. The candidate himself did not have to be "entirely unaffiliated," Brunner said.

The court ruling changes that.

Now, a candidate must be "unaffiliated or disaffiliated from any political party," Brunner said.

Moore declined to disclose the voting histories of any of the three independents, so it's unclear whether that factor could affect the three candidates.

However, Parker was elected to office on the Republican ticket - a factor that could be considered when weighing whether his candidacy as an independent is valid, according to Brunner's advisory.

 Print |  Close Window | Copyright 2007, Enquirer.com

AUG22'07 AM11:02 DIR



CUYAHOGA COUNTY BOARD OF ELECTIONS

Jeff Hastings
Interim Chairman

Inajo Davis Chappell
Member

Robert S. Frost
Member

Eben O. (Sandy) McNair, IV
Member

July 2, 2007

The Honorable Maureen Alder Gravens
21370 Snowflower Drive
Rocky River, Ohio 44116

Dear Judge Gravens:

Please accept this notice in regards to the letter we received from Ms. Deborah Reese relative to your filing as an Independent candidate for Judge of Rocky River Court for the November 6, 2007 General Election.

The Board of Elections discussed this issue today at our board meeting. The board has scheduled a protest hearing on the matter at their 9 A.M. board meeting on Monday, August 6, 2007. Additionally, the board is requesting that both parties, yourself and Ms. Reese, submit initial briefs by 4 P.M. Monday, July 16, 2007. Both parties will then be given the opportunity to respond. Response briefs are due to the Board of Elections by 4 P.M. July 23, 2007.

Upon receipt of each party's briefs, they will be forwarded to each other respectively.

Cordially,

Jane M. Platten
Director
Cuyahoga County Board of Elections

CC: Inajo Davis Chappell, Board Member
Robert S. Frost, Board Member
Jeff Hastings, Chairman
Eben O. (Sandy) McNair, IV, Board Member
Reno Oradini, Assistant County Prosecutor

AUG 22 '07 11:00 DIR

July 12, 2007

Jane Platten
Director
Cuyahoga County Board of Elections
2925 Euclid Avenue
Cleveland, Ohio 44115

Re: Candidacy of Maureen Adler Gravens

Dear Ms. Platten:

Pursuant to your letter dated July 2, 2007, I understand that my letter of June 19, 2007 is considered a formal protest to the candidacy of Judge Maureen Adler Gravens for the Rocky River Municipal Court. I am a registered voter eligible to vote for the position of Rocky River Municipal Court Judge. The purpose of this letter is to ensure I have met the statutory definition of a formal protest as required by Ohio Rev. Code § 3513.262.

On May 2, 2007, Mrs. Gravens filed petitions to be put on the ballot for Judge of Rocky River Municipal Court as an Independent Candidate. Subsequently, she then voted in the Democratic Primary on May 8, 2007. On May 29, 2007, the Cuyahoga County Board of Elections certified Maureen Adler Gravens as an Independent Candidate for judge.

As you are aware, in the Sixth Circuit Court of Appeals decision *Morrison v. Colley*, 467 F.3d 503 (6th Cir. 2006), the Court held that independent candidates must actually be unaffiliated and such unaffiliation, when claimed, must be made in good faith.

In order to clarify what impact this decision would have on subsequent elections, the Ohio Secretary of State, Jennifer Brunner, published Advisory Opinion, No. 2007-05 on June 4th, 2007. The Ohio Secretary of State's opinion concluded that the *Morrison* court and Ohio Rev. Code § 3513.257 require that (1) "an independent candidate actually be unaffiliated, or disaffiliated from any political party, and (2) "the required claim of unaffiliation by an independent candidate must be in good faith."

AUG22'07 AM11:02 DIR

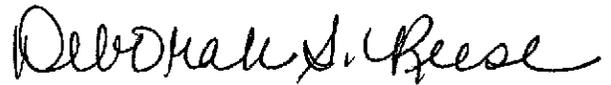
JUL13'07 PM 2:42 BOE

Jane Platten
July 12, 2007

The Secretary of State went on to provide boards of elections with guidelines on how to determine whether or not an independent candidate is actually affiliated with a political party or whether the independent candidate has claimed unaffiliation in good faith. One such guideline says that "if an independent candidate votes in a party primary election after filing as an independent, the candidate is not actually unaffiliated, and the candidate's claim of independence was either not made in good faith or is no longer current."

As mentioned above, Mrs. Gravens voted in the Democratic Primary election six days after declaring her candidacy as an Independent Candidate for Judge of the Rocky River Municipal Court. For this reason, Maureen Adler Gravens should be disqualified as a candidate.

Sincerely,



Deborah S. Reese
4277 West 214th Street
Fairview Park, Ohio 44126

cc: Inajo Davis Chappell, Board Member
Robert S. Frost, Board Member
Jeff Hastings, Chairman
Eben O. (Sandy) McNair, IV, Board Member
Reno Oradini, Assistant County Prosecutor

AUG22'07 AM11:02 DIR

Ex. 7

MICHAEL PATRICK BUTLER

ATTORNEY AT LAW

55 PUBLIC SQUARE, SUITE 1260
CLEVELAND, OHIO 44113

TELEPHONE: (216) 621-8005
FAX: (216) 621-8378

July 16, 2007

Jane Platten
Director
Board of Elections
2950 Euclid
Cleveland, Ohio 44115

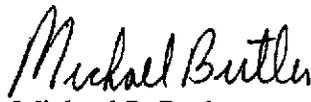
Re: Brief of Maureen Adler Gravens

Dear Ms. Platten:

I represent Maureen Adler Gravens. Please receive for filing the original and four copies of the Brief as requested by the Board. Please distribute copies to Board members.

Please direct any filings, notices or other matters to me at the address listed above.
Thank you.

Very truly yours,


Michael P. Butler

MPB/jah

Enclosures

cc: Daniel Carter, Esq./Jeffrey Ruple, Esq.
Reno Oradini, Assistant Prosecutor

JUL16'07 PM12:28 DIR

AUG22'07 AM11:02 DIR

ORIG.

BOARD OF ELECTIONS
CUYAHOGA COUNTY, OHIO

- IN RE:)
)
 1) Nonpartisan Petition of)
 Maureen Adler Gravens)
)
 2) Correspondence of)
 Deborah Reese)
)

**BRIEF OF
MAUREEN ADLER GRAVENS**

Now comes Maureen Adler Gravens, nonpartisan candidate for Judge, Rocky River Municipal Court, by and through counsel, Michael P. Butler and hereby submits her brief in support of her petition and in response to the correspondence of Ms. Reese.

STATEMENT OF THE CASE

Maureen Adler Gravens, pursuant to O.R.C. §1901.07, on February 6, 2007 signed a Statement of Candidacy which states the following:

“I, Maureen Adler Gravens, the undersigned, hereby declare under penalty of election falsification that my voting residence address is Rocky River is 21370 Snowflower 44116; And I am a qualified elector. I further declare that I desire to be a candidate for election to the office of Judge in the Rocky River Municipal Court District, for the full term commencing January 1, 2008 at the general election next hereafter to be held.

I hereby declare that, if elected to this office or position. I will qualify therefor.

Dated this 6th day of February, 2007.”

Maureen Adler Gravens
(Print name as it should appear on ballot)

Signed by Maureen Adler Gravens
(Signature of candidate)

Exhibit A is attached hereto.

JUL16'07 PM12:27 DIR

AUG22'07 AM11:03 DIR

In compliance with O.R.C. §1901.07, the nominating petition, containing the requisite number of signatures, was timely filed. O.R.C. §1901.07(B) states in pertinent part:

“... nonpartisan candidates for the office of municipal court judge shall file nominating petitions not later than four p.m. of the day before the day of the primary election in the form prescribed by section 3513.261 of the Revised Code.” (emphasis added).

The Board of Elections, on May 29, 2007, found the Petition to be valid and certified the candidate to the ballot. The Board has somehow mischaracterized Judge Gravens' petition. The Board has mislabeled Judge Gravens as being an independent candidate for Judge despite the clear statement of candidacy referenced herein and the operation of O.R.C. 1901.07. (nonpartisan candidate). Counsel for Judge Gravens requested that the Board's minutes be corrected to accurately reflect the facts (nonpartisan). There is no reference to the term "Independent" nor is there any declaration of candidacy specifying an intent to be an independent candidate within the Petition of Judge Gravens.

On June 19, 2007, Ms. Reese submitted a letter with attachments, to the Board asserting the following:

- 1) Maureen Adler Gravens filed petitions to be an Independent candidate for Judge on May 2, 2007;
- 2) Maureen Adler Gravens voted in the May 8, 2007 Democratic Primary;
- 3) The Board of Elections certified Maureen Adler Gravens as an Independent candidate for Judge.

The attachments submitted by Ms. Reese include an advisory by the Secretary of State referencing Independent Candidate and Party Affiliation and a copy of Morrison, et al. v. Colley, et al., 467 F.3d 503 (2006).

The Reese correspondence failed to include any evidence supporting the contentions that Maureen Adler Gravens filed a petition as an Independent nor did the letter cite any legal authority which specifically prohibits a nonpartisan candidate from voting in a party primary.

The Board now has set the matter for hearing. Candidate Gravens submits this Brief preserving her right to argue that the Reese letter does not give rise to a protest as defined by law.

DUTIES OF BOARD

The Board of Elections, as a statutory body, has only those powers as specified by the Ohio Revised Code. Under O.R.C. 3501.11(K), the Board has a duty to inspect petitions and to determine their validity and legal sufficiency. O.R.C. §3501.38 provides the general rules governing candidate petitions.

O.R.C. 3501.39, titled Unacceptable Petitions, states in pertinent part:

(A) The secretary of state or a board of elections shall accept any petition described in section 3501.38 of the Revised Code unless one of the following occurs:

(1) A written protest against the petition or candidacy, naming specific objections, is filed, a hearing is held, and a determination is made by the election officials with whom the protest is filed that the petition is invalid, in accordance with any section of the Revised Code providing a protest procedure.

(2) A written protest against the petition or candidacy, naming specific objections, is filed, a hearing is held, and a determination

is made by the election officials with whom the protest is filed that the petition violates any requirement established by law.

(3) The candidate's candidacy or the petition violates the requirements of this chapter, Chapter 3513 of the Revised Code, or any other requirements established by law. (emphasis added).

In short, the petition is valid absent a specific violation of Chapter 35 or any other requirements established by law.

LAW and ARGUMENT

A. THE NOMINATING PETITION OF MAUREEN ADLER GRAVENS IS VALID AND SUFFICIENT

Significantly, the Board has previously certified the petition as valid and legally sufficient.

From the beginning, O.R.C. §1901.07, titled Term of Judge – Nomination, Election governs the candidacy in question. This section states in pertinent part:

“A) All municipal court judges shall be elected on the nonpartisan ballot . . .

B) All candidates for municipal judge may be nominated either by nominating petition or by primary election . . .”

“. . . nonpartisan candidates for the office of municipal court judge shall file nominating petitions not later than four p.m. of the day before the day of the primary in the form prescribed by section 3513.261 of the Revised Code.”

An examination of the petition reveals it is in compliance with the statutes referenced on the Board prescribed form, e.g. O.R.C. 1901.07, 3501.38 and 3513.261. §1901.31 while referenced on the petition, applies to the Clerk of Court. As stated earlier, §3501.38 governs general petition requirements while §3513.261 titled Nominating Petition form and Fee sets forth

the specific requirements for a nominating petition. It is undisputed that the petition meets the essential statutory requirements referenced in these sections.

- B. THE NONPARTISAN CANDIDATES FOR THE OFFICE OF MUNICIPAL COURT JUDGE SHALL FILE NOMINATING PETITIONS NOT LATER THAN FOUR P.M. OF THE DAY BEFORE THE DAY OF THE PRIMARY IN THE FORM PRESCRIBED BY SECTION 3513.261 OF THE REVISED CODE.

The concept of a **nonpartisan candidate** as referenced in §1901.07 has apparently confused matters. Some believe, without authority, if a petition is filed after the party filing deadline, then the candidate automatically becomes an Independent. On the contrary the law also provides for nonpartisan candidates. Fortunately, O.R.C. 3501.01 titled Election Procedure – Election Officials Definitions provides absolute legal distinctions. As to nonpartisan candidates, this section states in pertinent part:

(J) “Nonpartisan candidate” means any candidate whose name is required, pursuant to section 3505.04 of the Revised Code, to be listed on the nonpartisan ballot, including all candidates for judicial office, for member of any board of education, for municipal or township offices in which primary elections are not held for nominating candidates by political parties, and for offices of municipal corporations having charters that provide for separate ballots for elections for these offices.

The nonpartisan definition begins the statutory trail, beginning with the statement of candidacy and nominating petition and ending with name on the nonpartisan ballot (O.R.C. 3505.04). This section states in pertinent part:

“On the nonpartisan ballot shall be printed the names of all nonpartisan candidates for election to judicial office, office of member of state board of education, office of member of a board of education, . . .”

For Judge Gravens, the specific language of O.R.C. §1901.07 specifically enables a candidate to seek to appear on the ballot as a nonpartisan candidate.

Judge Gravens' statement of candidacy does not assert that she is an independent nor does the printed petition supplied by the Board and authorized by the Secretary of State make any reference to the term independent. The petition form does not prohibit voting in a primary election, nor does it specifically restrict political affiliation. For example, a nonpartisan school board candidate, who files a similar petition, is not restricted from party affiliation or party primary voting.

In summary, Judge Gravens, under the law, has filed a valid nonpartisan petition as authorized by O.R.C. 1901.07 and 3501.01(J). There is no statement in her statement of candidacy which prohibits voting in either party's primary. Judge Gravens, in the attached affidavit asserts the facts as stated herein.

C. MS. REESE'S CORRESPONDENCE IS FACTUALLY AND LEGALLY INCORRECT AND IS INAPPLICABLE

First, as stated above, Judge Gravens' nonpartisan candidacy is specifically authorized by statute. Judge Gravens is not an independent candidate. There is no petition or other evidence supporting this contention.

Ms. Reese has supplied a Secretary of State advisory which references Independent Candidates and Party Affiliation by examining Morrison v. Colley, supra, as attached to the advisory. This case has no legal application in that its holding is limited to finding that O.R.C.

§3513.257, titled Independent Candidates Statement of Candidacy and Nominating Petition

was constitutional and as such, the statute was not vague or overbroad.

Factually, Mr. Morrison sought to challenge the statute in Federal Court after the Assistant Secretary of State voted to break a tie of the Franklin County Board of Elections granting a protest and voting against certification of Morrison's petition. Mr. Morrison, in succession, did the following:

- Filed a petition for election as Republican State Committeeman
- Filed a petition for election as Republican County Committeeman
- Advertised/campaigned as a Republican for Committee office
- After affirming Republican affiliation, Morrison filed a petition the day before the May 2006 primary as an **"Independent"** candidate for Congress
- Filed with Federal Election Commission a statement of Republican affiliation
- Voted in Republican Primary

The Congressional candidacy was protested and ultimately the Congressional petition was not certified. The Assistant Secretary of State stated in pertinent part:

“. . . and because R.C. 3501.01(I) provides a standard, the law and facts show that Mr. Morrison was never truly independent at any point relevant to this matter.”

For background, O.R.C. §3501.01(I) states the following:

(I) “Independent candidate” means any candidate who claims not to be affiliated with a political party, and whose name has been certified on the office-type ballot at a general or special election through the filing of a statement of candidacy and nominating petition, as prescribed in section 3513.257 [3513.25.7] of the Revised Code. (Emphasis added)

In short, Morrison could not have it both ways as the specific statutory limitation of §3501.01(I) which governs Independent candidates controlled.

Ms. Reese's reliance on this case and the Secretary of State's advisory is totally inapplicable based on the facts and law of this case.

In Morrison, the Secretary of State, in breaking the tie vote, applied the clear language of 3501.01(I) which defines an independent as one who claims not to be affiliated with a political party against a candidate who claimed not to be affiliated (independent petition) while declaring his party affiliation repeatedly!

In contrast, 3501.01(J), has no limiting language, in that a nonpartisan candidate means any candidate whose name is required pursuant to section 3505.04 to be listed on the nonpartisan ballot. A nonpartisan candidate's petition makes no claims of status (independent or not) or any claims to affiliation. Judge Gravens' nonpartisan petition contains only the statement of candidacy which asserts the following: The name, address, assertion of qualification as an elector, a desire to be Judge of the specific office at the general election and finally declares, if elected, that Judge Gravens is qualified for the office. The Morrison "declaration of independent," and the Secretary of State's advisory concerning independent candidate petitions has no legal or factual application to Judge Gravens' petition.

CONCLUSION

This is a petition case. It is a well settled principal of Ohio election law that decisions concerning possible invalidation of a petition are determined in light of public policy favoring free, competitive elections. See Stern v. Board of Elections, (1968) 14 Ohio St.2d 175, 184; Beck

v. Casey, (1990) 51 Ohio St.3d 79 at Page 80. A Board of Elections, as a statutory body, examines the four corners of the petition to determine its validity.

This Board has previously determined that Judge Gravens' petition is valid. The petition is nonpartisan as specifically authorized by O.R.C. 1901.07. The petition does not assert that Judge Gravens is an Independent nor does the printed form supplied by the Board make any reference to the term Independent. There is no specific prohibition or reference to party affiliation. Instead, the Petition, being a nonpartisan nominating petition recites the mandatory statutory elements needed to qualify as a candidate for Judge.

It is respectfully requested that the Board amend its record to properly certify Judge Gravens' petition as nonpartisan. Also, as the petition has been previously certified as valid, the Board is requested to deny the relief sought by Ms. Reese and direct that Maureen Adler Gravens appear on the General Elections ballot as a nonpartisan candidate for Rocky River Municipal Court Judge.

Respectfully submitted,



Michael P. Butler (#0022180)

Attorney at Law

55 Public Square, Suite 1260

Cleveland, Ohio 44113

(216) 621-8005

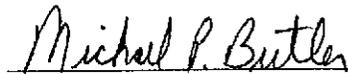
Fax: (216) 621-8378

CERTIFICATE OF SERVICE

A copy of the following was served by ordinary U.S. Mail this 16th day of July, 2007 upon:

Daniel P. Carter, Esq.
Jeffrey Ruple, Esq.
Buckley King LPA
1400 Fifth Third Center
600 Superior Avenue, East
Cleveland, Ohio 44114-2652

Attorneys for Deborah S. Reese



Michael P. Butler (#0022180)

Attorney at Law

STATE OF OHIO)
) SS
COUNTY OF CUYAHOGA)

AFFIDAVIT

Now comes Maureen Adler Gravens, after being duly sworn, deposes and states the following:

1. I am Maureen Adler Gravens. I am presently serving as Judge of the Rocky River Municipal Court. This is my third term.

2. On February 6, 2007, I signed a Statement of Candidacy which is demonstrated on a part petition marked as Exhibit A, attached hereto. The completed nominating petition with signatures of nominating electors was filed with the Board of Elections. It is my understanding, that the petition has previously been certified as valid by the Board of Elections..

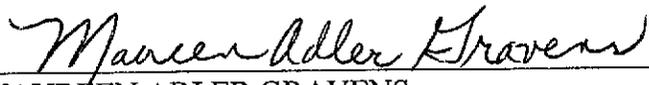
3. In the past, I have filed nonpartisan nominating petitions and have also voted in party primaries, all in accordance with the law.

4. I am a nonpartisan candidate as is authorized by operation of Ohio Revised Code §1901.07.

5. It is my understanding that there is no Ohio statute that specifically prohibits a nonpartisan candidate for any office from voting in a party primary. Accordingly, I exercised my right to vote in the May Democratic Primary held in Rocky River.

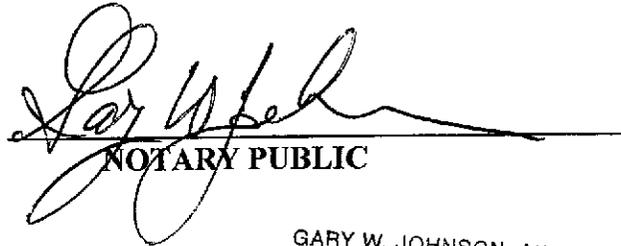
6. My nomination petition does not make any claim or assertion that I am an Independent candidate nor does it make any claim that I am not affiliated with a political party. Instead, my statement of candidacy clearly asserts the statutory qualifications mandated by Ohio Election law.

FURTHER AFFIANT SAYETH NAUGHT.



MAUREEN ADLER GRAVENS

SWORN TO BEFORE ME, and subscribed in my presence this 15th day of July,
2007.



NOTARY PUBLIC

GARY W. JOHNSON, Attorney at Law
Notary Public, State of Ohio
My commission has no expiration date.
Section 147.03 O.R.C.

Prepared By:
MICHAEL P. BUTLER
Attorney at Law (#0022180)
55 Public Square, Suite 1260
Cleveland, Ohio 44113
(216) 621-8005

JUDGE OR CLERK OF THE MUNICIPAL COURT

For Board of Elections use only - Do not write in this space

Office Sought: JUDGE - ROCKY RIVER

80.00 Filing Fee MIN 50-MAX 150 Signature Requirements MAY 7 2007 4PM Last Filing Date/Time

The candidate must fill in, sign and date this statement of candidacy before petitions are circulated.

STATEMENT OF CANDIDACY

Revised Code, Sections 1901.07, 1901.31, 3501.38, 3513.261

I, MAUREEN ADLER GRAVENS, the undersigned, hereby declare under penalty of election

falsification that my voting residence address is ROCKY RIVER is 21370 SNOWFLOWER 44116

And I am a qualified elector. I further declare that I desire to be a candidate for

election to the office of JUDGE in the ROCKY RIVER Municipal Court District,

for the full term commencing JANUARY 1, 2008 or unexpired term ending _____

at the general election next hereafter to be held.

I hereby declare that, if elected to this office or position, I will qualify therefor.

BOARD USE ONLY	
City, Ward & Precinct	
PARTY / YEAR	
SIGNATURE	
INITIALS	

Dated this 6th day of FEBRUARY, 2007

MAUREEN ADLER GRAVENS
(Print name as it should appear on the ballot)

Maureen Adler Gravens
(Signature of candidate)

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

I, MAUREEN ADLER GRAVENS hereby designate the persons named below a committee to represent me:

NAME	STREET ADDRESS
TERRANCE P. GRAVENS	21370 SNOWFLOWER, ROCKY RIVER, OH 44116
GARY JOHNSON	1250 RUE ST. GEORGES, WESTLAKE, OH 44145
PATRICIA A. GAUL	2751 COUNTRY CLUB, ROCKY RIVER, OH 44116
MICHAEL CARLIN	4140 DIANE, FAIRVIEW PARK, OH 44126
KATHLEEN MAHONEY	30122 EDNIL, BAY VILLAGE, OH 44140

NOMINATING PETITION

We, the undersigned, qualified electors whose voting residence set opposite our names, hereby nominate the above-named candidate for election to the office and term as stated above of the above named municipal court district, to be voted for at the next general election, and certify said person is, in our opinion, well qualified to perform the duties of the office or position the candidate desires to be elected.

Electors must write signatures on this petition in ink.

SIGNATURES (Must be written in ink)	PRINTED NAME OF SIGNER	STREET ADDRESS (Must be the address on file with the Board of Elections)	DATE OF SIGNING
<i>Patricia A. Costello</i>	PATRICIA A. COSTELLO	1660 BASSETT RD. WESTLAKE, OH 44145	3/8/07
<i>James P. Madsen</i>	JAMES P. MADSEN	1670 BASSETT RD. WESTLAKE, OH 44145	3/15/07

A LEGAL PROFESSIONAL ASSOCIATION

BUCKLEY KING

1400 FIFTH THIRD CENTER

600 SUPERIOR AVENUE EAST • CLEVELAND, OHIO 44114-2652

Tel: 216.363.1400 • 800.255.2825 • Fax: 216.579.1020

www.buckleyking.com

Writer's Direct E-Mail: carter@buckleyking.com

July 16, 2007

Daniel P. Carter, Esq.
Also Admitted in Pennsylvania

Jane M. Platten
Director
Cuyahoga County Board of Elections
2925 Euclid Avenue
Cleveland, OH 44115-2497

Re: Challenge to Maureen Adler Gravens

Dear Ms. Platten:

This submission is on behalf of Ms. Deborah Reese ("Ms. Reese"), a qualified elector for the 2007 General Election. On June 19, 2007, Ms. Reese filed a protest with the Cuyahoga County Board of Elections ("BOE") as to the candidacy of Maureen Adler Gravens ("Ms. Gravens") for the position of Rocky River Municipal Court Judge. After receiving this June 19, 2007 letter, the BOE requested briefs from the interested parties to be filed by the close of business on July 16, 2007. Ms. Reese additionally filed a formal protest on July 13, 2007.

Ms. Reese hereby submits her brief as well as the following exhibits:

- Ex. A: BOE Petition Deadlines
- Ex. B: Gravens Statement of Candidacy and Nominating Petitions
- Ex. C: Receipt of Petition for Pre-check
- Ex. D: Results of Candidate Pre-check
- Ex. E: Judicial Receipt for Petition filing materials
- Ex. F: Gravens Voting Record
- Ex. G: BOE Alphabetical Poll Book from the Primary May 8, 2007 (2 pages)
- Ex. H: Morrison Opinion
- Ex. I: Secretary of State Opinion
- Ex. J: Articles regarding Mahoning County
- Ex. K: Articles regarding Warren County
- Ex. L: Articles regarding Trumbull County

JUL16'07 PM 3:54 BOE

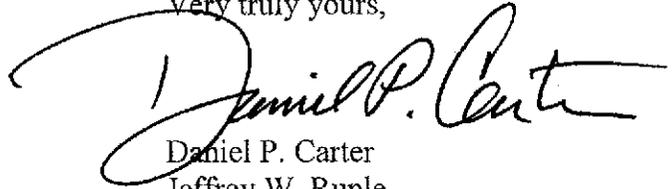
AUG22'07 AM11:04 DIR

Jane M. Platten
July 16, 2007

BUCKLEY KING

If you have any questions, please do not hesitate to contact the undersigned.

Very truly yours,

A handwritten signature in cursive script that reads "Daniel P. Carter". The signature is written in black ink and is positioned above the printed name and title.

Daniel P. Carter
Jeffrey W. Ruple

DPC/jls
Enclosures

In Re Challenge : Cuyahoga County
to Maureen Adler Gravens : Board of Elections

BRIEF OF DEBORAH REESE IN SUPPORT OF THE CHALLENGE TO THE
INDEPENDENT CANDIDATE MAUREEN ADLER GRAVENS

The issue before the Cuyahoga County Board of Elections (“BOE”) is a simple one: Should Independent Candidate Maureen Adler Gravens be disqualified as a candidate from the Rocky River Municipal Court election for voting in the Democratic Party Primary? Based upon the clear mandate of the Ohio Secretary of State and the opinion of the Sixth Circuit Court of Appeals, Ms. Gravens must be disqualified as a candidate for the 2007 General Election.

I. FACTS:

According to the filing deadlines set forth by the BOE, a candidate running in a party primary must have filed for the election of the Judge of the Rocky River Municipal Court no later than February 22, 2007. (Ex. A: BOE Petition Deadlines) Further, Independent Candidates, had up to and through May 7, 2007 to file their petitions. (Ex. A: BOE Petition Deadlines)

Rev. Code §1901.07 permits municipal judges to be elected either in a partisan primary or by nomination in a nonpartisan election. There is no dispute that the Rocky River Municipal Court is a “partisan” office, therefore, a candidate must have been included in the partisan primary or filed as an Independent Candidate. (Ex. A: BOE Petition Deadlines)

Ms. Gravens followed the rules for filing as an Independent Candidate by filing her petitions on May 2, 2007. (Ex. A: BOE Petition Deadlines; Ex. B: Gravens Statement of Candidacy and Nominating Petitions; Ex. C: Receipt of Petition for Pre-check; Ex. D: Results of Candidate Pre-check; Ex. E: Judicial Receipt for Petition filing materials) Despite filing as an Independent, Ms. Gravens voted in the Democratic primary election on May 8, 2007 (Ex. F: Gravens Voting Record; Ex. G: BOE Alphabetical Poll Book from the Primary May 8, 2007 (2 pages)). Such participation in a primary election is not permissible if she is claiming to be an Independent Candidate. (Ex. B: Gravens Statement of Candidacy and Nominating Petitions; Ex. H: Morrison Opinion; Ex. I: Secretary of State Opinion) The timing of the filings locks Ms. Gravens into the position of an Independent Candidate.

II. LAW AND ARGUMENT

A. Ms. Gravens must be disqualified from the 2007 General Election by law.

In the State of Ohio, an Independent Candidate is defined by statute. Rev. Code § 3501.01 defines an Independent Candidate as:

(I) "Independent candidate" means any candidate who claims not to be affiliated with a political party, and whose name has been certified on the office-type ballot at a general or special election through the filing of a statement of candidacy and nominating petition, as prescribed in section 3513.257 of the Revised Code.

Further, as set forth in R.C. 3513.257 (Independent Candidates Statement of Candidacy and Nominating Petitions):

Each person desiring to become an independent candidate for an office for which candidates may be nominated at a primary election, ... shall file no later than four p.m. of the day before the day of the primary election immediately preceding the general election at which such candidacy is to be voted for by the voters, a statement of candidacy and nominating petition as provided in section 3513.261 of the Revised Code.

By filing her petitions on May 2, 2007, Ms. Gravens could not run as anything but an Independent Candidate, by operation of the BOE deadlines as set forth in Exhibit “A”. Therefore, there can be no factual dispute that Ms. Gravens filed as an Independent candidate for the position of Rocky River Municipal Court Judge. (Ex. B: Gravens Statement of Candidacy and Nominating Petitions)

Both the U.S. Court of Appeals for the Sixth Circuit and the Ohio Secretary of State have made it clear that an “Independent” candidate, must be truly Independent. Ms. Gravens’ subsequent declaration and/or voting in a major primary party requires that the Board of Elections cannot certify and/or must disqualify her candidacy.

In *Morrison v. Colley*, 467 F.3d 503 (6th Cir. 2006) (Ex. H: Morrison Opinion), the Sixth Circuit Court of Appeals held that an independent candidate must *actually* be unaffiliated with any political party and when such unaffiliation is claimed, it must be in good faith (emphasis added).

The relevant facts of *Morrison* are as follows: The day before the 2006 primary election, Charles Morrison filed nominating petitions with the Franklin County Board of Elections in order to run as an independent candidate for the office of United States Representative of Ohio’s Fifteenth Congressional District. *Id.* at 505. The next day, Mr. Morrison requested a Republican ballot and voted in the Republican primary, and his name also appeared on the ballot for election to the Madison County Republican Party Central Committee and the Ohio Republican Party State Central Committee. *Id.* Three qualified electors filed a written protest with the Board of Elections challenging Mr. Morrison’s candidacy as an independent candidate for U.S. Representative. The Board of Elections and the Secretary of State, who voted to break a tie vote by the

Board, decided in favor of the protestors and against Mr. Morrison's certification. *Id.* As a result, Mr. Morrison brought suit seeking injunctive relief requesting placement on the November 2006 ballot as an independent candidate. *Id.* at 506.

The Sixth Circuit agreed with the District Court's reasoning that "a person of ordinary intelligence would understand that an aspiring Independent candidate must actually be independent, rather than merely claim it." Citing *United States v. Gjieli*, 717 F.2d 968, 972 (6th Cir. 1983) (emphasis added). The court continued, "[a] candidate possessing ordinary intelligence and common sense would readily understand that the claim of independence must be made in good faith—otherwise there would be no reason for having the claim requirement, and none of the state interests animating the claim requirement would be served." *Id.*

In order to provide guidance to local Boards of Elections after the *Morrison* decision, the Ohio Secretary of State, Jennifer Brunner, promulgated Advisory Opinion No. 2007-05. (Ex. I: Secretary of State Opinion). The opinion concluded that the *Morrison* court and Ohio Rev. Code § 3513.257 require that (1) "an independent candidate actually be unaffiliated, or disaffiliated from any political party, and (2) "the required claim of unaffiliation by an independent candidate must be in good faith." *Id.*

The Secretary of State went on to provide boards of elections with guidelines on how to determine whether or not an independent candidate is actually affiliated with a political party or whether the independent candidate has claimed unaffiliation in good faith. One such guideline says that "if an independent candidate votes in a party primary election after filing as an independent, the candidate is not actually unaffiliated, and the candidate's claim of independence was either not made in good faith or is no

longer current.” *Id.* (Emphasis added.) This is precisely what Ms. Gravens did on May 8, 2007 when she voted in the Democratic primary after filing a statement of candidacy and nominating petitions with the Cuyahoga County Board of Elections just six days prior, on May 2, 2007.

Ms. Gravens would not be the first candidate to be denied certification or disqualified for such actions following the *Morrison* decision and the publication of the Ohio Secretary of State’s Opinion. This precise issue has recently been faced by the Mahoning, Warren and Trumbull Counties Boards of Elections. Each of the Boards voted to not certify the candidates because it was found that the candidates could not be considered truly independent. (Ex. J: Articles regarding Mahoning County; Ex. K: Articles regarding Warren County; Ex. L: Articles regarding Trumbull County)

B. MS. GRAVENS IS NOT A “NONPARTISAN” CANDIDATE.

Ms. Gravens may argue that she is a “nonpartisan” candidate rather than an “independent” candidate.

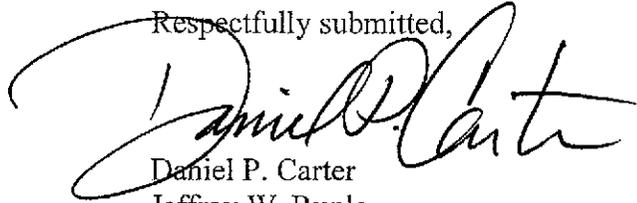
“Nonpartisan candidate” means any candidate whose name is required, pursuant to R.C. §3505.05 of the Revised Code, to be listed on the nonpartisan ballot, including candidates for judicial office, for member of any board of education, for municipal or township offices **in which primary elections are not held for nominating candidates by political parties, and for offices of municipal corporations having charters that provide for separate ballots for elections for these offices.** R.C. §3501.01(J).

There is no dispute that Rocky River held a primary election in which Ms. Gravens voted as a democrat and that the position of Municipal Court Judge is a partisan position. Therefore, Ms. Gravens does not meet the definition of a non-partisan candidate. Further, Ms. Reese opposes any attempt by Ms. Gravens or her campaign to

have the BOE change its minutes from the last meeting to indicate that she is “nonpartisan.”

Accordingly, Ms. Reese respectfully requests that the Board of Elections decertify and/or disqualify Ms. Gravens as a candidate for the 2007 General Election based on the clear mandate of the 6th Circuit and the Secretary of State.

Respectfully submitted,



Daniel P. Carter
Jeffrey W. Ruple

2007 PETITION FILING DEADLINE DATES FOR CANDIDATES

P=Party Primary Filing

NP=Nonpartisan Filing

IND = Independent Filing in a city with a partisan primary

Solon

February 22, 2007

Newburgh Hts. (P)
 North Olmsted (NP)
 Parma City (P)
 Parma Judicial (P)
 Rocky River Judicial (P)
 Strongsville (NP)

March 24, 2007

Oakwood (NP)

April 19, 2007

Cleveland - Ward 21 only
 - at midnight (NP)

May 7, 2007

Newburgh Hts. (IND)
 Parma City (IND)
 Parma Judicial (IND)
 Rocky River Judicial (IND)

June 13, 2007

Broadview Hts. (NP)

July 19, 2007

Lakewood (NP)
 North Royalton Mayor &
 Council President only (NP)

July 20, 2007

Rocky River City (P & IND)

July 27, 2007

Brook Park (P & IND)
 Maple Hts. (NP)

August 3, 2007

Berea City (P & IND)

August 8, 2007

(ALL NONPARTISAN)
 Bedford Hts.
 East Cleveland Council
 Richmond Hts.

August 23, 2007

(ALL NONPARTISAN)

Bay Village
 Beachwood
 Bedford City
 Bentleyville
 Bratenahl
 Brooklyn
 Brooklyn Hts.
 Chagrin Falls Township
 Chagrin Falls Village
 Cleveland Judicial 4:00 p.m.
 Cuyahoga Hts.
 Euclid City
 Fairview Park
 Garfield Hts. City
 Gates Mills
 Highland Hts.
 Highland Hills
 Hunting Valley
 Linndale
 Lyndhurst City
 Mayfield Hts.
 Mayfield Village
 Middleburg Hts.
 Moreland Hills
 North Randall
 North Royalton Council only
 Olmsted Township
 Orange Village
 Parma Hts.
 Pepper Pike
 Seven Hills
 Shaker Hts. City
 South Euclid City
 Valley View
 Walton Hills
 Woodmere

And all Boards of Education

September 7, 2007

(ALL NONPARTISAN)

Cleveland Hts. City
 Glenwillow
 Independence
 Olmsted Falls
 Warrensville Heights
 University Hts.

September 22, 2007

Brecksville (NP)

NO ELECTION 2007

Cleveland City
 East Cleveland Mayor
 Westlake (NP)

Bedford Judicial
 Berea Judicial
 Cleveland Hts. Judicial
 East Cleveland Judicial
 Euclid Judicial
 Garfield Judicial
 Lakewood Judicial
 Lyndhurst Judicial
 Shaker Hts. Judicial
 South Euclid Judicial (NP)

2008 Presidential Primary**January 4, 2008**

All Partisan Candidates &
 Republican Precinct
 Committeepersons.

JUDGE OR CLERK OF THE MUNICIPAL COURT

For Board of Elections use only - Do not write in this space

Office Sought: JUDGE - ROCKY RIVER

80.00 Filing Fee MIN 50-MAX 150 Signature Requirements MAY 2 2007 4PM Last Filing Date/Time

The candidate must fill in, sign and date this statement of candidacy before petitions are circulated.

STATEMENT OF CANDIDACY

Revised Code, Sections 1901.07, 1901.31, 3601.38, 3613.261

I, MAUREEN ADLER GRAVENS, the undersigned, hereby declare under penalty of election
(Name of candidate)

falsification that my voting residence address is ROCKY RIVER is 21370 SNOWFLOWER 44116
(Enter city, village or township name) (Street address) (Zip code)

And I am a qualified elector. I further declare that I desire to be a candidate for
 election to the office of JUDGE in the ROCKY RIVER Municipal Court District,
(Judge or Clerk) (Enter court name)

for the full term commencing JANUARY 1, 2008 or unexpired term ending _____
(Check one of the boxes and fill in the appropriate date)

at the general election next hereafter to be held.

I hereby declare that, if elected to this office or position, I will qualify therefor.

BOARD USE ONLY	
City, Ward & Precinct	
PARTY / YEAR	
SIGNATURE	
INITIALS	

Dated this 6th day of FEBRUARY, 20 07

MAUREEN ADLER GRAVENS
(Print name as it should appear on the ballot)

Maureen Adler Gravens
(Signature of candidate)

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

I, MAUREEN ADLER GRAVENS hereby designate the persons named below a committee to represent me:
(Name of candidate)

NAME	STREET ADDRESS
TERRANCE P. GRAVENS	21370 SNOWFLOWER, ROCKY RIVER, OH 44116
GARY JOHNSON	1250 RUE ST. GEORGES, WESTLAKE, OH 44145
PATRICIA A. GAUL	2751 COUNTRY CLUB, ROCKY RIVER, OH 44116
MICHAEL CARLIN	4140 DIANE, FAIRVIEW PARK, OH 44126
KATHLEEN MAHONEY	30122 EDNIL, BAY VILLAGE, OH 44140

NOMINATING PETITION

We, the undersigned, qualified electors whose voting residence set opposite our names, hereby nominate the above-named candidate for election to the office and term as stated above of the above named municipal court district, to be voted for at the next general election, and certify said person is, in our opinion, well qualified to perform the duties of the office or position the candidate desires to be elected.

Electors must write signatures on this petition in ink.

SIGNATURES <small>(Must be written in ink)</small>	PRINTED NAME OF SIGNER	STREET ADDRESS <small>(Must be the address on file with the Board of Elections)</small>	DATE OF SIGNING
<i>Susan E. Madden</i>	SUSAN E. MADDEN	1670 BASSWOOD RD	3-15-07
<i>Maureen M. Sweeney</i>	MAUREEN M. SWEENEY	21055 South Park Dr	3/15/07

SIGNATURES (Must be written in ink)	PRINTED NAME OF SIGNER	STREET ADDRESS (Must be the address on file with the Board of Elections)	DATE OF SIGNING
<i>Thomas P. Costello</i>	THOMAS P. COSTELLO	4994 GREENFLOWER	3/15/07
<i>Bridget McAfferty</i>	Bridget McAfferty	30315 Adams Lane MIL 44115	3-15-07
<i>Joseph Butte</i>	Joseph Butte	24466 Church NO 44070	3/15/07
<i>Kevin Atkins</i>	Kevin Atkins	9617 Ernest Hill Run Olmsted Falls	3/15/07
<i>Thomas J. Kraus</i>	THOMAS J. KRAUS	20647 Beaconfield Blvd Rocky River OH 44116	3/15/07
8.			
9.			
10.			
11.			
12.			
13.			
14.			
15.			
16.			
17.			
18.			
19.			
20.			

I, JAMES P. MADDEN, JR., declare under penalty of election falsification that I am a
(Printed name of circulator)

qualified elector of the State of Ohio and reside at the address appearing below my signature; that I am the
circulator of the foregoing petition containing 7 signatures; that I witnessed the affixing of every
(Number)
signature; 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 or of an attorney in fact
acting pursuant to section 3501.382 of the Revised Code.

James P. Madden Jr.
(Signature of circulator)

1670 BARSETT RA
(Street address)

WESTAKE, OHIO 44145
(Municipality and zip code)

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

BOARD USE ONLY		
	CAND	CIRC
C.W. & PRCT		
PARTY / YEAR		
SIGNATURE		
PROBLEM		
OK PETITON		
INITIALS		

JUDGE OR CLERK OF THE MUNICIPAL COURT

2

For Board of Elections use only - Do not write in this space		
Office Sought: <u>JUDGE - ROCKY RIVER</u>		
<u>80.00</u> <small>Filing Fee</small>	<u>MIN 50-MAX 150</u> <small>Signature Requirements</small>	<u>MAY 22 007 4PM</u> <small>Last Filing Date/Time</small>

The candidate must fill in, sign and date this statement of candidacy before petitions are circulated.

STATEMENT OF CANDIDACY

Revised Code, Sections 1901.07, 1901.31, 3501.38, 3513.261

I, MAUREEN ADLER GRAVENS, the undersigned, hereby declare under penalty of election

falsification that my voting residence address is ROCKY RIVER is 21370 SNOWFLOWER 44116

(Enter city, village or township name) (Street address) (Zip code)

And I am a qualified elector. I further declare that I desire to be a candidate for election to the office of JUDGE in the ROCKY RIVER Municipal Court District,

(Judge or Clerk) (Enter court name)

for the full term commencing JANUARY 1, 2008 or unexpired term ending _____

(Check one of the boxes and fill in the appropriate date)

at the general election next hereafter to be held.

I hereby declare that, if elected to this office or position, I will qualify therefor.

BOARD USE ONLY	
City, Ward & Precinct	
PARTY / YEAR	
SIGNATURE	
INITIALS	

Dated this 6th day of FEBRUARY, 20 07

MAUREEN ADLER GRAVENS
(Print name as it should appear on the ballot)

Maureen Adler Gravens
(Signature of candidate)

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

I, MAUREEN ADLER GRAVENS hereby designate the persons named below a committee to represent me:

(Name of candidate)

NAME	STREET ADDRESS
TERRANCE P. GRAVENS	21370 SNOWFLOWER, ROCKY RIVER, OH 44116
GARY JOHNSON	1250 RUE ST. GEORGES, WESTLAKE, OH 44145
PATRICIA A. GAUL	2751 COUNTRY CLUB, ROCKY RIVER, OH 44116
MICHAEL CARLIN	4140 DIANE, FAIRVIEW PARK, OH 44126
KATHLEEN MAHONEY	30122 EDNIL, BAY VILLAGE, OH 44140

NOMINATING PETITION

We, the undersigned, qualified electors whose voting residence set opposite our names, hereby nominate the above-named candidate for election to the office and term as stated above of the above named municipal court district, to be voted for at the next general election, and certify said person is, in our opinion, well qualified to perform the duties of the office or position the candidate desires to be elected.

Electors must write signatures on this petition in ink.

SIGNATURES <small>(Must be written in ink)</small>	PRINTED NAME OF SIGNER	STREET ADDRESS <small>(Must be the address on file with the Board of Elections)</small>	DATE OF SIGNING
<i>Patricia A. Costello</i>	PATRICIA A. COSTELLO	1660 BASSETT RD WESTLAKE OH 44145	3/16/07
<i>James P. Madonia</i>	JAMES P. MADONIA	1670 BASSETT RD WESTLAKE OH 44145	3/15/07

SIGNATURES (Must be written in ink)	PRINTED NAME OF SIGNER	STREET ADDRESS (Must be the address on file with the Board of Elections)	DATE OF SIGNING
<i>[Signature]</i>	John P. Corrigan, Jr	3810 W. Valley Dr. Fairview #20 44126	3-15-07
<i>[Signature]</i>	EILEEN A GAUGHER	46 POND DRIVE Rocky River, OH 44116	3-15-07
<i>[Signature]</i>	Michael H. Murphy	4036 Brendan Lane #315 North Olmsted, OH 44070	3-15-07
<i>[Signature]</i>	FRANK X. O'GRADY	3879 SAVON DR. Fairview Park 44126	3-15-07
<i>[Signature]</i>	William T. Anderson	20928 MILLCRO DR. 44112 BAY VILLAGES OH	3-15-07
<i>[Signature]</i>	Walter N Gahr	44116 RRCH 22851 Hilliard Rd	3-15-07
<i>[Signature]</i>	Barbara Goleva	22851 Hilliard Rd	3-15-07
<i>[Signature]</i>	Michael O'Shea	RR 44116 21714 Abscon Rd	3-15-07
<i>[Signature]</i>	KAREN GANNON	RR 44116 3901 Higley Rd	3/15/07
<i>[Signature]</i>	JAMES GANNON	RR 44116 3901 Higley Rd	3/15/07
<i>[Signature]</i>	PATRICIA D. BATES	RR 44116 27681 Carolan Cir	3/15/07
<i>[Signature]</i>	Ursula Patton	RR 44116 1840 Inverness Dr	3/15/07
<i>[Signature]</i>	LINDA TRAVIS	RR 44116 25145 Lake Blvd	3/15/07
<i>[Signature]</i>	George HINEFF, Jr.	RR 44116 19850 Roslyn Dr. S. Park	3/15/07
<i>[Signature]</i>	Brendan Sheehan	RR 44116 20060 Franklin Rd	3/15/07
18.			
19.			
20.			

SUSAN E. MADDEN

(Printed name of circulator)

declare under penalty of election falsification that I am a

qualified elector of the State of Ohio and reside at the address appearing below my signature: that I am the

circulator of the foregoing petition containing 17 signatures; that I witnessed the affixing of every

(Number)

signature; 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 or of an attorney in fact

acting pursuant to section 3501.382 of the Revised Code.

Susan E. Madden

(Signature of circulator)

1670 Brossett Rd

(Street address)

Westlake, Ohio 44145

(Municipality and zip code)

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

BOARD USE ONLY		
	CAND	CIRC
C.W. & PRCT		
PARTY / YEAR		
SIGNATURE		
PROBLEM		
OK PETITON		
INITIALS		

JUDGE OR CLERK OF THE MUNICIPAL COURT

3

For Board of Elections use only - Do not write in this space		
Office Sought: <u>JUDGE - ROCKY RIVER</u>		
<u>80.00</u>	<u>MIN 50-MAX 150</u>	<u>MAY 7 2007 4PM</u>
Filing Fee	Signature Requirements	Last Filing Date/Time

The candidate must fill in, sign and date this statement of candidacy before petitions are circulated.

STATEMENT OF CANDIDACY

Revised Code, Sections 1901.07, 1901.31, 3501.38, 3513.261

I, MAUREEN ADLER GRAVENS, the undersigned, hereby declare under penalty of election

(Name of candidate)

falsification that my voting residence address is ROCKY RIVER is 21370 SNOWFLOWER 44116

(Enter city, village or township name)

(Street address)

(Zip code)

And I am a qualified elector. I further declare that I desire to be a candidate for

election to the office of JUDGE in the ROCKY RIVER Municipal Court District,

(Judge or Clerk)

(Enter court name)

for the full term commencing JANUARY 1, 2008 or unexpired term ending _____

(Check one of the boxes and fill in the appropriate date)

at the general election next hereafter to be held.

I hereby declare that, if elected to this office or position, I will qualify therefor.

BOARD USE ONLY	
City, Ward & Precinct	
PARTY / YEAR	
SIGNATURE	
INITIALS	

Dated this 6th day of FEBRUARY, 20 07

MAUREEN ADLER GRAVENS

(Print name as it should appear on the ballot)

Maureen Adler Gravens

(Signature of candidate)

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

I, MAUREEN ADLER GRAVENS hereby designate the persons named below a committee to represent me:

(Name of candidate)

NAME	STREET ADDRESS
TERRANCE P. GRAVENS	21370 SNOWFLOWER, ROCKY RIVER, OH 44116
GARY JOHNSON	1250 RUE ST. GEORGES, WESTLAKE, OH 44145
PATRICIA A. GAUL	2751 COUNTRY CLUB, ROCKY RIVER, OH 44116
MICHAEL CARLIN	4140 DIANE, FAIRVIEW PARK, OH 44126
KATHLEEN MAHONEY	30122 EDNIL, BAY VILLAGE, OH 44140

NOMINATING PETITION

We, the undersigned, qualified electors whose voting residence set opposite our names, hereby nominate the above-named candidate for election to the office and term as stated above of the above named municipal court district, to be voted for at the next general election, and certify said person is, in our opinion, well qualified to perform the duties of the office or position the candidate desires to be elected.

Electors must write signatures on this petition in ink.

SIGNATURES <small>(Must be written in ink)</small>	PRINTED NAME OF SIGNER	STREET ADDRESS <small>(Must be the address on file with the Board of Elections)</small>	DATE OF SIGNING
<i>James Goggin</i>	JAMES GOGGIN	25980 Williams DR WL 44145	3/15/07
<i>James Swartz</i>	JAMES SWARTZ	900 BRICK Mill Rd #301 WL 44145	3/15/07

SIGNATURES (Must be written in ink)	PRINTED NAME OF SIGNER	STREET ADDRESS (Must be the address on file with the Board of Elections)	DATE OF SIGNING
<i>Gary W. Johnson</i>	GARY W. JOHNSON	44145 Westlake 1250 R. e. St. George	3/15/07
<i>Sheila T. Adler</i>	SHEILA P. ADLER	RR 44116 1934 WESTOVER	3/15/07
<i>Ralph T. DeFranco</i>	RALPH T. DEFRANCO	44145 WESTLAKE 30338 HILLIARD RD	3/15/07
<i>Mary Pat Smith</i>	MARY PAT SMITH	1129 CHATHAM	3/15/07
<i>Mark S. Valpouli</i>	MARK S. VALPOULI	5490 N. Olden 44070 Piquette La Walk	3/15/07
<i>Maureen Rosfelder</i>	Maureen Rosfelder	RR 44116 21398 Stratford Ave	3/15/07
<i>Richard N. Rosfelder</i>	Richard N. ROSFELDER	RR 44116 21398 STRATFORD AVE	3/15/07
<i>Thomas S. Camporella</i>	Thomas S. Camporella	44116 Rocky Hill 3423 BRADFORD GATE	3/15/07
<i>Mary B. Scherzer</i>	MARY B. SCHERZER	EP 44126 20790 BRANDYwine DR.	3/15/07
<i>Dorothy J. O'Donnell</i>	DOROTHY J. O'DONNELL	EP 44126 2205 STAMORE 4426	3/15/07
<i>Michael F. O'Donnell</i>	Michael F. O'DONNELL	EP 44126 22795 Sycamore 4426	3/15/07
<i>Bernadette M. Gosh</i>	BERNADETTE M. GOSH	44140 608 Revere Dr. Bay	3/15/07
<i>Marvella Krause</i>	MARVELLA KRAUSE	ND 5603 Columbia Rd 44171	3/15/07
<i>Mary Pat Smith</i>	MARY PAT SMITH	RR 44116 1129 CHATHAM	3/15/07
<i>James V. Patton</i>	JAMES V. PATTON	WL 44145 1846 HUNTER'S POINT	3/15/07
<i>Bonita A. Foy</i>	BONITA A. FOY	RR 44116 3620 ARCHWOOD DR	3/15/07
19.			
20.			

PATRICIA A. COSTELLO declare under penalty of election falsification that I am a
(Printed name of circulator)

qualified elector of the State of Ohio and reside at the address appearing below my signature; that I am the circulator of the foregoing petition containing 17 signatures; that I witnessed the affixing of every (Number)
signature; 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 or of an attorney in fact acting pursuant to section 3501.302 of the Revised Code.

Patricia A. Costello
(Signature of circulator)
1660 Bassett Road
(Street address)
Westlake, Oh 44145
(Municipality and zip code)

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

BOARD USE ONLY		
	CAND	CIRC
C.W. & PRCT		
PARTY / YEAR		
SIGNATURE		
PROBLEM		
OK PETITON		
INITIALS		

JUDGE OR CLERK OF THE MUNICIPAL COURT

4

For Board of Elections use only - Do not write in this space		
Office Sought: <u>JUDGE - ROCKY RIVER</u>		
<u>80.00</u> <small>Filing Fee</small>	<u>MIN 50 - MAX 150</u> <small>Signature Requirements</small>	<u>MAY 7, 2007 4PM</u> <small>Last Filing Date/Time</small>

The candidate must fill in, sign and date this statement of candidacy before petitions are circulated.

STATEMENT OF CANDIDACY

Revised Code, Sections 1901.07, 1901.31, 3501.38, 3513.261

I, MAUREEN ADLER GRAVENS, the undersigned, hereby declare under penalty of election falsification that my voting residence address is ROCKY RIVER is 21370 SNOWFLOWER 44116.
(Name of candidate) (Enter city, village or township name) (Street address) (Zip code)

And I am a qualified elector. I further declare that I desire to be a candidate for election to the office of JUDGE in the ROCKY RIVER Municipal Court District,
(Judge or Clerk) (Enter court name)

for the full term commencing JANUARY 1, 2008 or unexpired term ending _____
(Check one of the boxes and fill in the appropriate date)

at the general election next hereafter to be held.

I hereby declare that, if elected to this office or position, I will qualify therefor.

BOARD USE ONLY	
City, Ward & Precinct	
PARTY / YEAR	
SIGNATURE	
INITIALS	

Dated this 6th day of FEBRUARY, 20 07

MAUREEN ADLER GRAVENS
(Print name as it should appear on the ballot)

Maureen Adler Gravens
(Signature of candidate)

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

I, MAUREEN ADLER GRAVENS, hereby designate the persons named below a committee to represent me:
(Name of candidate)

NAME	STREET ADDRESS
TERRANCE P. GRAVENS	21370 SNOWFLOWER, ROCKY RIVER, OH 44116
GARY JOHNSON	1250 RUE ST. GEORGES, WESTLAKE, OH 44145
PATRICIA A. GAUL	2751 COUNTRY CLUB, ROCKY RIVER, OH 44116
MICHAEL CARLIN	4140 DIANE, FAIRVIEW PARK, OH 44126
KATHLEEN MAHONEY	30122 EDNIL, BAY VILLAGE, OH 44140

NOMINATING PETITION

We, the undersigned, qualified electors whose voting residence set opposite our names, hereby nominate the above-named candidate for election to the office and term as stated above of the above named municipal court district, to be voted for at the next general election, and certify said person is, in our opinion, well qualified to perform the duties of the office or position the candidate desires to be elected.

Electors must write signatures on this petition in ink.

SIGNATURES <small>(Must be written in ink)</small>	PRINTED NAME OF SIGNER	STREET ADDRESS <small>(Must be the address on file with the Board of Elections)</small>	DATE OF SIGNING
<i>Patricia A. Corrigan</i>	PATRICIA A. CORRIGAN	1045 BROOK LANE	3-15-07
<i>Mary S. Johnson</i>	MARY S. JOHNSON	1250 RUE ST. GEORGES 44145	3-15-07

SIGNATURES (Must be written in ink)	PRINTED NAME OF SIGNER	STREET ADDRESS (Must be the address on file with the Board of Elections)	DATE OF SIGNING
<i>Deirdre Geib</i>	Deirdre Geib	3869 Savoy ⁴⁴¹²⁶ Rd	3/15/07
<i>Kathy Ward</i>	Kathy Ward	3855 ⁴⁴¹²⁶ Savoy Dr	3/15/07
<i>Mary Pat Hargis</i>	Mary Pat Hargis	30896 Prestwick Crossing Westlake, OH 44145	3-15-07
6.			
7.			
8.			
9.			
10.			
11.			
12.			
13.			
14.			
15.			
16.			
17.			
18.			
19.			
20.			

Peter H. Carriger, Jr.

_____, declare under penalty of election falsification that I am a
(Printed name of circulator)

qualified elector of the State of Ohio and reside at the address appearing below my signature; that I am the circulator of the foregoing petition containing 5 signatures; that I witnessed the affixing of every
(Number)
signature; 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 or of an attorney in fact acting pursuant to section 3501.382 of the Revised Code.

Peter H. Carriger, Jr.
(Signature of circulator)

20096 Bonnie Bank Blvd.
(Street address)

Rocky River 44416
(Municipality and zip code)

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

BOARD USE ONLY		
	CAND	CIRC
C.W. & PRCT		
PARTY / YEAR		
SIGNATURE		
PROBLEM		
OK PETITON		
INITIALS		

JUDGE OR CLERK OF THE MUNICIPAL COURT

5

For Board of Elections use only - Do not write in this space		
Office Sought: <u>JUDGE - ROCKY RIVER</u>		
<u>80.00</u> <small>Filing Fee</small>	<u>MIN 50-MAX 150</u> <small>Signature Requirements</small>	<u>MAY 7 2007 4PM</u> <small>Last Filing Date/Time</small>

The candidate must fill in, sign and date this statement of candidacy before petitions are circulated.

STATEMENT OF CANDIDACY

Revised Code, Sections 1901.07, 1901.31, 3501.38, 3513.261

I, MAUREEN ADLER GRAVENS, the undersigned, hereby declare under penalty of election

(Name of candidate)

falsification that my voting residence address is ROCKY RIVER is 21370 SNOWFLOWER 44116

(Enter city, village or township name)

(Street address)

(Zip code)

And I am a qualified elector. I further declare that I desire to be a candidate for

election to the office of JUDGE in the ROCKY RIVER Municipal Court District,

(Judge or Clerk)

(Enter court name)

for the full term commencing JANUARY 1, 2008 or unexpired term ending _____

(Check one of the boxes and fill in the appropriate date)

at the general election next hereafter to be held.

I hereby declare that, if elected to this office or position, I will qualify therefor.

BOARD USE ONLY	
City, Ward & Precinct	
PARTY / YEAR	
SIGNATURE	
INITIALS	

Dated this 6th day of FEBRUARY, 20 07

MAUREEN ADLER GRAVENS

(Print name as it should appear on the ballot)

Maureen Adler Gravens

(Signature of candidate)

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

I, MAUREEN ADLER GRAVENS hereby designate the persons named below a committee to represent me:

(Name of candidate)

NAME	STREET ADDRESS
TERRANCE P. GRAVENS	21370 SNOWFLOWER, ROCKY RIVER, OH 44116
GARY JOHNSON	1250 RUE ST. GEORGES, WESTLAKE, OH 44145
PATRICIA A. GAUL	2751 COUNTRY CLUB, ROCKY RIVER, OH 44116
MICHAEL CARLIN	4140 DIANE, FAIRVIEW PARK, OH 44126
KATHLEEN MAHONEY	30122 EDNIL, BAY VILLAGE, OH 44140

NOMINATING PETITION

We, the undersigned, qualified electors whose voting residence set opposite our names, hereby nominate the above-named candidate for election to the office and term as stated above of the above named municipal court district, to be voted for at the next general election, and certify said person is, in our opinion, well qualified to perform the duties of the office or position the candidate desires to be elected.

Electors must write signatures on this petition in ink.

SIGNATURES (Must be written in ink)	PRINTED NAME OF SIGNER	STREET ADDRESS (Must be the address on file with the Board of Elections)	DATE OF SIGNING
<i>Patricia A. Gaul</i>	Patricia A. Gaul	2751 Country Club RR 44116	3-15-07
<i>Patricia D. Gonyea</i>	Patricia D. Gonyea	20096 Bohate Bank RR 44116	3-15-07

SIGNATURES (Must be written in ink)	PRINTED NAME OF SIGNER	STREET ADDRESS (Must be the address on file with the Board of Elections)	DATE OF SIGNING
<i>Susan A. Carlin</i>	Susan A. Carlin	4140 Diane Dr Fairview ⁴⁴¹²⁶	3/15/07
<i>James M. Adler</i>	James M. Adler	30578 Atlanta Lane ^{Westlake} ₄₄₁₂₆ ^{OK 44126}	3/15/07
<i>Charles F. Adler</i>	Charles F. Adler	20740 Saratoga Dr. ⁴⁴¹²⁶ Fairview _{Paris}	3/15/07
<i>Thomas C. Murphy</i>	Thomas C. Murphy	1931 Kings James ^{Westlake} _{OK 44126}	3/15/07
<i>Edward T. Konopka</i>	Edward T. Konopka	23109 Fenwick ^{ND 44070} _{Brook Dr}	3/15/07
<i>Marylou Konopka</i>	Marylou Konopka	23159 Stonebriar ^{ND 44070} _{Dr}	3/15/07
<i>Ed Konopka</i>	Ed Konopka	25470 Wolf Rd ⁴⁴¹⁴⁰ _{Br. UH}	3/15/07
<i>Dennis M. Lambert</i>	Dennis M. Lambert	23057 Carey Ln ⁴⁴¹²⁶ _{OK}	3-15-07
<i>Christine Dorsey</i>	Christine Dorsey	24024 Center Ridge ⁴⁴¹²⁶ _{OK}	3/15/07
<i>Joseph M. Gaul</i>	Joseph M. Gaul	21778 Eaton ⁴⁴¹²⁶ _{OK}	3/15/07
<i>Mary Sue Edgeman</i>	MARY SUE EDGEMAN	3915 Colonial Ct ⁴⁴⁰⁷⁰ _{N. O. Moore}	3/15/07
<i>John Duffey</i>	JOHN DUFFEY	26888 Sudbury Dr ⁴⁴⁰⁷⁰	3/15/07
<i>Linda DeBacco</i>	LINDA DeBacco	3907 Kings Mill Run R.R. ⁴⁴¹²⁶	3/15/07
<i>Petrit Sulejmanovic</i>	PETRIT SULEJMANOVIC	2529 Gasser Blvd, R.R. ⁴⁴¹²⁶	3/15/07
<i>Liljana Sulejmanovic</i>	LILJANA SULEJMANOVIC	2529 Gasser Blvd, R.R. ⁴⁴¹²⁶	3/15/07
<i>Deborah G. Henry</i>	DEBORAH G. HENRY	19040 Inglewood ⁴⁴¹²⁶ _{RR}	3/15/07
<i>Colleen Dunn</i>	Colleen Dunn	4564 W. 213 ⁴⁴¹²⁶ _{FR}	3/15/07
<i>Peter H. Corrigan, Jr.</i>	PETER H. CORRIGAN, JR.	1093 Brook ⁴⁴¹²⁶ _{RR. off}	3/15/07

I, Peter H. Corrigan, Jr. declare under penalty of election falsification that I am a
(Printed name of circulator)

qualified elector of the State of Ohio and reside at the address appearing below my signature; that I am the
circulator of the foregoing petition containing 20 signatures; that I witnessed the affixing of every
(Number)

signature; 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 or of an attorney in fact
acting pursuant to section 2501.362 of the Revised Code.

Peter H. Corrigan, Jr.
(Signature of circulator)

20096 Bonnie Bank Blvd.
(Street address)

Rocky River OH 44116
(Municipality and zip code)

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

BOARD USE ONLY		
	CAND	CIRC
C.W. & PRCT		
PARTY / YEAR		
SIGNATURE		
PROBLEM		
OK PETITON		
INITIALS		

JUDGE OR CLERK OF THE MUNICIPAL COURT

6

For Board of Elections use only - Do not write in this space

Office Sought: JUDGE - ROCKY RIVER

80.00 Filing Fee MIN 50-MAX 150 Signature Requirements MAY 7 2007 4PM Last Filing Date/Time

The candidate must fill in, sign and date this statement of candidacy before petitions are circulated.

STATEMENT OF CANDIDACY

Revised Code, Sections 1901.07, 1901.31, 3501.38, 3513.261

I, MAUREEN ADLER GRAVENS, the undersigned, hereby declare under penalty of election

(Name of candidate)

falsification that my voting residence address is ROCKY RIVER is 21370 SNOWFLOWER 44116

(Enter city, village or township name)

(Street address)

(Zip code)

And I am a qualified elector. I further declare that I desire to be a candidate for

election to the office of JUDGE in the ROCKY RIVER Municipal Court District,

(Judge or Clerk)

(Enter court name)

for the full term commencing JANUARY 1, 2008 or unexpired term ending _____

(Check one of the boxes and fill in the appropriate date)

at the general election next hereafter to be held.

I hereby declare that, if elected to this office or position, I will qualify therefor.

BOARD USE ONLY	
City, Ward & Precinct	
PARTY / YEAR	
SIGNATURE	
INITIALS	

Dated this 6th day of FEBRUARY, 20 07

MAUREEN ADLER GRAVENS
(Print name as it should appear on the ballot)

Maureen Adler Gravens
(Signature of candidate)

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

I, MAUREEN ADLER GRAVENS hereby designate the persons named below a committee to represent me:

(Name of candidate)

NAME	STREET ADDRESS
TERRANCE P. GRAVENS	21370 SNOWFLOWER, ROCKY RIVER, OH 44116
GARY JOHNSON	1250 RUE ST. GEORGES, WESTLAKE, OH 44145
PATRICIA A. GAUL	2751 COUNTRY CLUB, ROCKY RIVER, OH 44116
MICHAEL CARLIN	4140 DIANE, FAIRVIEW PARK, OH 44126
KATHLEEN MAHONEY	30122 EDNIL, BAY VILLAGE, OH 44140

NOMINATING PETITION

We, the undersigned, qualified electors whose voting residence set opposite our names, hereby nominate the above-named candidate for election to the office and term as stated above of the above named municipal court district, to be voted for at the next general election, and certify said person is, in our opinion, well qualified to perform the duties of the office or position the candidate desires to be elected.

Electors must write signatures on this petition in ink.

SIGNATURES <small>(Must be written in ink)</small>	PRINTED NAME OF SIGNER	STREET ADDRESS <small>(Must be the address on file with the Board of Elections)</small>	DATE OF SIGNING
<u>Maureen F. Buttrick</u>	Maureen F. Buttrick	2159 Woodster Rd #23 Rocky River, OH 44116	3/15/07
<u>Peter H. Corrigan Jr</u>	Peter H. Corrigan Jr	20096 Bonnie Bnt Blvd 44116	3/15/07

SIGNATURES (Must be written in ink)	PRINTED NAME OF SIGNER	STREET ADDRESS (Must be the address on file with the Board of Elections)	DATE OF SIGNING
<i>Edward J. McNamee</i>	EDWARD J. McNAMEE	3930 West 212 ^{EP 44126}	4/21/07
<i>Nancy A. Golden</i>	NANCY A. GOLDEN	23608 ^{ND 44070} Stoneybrook Dr	4/21/07
<i>Colleen C. Dunn</i>	COLLEEN C. DUNN	4564 W 213 FPK ⁴⁴¹²⁶	4/21/07
<i>John T. Dunn</i>	JOHN T. DUNN JR	4569 W 213 ⁴⁴¹²⁶ FPK	4/21/07
<i>Mary M. McNamee</i>	MARY M. McNAMEE	414 Bunkin^{ND 44070}	4/21/07
<i>Mary M. McNamee</i>	MARY M. McNAMEE	414 Bunkin ^{ND 44070}	4/21/07
<i>Kathryn A. Carey</i>	KATHRYN A. CAREY	4464 Breaker Lane	4/21/07
<i>Kathryn A. Carey</i>	KATHRYN A. CAREY	4464 Breaker Lane ^{ND 44070}	4/21/07
<i>Albert V. Fratini</i>	ALBERT V. FRATINI	930 1672 Remington Dr. Westlake ⁴⁴¹⁴⁵	4/21/07
<i>Mary Ellen Greines</i>	MARY ELLEN GREINES	31050 Delia The Limited ⁴⁴⁰⁷⁰	4-21-07
<i>Michael Greines</i>	MICHAEL GREINES	31050 Delia The Limited ⁴⁴⁰⁷⁰	4-21-07
<i>Jerry R. Haughey</i>	JERRY R. HAUGHEY	22976 Maple Ridge ⁴⁴⁰⁷⁰	4-21-07
<i>Rosemary Gange</i>	ROSEMARY GANGE	22976 Maple Ridge ⁴⁴⁰⁷⁰	4-21-07
<i>Thomas F. O'Grady</i>	THOMAS F. O'GRADY	6328 Hester Dr W.D. ⁴⁴⁰⁷⁰	4/21/07
<i>Daniel G. O'Grady</i>	DANIEL G. O'GRADY	28123 Sherwood Westlake ⁴⁴¹⁴⁵	4/21/07
<i>Kathy O'Grady</i>	KATHY O'GRADY	28123 Sherwood Dr. ⁴⁴¹⁴⁵	4/21/07
<i>Tricia O'Grady</i>	TRICIA O'GRADY	23156 Stoneybrook ^{ND 44070}	4/21/07
<i>John K. Mooney</i>	JOHN K. MOONEY	2405 Kings Highway ^{EP 44126}	4/21/07

I, Patricia A. Gaul, declare under penalty of election falsification that I am a
(Printed name of circulator)

qualified elector of the State of Ohio and reside at the address appearing below my signature; that I am the
circulator of the foregoing petition containing 18 signatures; that I witnessed the affixing of every
(Number)

signature; 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 or of an attorney. In fact
acting pursuant to section 3501.382 of the Revised Code.

Patricia A. Gaul (pf)
(Signature of circulator)

2751 Country Club Blvd.
(Street address)

Rocky River, OH 44116
(Municipality and zip code)

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

BOARD USE ONLY		
	CAND	CIRC
C.W. & PRCT		
PARTY / YEAR		
SIGNATURE		
PROBLEM		
OK PETITON		
INITIALS		

JUDGE OR CLERK OF THE MUNICIPAL COURT

For Board of Elections use only - Do not write in this space

Office Sought: <u>JUDGE - ROCKY RIVER</u>		
80.00 <small>Filing Fee</small>	MIN 50-MAX 150 <small>Signature Requirements</small>	MAY 7 2007 4PM <small>Last Filing Date/Time</small>

The candidate must fill in, sign and date this statement of candidacy before petitions are circulated.

STATEMENT OF CANDIDACY

Revised Code, Sections 1901.07, 1901.31, 3501.38, 3513.261

I, MAUREEN ADLER GRAVENS, the undersigned, hereby declare under penalty of election

falsification that my voting residence address is ROCKY RIVER is 21370 SNOWFLOWER 44116

And I am a qualified elector. I further declare that I desire to be a candidate for election to the office of JUDGE in the ROCKY RIVER Municipal Court District,

for the full term commencing JANUARY 1, 2008 or unexpired term ending _____

at the general election next hereafter to be held.

I hereby declare that, if elected to this office or position, I will qualify therefor.

BOARD USE ONLY	
City, Ward & Precinct	
PARTY / YEAR	
SIGNATURE	
INITIALS	

Dated this 6th day of FEBRUARY, 20 07

MAUREEN ADLER GRAVENS
(Print name as it should appear on the ballot)

Maureen Adler Gravens
(Signature of candidate)

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

I, MAUREEN ADLER GRAVENS hereby designate the persons named below a committee to represent me:

NAME	STREET ADDRESS
TERRANCE P. GRAVENS	21370 SNOWFLOWER, ROCKY RIVER, OH 44116
GARY JOHNSON	1250 RUE ST. GEORGES, WESTLAKE, OH 44145
PATRICIA A. GAUL	2751 COUNTRY CLUB, ROCKY RIVER, OH 44116
MICHAEL CARLIN	4140 DIANE, FAIRVIEW PARK, OH 44126
KATHLEEN MAHONEY	30122 EDNIL, BAY VILLAGE, OH 44140

NOMINATING PETITION

We, the undersigned, qualified electors whose voting residence set opposite our names, hereby nominate the above-named candidate for election to the office and term as stated above of the above named municipal court district, to be voted for at the next general election, and certify said person is, in our opinion, well qualified to perform the duties of the office or position the candidate desires to be elected:

Electors must write signatures on this petition in ink.

SIGNATURES (Must be written in ink)	PRINTED NAME OF SIGNER	STREET ADDRESS (Must be the address on file with the Board of Elections)	DATE OF SIGNING
<i>Jam M. Kille</i>	JAMES M. KILDON	4217 BRENOAF RD RD 14407D	04/21/07
<i>Terrance P. Gravens</i>	TERRANCE P. GRAVENS	21370 SNOWFLOWER RR 44116	04/21/07

SIGNATURES (Must be written in ink)	PRINTED NAME OF SIGNER	STREET ADDRESS (Must be the address on file with the Board of Elections)	DATE OF SIGNING
<i>[Signature]</i>	LOUISE KUBATJE	NO 44070 4124 BRENDAN LANE	4/21/07
<i>[Signature]</i>	TED BRADY	WL 1902 ROOS CT 44045	4/21/07
<i>[Signature]</i>	DONNA MURPHY	NO 44070 4143 BRENDAN LANE	4/21/07
<i>[Signature]</i>	THOMAS O'GRODY	NO 44070 6328 HASTINGS DR.	4/24/07
<i>[Signature]</i>	JOHN E. DALRY JR	NO 44070 24277 VINCENT DR	4/21/07
<i>[Signature]</i>	JULIE DAWLEY	NO 44070 24277 VINCENT DR	4/21/07
<i>[Signature]</i>	CLIFFORD THOMPSON JR	28603 CHAPEL HILL	4/21/07
<i>[Signature]</i>	CLIFFORD THOMPSON	28603 CHAPEL HILL	4/21/07
12.			
13.			
14.			
15.			
16.			
17.			
18.			
19.			
20.			

I, Patricia A. Gaul, declare under penalty of election falsification that I am a
(Printed name of circulator)

qualified elector of the State of Ohio and reside at the address appearing below my signature; that I am the circulator of the foregoing petition containing 10 signatures; that I witnessed the affixing of every
(Number)
signature; 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 or of an attorney in fact acting pursuant to section 3501.382 of the Revised Code.

Patricia A. Gaul (PAG)
(Signature of circulator)

2757 Country Club Blvd.
(Street address)

Rocky River, OH 44116
(Municipality and zip code)

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

BOARD USE ONLY		
	CAND	CIRC
C.W. & PRCT		
PARTY / YEAR		
SIGNATURE		
PROBLEM		
OK PETITION		
INITIALS		

JUDGE OR CLERK OF THE MUNICIPAL COURT

8

For Board of Elections use only - Do not write in this space		
Office Sought: <u>JUDGE - ROCKY RIVER</u>		
<u>80.00</u> Filing Fee	<u>MIN 50-MAX 150</u> Signature Requirements	<u>MAY 7 2007 4PM</u> Last Filing Date/Time

The candidate must fill in, sign and date this statement of candidacy before petitions are circulated.
STATEMENT OF CANDIDACY
 Revised Code, Sections 1901.07, 1901.31, 3501.38, 3513.261

I, MAUREEN ADLER GRAVENS, the undersigned, hereby declare under penalty of election

falsification that my voting residence address is ROCKY RIVER is 21370 SNOWFLOWER 44116
(Enter city, village or township name) (Street address) (Zip code)

And I am a qualified elector. I further declare that I desire to be a candidate for election to the office of JUDGE in the ROCKY RIVER Municipal Court District,
(Judge or Clerk) (Enter court name)

for the full term commencing JANUARY 1, 2008 or unexpired term ending _____
(Check one of the boxes and fill in the appropriate date)

at the general election next hereafter to be held.

I hereby declare that, if elected to this office or position, I will qualify therefor.

BOARD USE ONLY	
City, Ward & Precinct	
PARTY / YEAR	
SIGNATURE	
INITIALS	

Dated this 6th day of FEBRUARY, 20 07

MAUREEN ADLER GRAVENS
(Print name as it should appear on the ballot)

Maureen Adler Gravens
(Signature of candidate)

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

I, MAUREEN ADLER GRAVENS, hereby designate the persons named below a committee to represent me:
(Name of candidate)

NAME	STREET ADDRESS
TERRANCE P. GRAVENS	21370 SNOWFLOWER, ROCKY RIVER, OH 44116
GARY JOHNSON	1250 RUE ST. GEORGES, WESTLAKE, OH 44145
PATRICIA A. GAUL	2751 COUNTRY CLUB, ROCKY RIVER, OH 44116
MICHAEL CARLIN	4140 DIANE, FAIRVIEW PARK, OH 44126
KATHLEEN MAHONEY	30122 EDNIL, BAY VILLAGE, OH 44140

NOMINATING PETITION

We, the undersigned, qualified electors whose voting residence set opposite our names, hereby nominate the above-named candidate for election to the office and term as stated above of the above named municipal court district, to be voted for at the next general election, and certify said person is, in our opinion, well qualified to perform the duties of the office or position the candidate desires to be elected.

Electors must write signatures on this petition in ink.

SIGNATURES <small>(Must be written in ink)</small>	PRINTED NAME OF SIGNER	STREET ADDRESS <small>(Must be the address on file with the Board of Elections)</small>	DATE OF SIGNING
<i>Philip J Wall</i>	PHILIP J WALL	24113 Russett Rd Bay Village	4-24-07
<i>Regis McGann</i>	Regis McGann	2682 Chadwick West	4-24-07

SIGNATURES (Must be written in ink)	PRINTED NAME OF SIGNER	STREET ADDRESS (Must be the address on file with the Board of Elections)	DATE OF SIGNING
<i>Vicky Polito</i>	Vicky Polito	3954 Woodside North Olmsted	4/24/07
<i>Michael H. Murphy</i>	Michael H. Murphy	4036 Brendan Lane #315 North Olmsted 44070	4/24/07
<i>Paul Michael Ward</i>	PAUL MICHAEL WARD	3852 SAVOY DR FAIRVIEW PARK 44126	4-24-07
<i>Hugh A. Carlin</i>	Hugh A. Carlin	2671 Forestview Rocky River Ohio	4-24-07
<i>Paul Ziebler</i>	PAUL ZIEBLER	486 Bay Village	4/24/07
<i>John Bolino</i>	JOHN BOLINO	3954 Woodside Drive North Olmsted, Ohio 44070	4/24/07
<i>George Glavinias Jr</i>	GEORGE GLAVINIAS JR	1708 Westhill Westlake 44145	4-24-07
<i>Patrick Nixon</i>	PATRICK NIXON	3110 VILLAGE GREEN DR WESTLAKE OH 44145	4/24/07
<i>John J. Spallone</i>	John J. Spallone	2167 Summit Phay Westlake OH 44145	4/24/07
<i>George Mineff Jr</i>	George MINEFF JR	19950 ROSLYN DR N. Riv. OH	4/24/07
<i>Mark Stanton</i>	MARK STANTON	18849 Cady Ln RD. 44126	4/24/07
<i>Margaret E. Standard</i>	Margaret E. Standard	7330 Fraser Dr Rocky River 44116	4/24/07
<i>Philip J. Kurey</i>	PHILIP J. KUREY	2807 E. ASPLIN ROCKY	4-24-07

I, KATHLEEN G. MAHONEY, declare under penalty of election falsification that I am a
(Printed name of circulator)

qualified elector of the State of Ohio and reside at the address appearing below my signature: that I am the circulator of the foregoing petition containing 16 signatures; that I witnessed the affixing of every signature; 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 or of an attorney in fact acting pursuant to section 3501.382 of the Revised Code.

Kathleen G. Mahoney
(Signature of circulator)
30122 Edna Dr.
(Street address)
Bay Village, OH 44140
(Municipality and zip code)

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

BOARD USE ONLY		
	CAND	CIRC
C.W. & PRCT		
PARTY / YEAR		
SIGNATURE		
PROBLEM		
OK PETITION		
INITIALS		

JUDGE OR CLERK OF THE MUNICIPAL COURT

9

For Board of Elections use only - Do not write in this space		
Office Sought: <u>JUDGE - ROCKY RIVER</u>		
<u>80.00</u> <small>Filing Fee</small>	<u>MIN 50-MAX 150</u> <small>Signature Requirements</small>	<u>MAY 7 2007 4PM</u> <small>Last Filing Date/Time</small>

The candidate must fill in, sign and date this statement of candidacy before petitions are circulated.

STATEMENT OF CANDIDACY

Revised Code, Sections 1901.07, 1901.31, 3501.38, 3513.261

I, MAUREEN ADLER GRAVENS, the undersigned, hereby declare under penalty of election

(Name of candidate)

falsification that my voting residence address is ROCKY RIVER is 21370 SNOWFLOWER 44116

(Enter city, village or township name)

(Street address)

(Zip code)

And I am a qualified elector. I further declare that I desire to be a candidate for

election to the office of JUDGE in the ROCKY RIVER Municipal Court District,

(Judge or Clerk)

(Enter town name)

for the full term commencing JANUARY 1, 2008 or unexpired term ending _____

(Check one of the boxes and fill in the appropriate date)

at the general election next hereafter to be held.

I hereby declare that, if elected to this office or position, I will qualify therefor.

BOARD USE ONLY	
City, Ward & Precinct	
PARTY / YEAR	
SIGNATURE	
INITIALS	

Dated this 6th day of FEBRUARY, 20 07

MAUREEN ADLER GRAVENS

(Print name as it should appear on the ballot)

Maureen Adler Gravens
(Signature of candidate)

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

I, MAUREEN ADLER GRAVENS hereby designate the persons named below a committee to represent me:

(Name of candidate)

NAME	STREET ADDRESS
TERRANCE P. GRAVENS	21370 SNOWFLOWER, ROCKY RIVER, OH 44116
GARY JOHNSON	1250 RUE ST. GEORGES, WESTLAKE, OH 44145
PATRICIA A. GAUL	2751 COUNTRY CLUB, ROCKY RIVER, OH 44116
MICHAEL CARLIN	4140 DIANE, FAIRVIEW PARK, OH 44126
KATHLEEN MAHONEY	30122 EDNIL, BAY VILLAGE, OH 44140

NOMINATING PETITION

We, the undersigned, qualified electors whose voting residence set opposite our names, hereby nominate the above-named candidate for election to the office and term as stated above of the above named municipal court district, to be voted for at the next general election, and certify said person is, in our opinion, well qualified to perform the duties of the office or position the candidate desires to be elected.

Electors must write signatures on this petition in ink.

SIGNATURES <small>(Must be written in ink)</small>	PRINTED NAME OF SIGNER	STREET ADDRESS <small>(Must be the address on file with the Board of Elections)</small>	DATE OF SIGNING
1. <i>L. Smith</i>	Lindsay Smith	31100 Manchester Bay	4/24/07
2. <i>Kathleen Mahoney</i>	KATHLEEN MAHONEY	30122 Ednil Dr Bay	4/24/07

SIGNATURES (Must be written in ink)	PRINTED NAME OF SIGNER	STREET ADDRESS (Must be the address on file with the Board of Elections)	DATE OF SIGNING
<i>Charles M. Young</i>	Charles M. Young	11 Astor Place Rocky River Ohio 44116	4/24/07
<i>Daniel J. Ryan</i>	DANIEL J. RYAN	26734 SUDBURY WALMSTEAD OH	4/24/2007
<i>William T. McGinty</i>	W. Liam T. McGinty	18897 N. Valley Dr Fairview Park Ohio	4/24/07
<i>John D. Wheeler</i>	John D. Wheeler	1777 Spring Hill Wickliffe OH	4/24/07
<i>Kevin Catterkay</i>	KEVIN CATTERKAY	18424 Edgewood Dr Rocky Hill	4/24/07
<i>John B. Gibbons</i>	JOHN B. GIBBONS	1918 Newbury Dr Westlake Ohio	4/24/07
<i>Margaret Muehl</i>	M. G. WAEGBLE	4586 Colcord C.P. - 44126	4/24/07
10.			
11.			
12.			
13.			
14.			
15.			
16.			
17.			
18.			
19.			
20.			

I, Patricia A. Gaul declare under penalty of election falsification that I am a
(Printed name of circulator)

qualified elector of the State of Ohio and reside at the address appearing below my signature; that I am the
circulator of the foregoing petition containing 9 signatures; that I witnessed the affixing of every
(Number)
signature; 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 or of an attorney in fact
acting pursuant to section 3501.382 of the Revised Code.

Patricia A. Gaul (p/g)
(Signature of circulator)
2751 Country Club Blvd.
(Street address)
Rocky River, OH 44116
(Municipality and zip code)

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

BOARD USE ONLY		
	CAND	CIRC
C.W. & PRCT		
PARTY / YEAR		
SIGNATURE		
PROBLEM		
OK PETITON		
INITIALS		



CUYAHOGA COUNTY
BOARD OF ELECTIONS

RECEIPT OF PETITION FOR PRE-CHECK

PLEASE READ

A PRE-CHECK INCLUDES SIGNATURE VERIFICATION AND NOT A LEGAL EXAMINATION OF THE PETITION. WE RECOMMEND THAT A CANDIDATE FILE TWICE THE SIGNATURES NEEDED. AFTER OFFICIALLY FILING, IF ONE OR MORE PART-PETITIONS ARE RULED INVALID FOR ANY REASON, BY NOT FILING MORE THAN THE MINIMUM SIGNATURES, A CANDIDATE RISKS THE CHANCE OF BEING REMOVED FROM THE BALLOT.

We ask that you pick up or file the petition within three business days after notification that the pre-check is complete.

We have accepted the following petition for a pre-check:

Date: 4-13-2007

Name of Candidate: Maureen Adler Gravens
(Please Print Name)

Office Sought: Judge

Municipality or district: Rocky River Muni Court.

Daytime telephone number and, if not the candidate, the contact person's name:

Area Code (216) 348-5280 Home (216) 832-5206 Cell
* Patricia Gaul Work

*Patricia Gaul
4-24-07
Jan Keane*

Number of part-petitions received & number of signatures required:

7 (Part-petitions received) 50 (Signatures required)

Signature of person bringing in petition: Patricia A. Gaul

Jan Keane
Signature of Board of Elections clerk receiving the petition
(Copy to candidate/Original attached to petition)

PETITION RETURNED TO CANDIDATE:

Signature of Candidate (Representative): Patricia A. Gaul Date: 4-24-07

Staple this form to the original pre check receipt and maintained in department

Results of Candidate Petition Pre-Check

Candidate Name and Office Sought

Mureen Allen Graves

The following items on your petition represent certain flaws that could render your petition invalid. A "NO" checked indicates that area on one or more of your part-petitions require further review before filing. **Review this list when returning petition to the candidate. Give Verbal notice to the candidate of any discrepancies that may have been found.**

<u>ITEM</u>	<u>YES</u>	<u>NO</u>	<u>SEE PETITION #</u>
Statement of Candidacy:			
Complete and accurate:	<input checked="" type="checkbox"/>	<input type="checkbox"/>	_____
Office sought and term clearly stated:	<input checked="" type="checkbox"/>	<input type="checkbox"/>	_____
Dated by candidate correctly:	<input checked="" type="checkbox"/>	<input type="checkbox"/>	_____
Signed by candidate:	<input checked="" type="checkbox"/>	<input type="checkbox"/>	_____

Comments: _____

Signature Problems:

Signatures of electors verifiable:	<input checked="" type="checkbox"/>	<input type="checkbox"/>	_____
Addresses of electors complete and valid:	<input checked="" type="checkbox"/>	<input type="checkbox"/>	_____
Signing dates filled-in and valid:	<input checked="" type="checkbox"/>	<input type="checkbox"/>	_____
Petition contains minimum signatures required:	<input checked="" type="checkbox"/>	<input type="checkbox"/>	_____

Comments: _____

Circulator's Clause:

Circulator's name printed on the proper line:	<input checked="" type="checkbox"/>	<input type="checkbox"/>	_____
Accurate number of signatures shown:	<input checked="" type="checkbox"/>	<input type="checkbox"/>	_____
Circulator's signature verifiable:	<input checked="" type="checkbox"/>	<input type="checkbox"/>	_____
Circulator's address complete and valid:	<input checked="" type="checkbox"/>	<input type="checkbox"/>	_____

Comments: _____

Ann Keane
Signature - Absentee Voting/Candidate Services Staff Reviewer

4-24-07
Date

Patricia A. Paul
Candidate (or representative) Signature

5-2-07
Date



CUYAHOGA COUNTY
BOARD OF ELECTIONS

Judicial Receipt for Petition filing materials

The undersigned with this acknowledges receipt of the following materials:

- Campaign Finance Compliance & disclosure Guide CD;
- Helpful hints for Candidates and Treasurers;
- Check-off list for Candidate or PAC Treasurer;
- Campaign Finance Reports & Candidate Reporting Deadlines;
- Items Available Through the Cashiers Office;
- Ohio Rules of Court Code of Judicial Conduct;
- Instructions for Electioneering Communication;
- Listing of Required Judicial Candidate Seminars;
- A personal financial disclosure statement form to be filed with the Ohio Ethics Commission.

The undersigned candidate, or his/her representative, this acknowledges receipt of the above items concerning filing of campaign finance reports required by O.R.C. 3517.10(A).

Maureen Adler Gravens Judge - Rocky River Municipal
 Name of Candidate (print) Office sought (include political subdivision)
21370 Snowflower, RR 44116 440-331-2454
 Street Address, including city and zip code Phone Number of Candidate
Patricia A. Gaul Patricia A. Gaul 5-2-07
 Signature of Candidate/Agent Printed name of Candidate/Agent Date of signing

The Cuyahoga County Board of Elections may need to reach you to advise you of a Board Meeting, questions concerning your candidacy, recount election, etc.

Candidate: Please provide us with a phone number in which you can be immediately contacted.

pqa810@aol.com
 E-mail address (print clearly)
216-832-5206 216-832-5205
 Phone number with area code (print clearly) Alternate phone number (print clearly)

The Cuyahoga County Board of Elections is required to create an audio ballot for each election. To facilitate the pronunciation of your name as it should appear on the ballot, please spell you name phonetically (example: Phillip Keane - phonetically: Fill up Cane) below:

Maureen Adler Gravens More-En ~~Adler~~
 Name as it appears on ballot (print clearly) Name phonetically (print clearly) Gravens



Voter History for Eligible Elections Only - MAUREEN GRAVENS

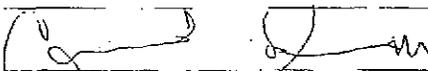
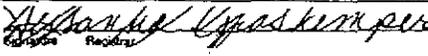


#	Date	Title	Elig	Vote	Cons Prec	Party	Poll	AV F	AV F	Cate	Sou	Chal	Ret	FS F	FS F	Prov	Prov	Orig. Precinc	Orig. Party	Elec
1	05/08/2007	MAY 8, 2007 PRIMARY ELECTION	Y	Y	RRIV02F	DEM	Y	N	N					N	N	N	N	RRIV02F.01	DEM	124
2	11/07/2006	2006_NOV_GENERAL	Y	Y	RRIV02F		Y	N	N					N	N	N	N	RRIV02F.01		122
3	05/02/2006	2006_MAY_PRIMARY	Y	Y	RRIV02F	DEM	Y	N	N					N	N	N	N	RRIV02F.01	DEM	119
4	11/08/2005	GENERAL_NOV_2005	Y	Y	RRIV02F		Y	N	N					N	N	N	N	RRIV02F.01		115
5	05/03/2005	PRIMARY_MAY_2005	Y	Y	RRIV02F		Y	N	N					N	N	N	N	RRIV02F.01		107
6	11/02/2004	GENERAL_NOV_2004	Y	Y	RRIV02F		Y	N	N					N	N	N	N	RRIV02F.01	DEM	97
7	03/02/2004	2004_MAR_PRIMARY	Y	Y		DEM		N	N					N	N	N	N			94
8	11/04/2003	2003_NOV_GENERAL	Y	Y		NONE		N	N					N	N	N	N			89
9	05/06/2003	PRIMARY ELECTION	Y	Y		NOPI		N	N					N	N	N	N			87
10	11/05/2002	2002_NOV_GENERAL	Y	Y		NONE		N	N					N	N	N	N			85
11	05/07/2002	2002_MAY_PRIMARY	Y	Y		DEM		N	N					N	N	N	N			83
12	11/06/2001	2001_NOV_GENERAL	Y	Y		NONE		N	N					N	N	N	N			78
13	11/07/2000	2000_NOV_GENERAL	Y	Y		NONE		N	N					N	N	N	N			70
14	03/07/2000	2000_MAR_PRIMARY	Y	Y		DEM		N	N					N	N	N	N			68
15	11/02/1999	GENERAL ELECTION	Y	Y		NONE		N	N					N	N	N	N			66
16	11/03/1998	GENERAL ELECTION	Y	Y		NOPI		N	N					N	N	N	N			55
17	05/05/1998	PRIMARY ELECTION	Y	Y		DEM		N	N					N	N	N	N			53
18	11/04/1997	GENERAL ELECTION	Y	Y		NOPI		N	N					N	N	N	N			45
19	11/05/1996	GENERAL ELECTION	Y	Y		NOPI		N	N					N	N	N	N			43
20	03/19/1996	COUNTY WIDE PRIMARY ELECTION	Y	Y		DEM		N	N					N	N	N	N			39
21	11/07/1995	GENERAL ELECTION	Y	Y		NOPI		N	N					N	N	N	N			32
22	10/03/1995	PRIMARY ELECTION	Y	Y		NOPI		N	N					N	N	N	N			31

All Elections

CUYAHOGA COUNTY BOARD OF ELECTIONS ALPHABETICAL POLL BOOK – Party Primary – May 8, 2007
 Municipality: ROCKY RIVER Ward: 02 Precinct: F

A
B
C
D
E
F
G
H
I
J
K
L
M
N
O
P
Q
R
S
T
U
V
W
X

Name & Address	Apt. No. If Required	Pre-Printed Signature	Voter Signature Only	Voter Registration#
GRAHAM, CONRAD K JR 22074 RIVER OAKS DR 19700113	APT. 8B		Must Vote Provisional ↑ Please sign here ↑	2110615 - A 
GRANT, DAVID M 2735 PLEASANT DR 19460822	APT. REP		↑ Please sign here ↑	0738524 - A 
GRASKEMPER, SUSANNA 21700 RIVER OAKS DR 19591004	APT. # 304-B		Verify Residence Address Notice Returned to the Board of Elections ↑ Please sign here ↑	0936351 - I 
GRAVENS, MAUREEN A 21370 SNOWFLOWER DR 19530121	APT. DEM		↑ Please sign here ↑	0466259 - A 

74 - GRA

Ex. 17

REGULAR VOTERS

Names, Addresses and Stub Numbers to be WRITTEN BY AN ELECTION OFFICER

	NAMES IN FULL		ADDRESSES	Stub No. 1	Stub No. 2	Stub No. 3
1	O'MALLEY MARTIN F.	D	2773 PEASE DR. C	1		
2	GRAVENS MAUREEN A.	D	21370 SNOWFLOWER DR.	2		
3	GRAVENS TERRANCE J.	D	21370 SNOWFLOWER DR.	3		
4	LANZOLA J. MARGARET	R	2958 KINGSBURY DR.	4		
5	LIVINGOOD JEANNE	D	2826 PEASE DR. 112	5		
6	REGAS, HARRY T.	D	21860 RIVER OAKS DR. 6-3	6		
7	TIRPAK, ELIZABETH A.	D	2845 PEASE DR.	7		
8	AKER, THORA D.	R	2757 PEASE DR.	8		
9	GREEN, WILLIAM P.	R	2780 WAGAR RD.	9		
10	SCHICKEL, MILDRED F.	I	2736 PEASE DR 114W	10		
11	TURK, JOSEPH M.	D	22895 COTTONWOOD DR.	11		
12	GAPATE, MELTON J.	D	2770 WAGAR RD	12		
13	KELLY, ESTHER	D	2781 PEASE DR.	13		
14	BREIL, ROBERT P.	D	2761 WILDFLOWER DR.	14		
15	Ginley, Martin R.	D	2885 Pease Dr.	15		
16	CLEARY, THOMAS J.	D	21896 RIVER OAKS DR 8A07	16		
17	JAKER PATRICIA	D	2825 PEASE DR. 2-414	17		
18	APPLETOWN JUDITH - D	-D	2727 PEASE DR.	18		
19	O'MALLEY MARGARET, A.	D	2773 PEASE DR. C	19		
20	STIGLIC, DON, T	D	2864 PEASE DR 104	20		

DEMOCRATIC

LEXSEE 467 F3D 503

CHARLES R. MORRISON, DONALD E. ECKHART, and ALEXANDER SMITH,
Plaintiffs-Appellants, v. MICHAEL F. COLLEY, CAROLYN C. PETREE,
WILLIAM A. ANTHONY, JR., KIMBERLY E. MARINELLO, and FRANKLIN
COUNTY BOARD OF ELECTIONS, Defendants-Appellees.

No. 06-4216

UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

06a0373p.06;

467 F.3d 503; 2006 U.S. App. LEXIS 25416; 2006 FED App. 0373P (6th Cir.)

September 20, 2006, Argued
September 22, 2006, Decided
September 22, 2006, Filed *

* An interim opinion was filed in this matter on September 22, 2006. The court is now filing this more detailed opinion.

PRIOR HISTORY: [**1] Appeal from the United States District Court for the Southern District of Ohio at Columbus. No. 06-00644. George C. Smith, District Judge. *Morrison v. Colley*, 2006 U.S. App. LEXIS 24028 (6th Cir.) (6th Cir. Ohio, 2006)

DISPOSITION: Affirmed.

CASE SUMMARY:

PROCEDURAL POSTURE: Seeking preliminary and permanent injunctions, plaintiff candidate sued defendants, a county elections board and several individuals, under 42 U.S.C.S. § 1983, alleging violation of the candidate's rights under the First and Fourteenth Amendments to the Constitution of the United States. The United States District Court for the Southern District of Ohio at Columbus denied the candidate all relief. The candidate appealed.

OVERVIEW: The candidate alleged defendants violated his constitutional rights by excluding him from a ballot as an independent candidate for a congressional seat because he was affiliated with a political party. In an interim order, the instant court upheld the trial court's decision denying the candidate injunctive relief. In the instant order, the court expounded on that decision. *Ohio Rev. Code Ann. § 3513.257* did not impose a severe restriction on an independent candidate's First and Fourteenth Amendment rights, so the statute only had to survive review for reasonableness. The First and Fourteenth Amendments did not prohibit a state from requiring independent candidates to claim on the day before a primary that they were not affiliated with any political party. *Ohio Rev. Code §§ 3513.19(A)(3); 3513.05*, para. 7; 3513.19(B); 3513.20; and § 3599.11(A) put the candidate on notice that "claims" of party affiliation or nonaffiliation must be made in good faith. When the candidate declared that he was not affiliated with a political party, he had already made sworn statements to the contrary. Under the facts of the case, *Ohio Rev. Code Ann. § 3513.257* was not overbroad or void for vagueness.

OUTCOME: The court affirmed the judgment of the district court.

COUNSEL: SARGUED: David R. Langdon, LANGDON & HARTMAN LLC, Cincinnati, Ohio, for Appellants.

Patrick J. Piccininni, PROSECUTING ATTORNEY'S OFFICE FOR THE COUNTY OF FRANKLIN, Columbus, Ohio, for Appellees.

ON BRIEF: David R. Langdon, Curt C. Hartman, Joshua B. Bolinger, LANGDON & HARTMAN LLC, Cincinnati, Ohio, Christopher P. Finner, FINNEY, STAGNARO, SABA & KLUSMEIER CO., L.P.A., Cincinnati, Ohio, for Appellants.

Patrick J. Piccininni, Nick A. Soulas, Jr., PROSECUTING ATTORNEY'S OFFICE FOR THE COUNTY OF FRANKLIN, Columbus, Ohio, for Appellees.

JUDGES: Before: SILER, GILMAN, and GRIFFIN, Circuit Judges.

OPINION BY: Griffin

OPINION:

[*504] GRIFFIN, Circuit Judge. Plaintiff-appellant Charles R. Morrison sought to run as an independent candidate for the office of United States Representative in Ohio's Fifteenth Congressional District ("CD") in the November 7, 2006, election. Defendants-appellees Franklin County Board of Elections ("BOE"), *et al.*, excluded Morrison from the ballot on the ground that, under Ohio election law, he [*505] did not [**2] qualify as an independent candidate because he was affiliated with a political party. Morrison filed an action in the United States District Court for the Southern District of Ohio seeking preliminary and permanent injunctions requiring the BOE to place him on the ballot. Morrison claimed that the Ohio statutory provision violated his *First* and *Fourteenth Amendment* rights and those of his would-be voters because it was allegedly overbroad, illegally discriminatory, and void for vagueness. After the district court denied Morrison all relief, Morrison appealed to this court. We granted Morrison's motion to expedite the appeal and heard oral argument on September 20, 2006. On September 22, 2006, we issued a per curiam interim opinion unanimously affirming the district court, stating, "despite any constitutional infirmities that *may* exist in the relevant Ohio statutes as they might apply to others, there is no reasonable basis for Morrison to claim in good faith that he is not affiliated with a political party." (Emphasis added.) Today we explain our holding in greater detail.

I.

In December 2005 and January 2006, Morrison began circulating petitions seeking placement on the May 2, 2006, ballot [**3] for the Madison County Republican Party Central Committee and the Ohio Republican Party State Central Committee. Morrison filed his petitions, was certified as a candidate in the Republican primary for the state and county committee positions, and appeared on the May 2, 2006, Republican primary ballot. He lost both races.

Morrison filed his declaration of candidacy for the county committee on a form that stated, "This petition shall be circulated only by a member of the same political party as stated above by the candidate." Morrison signed the declaration, which also required him to state, under penalty of "election falsification," that he was a member of the Republican Party. Likewise as to the state committee, Morrison signed a declaration of candidacy that required him to state, under penalty of election falsification, that he was a member of the Republican Party.

Approximately three weeks before the May 2, 2006, Republican primary, Morrison purchased local newspaper advertisements supporting his state and county committee candidacies. In his ads, Morrison stated that he was a Republican. On May 2, 2006, Morrison requested a Republican ballot and voted in the Republican primary. [**4]

On May 1, 2006, the day before Morrison's name appeared on the ballot in the Republican primary, he filed nominating petitions with the BOE to run as an independent candidate in Ohio's Fifteenth CD.

On May 22, 2006, three residents and qualified electors from the Fifteenth CD filed a written protest challenging Morrison's congressional candidacy on the ground that he was not an independent under Ohio law, and the BOE responded by holding a protest hearing. After receiving briefs and hearing argument at the hearing, the BOE deadlocked 2-2 on whether to certify Morrison as an independent candidate. Pursuant to *Ohio Rev. Code* § 3501.05, the matter was referred to the Ohio Secretary of State, who voted in favor of the protestors and against certification.

Morrison brought suit in the district court under 42 U.S.C. § 1983, and thereafter the district court held a hearing on the merits.

II.

Because Morrison alleged the violation of rights recognized by the *First* and [*506] *Fourteenth Amendments to the U.S. Constitution*, the district court had federal-question jurisdiction under 28 U.S.C. § 1331. Regarding [**5] our jurisdiction, the district court consolidated the hearing on Morrison's preliminary injunction application with the hearing on the merits, and its order disposed of Morrison's complaint and request for permanent injunctive relief. Accordingly, the district court's order is final and immediately appealable. We review the district court's legal conclusions de novo and its factual findings for clear error. *Planned Parenthood Cincinnati Region v. Taft*, 444 F.3d 502, 507 (6th Cir. 2006) (citing *Taubman Co. v. Webfeats*, 319 F.3d 770, 774 (6th Cir. 2003)).

III.

Recently, in *Clingman v. Beaver*, 544 U.S. 581, 125 S. Ct. 2029, 161 L. Ed. 2d 920 (2005), the Supreme Court emphasized that not all election regulations that burden *First Amendment* rights are subject to a strict scrutiny analysis. Rather, unless a state election regulation places a heavy or severe burden on a party, "a State's important regulatory interests will usually be enough to justify reasonable, nondiscriminatory restrictions." *Id.* at 587 (quoting with approval *Timmons v. Twin Cities Area New Party*, 520 U.S. 351, 358, 117 S. Ct. 1364, 137 L. Ed. 2d 589 (1997)).

In holding [**6] that an Oklahoma statute allowing political parties to open their primary elections to only their own party members and voters registered as independents did not violate the *First Amendment*, the Supreme Court refused to apply a strict scrutiny analysis because the burden was not "severe":

[O]ur cases since *Tashjian [v. Republican Party]*, 479 U.S. 208, 107 S. Ct. 544, 93 L. Ed. 2d 514 (1986) have clarified [that] strict scrutiny is appropriate only if the burden is severe. [*California Democratic Party v. Jones*], 530 U.S. 567, 120 S. Ct. 2402, 147 L. Ed. 2d 502 (2000)], *supra*, at 582, 147 L. Ed. 2d 502, 120 S. Ct. 2402; *Timmons*, 520 U.S. at 358, 137 L. Ed. 2d 589, 117 S. Ct. 1364.

* * *

Many electoral regulations, including voter registration generally, require that voters take some action to participate in the primary process. *See, e.g., Rosario v. Rockefeller*, 410 U.S. 752, 760-62, 36 L. Ed. 2d 1, 93 S. Ct. 1245 (1973) (upholding requirement that voters change party registration 11 months in advance of the primary election). Election laws invariably "affect[] -- at least to some degree -- the individual's [**7] right to vote and his right to associate with others for political ends." *Anderson v. Celebrezze*, 460 U.S. 780, 788, 75 L. Ed. 2d 547, 103 S. Ct. 1564 (1983).

These minor barriers between voter and party do not compel strict scrutiny. *See Bullock v. Carter*, 405 U.S. 134, 143, 31 L. Ed. 2d 92, 92 S. Ct. 849 (1972). To deem ordinary and widespread burdens like these severe would subject virtually every electoral regulation to strict scrutiny, hamper the ability of States to run efficient and equitable elections, and compel federal courts to rewrite state electoral codes. The Constitution does not require that result, for it is beyond question "that States may, and inevitably must, enact reasonable regulations of parties, elections, and ballots to reduce election- and campaign-related disorder." *Timmons, supra*, 520 U.S. at 358, 137 L. Ed. 2d 589, 117 S. Ct. 1364; *Storer v. Brown*, 415 U.S. 724, 730, 39 L. Ed. 2d 714, 94 S. Ct. 1274 (1974). Oklahoma's semiclosed primary system does [*507] not severely burden the associational rights of the state's citizenry.

C

When a state electoral provision places [**8] no heavy burden on associational rights, "a State's important regulatory interests will usually be enough to justify reasonable, nondiscriminatory restrictions." *Timmons, supra*, at 358, 137 L. Ed. 2d 589, 117 S. Ct. 1364 (internal quotation marks omitted); *Anderson, supra*, at 788, 75 L. Ed. 2d 547, 103 S. Ct. 1564.

Clingman, 544 U.S. at 592-93. *Clingman* follows, and is consistent with, *Timmons*, which likewise refused to apply strict scrutiny to a challenge to a Minnesota election law prohibiting multi-party or "fusion" candidates from appearing

on the ballot. In rejecting a claim that the Minnesota regulation violated the plaintiff's *First* and *Fourteenth Amendment* rights, the Supreme Court stated,

[I]t is also clear that States may, and inevitably must, enact reasonable regulations of parties, elections, and ballots to reduce election- and campaign-related disorder. *Burdick [v. Takushi]*, 504 U.S. 428, 119 L. Ed. 2d 245, 112 S. Ct. 2059 (1992)], *supra*, at 433 ("[A]s a practical matter, there must be a substantial regulation of elections if they are to be fair and honest and if some sort [**9] of order, rather than chaos, is to accompany the democratic process") (quoting *Storer v. Brown*, 415 U.S. 724, 730, 94 S. Ct. 1274, 39 L. Ed. 2d 714 (1974)); *Tashjian*, *supra*, at 217 (The Constitution grants States "broad power to prescribe the 'Time, Places and Manner of holding elections for Senators and Representatives', Art. I, § 4, cl. 1, which power is matched by state control over the election process for state offices").

When deciding whether a state election law violates *First* and *Fourteenth Amendment* associational rights, we weigh the "character and magnitude" of the burden the State's rule imposes on those rights against the interests the State contends justify that burden, and consider the extent to which the State's concerns make the burden necessary. *Burdick*, *supra*, at 434 (quoting *Anderson v. Celebrezze*, 460 U.S. 780, 789, 103 S. Ct. 1564, 75 L. Ed. 2d 547 (1983)). Regulations imposing severe burdens on plaintiffs' rights must be narrowly tailored and advance a compelling state interest. Lesser burdens, however, trigger less exacting review, and a State's "important regulatory interests" will usually be enough to justify [**10] "reasonable, nondiscriminatory restrictions." *Burdick*, *supra*, at 434 (quoting *Anderson*, *supra*, at 788); *Norman [v. Reed]*, 502 U.S. 279, 116 L. Ed. 2d 711, 112 S. Ct. 698 (1992)], *supra*, at 288-289 (requiring "corresponding interest sufficiently weighty to justify the limitation"). No bright line separates permissible election-related regulation from unconstitutional infringements on *First Amendment* freedoms. *Storer*, *supra*, at 730 ("[N]o litmus-paper test . . . separat[es] those restrictions that are valid from those that are invidious The rule is not self-executing and is no substitute for the hard judgments that must be made.").

Timmons, 520 U.S. at 358-59.

The district court concluded correctly that *Ohio Rev. Code § 3513.257* does not impose a severe restriction on the *First* and *Fourteenth Amendment* rights of Morrison or other potential independent candidates or voters. *See Lawrence v. Blackwell*, 430 F.3d 368 (6th Cir.) (Ohio [**508] statute requiring independent congressional candidates to file statement of candidacy and nominating [**11] petition on the day preceding the primary election did not impose a severe burden on independent candidates' or voters' constitutional rights, so strict scrutiny was not warranted), *cert. denied*, ___ U.S. ___, 126 S. Ct. 2352, 165 L. Ed. 2d 278 (2006). The election regulation at issue is merely a reasonable, nondiscriminatory regulation to require would-be independent candidates to claim, no later than 4:00 p.m. of the day before the primary elections, that they are free of affiliation with any political party. Therefore, Ohio need only show that this requirement advances an important state interest, not a compelling state interest. *Id.* For the reasons stated by the district court, the non-affiliation requirement passes muster under this deferential standard. In addition, the statute itself specifies the following important state interests furthered by the election regulation:

The purpose of establishing a filing deadline for independent candidates prior to the primary election immediately preceding the general election at which the candidacy is to be voted on by the voters is to recognize that the state has a substantial and compelling interest [**12] in protecting its electoral process by encouraging political stability, ensuring that the winner of the election will represent a majority of the community, providing the electorate with an understandable ballot, and enhancing voter education, thus fostering informed and educated expressions of the popular will in a general election. The filing deadline for independent candidates required in this section prevents splintered parties and unrestrained factionalism, avoids political fragmentation, and maintains the integrity of the ballot. The deadline, one day prior to the primary election, is the least drastic or restrictive means of protecting these state interests. The general assembly finds that the filing deadline for independent candidates in primary elections required in this section is reasonably related to the state's purpose of ensuring fair and honest elections

while leaving unimpaired the political, voting, and associational rights secured by the *first* and *fourteenth* amendments to the United States Constitution.

OHIO REV. CODE § 3513.257.

As the Supreme Court recognized in *Timmons*, a state may, consistent with the *First Amendment*, ban [**13] "fusion" or multi-party candidates in order to reduce election disorder. *Cf. Libertarian Party of Ohio v. Blackwell*, 462 F.3d 579, 462 F.3d 579, 2006 U.S. App. LEXIS 22639 (6th Cir. 2006).

In summary, we hold that the *First* and *Fourteenth Amendments* do not prohibit the Ohio General Assembly from requiring independent candidates to claim on the day before the primary that they are not affiliated with any political party.

IV.

Next, Morrison argues that the statute is void for vagueness because it allegedly fails to specify what a putative independent candidate must do to get on the ballot, and because it does not provide objective standards for enforcement. His argument is wholly unpersuasive under the facts of this case.

Under *Grayned v. City of Rockford*, 408 U.S. 104, 108, 92 S. Ct. 2294, 33 L. Ed. 2d 222 (1972), a statute must "give the person of ordinary intelligence a reasonable opportunity to know what is prohibited" or, in this case, what is required. In addition, the statute "must provide explicit standards for those who apply them." *Id. Cf. Risbridger v. Connelly*, 275 F.3d 565, 572 [*509] (6th Cir. 2002) ("[T]he void-for-vagueness doctrine requires that a penal statute define the criminal [**14] offense with sufficient definiteness that ordinary people can understand what conduct is prohibited and in a manner that does not encourage arbitrary and discriminatory enforcement.") (quoting *Kolender v. Lawson*, 461 U.S. 352, 357, 103 S. Ct. 1855, 75 L. Ed. 2d 903 (1983)).

The district court rejected Morrison's argument that the statute "creates confusion as to . . . whether a person desiring to become an independent candidate can merely claim not to be affiliated with a political party or whether they must truly be unaffiliated with a political party." The district court reasoned, "a person of ordinary intelligence, when considering *O.R.C. § 3513.257* [which requires the candidate to claim independence] and *O.R.C. § 3501.01(I)* [which defines an 'independent' candidate as one 'who claims not to be affiliated with any political party'] in the whole legislative scheme, would understand that an aspiring independent candidate 'must actually be independent, rather than merely claim it.'" A candidate possessing ordinary intelligence and common sense would readily understand that the claim of independence must be made in [**15] good faith -- otherwise there would be no reason for having the claim requirement, and none of the state interests animating the claim requirement would be served. *See United States v. Gjeli*, 717 F.2d 968, 972 (6th Cir. 1983).

In addition to the common-sense meaning of "claim" in *Ohio Rev. Code § 3513.257*, other sections of the Ohio election code put Morrison on notice that his actions were incompatible with his contemporaneous claim that he was not affiliated with any political party. Provisions of the Ohio election code other than *§ 3513.257* discuss political party affiliation and specify how it may be determined when challenged. This is significant, because typically "identical words used in different parts of the same act are intended to have the same meaning." *OfficeMax, Inc. v. United States*, 428 F.3d 583, 591 (6th Cir. 2005) (quoting *Gustafson v. Alloyd Co., Inc.*, 513 U.S. 561, 570, 115 S. Ct. 1061, 131 L. Ed. 2d 1 (1995)). n1

n1 *See also Lewis v. Philip Morris, Inc.*, 355 F.3d 515, 536 (6th Cir.) (Moore, J., for the court, joined in pertinent part by Katz, U.S.D.J.) (referring to "[t]he usual presumption that 'the same words used twice in the same act have the same meaning'" (quoting 2A NORMAN J. SINGER, SUTHERLAND ON STATUTES AND STATUTORY CONSTRUCTION, § 46.06, at 193 (6th ed. 2000)), *cert. denied*, 543 U.S. 821, 125 S. Ct. 61, 160 L. Ed. 2d 31 (2004); *Lake Cumberland Trust, Inc. v. EPA*, 954 F.2d 1218, 1222 (6th Cir. 1994) ("We must presume that words used more than once in the same statute have the same meaning.") (citation omitted).

[**16]

First, *Ohio Rev. Code § 3513.19(A)(3)* provides that a person's right to vote in a party's primary can be challenged on the basis that he "is not affiliated with or is not a member of" that party. That section also states, in pertinent part, that "[s]uch party affiliation shall be determined by examining the elector's voting record for the current year and the

immediately preceding two calendar years as shown on the voter's registration card, using the standards of affiliation specified in the seventh paragraph of *section 3513.05* of the Revised Code." *OHIO REV. CODE. § 3513.19(A)(3)*. In turn, *§ 3513.05 P 7* considers a voter to be affiliated with a party if he was registered with that party and voted in that party's primaries during the current year and the two preceding years. Morrison has never denied that he was registered as a Republican and voted in the May 2, 2006, Republican primary, nor has he claimed that he was ever registered [*510] as something other than a Republican or that he voted in non-Republican primaries during the preceding two calendar years.

Moreover, the next subsection of the statute, *Ohio Rev. Code § 3513.19(B) [**17]*, provides:

When the right of a person to vote is challenged upon the ground set forth in division (A)(3) of this section, membership in or political affiliation with a political party shall be determined by the person's statement, *made under penalty of election falsification*, that the person desires to be affiliated with and supports the principles of the political party whose primary ballot the person desires to vote.

(Emphasis added.) By registering as a Republican and then affirmatively requesting and voting the Republican Party primary ballot on May 2, 2006, Morrison necessarily evinced a desire to be affiliated with the Republican Party at that time. Indeed, when Morrison presented himself as eligible to vote in the Republican primary on May 2, 2006, Ohio law required him to be prepared to prove, *under penalty of punishment for false statement*, that he was affiliated with the Republican Party:

Before any challenged person shall be allowed to vote at a primary election, the person shall make a statement, *under penalty of election falsification*, before one of the precinct officials . . . stating that the person desires to be affiliated [**18] with and supports the principles of the political party whose ballot the person desires to vote; and giving all other facts necessary to determine whether the person is entitled to vote in that primary election. The statement shall be returned to the office of the board with the poll-books and tally sheets.

OHIO REV. CODE § 3513.20.

If there were any doubt whether registering Republican, running as a Republican in the primary, and voting in the Republican primary precluded a good faith claim to be unaffiliated with any party, Morrison's own Federal Election Commission ("FEC") filing dispels it. Morrison conceded that his own congressional campaign committee's statement of organization, FEC Form 1, listed him as affiliated with the Republican Party.

Morrison cannot complain if his own campaign committee's express statement of his party affiliation is considered and used to rule against him. *Cf. In re El-Amin, 252 B.R. 652, 659 (Bankr. E.D. Va. 2000)* ("The party who made the admission cannot complain that they [sic] were prejudiced by their own words."); *Levy v. United States*, 1858 U.S. Ct. Cl. LEXIS 58, 1858 WL 4645, at *27 (Ct. Cl. May 4, 1858) [**19] Morrison cannot complain if his own campaign committee's express statement of his party affiliation is considered and used to rule against him. *Cf. In re El-Amin, 252 B.R. 652, 659 (Bankr. E.D. Va. 2000)* ("The party who made the admission cannot complain that they [sic] were prejudiced by their own words."); *Levy v. United States*, 1858 U.S. Ct. Cl. LEXIS 58, 1858 WL 4645, at *27 (Ct. Cl. May 4, 1858) [**19] ("The petitioner cannot object to this conclusion, because it is in exact accordance with his own export manifest, rendered on his own oath."). n2

n2 *Cf. also United States v. Beal, 940 F.2d 1159, 1162 (8th Cir. 1991)* ("[D]efendant cannot complain if his own admissions . . . [are] received in evidence against him.");

United States v. Alvarez, 810 F.2d 879, 889 (9th Cir. 1987) ("The defendant cannot complain when his own testimony fixes the time of his arrest.");

Courtney v. United States, 518 F.2d 514, 517 (4th Cir. 1975) ("[T]he defendant cannot be heard to complain that he was convicted on the basis of his own testimony.");

467 F.3d 503, *, 2006 U.S. App. LEXIS 25416, **;
2006 FED App. 0373P (6th Cir.)

United States v. Bates, 141 F.2d 436, 439 (7th Cir.) ("Defendant cannot complain if the jury accepted at their face value his own statements . . ."), *vac'd on other grounds*, 323 U.S. 15, 65 S. Ct. 15, 89 L. Ed. 13 (1944);

The Eroee, 9 Ben. 191, 8 F. Cas. 774, 775, F. Cas. No. 4521 (E.D.N.Y. 1877) (No. 4,521) ("[T]he respondents can resort to this bill rendered . . . there being no other proof, it must be taken of evidence of the amount of such difference. Of this the consignees cannot complain, as it is their own bill."), *aff'd*, 17 Blatchf. 16, 8 F. Cas. 775, F. Cas. No. 4522 (C.C.S.D.N.Y. 1879) (No. 4,522).

[**20]

[*511] Most importantly, under Ohio law, if Morrison was unaffiliated with any political party on May 1, 2006, as he contends, he could not also claim in good faith to be a Republican at the same time without risking consequences more serious than exclusion from the ballot. Specifically, *Ohio Rev. Code § 3599.11(A)* provides the following criminal penalties for false swearing: "No person shall knowingly swear or affirm falsely upon a lawful examination by or before any registering officer; or make, print, or issue, any false . . . certificate of registration No person shall . . . knowingly make any false statement on any form for registration or change of registration Whoever violates this division is guilty of a felony of the fifth degree."

A person of ordinary intelligence in the position of Morrison is put on notice that "claims" of party affiliation or non-affiliation must be made in good faith; otherwise the person is subject to criminal prosecution.

We conclude that the statutes at issue gave Morrison sufficient notice that his claims of party affiliation or non-affiliation had to be made in good faith when he filed his independent congressional [*21] candidacy petition on May 1, 2006. Further, under the undisputed facts of this case, Morrison's claim of unaffiliation with a political party was not made in good faith.

For these reasons, we hold that, under the facts of this case, *Ohio Rev. Code § 3513.257* is not void for vagueness. *Cf. McEniee v. MSPB*, 404 F.3d 1320, 1333-34 (Fed. Cir.), *cert. denied*, ___ U.S. ___, 126 S. Ct. 381, 163 L. Ed. 2d 167 (2005). In addition, for the reasons stated by the district court, we hold that *Ohio Rev. Code § 3513.257* is not overbroad, nor was it applied in a manner that illegally discriminated against Morrison.

V.

In conclusion, we affirm the district court's denial of Morrison's application for preliminary and permanent injunctive relief. Morrison has not provided grounds to enjoin defendants from excluding him from the November 2006 congressional ballot due to his non-compliance with *Ohio Rev. Code § 3513.257*.

Affirmed.



JENNIFER BRUNNER
OHIO SECRETARY OF STATE

180 East Broad Street, 15th floor
 Columbus, Ohio 43215-3726 USA
 Tel.: 1-614-466-2655
 Fax: 1-614-644-0649
 www.sos.state.oh.us

ADVISORY NO. 2007-05

June 4, 2007

To: All County Boards of Elections
 Re: Independent Candidates and Party Affiliation

It has come to the attention of the Secretary of State's office that the United States Court of Appeals for the Sixth Circuit decided a case in September of 2006 that has a direct impact upon the function of Ohio's boards of elections and the candidacies of some independent candidates in Ohio. The case is *Morrison v. Colley*, 467 F.3d 503 (6th Cir. 2006) (attached). The ruling in *Morrison* changes longstanding practice in Ohio, and this Advisory is intended to inform boards of elections of this change.

Longstanding practice in Ohio and the interpretations of R.C. 3513.257 made by former Ohio Secretaries of State required only that the *candidacy* of an independent candidate be independent of political party affiliation, but not that the *individual* himself or herself be entirely unaffiliated. The *Morrison* case now requires that independent candidates actually be unaffiliated and that when an unaffiliation is claimed, it must be claimed in good faith.

Facts and History of Morrison

In December 2005 and January 2006 Charles Morrison circulated petitions seeking election to the Madison County Republican Party Central Committee and to the Ohio Republican Party State Central Committee. Mr. Morrison subsequently filed his petitions and appeared on the ballot in the May 2006 Republican primary ballot for these positions. To appear on the ballot in these races Mr. Morrison affirmed his affiliation with the Republican Party under penalty of election falsification. Additionally, Mr. Morrison advertised his candidacy as a Republican in a newspaper advertisement.

On May 1, 2006, the day before the primary, Mr. Morrison filed as an "independent" candidate in the race for the Ohio 15th U.S. Congressional District. By filing as an independent Mr. Morrison affirmed, under penalty of election falsification, that he had no affiliation with a political party. Mr. Morrison also filed documents with the Federal Election Commission, related to his "independent" candidacy, clearly stating his affiliation with the Republican Party.

On May 2, 2006 Mr. Morrison voted in the Republican primary election in Madison County. By voting in the Republican primary Mr. Morrison again affirmed his affiliation with the Republican Party under penalty of election falsification.

On May 22, 2006 three electors protested Mr. Morrison's candidacy for the congressional seat in the 15th District, alleging that Mr. Morrison was not independent of political party affiliation under Ohio law. The Franklin County Board of Elections (the most populous county) held a protest hearing, and the Board tied 2-2 on the protest. The Board certified the tie vote to this office, and former Assistant Secretary of State Monty Lobb, presumably acting on behalf of then

Secretary of State Blackwell, broke the tie vote in favor of the protest and against certification of Mr. Morrison's candidacy. Assistant Secretary Lobb based his rationale for not certifying Mr. Morrison's petition on Mr. Morrison's failure to disaffiliate himself from the Republican Party and thereby be truly independent of political party affiliation:

[T]he relevant law clearly requires a more definitive representation to demonstrate one's status as an independent candidate for elected office in Ohio. R.C. §3501.01 (I). Because the Supreme Court permits Ohio to determine and devise its own standard for saying when a member of a major political party has transitioned into the status of being an independent, and therefore no longer a member of that party, and because R.C. §3501.01 (I) provides that standard, the law and the facts show that Mr. Morrison was never *truly independent* at any point relevant to this matter.

Mr. Morrison filed suit in the U.S. District Court for the Southern District of Ohio seeking preliminary and permanent injunctions to preclude the Board from invalidating his candidacy and alleging that R.C. 3513.257 was unconstitutional. The district Court upheld Assistant Secretary Lobb's decision, and Mr. Morrison appealed.

The Appellate Court's Analysis

It is important to note at the outset that the *Morrison* court did not attempt to set forth specific guidelines for boards of elections to follow when determining the validity and sufficiency of independent candidates' nominating petitions. Rather, the court simply determined, under the facts of the case, that R.C. 3513.257 was not unconstitutional. However, the portion of the court's opinion relating to Mr. Morrison's claim that the statute was "void for vagueness" does indicate that there are certain threshold requirements an independent candidate must meet in order to be actually "independent." Further, the opinion indicates that the facts of each case will determine whether or not the candidate in question is actually independent and whether or not a candidate made his or her claim of unaffiliation in good faith.

The *Morrison* circuit court noted, and extended, the district court's reasoning:

a person of ordinary intelligence, when considering O.R.C. § 3513.257 which requires the candidate to claim independence and O.R.C. § 3501.01(I) which defines an 'independent' candidate as one who claims not to be affiliated with any political party in the whole legislative scheme, would understand that an aspiring independent candidate must actually be independent, rather than merely claim it. A candidate possessing ordinary intelligence and common sense would readily understand that the claim of independence must be made in good faith -- otherwise there would be no reason for having the claim requirement, and none of the state interests animating the claim requirement would be served.

Morrison, F.3d at 509 (internal quotations omitted).

In reaching its conclusion, the circuit court noted that the statutory scheme in Ohio recognizes only voter history as a means to determine party affiliation. However, the court also noted that even if some doubt existed as to Mr. Morrison's affiliation after considering that he had voted Republican prior to 2006 as well as in the 2006 Republican primary election, and had run in the 2006 Republican primary, all doubt was dispelled by Mr. Morrison's own FEC filings (for his "independent candidacy"). Those filings indicated his affiliation with the Republican Party, and the court stated that "Morrison cannot complain if his own campaign committee's express statement of his party affiliation is considered and used to rule against him." Thus, the court concluded that because Mr. Morrison had voted in past Republican primaries, and most importantly, in the Republican primary held the day after he filed as an independent candidate, and because so voting required him to state under penalty of criminal prosecution for election falsification that he was affiliated with the Republican party, Mr. Morrison could not claim in good faith that he actually was independent of party affiliation.

The court also stated that, "most importantly, under Ohio law, if Morrison was unaffiliated with any political party on May 1, 2006," as indicated by his filing as an independent, "he could not also claim in good faith to be a Republican at the same time," as indicated by his voting in the Republican primary the next day, "without risking consequences more serious than exclusion from the ballot" such as criminal prosecution under, among other statutes, R.C. 3599.11(A).

The Court concluded that under the facts of the case, Morrison had not provided grounds to enjoin the Franklin County Board of Elections from excluding him from the ballot because he had, in fact, failed to comply with the requirements of R.C. 3513.257.

Conclusion

We advise, as indicated by the *Morrison* court, that R.C. 3513.257 requires that:

- an independent candidate actually be unaffiliated, or disaffiliated from any political party; and
- the required claim of unaffiliation by an independent candidate must be made in good faith.

However, as mentioned above, the *Morrison* court did not provide clear guidelines for determining when an independent is actually affiliated with a political party, or how to determine whether an independent candidate has claimed unaffiliation in good faith.

Absent direction from the General Assembly or a court, this office is attempting to provide some guidance on this matter to the boards of elections. Thus:

- If an independent candidate votes in a party primary election after filing as an independent, the candidate is not actually unaffiliated, and the candidate's claim of independence was either not made in good faith or is no longer current; and
- If an independent candidate was on a political party's central or executive committee at the time he or she filed as an independent candidate, or becomes such a committee member at any time during his or her independent candidacy, the candidate is not

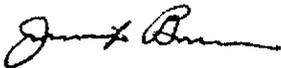
actually unaffiliated, and the candidate's claim of independence was either not made in good faith or is no longer current.

Additionally, as indicated by the *Morrison* court, indications of party affiliation such as past voting history, information submitted on required election-related filings, political advertisements, participation as a political party officer or member, or holding a public office for which the office holder was nominated through a political party's primary election and elected on a partisan ticket may serve as evidence, though not necessarily conclusive evidence, of party affiliation to support a protest against an independent candidate's candidacy. For example, voting *history*, alone, is an insufficient basis on which to disqualify an independent candidate because Ohioans are freely entitled to change or revoke their party affiliation at any time. However, voting history, together with other facts tending to indicate party affiliation, may be sufficient grounds to disqualify an independent.

Finally, please note that it is well established that boards of elections may accept filed petitions at face value. That is, because candidates file their petitions under penalty of election falsification, a board may accept the declaration of the candidate without further inquiry. However, if a board has personal knowledge or reason to believe that the declaration made by a candidate is false, or a protest is filed against an independent candidate, the board may inquire further to determine whether sufficient grounds exist to invalidate the candidate's petition and disqualify the candidate from running as an independent.

If you have additional questions or concerns please feel free to direct them to your assigned Elections Counsel at (614) 466-2585, or by e-mail to any of them.

Sincerely,



Jennifer Brunner
Ohio Secretary of State



Board removes eight from ballot

Friday, June 15, 2007

The state advisory that disqualified the candidates was issued last week.

By DAVID SKOLNICK

VINDICATOR POLITICS WRITER

YOUNGSTOWN — Not only are eight independent candidates for Youngstown City Council seats no longer on the ballot, they can't even run as write-ins, according to the Ohio Secretary of State's Office.

A recent secretary of state advisory opinion left the Mahoning County Board of Elections with no choice but to disqualify the eight, said Thomas McCabe, the board's director. They can't run as write-ins on the November general election ballot either, said Brian Green, elections counsel for the secretary of state.

The advisory opinion that led to Thursday's disqualification of eight council candidates states those who run as independents and then vote in a party primary election can no longer be considered independents. The opinion also states candidates aren't independents if they serve on a political party's central or executive committees when they file as independents.

Seven of the candidates voted in the Democratic primary May 8, one day after the filing deadline for independents. Moses H. Mahdee of the 5th Ward also serves as a Democratic central committee member. Tyrone Peakes of 5th Ward didn't vote in the primary, but serves as a Republican central committee member.

The opinion is based on a September 2006 federal appeals court decision that interprets state law's definition of an independent candidate. It wasn't until last week — about a month after the independent candidate filing deadline — that

AUG22'07 AM11:05 DIR

In Columbiana County, two independent candidates — Ginny Hanlon, running for East Liverpool mayor, and Donald E. Brown, running for Wellsville mayor — voted in the May 8 primary, said Lois Gall, the county's elections board director. That county's elections board will vote to certify independent candidates July 5.

skolnick@vindy.com

Ex. 21

The Western Star

 PRINT THIS Click to Print[SAVE THIS](#) | [EMAIL THIS](#) | [Close](#)

Warren County First Assistant Prosecutor Keith Anderson provided that advice.

"It's the fact that they voted Republican, combined with the fact that they petitioned to run as Independents," he said. "There is a line in that opinion that specifically says they shouldn't be certified."

Allen said he will file a writ of mandamus with the Supreme Court — a request to have the court force the board to correct what he says is a mistaken reading of election law. He said he believes the local board of elections misconstrued Brunner's opinion because it dealt with Independent candidates in partisan elections, whereas a judgeship is a non-partisan elected position — regardless of the fact the primary is a partisan election.

"We are running in a non-partisan election. Even the people who got the Democratic nomination or the Republican nomination are non-partisan candidates for purposes of being a judge," he said. "There are no Republican judges or Democratic judges. I think the board of elections confused an Independent candidate with a non-partisan candidate."

Allen and the others also have the option of asking for a hearing before the election board, but he said he doubts he could change their minds — and what's more, he believes this is a problem that needs solving statewide.

"I think my preference is to go to the Supreme Court, argue it out and let the Supreme Court make a decision," he said.

Parker would not comment of whether or not he plans to take any action on the board's decision. Whitaker said he is mulling his next move.

The deadline for asking for a hearing before the local board is July 30; a writ can be filed any time.

Contact this reporter at (513) 696-4525 or dcallahan@coxohio.com.

Sponsored Links

[Buy a link here](#)

- [Home](#)
- [News](#)
- [Sports](#)
- [Entertainment](#)
- [Opinions](#)
- [Living](#)

- [Cars](#)
- [Jobs](#)
- [Homes & Apts.](#)

Western-Star.com:

- [Advertise](#)
- [Customer Service](#)
- [Our Partners](#)
- [Rated with ICRA](#)
- [Valid CSS](#)
- [Valid XHTML](#)

Copyright ©2007 Cox Ohio Publishing, Dayton, Ohio, USA. All rights reserved.

By using Western-Star.com, you accept the terms of our [visitor agreement](#) and [privacy policy](#). You may wish to note our [other business policies](#).



Find this article at:

<http://www.western-star.com/n/content/oh/story/news/local/2007/07/11/pjm071207independents.html>

 [Click to Print](#)

[SAVE THIS](#) | [EMAIL THIS](#) | [Close](#)

Check the box to include the list of links referenced in the article.

 Print |  Close Window

THE ENQUIRER

Last Updated: 6:03 pm | Thursday, June 14, 2007

Judge hopefuls' status at issue

Three declared as 'independent'

BY JANICE MORSE | JMORSE@ENQUIRER.COM

MASON - The five-way field for municipal judge here - which includes controversial incumbent George Parker - could shrink if officials declare that Parker or other independent candidates aren't truly "independent."

The Warren County elections board has asked the county prosecutor's office whether any of the independent candidates should be disqualified, said Michael E. Moore, county elections director. He hopes Assistant Prosecutor Keith Anderson will have an opinion ready in time for the election board's July 3 meeting.

For now, the candidates include Republican D. Andrew Batche, Democrat Valerie Finn-Deluca and three independents: Parker and local attorneys James Whitaker and Mitchell Allen.

The Municipal Court judgeship is a six-year term that oversees traffic cases, misdemeanors, and the initial stages of more serious felony cases that occur in Mason and Deerfield Township. The question about whether any of the independents should be disqualified arose after Ohio Secretary of State Jennifer Brunner issued a June 3 advisory to all county elections boards.

A federal appeals court decision "changes longstanding practice in Ohio," Brunner said. Previously, the state only required an independent candidate's campaign to be unaffiliated with a political party. The candidate himself did not have to be "entirely unaffiliated," Brunner said.

The court ruling changes that.

Now, a candidate must be "unaffiliated or disaffiliated from any political party," Brunner said.

Moore declined to disclose the voting histories of any of the three independents, so it's unclear whether that factor could affect the three candidates.

However, Parker was elected to office on the Republican ticket - a factor that could be considered when weighing whether his candidacy as an independent is valid, according to Brunner's advisory.

 Print |  Close Window | Copyright 2007, [Enquirer.com](http://www.enquirer.com)

[Print Article](#)[Close Window](#)

'Independents' day over at polls Elections board nixes 7 hopefuls

By STEPHEN ORAVECZ Tribune Chronicle

Despite claims they were being unfair, the Trumbull County Board of Elections on Tuesday disqualified seven candidates who wanted to run in November as independents.

As a result, the incumbent mayors in Girard and Hubbard have no opposition, and there is no candidate in Niles 1st Ward. That could change, as write-in candidates have until September to declare they are running, but the write-in option is not open to any of the seven. State law prevents a candidate from filing petitions twice in for the same seat in the same election.

Following an advisory from Ohio's top election official, Secretary of State Jennifer Brunner, the elections board said the seven candidates were not really independents. After filing their nominating petitions, they then voted in the May 8 Democratic primary.

Under Ohio law, party affiliation is determined by voting in the Democratic or Republican primary. The advisory, based on a federal court decision, says anyone with a clear party affiliation cannot run as an independent.

Two of the seven candidates who attended the board meeting objected to the timing of the advisory. Independents were required to file nominating petitions by May 7, the day before the primary. But the advisory did not come out until June 4.

Myron A. Esposito, who had planned to run for mayor of Hubbard, said the only fair thing to do would be to grandfather people who filed petitions before the advisory was issued. Past practice in Ohio allowed independents to vote in the primary, and, he said, "No one went around the law intentionally."

Niles 1st Ward Councilman David Wilkerson said, "It's not right. We did everything asked of us."

Wilkerson was trying to run as an independent after he failed to submit enough valid signatures to run in the Democratic primary last May.

Since he cannot run as a write-in, it appears Wilkerson will lose his seat if a write-in candidate files. If no write-ins run, Democrats will appoint someone to fill the vacancy.

Both Wilkerson and Esposito said they are considering legal action. Esposito said he asked board employees if he had to change his party affiliation to run as an independent and he was told no. He also asked if he could vote in the Democratic primary, and he was told he could.

Both answers were correct at the time, but the advisory changed the rules.

Assistant Prosecutor James Saker, who reluctantly advised the board to disqualify the candidates, said the Ohio Supreme Court has ruled governments cannot be held liable for bad advice given by their employees. While the board expressed regret for its unanimous decision, Saker said ignoring Brunner's advisory would put them in a bad legal position if a candidate who is on the ballot challenged their decision.

Saker also said ignorance of the law is no excuse.

"How were we supposed to know?" Wilkerson said, adding that the secretary of state's office are the ones who are ignorant. "Now we have to get a judge to change that."

Board member Ronald Knight said it was the board's duty to follow the law "whether we like it or not. Obviously to more people this does not seem fair to change the rules in the course of the game. Everyone empathizes with the candidates, but the board does not have a choice."

The Mahoning County Board of Elections last month decertified eight independent candidates. The board had placed their names on ballot in May, but reversed its decision following Brunner's advisory.

Both election boards are awaiting a ruling from Brunner about whether her advisory on independents applies to write-in candidates who voted in the May primary. That ruling is still several weeks away.

Also Tuesday, the board hired two part-time employees in response to a request from additional help from the director and deputy director. That decision was a compromise between Democrats, who wanted to hire two full-time workers as the director and deputy director recommended, and the Republicans, who want to hire more part-time and seasonal workers.

On a tie vote, the board rejected a proposal from Knight, a Republican, to merge precincts to save money. He proposed merging 150 precincts into 75 precincts. Democrats oppose major changes until after the 2008 presidential election. Brunner declined to break a tie vote on an earlier proposal from Knight, telling the board to work out a precinct consolidation plan on its own.

The board did make minor changes in Niles. People living in the Howland school district were moved from Precincts 1C and 1F to Precinct 1D and combined Precincts 1C and 1F, eliminating 1F.

soravec@tribune-chronicle.com

Section: News Date Posted: 7/11/2007

A LEGAL PROFESSIONAL ASSOCIATION

BUCKLEY KING

1400 FIFTH THIRD CENTER

600 SUPERIOR AVENUE EAST • CLEVELAND, OHIO 44114-2652

Tel: 216.363.1400 • 800.255.2825 • Fax: 216.579.1020

www.buckleyking.com

Writer's Direct E-Mail: ruple@buckleyking.com

JUL 23 '07 PM 3:36 BOE

July 23, 2007

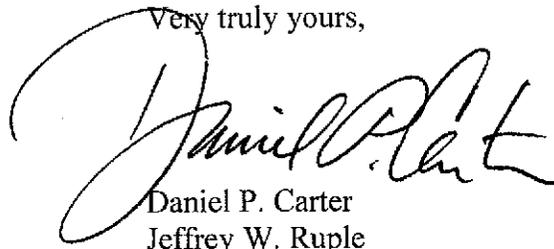
Ms. Jane M. Platten
Director, Cuyahoga County
Board of Elections
2925 Euclid Avenue
Cleveland, OH 44115-2497

Re: Challenge of Maureen Adler Gravens

Dear Ms. Platten:

Enclosed please find the *Reply Brief of Deborah Reese*. Upon review of this brief, should you have any questions, please feel free to contact me.

Very truly yours,



Daniel P. Carter
Jeffrey W. Ruple

JWR/ap
Enclosure

cc: Deborah Reese
Inajo Davis Chappell, Board Member
Robert S. Frost, Board Member
Jeff Hastings, Chairman
Eben O. (Sandy) McNair, IV, Board Member
Reno Oradini, Assistant County Prosecutor

8129\001\LT\017jp003lr.doc

AUG 22 '07 AM 11:04 DIR

IN THE BOARD OF ELECTIONS
CUYAHOGA COUNTY, OHIO

JUL23'07 PM 3:36 BOE

IN RE:)	
)	
Challenge to Maureen Adler Gravens)	<u>REPLY BRIEF OF</u>
)	<u>DEBORAH REESE</u>
)	

I. INTRODUCTION

In her brief, Ms. Adler Gravens (“Ms. Gravens”) argues to the Board of Elections (“BOE”) that she is a “nonpartisan” candidate as opposed to an “independent” candidate. Unfortunately for Ms. Gravens’ argument, the Rocky River Municipal Court race is a partisan election- there is no “nonpartisan” candidate in this election. Therefore, since Ms. Gravens voted in the Democrat primary, evidencing her partisanship, the 6th Circuit Court of Appeals Opinion in *Morrison v. Colley*, 467 F.3d 503 (6th Cir. 2006) and the Ohio Secretary of State’s Advisory Opinion 2007-05. Both mandate that she must be decertified and/or disqualified from this election.

II. RESTATEMENT OF FACTS

Perhaps Ms. Gravens confusion comes from the fact that Form 3-I is used for both Nonpartisan candidates and Independent candidates. (See Ex A: Ohio Secretary of State, Candidate Requirement Guide for Municipal Court Judge) As set forth in the Ohio Secretary of State’s candidate requirement guide for a Municipal Court Judge, the forms to be used are:

- Judicial officers that may be nominated in a partisan primary:
 1. Major Party (Petition #2-h): 50 valid signatures
 2. Independent (Petition #3-I): 50 valid signatures
- Nonpartisan judicial officers nominated by petition or in a nonpartisan primary (Petition #3-1): 50 valid signatures’.

Ms. Gravens argues that she is a “nonpartisan” candidate. She further argues that she has not indicated she is an “Independent” candidate on her declaration of candidacy. Unfortunately, for this argument, the BOE’s 2007 Petition Filing Deadline Dates for Candidates, clearly provides that the Rocky River Judicial race is a “partisan” race. (*See* Brief of Deborah Reese to BOE, dated July 16, 2007, Ex. A: Petition Deadlines.) The form utilized does not control, it is the office being sought that controls.

As for Ms. Gravens statement that Ms. Deborah Reese’s (“Ms. Reese”) letter does not constitute a protest, it is apparent that the Board considered the letter a valid protest by setting a briefing schedule and also a hearing on the matter. Despite this action by the BOE, Ms. Reese, out of an abundance of caution, submitted a second letter on July 12, 2007 setting forth that she is “formally protesting” the candidacy of Ms. Gravens.

II. LAW AND ARGUMENT

A. MS. GRAVENS’ PETITION IS AN UNACCEPTABLE PETITION AND SHOULD NOT BE ACCEPTED ACCORDING TO REV. CODE §3501.39(A) .

In her Brief, Ms. Gravens asserts that her petition is valid and therefore the BOE cannot disqualify her candidacy. The law provides otherwise. Rev. Code §3501.39(A), the provision that deals with Unacceptable Petitions, specifically provides that:

(A) The secretary of state or a board of elections shall accept any petition described in section 3501.38 of the Revised Code **unless one of the following occurs:**

- (1) a written protest against the petition or candidacy, naming specific objections, is filed, a hearing is held, and a determination is made by the election officials with whom the protest is filed that the petition is invalid, in accordance with any section of the Revised Code providing protest procedure.
- (2) A written protest against the petition or candidacy, naming specific objections, is filed, a hearing is held, and a determination is made by the election officials with whom the protest is filed that the petitions violates any requirement established by law.
- (3) The candidate's candidacy or the petition violates the requirements of this chapter, Chapter 3513 of the Revised Code, or any other requirements established by law.

The written protest was filed by Ms. Reese and a hearing has been scheduled for August 6, 2007 by the BOE. Ms. Gravens' petition is invalid as it violates the requirements established by the Sixth Circuit's decision in *Morrison v. Colley*, 461 F.3d 503 (6th Cir. 2006) and the Ohio Secretary of State's Advisory Opinion No. 2007-05 that Ms. Gravens must be an "Independent" Candidate. The "unless" requirements of the statute have been met; therefore, Ms. Graven's petitions are unacceptable.

B. MS. GRAVENS CANNOT BE A NONPARTISAN CANDIDATE BECAUSE THE POSITION OF ROCKY RIVER MUNICIPAL COURT JUDGE IS A PARTISAN POSITION FOR WHICH CANDIDATES ARE EITHER AFFILIATED WITH A MAJOR PARTY OR INDEPENDENT.

Ohio Rev. Code §1901.07(B) permits municipal judges to be elected either in a partisan primary or by nomination in a nonpartisan election. This is also set forth in the Ohio Secretary of State's Candidate Requirement Guide for Municipal Court Judges (Ex. A).

As the BOE is fully aware, the judicial race in question is a "partisan" race where primary elections were held for this position. The Filing Deadlines of the BOE indicate

that in Rocky River's race for judicial office, there was to be a Party Primary Filing, denoted by a "P" and an Independent Filing in a city with a partisan primary, denoted by an "IND". (See Brief of Deborah Reese to BOE, dated July 16, 2007, Ex. A: Petition Deadlines) By contrast, the cities within Cuyahoga County that hold nonpartisan elections are those cities that are denoted with a "NP" after the name of the city. The Filing Deadlines list "Rocky River Judicial" followed by a "P" and an "IND" which clearly shows that Rocky River's judicial office is a partisan race as Ms. Gravens contends.

In a partisan election, candidates are either affiliated with one of the major parties or they are Independent. (See Brief of Deborah Reese to BOE, dated July 16, 2007, Ex. A: BOE Petition Deadlines). Otherwise, the election itself would be considered a nonpartisan election. Therefore, while it is true, as Ms. Graves points out, that §3501.01(B) says that nonpartisan candidates shall file not later than 4 p.m. of the day before the primary election, Ms. Gravens petition cannot be considered a nonpartisan petition solely because she filed on May 2, 2007.

The fallacy of Ms. Gravens' argument is that in a partisan election, there is no "nonpartisan" candidate. There are several statutory provisions discussing the issue of "nonpartisan," elections and "nonpartisan" candidates.

As set forth in Ohio Rev. Code §3501.01, a nonpartisan candidate is defined as:

(J) "Nonpartisan Candidate" means any candidate whose name is required, pursuant to § 3505.04 to be listed on the nonpartisan ballot, including candidates for judicial office, for member of any board of education, for municipal or township offices **in which primary elections are not held for nominating candidates by political parties, and for offices of municipal corporations having charters that provide for separate ballots for elections for these offices.** (emphasis added)

Further, Further, R.C. §3505.04 Nonpartisan Ballot, provides:

On the nonpartisan ballot shall be printed the names of all nonpartisan candidates for election to judicial office, office of member of the state board of education, office of member of a board of education, municipal or township offices for municipal corporations and townships **in which primary elections are not held for nomination of candidate by political parties** , and municipal offices of municipal corporate having charters which provide for separate ballots for elections for such municipal offices.

As is readily apparent, the word “nonpartisan” has no place in the General Election for the Rocky River Municipal Court. As can be seen in both of these statutes “nonpartisan candidate” and “nonpartisan ballot,” refer to cases where there is no primary election. There is no dispute that a primary election was held for this judicial race.

Ms. Gravens also fails to read R.C. §1901.07(B) in its entirety. The statutory provision also states:

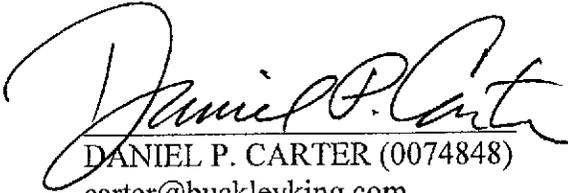
If the jurisdiction of a municipal court extends beyond the corporate limits of the municipal corporation in which it is located ... nonpartisan candidates for the office of municipal court judge shall filing nominating petitions not later than four p.m. of the day before the day of the primary election in the form prescribed by section 3513.261 of the Revised Code. **The petition shall conform to the requirements provided for those petitions of candidacy contained in Section 3513.257 of the Revised Code.**

Of course, as noted, supra, §3513.257, is the provision of the Revised Code addressing **Independent Candidates**.

In sum, “nonpartisan” is not interchangeable with “independent.” An election is either partisan or nonpartisan. This election is a “partisan” election, therefore, a candidate must be a member of a political party or independent. Here- Ms. Gravens declared herself an “independent” by filing Form 3-I with the BOE. Ms. Gravens subsequent voting in the Democrat Primary disqualifies her from the ballot because Ohio law requires an “independent candidate,” must truly be “independent.” *Morrison v.*

Colley, 467 F.3d 503 (6th Cir. 2006); Ohio Secretary of State Advisory Opinion 2007-05. Accordingly, Ms. Reese requests that the BOE decertify and/or disqualify Ms. Gravens from the 2007 General Election.

Respectfully submitted,



DANIEL P. CARTER (0074848)

carter@buckleyking.com

JEFFREY W. RUPLE (0068742)

ruple@buckleyking.com

1400 Fifth Third Center

600 Superior Avenue, East

Cleveland, Ohio 44114-2652

(216) 363-1400

(216) 579-1020 (*facsimile*)

OF COUNSEL:

BUCKLEY KING, LPA

8129\001\017 Reese Response Brief.doc

JUL23'07 PM 2:43 BOE

BOARD OF ELECTIONS
CUYAHOGA COUNTY, OHIO

- IN RE:)
)
 1) Nonpartisan Petition of)
 Maureen Adler Gravens)
)
 2) Protest of)
 Deborah Reese)
)

**REPLY BRIEF OF
MAUREEN ADLER GRAVENS**

Now comes Maureen Adler Gravens, nonpartisan candidate for Judge, Rocky River Municipal Court, by and through counsel, Michael P. Butler and hereby submits this Brief in support in reply to the Brief of Ms. Reese.

RESTATEMENT OF THE CASE

This is a petition case.

There are two matters that are pending before the Board. First, pursuant to O.R.C. §1901.07, §3501.01(J) and the plain language contained in her nominating petition, Judge Gravens has asked that the Board correct its records to reflect her nonpartisan candidacy. Second, Ms. Reese, after initially sending in correspondence, has now submitted a protest.

ISSUES PRESENTED

Does O.R.C. §1901.07 specifically authorize nonpartisan candidates for the office of Judge of Rocky River Municipal Court District?

Does candidate Gravens' nominating petition comply with the requirements of O.R.C. §1901.07?

AUG22'07 AM 11:06 DLR

Does the statement of candidacy signed by Candidate Gravens, made pursuant to O.R.C. §1901.07, contain any declaration of being an “independent”?

Is there a specific statute that prohibits nonpartisan candidates including candidates for judicial office, and school board candidates, from voting in a party primary election?

LAW AND ARGUMENT

I. O.R.C. §1901.07 SPECIFICALLY AUTHORIZES NONPARTISAN CANDIDATES FOR THE OFFICE OF JUDGE, INCLUDING JUDGE OF THE ROCKY RIVER MUNICIPAL COURT DISTRICT.

Ms. Reese asserts at page 1 of her Brief:

“ . . . Rocky River Municipal Court is a ‘partisan’ office, therefore, a candidate must have been included in the partisan primary or filed as an independent candidate.”

This statement is in conflict with the language of O.R.C. §1901.07. This statute, titled Term of Office of Judge - Nomination, Election states in pertinent part the following:

“A) All municipal court judges shall be elected on the nonpartisan ballot for terms of six years.

B) All candidates for municipal judge may be nominated either by nominating petition or by primary election . . .”

“If the jurisdiction of a municipal court extends beyond the corporate limits of the municipal corporation in which it is located or if the jurisdiction of the court does not extend beyond the corporate limits of the municipal corporation in which it is located and no charter provisions apply, **nonpartisan candidates for the office of municipal court judge shall file nominating petitions not later than four p.m. of the day before the day of the primary in the form prescribed by section 3513.261 of the Revised Code.**” (Emphasis Added)

The Rocky River Municipal District, as reflected in the Board's records, extends beyond the corporate limits of the city of Rocky River and includes several other municipalities. By law, nonpartisan candidates for Rocky River Municipal Court District shall file nominating petitions by the end of the day before the primary. Ms. Reese asserts that this time of filing results in an automatic label of "independent". This assertion is factually and legally incorrect.

The Ohio Constitution, Article IV Section 6 titled Election and Compensation of Judges provides in pertinent part:

4) ". . .and laws shall be enacted to prescribe the times and mode of their election."

From this, separate statues have been enacted for various judicial offices. For municipal courts, §1901.07 controls.

Judge Gravens has timely filed a petition in conformity with O.R.C. §1901.07 and has met the general petition requirements of O.R.C. §3513.261 and §3501.38.

II. THE BOARD OF ELECTION'S DUTY IS TO INSPECT PETITIONS AND TO DETERMINE THEIR VALIDITY AND LEGAL SUFFICIENCY.

The Brief of Ms. Reese is captioned "Challenge to Maureen Adler Gravens". The Brief asks the Board to consider this question:

"Should . . . Candidate Maureen Adler Gravens be disqualified as a candidate from the Rocky River Municipal Court for voting in the Democratic Party Primary?"

This Board examines petitions. Ms. Reese's protest and Brief, while making conclusory allegations, fails to specify the defect in the petition that would cause this Board to rule it invalid.

The nominating petition contains the following Statement of Candidacy:

“I, Maureen Adler Gravens, the undersigned, hereby declare under penalty of election falsification that my voting residence address is Rocky River is 21370 Snowflower 44116; And I am a qualified elector. I further declare that I desire to be a candidate for election to the office of Judge in the Rocky River Municipal Court District, for the full term commencing January 1, 2008 at the general election next hereafter to be held.

I hereby declare that, if elected to this office or position. I will qualify therefor.

Dated this 6th day of February, 2007.”

Maureen Adler Gravens
(Print name as it should appear on ballot)

Signed by Maureen Adler Gravens
(Signature of candidate)

A reading of Judge Gravens’ petition provides the simplest solution to this case. Judge Gravens does not assert that she is an “independent” nor does she claim to not be affiliated with a political party. Instead, in conformity with O.R.C. §1901.07, Judge Gravens has stated her qualifications as an elector and as a candidate for the office.

Ms. Reese’s contention that Judge Gravens filed as an independent is not supported by the facts. While relying on the nominating petition (Reese, Exhibit B), Ms. Reese does not specify the term or phrase contained in the petition which supports this fanciful assertion.

Ms. Reese also references certain Board documents (Exhibits A, C, D and E). Of these, only Exhibit A, a Board generated list of deadlines, references the term independent in regard to the Office of Rocky River Municipal Court. This form is incorrect as it is in conflict with the express language of O.R.C. §1901.07 (deadline for nonpartisan candidates). It is a well settled principle of law that the errors of Board employees will not create an estoppel against a public

official, as to prevent the correct application of law. See State, ex rel. Svete v. Board of Elections, 4 Ohio St.2d 16 (1965).

Ms. Reese's protest fails as she has failed to produce any facts demonstrating that Judge Gravens filed an "independent" petition.

III. THERE IS NO STATUE WHICH INVALIDATES THE NOMINATING PETITION OF A NONPARTISAN CANDIDATE WHO EXERCISES THE RIGHT TO VOTE IN PARTY PRIMARY ELECTIONS.

Ms. Reese contends that voting in a party primary results in an automatic disqualification for a nonpartisan candidate. There is no statute that supports this contention. To the contrary, O.R.C. §1901.07, which allows a nonpartisan judicial candidate, requires only that a valid nominating petition be timely filed.

Ms. Reese confuses an independent candidate and a nonpartisan candidate. An independent candidate, as specified by O.R.C. §3501.01 means "any candidate who claims not to be affiliated with a political party". Ms. Reese relies on Morrison, et al. v. Colley, 467 F.3d 503 (2006) which began as a petition case. Morrison's petition, according to the Court and the Secretary of State asserted that he was filing as an independent. Because this claim was factually incorrect, his petition was ruled invalid.

Morrison, supra, and the Secretary of State Advisory apply only to independent candidates. As Judge Gravens' petition does not contain any assertion of this nature, Morrison and the Secretary of State Advisory have no application.

Finally, Ms. Reese attempts to ignore the plain language of O.R.C. §3501.01(J), the nonpartisan candidate definition. This statute is to be read in conformity with O.R.C. §1.42, titled Common and Technical Usage which states:

“Words and phrases shall be read and construed according to the rules of grammar and common usage.”

Nonpartisan candidate means any candidate whose name is required pursuant to §3505.04 of the Code, to be listed on the nonpartisan ballot, including all candidates for judicial office, and candidates of any board of education. The statute then further defines nonpartisan candidates to include municipal or township officials in which primary elections are not held for nominating candidates by political parties. The office of Judge of the Rocky River Municipal Court District is not a municipal or township office but is a statutory office governed by the operation of O.R.C. §1901.07. Again, this statute specifically provides for a **nonpartisan** candidate.

PROCEDURAL OBJECTION

Ms. Reese has submitted newspaper reports concerning other counties and other petitions. This Board is to consider candidate Gravens' petition in accordance with the law. Accordingly, there is an ongoing objection to the “news” articles based on relevancy and hearsay.

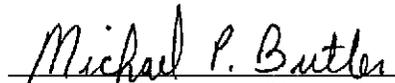
CONCLUSION

The nominating petition of candidate Gravens is valid and in accordance with O.R.C. §1901.07 which specifically provides for a nonpartisan candidate. The Board, in applying this

statute to the facts, is asked to correct its records, properly referencing Maureen Adler Gravens as a nonpartisan candidate.

The protest of Ms. Reese fails in that it is not supported by law or fact.

Respectfully submitted,



Michael P. Butler (#0022180)

Attorney at Law

55 Public Square, Suite 1260

Cleveland, Ohio 44113

(216) 621-8005

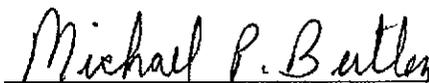
Fax: (216) 621-8378

CERTIFICATE OF SERVICE

A copy of the following was served by ordinary U.S. Mail this 23rd day of July, 2007 upon:

Daniel P. Carter, Esq.
Jeffrey Ruple, Esq.
Buckley King LPA
1400 Fifth Third Center
600 Superior Avenue, East
Cleveland, Ohio 44114-2652

Attorneys for Deborah S. Reese



Michael P. Butler (#0022180)

Attorney at Law

BOARD OF ELECTIONS
CUYAHOGA COUNTY, OHIO

IN RE:)
)
1) Nonpartisan Petition of) ● Notice of Conflict
Maureen Adler Gravens) of Interest
)
2) Protest of) ● Request for Voluntary
Deborah Reese) Disqualification by Board
) Member Robert S. Frost
)

Now comes Maureen Adler Gravens, nonpartisan candidate for Judge, Rocky River Municipal Court District, by and through counsel, Michael P. Butler and hereby respectfully submits the following Notice of Conflict of Interest and Request for Voluntary Disqualification.

STATEMENT OF THE CASE

Maureen Adler Gravens has submitted a nominating petition in conformity with O.R.C. §1901.07 as a nonpartisan candidate for Judge of the Rocky River Municipal Court District. The petition was determined by the Board to be valid but in certifying her name to the ballot, the Board's minutes referred to Mrs. Gravens as an "Independent" candidate. The Board has been asked to correct its minutes to conform with the operation of O.R.C. §1901.07, thereby properly referencing Mrs. Gravens as a nonpartisan candidate.

Deborah Reese has filed a protest which asserts that Mrs. Gravens is an Independent candidate and should be disqualified because she voted in a party primary election. This matter has been set for a Protest Hearing.

JUL25'07 PM 2:41 DIR

FACTUAL BACKGROUND

In addition to Maureen Adler Gravens, the only other candidate certified to the ballot is Brian Hagan.

Mr. Hagan's petition contained several part petitions. One of the part petitions was circulated by Robert S. Frost. A copy of the part petition is attached as Exhibit A.

NOTICE OF CONFLICT OF INTEREST

In conducting a protest hearing, a Board of Elections acts in a quasi-judicial capacity. This long settled principle is stated in State ex. rel. Pucel v. Green (1965), 165 Ohio St. 175. The Court stated:

“In dealing with this question, the election board was acting in a quasi-judicial capacity. Its function was to determine the validity of the petitions offered by the relator with impartiality and fairness both to the candidate and to the electors of the County.” (Emphasis added)

This language was again recited in Beck v. Casey (1990), 51 Ohio St.3d 79 at p. 81.

A conflict of issue arises if a Board member actively participates in a protest hearing concerning the validity of a candidate's petition after having actively campaigned for the only other candidate. Circulating a petition for a candidate is a primary act of political campaigning. Accordingly, if a Board Member circulated Exhibit A, participating in the Protest Hearing concerning the opponent creates a conflict of interest.

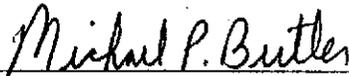
REQUEST FOR VOLUNTARY DISQUALIFICATION

Please note Chapter 35 does not provide a specific statutory means of seeking disqualification. This issue, as a courtesy, has been discussed with the Board's legal advisor,

Assistant Prosecutor Oradini, prior to this submission. This request is made in this manner as there is no other clearly stated means available in the law.

It is respectfully requested, in order to insure impartiality and to avoid the appearance of impropriety that Robert S. Frost voluntarily disqualify himself from participating in the Protest Hearing.

Respectfully submitted,



Michael P. Butler (#0022180)

Attorney at Law

55 Public Square, Suite 1260

Cleveland, Ohio 44113

(216) 621-8005

Fax: (216) 621-8378

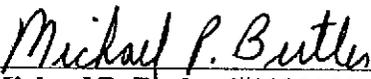
CERTIFICATE OF SERVICE

A copy of the following was served by ordinary U.S. Mail this 25th day of July, 2007 upon:

Daniel P. Carter, Esq.
Jeffrey Ruple, Esq.
Buckley King LPA
1400 Fifth Third Center
600 Superior Avenue, East
Cleveland, Ohio 44114-2652

Reno Oradini, Esq.
Assistant Prosecuting Attorney
1200 Ontario Street
Cleveland, Ohio 44113

Attorneys for Deborah S. Reese



Michael P. Butler (#0022180)
Attorney at Law

**DECLARATION OF CANDIDACY
PARTY PRIMARY ELECTION
For Judge or Clerk of the Municipal Court**

To be filed with the Board of Elections not later than 4 p.m. of the 75th day before the primary election.
Revised Code 1901.07, 31, 3513.05, .07, .08, .09, 10, 191, 3501.38

NOTE - THE CANDIDATE MUST FILL IN, SIGN AND DATE THE STATEMENT OF CANDIDACY BEFORE PETITIONS ARE CIRCULATED.

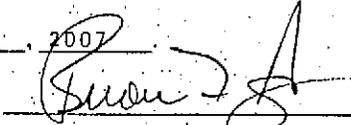
I, BRIAN F. HAGAN, the undersigned, hereby declare under penalty of election falsification that my voting residence address is 3926 Mark Avenue
(Name of Candidate) (Street and Number, if any, or Rural Route Number)
Rocky River, Ohio 44116 and I am a qualified elector:
(City or Village) (Zip Code)

I further declare that I desire to be a candidate for nomination to the office of Judge
(Insert "Judge," or "Clerk")
of the Rocky River Municipal Court, as a member of the Republican

Party for the: full term commencing 01/01/2008 or unexpired term ending _____
(Check one box and fill in the appropriate date)

at the primary election to be held on the 8th day of May, 2007.

I further declare that, if elected to this office or position, I will qualify therefor, and I will support and abide by the principles enunciated by the Republican Party.

Dated this 1st day of February, 2007

(Signature of Candidate)

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

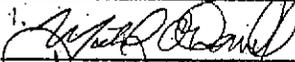
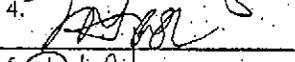
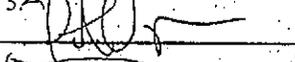
PETITION FOR CANDIDATE

(This petition shall be circulated only by a member of the same political party as stated above by the candidate)

We, the undersigned qualified electors of the State of Ohio, whose voting residence is in the county, city, village, or township, set opposite our names, and members of the Republican Party, hereby certify that Brian F. Hagan, whose declaration of candidacy is filed herewith, is in our opinion, well
(Name of Candidate)

qualified to perform the duties of the office or position to which the person desires to be elected.

Signatures on this petition must be from only one county and must be written in ink. Signatures on this petition shall be of persons who are of the same political party as stated above by the candidate.

SIGNATURE	VOTING RESIDENCE ADDRESS STREET AND NUMBER	CITY, VILLAGE, TOWNSHIP	COUNTY	DATE OF SIGNING
	2347 WINDWOOD AVE	Rocky River	Cuyahoga	2/1/2007
	21179 STRATFORD	Rocky River	City	2/6/07
	19530 BLACKCLIFF	R.R.	Cuyahoga	2-6-07
	27779 Stratford	R.R.	Cuyahoga	2-6-07
	20309 Kramer Dr.	Rocky River	Cuyahoga	2-6-07
	3600 EL DORADO DR.	ROCKY RIVER	CUYAHOGA	2-7-07
7.				

SIGNATURE	ADDRESS STREET AND NUMBER	VILLAGE, TOWNSHIP	COUNTY	DATE OF SIGNING
8.				
9.				
10.				
11.				
12.				
13.				
14.				
15.				
16.				
17.				
18.				
19.				
20.				
21.				

CIRCULATOR STATEMENT - Must be completed and signed by circulator.

I, ROBERT S. FROST, declare under penalty of election falsification that I am a qualified elector of
 (Printed Name of Circulator)

the State of Ohio and reside at the address appearing below my signature; that I am a member of the
REPUBLICAN Party; that I am the circulator of the foregoing petition containing 6
 (Number)

signatures; that I witnessed the affixing of every signature; 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 or of an attorney in fact acting pursuant to section 3501.382 of the Revised Code

RF
 (Signature of Circulator)

18126 W. Clinton Rd.
 (Permanent residence address in this state)

Eastwood OH 44107
 (City or Village and Zip Code)

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

County Board of Elections
 Form 2-H -- Declaration of Candidacy of

Candidate for _____

 Filed _____

Certificate of Validity
 REVISED CODE 3501.11

We, the undersigned members of the Board of Elections of this county, certify that we have reviewed and examined the foregoing petition and find it to be sufficient and valid, and caused our signatures and official seal to be affixed at _____, Ohio.

this _____ day of _____

Chairperson _____
 Member _____
 Member _____
 Member _____
 Director _____

(seal)

2007
OHIO CANDIDATE
REQUIREMENT GUIDE



Dear prospective Ohio candidate:

The strength of our open democracy depends on the participation of our citizens. By becoming active in the voting process, citizens empower their leaders. That civic participation does not stop at the polls. Citizens like yourself also choose to serve their nation, state and even local communities by running for office.

In the beginning, the prospect of running for office can be intimidating, considering the many laws and regulations that provide a consistent and fair electoral process. This guide will help you understand and follow that process. If you need further information, you may contact our elections division at (614) 466-2585. Additionally, the online version of this guide, available at www.sos.state.oh.us contains links to the text of the Ohio Revised Code cited throughout this book.

By running for office, you are choosing to embark on a path to serve your community and your fellow citizens. We in the Secretary of State's office applaud your participation and pledge to work to provide a system that is free, fair, open and honest.

Sincerely,

Jennifer Brunner
Ohio Secretary of State

This page intentionally left blank.

TABLE OF CONTENTS

GENERAL REQUIREMENTS FOR 2007 CANDIDATES	1
MUNICIPAL CORPORATIONS	1
MUNICIPAL LIMITED HOME RULE.....	2
MUNICIPAL OFFICES (OTHER THAN JUDGE OR COURT CLERK).....	2
I. MUNICIPAL CORPORATIONS (UNDER 2,000 POPULATION)	3
II. MUNICIPAL CORPORATIONS (2,000 OR MORE POPULATION)	4
MUNICIPAL JUDGE	8
MUNICIPAL COURT CLERK.....	10
TOWNSHIP OFFICES.....	11
BOARDS OF EDUCATION.....	12
WRITE-IN CANDIDATES	15
ELIMINATION OF PRIMARY ELECTION.....	16
PETITIONS.....	17
PROTESTS.....	20
UNEXPIRED TERMS.....	21
DEATH OR WITHDRAWAL OF CANDIDATE	24
OBSERVERS	25
RECOUNTS AND CONTESTS.....	27
CAMPAIGN FINANCE REPORT.....	28
CAMPAIGN LITERATURE	29
PERSONAL FINANCIAL DISCLOSURE STATEMENT	29
2007 OHIO ELECTIONS CALENDAR.....	31

This page intentionally left blank.

GENERAL REQUIREMENTS FOR 2007 CANDIDATES

In 2007, candidates in Ohio will run for municipal and township offices, municipal court judgeships, municipal court clerkships, and boards of education. This guide has been compiled to provide candidates with the basic information necessary to file for office. Please note that this is only a brief summary and should not be regarded as a complete digest of laws affecting candidates. The requirements outlined in this summary are accurate as of December 1, 2006. Subsequent legislative or judicial action may change these requirements.

For further information, contact your county board of elections or call the Secretary of State's Elections Division at (614) 466-2585.

Note: As used herein, "R.C." refers to the Revised Code of Ohio and "OH Const." refers to the Ohio Constitution.

MUNICIPAL CORPORATIONS: CITIES AND VILLAGES

As used in Ohio law, the terms "municipal corporation" or "municipality" refer either to a city or a village. A municipal corporation's classification as a city or village is based on its population as determined by the most recent decennial federal census or, alternatively, the number of registered electors at the most recent general election. Municipal corporations that, at the last federal census, had a population of 5,000 or more, or at the last general election had 5,000 registered electors, are classified as cities. All other municipal corporations are classified as villages (R.C. 703.01, 703.011).

Although many of the elective offices of cities and villages share common names, those offices are governed by different statutes. A candidate should become familiar with the statutes that set forth the duties of, and eligibility requirements for, the specific office the candidate seeks.

Also, note that, for election purposes, the law distinguishes between villages with populations of fewer than 2,000, and those with populations between 2,000 and 4,999.

MUNICIPAL LIMITED HOME RULE

Ohio law allows municipal corporations to organize under one of four specific plans of government that provide a limited amount of home rule. These plans – the charter, commission, city manager, and federal plans – are provided for in Article XVIII of the Ohio Constitution and Chapter 705. of the Revised Code of Ohio. A candidate seeking election to a municipal office governed by one of the home rule plans must be familiar with the constitutional and statutory provisions that set forth the duties of, and eligibility requirements for, that office.

MUNICIPAL OFFICES

OTHER THAN JUDGE OR COURT CLERK

Note: These provisions may not apply if a municipal corporation has adopted a charter or other form of limited home rule government.

TERMS OF OFFICE

(unless a controlling home rule provision provides otherwise)

Mayor: Four years, commencing 1/1/2008 (OH Const. Art. XVIII §7; R.C. 733.02, 733.24)

Member, Legislative Authority:

- City: Two years, commencing 1/1/2008 (OH Const. Art. XVIII §7; R.C. 731.03)
- Village: Four years, commencing 1/1/2008 (OH Const. Art. XVIII §7; R.C. 731.09)

President, Legislative Authority (City): Two or four years, commencing 1/1/2008 (R.C. 733.09)

Director of Law (City): Four years, commencing 1/1/2008 (R.C. 733.49)

Auditor (City): Four years, commencing 1/1/2008 (R.C. 733.10)

Treasurer: Four years, commencing 1/1/2008 (R.C. 733.42)

Village Clerk: Four years, commencing 4/1/2008 (R.C. 733.26)

Village Clerk-Treasurer: Four years, commencing 4/1/2008 (R.C. 733.261)

Village Board of Trustees of Public Affairs: Two or four years, as provided in R.C. 735.28, commencing 1/1/2008.

I. MUNICIPAL CORPORATIONS INCLUDING VILLAGES WITH LESS THAN 2,000 POPULATION

In a statutory village with a population of less than 2,000, all candidates are nominated by petition, unless the village voters adopted provisions to hold partisan primary elections pursuant to R.C. 3513.01. If the village has not adopted partisan elections, all candidates are designated as nonpartisan candidates.

QUALIFICATIONS

RESIDENCY REQUIREMENT:

- Legislative authority (council): One year in the village immediately before the election (R.C. 731.12)
- Mayor: One year in the village immediately before the election (R.C. 733.24)
- All other offices: Resident of the village (R.C. 3.15, 733.26, 733.261, 3513.05)

MINIMUM AGE:

18 years, as of the date of the general election (OH Const. Art. V §1, Art. XV §4)

OTHER:

- Must be a registered elector of the village (OH Const. Art. V §1, Art. XV §4; R.C. 3.15, 731.03, 731.09, 731.12, 733.10, 733.24, 733.26, 733.261, 733.42, 733.29).
- Director of law: Must be an attorney admitted to practice in this state (R.C. 733.50).

PETITION FORMS - CANDIDATE'S NAME TO BE PRINTED ON THE BALLOT:

- For individual candidates: #3-M
- For a group of candidates: #3-MA

SIGNATURE REQUIREMENTS:

10 valid signatures (R.C. 3513.251)

FILING FEE:

\$30 (R.C. 3513.10, 3513.251, 3513.261)

PETITION FILING DEADLINES:

All candidates nominated by petition for nonpartisan municipal offices in statutory villages with less than 2,000 population must file by 4 p.m. on August 23, 2007 the 75th day before the November 6 general election (R.C. 3513.251).

WHERE TO FILE:

County board of elections office (R.C. 3513.251)

Note: If the village is located in more than one county, the petition is filed with the board of elections in the most populous county.

(Write-in candidacies, refer to page 15).

**II. MUNICIPAL CORPORATIONS-
INCLUDING VILLAGES WITH POPULATION OVER 2,000,
BUT LESS THAN 5,000; CITIES WITH POPULATION OR
REGISTERED ELECTORS OVER 5,000**

Candidates for municipal office will be nominated by petition as nonpartisan candidates **unless** one or more of the following applies:

- the electors of the municipal corporation have petitioned to have partisan elections,
- previous municipal elections in that municipality were partisan, or
- a municipal charter provides otherwise.

Candidates for nonpartisan office who want their names printed on the ballot will file nominating petitions.

Candidates for offices nominated through a partisan primary who want their names printed on the ballot will file either a declaration of candidacy (primary candidates) or nominating petition (independent candidates).

**A. PARTY CANDIDATES
NAMES TO BE PRINTED ON PRIMARY ELECTION BALLOT**

QUALIFICATIONS

RESIDENCY REQUIREMENT:

- Mayor, Village with population of 2,000 - 4,999: One year in the village immediately preceding election (R.C. 3.15, 733.24)
- Mayor, City: Resident of the city (R.C. 3.15)

- President, City legislative authority: Resident of the city (R.C. 3.15)
- Legislative authority: One year in the village, city or ward immediately preceding election (R.C. 3.15, 731.02, 731.12)
- All other offices: Resident of the city or village (R.C. 3.15)

MINIMUM AGE:

18 years, as of the date of the general election
(OH Const. Art. V §1, XV §4)

OTHER:

- Must be a registered elector of the city or village (OH Const. Art. V §1, Art. XV §4, R.C. 3.15, 731.02, 731.12, 733.09, 733.10, 733.24, 733.42, 733.49).
- Director of law: Must be an attorney admitted to practice in this state (R.C. 733.50).

PETITION FORM NUMBER:

#2-1.

SIGNATURE REQUIREMENTS:

Ward council representative: 25 valid signatures;
All other offices: 50 valid signatures (R.C. 3513.05)

FILING FEE:

\$30 for village office; \$45 for city office (R.C. 3513.10)

PETITION FILING DEADLINE:

4 p.m. on February 22, 2007 (75 days before the May 8 primary election).
Candidates whose petitions are certified will run in the primary election, unless the primary is eliminated under R.C. 3513.02 (see "*Elimination of Primary Election*," page 14; *see also* R.C. 3513.04, 3513.05).

FILED WITH:

County board of elections office (R.C. 3513.05)

<p><i>Note: If the municipal corporation is located in more than one county, the petition is filed with the board of elections in the most populous county.</i></p>

(Write-in candidacies, refer to page 15).

B. INDEPENDENT CANDIDACIES:

“NONPARTY” OR “OTHER-PARTY” CANDIDATES

NAMES TO BE PRINTED ON GENERAL ELECTION BALLOT

Note: Although Ohio's election laws refer to "independent candidates," the descriptive term "independent" cannot be printed below candidates' names on the general election ballot. A non-judicial independent candidate may request, when filing his or her nominating petition (#3-N), to have one of two designations – "nonparty candidate" or "other-party candidate" – printed below his or her name on the ballot. Independent candidates who do not make such a request will not have anything printed below their names on the ballot. (R.C. 3513.257)

QUALIFICATIONS

RESIDENCY REQUIREMENT:

- Mayor, Village with population of 2,000 - 4,999: One year in the village immediately preceding election (R.C. 3.15, 733.24)
- Mayor, City: Resident of the city (R.C. 3.15)
- President, City legislative authority: Resident of the city (R.C. 3.15)
- Legislative authority: One year in the village, city or ward immediately preceding election (R.C. 3.15, 731.02, 731.12)
- All other offices: Resident of the city or village (R.C. 3.15)

MINIMUM AGE:

18 years, as of the date of the general election
(OH Const. Art. V §1, XV §4)

OTHER:

- Must be a registered elector of the city or village (OH Const. Art. V §1, Art. XV §4; R.C. 3.15, 731.02, 731.12, 733.09, 733.10, 733.24, 733.42, 733.49).
- Director of law: Must be an attorney admitted to practice in this state (R.C. 733.50).

PETITION FORM NUMBER:

#3-N

SIGNATURE REQUIREMENTS:

Based on the number of votes cast in the municipal corporation in the last general election for governor (R.C. 3513.257):

<i>Number of votes cast:</i>	<i>Number of valid signatures required:</i>
<i>Less than 5,000</i>	<i>25 signatures or 5 percent of vote (whichever is less)</i>
<i>5,000 or more</i>	<i>1 percent of vote</i>

FILING FEE:

\$30 for village office; \$45 for city office (R.C. 3513.10)

PETITION FILING DEADLINE:

4 p.m. on May 7, 2007 (the day before the May 8 primary election) (R.C. 3513.257, 3513.261).

FILED WITH:

County board of elections office (R.C. 3513.05)

Note: If the municipal corporation is located in more than one county, the petition is filed with the board of elections in the most populous county.

C. NONPARTISAN CANDIDATES

NAMES TO BE PRINTED ON BALLOT

QUALIFICATIONS

RESIDENCY REQUIREMENT:

- Legislative authority: One year in the village, city or ward immediately preceding election (R.C. 3.15, 731.02, 731.12)
- Mayor – Village with population of 2,000 - 4,999: One year in the village immediately preceding election (R.C. 3.15, 733.24)
- Mayor – City: Resident of the city (R.C. 3.15)
- All other offices: Resident of the city or village (R.C. 3.15)

MINIMUM AGE:

18 years, as of the date of the general election
(OH Const. Art. V §1, XV §4)

OTHER:

- Must be a registered elector of the city or village (OH Const. Art. V §1, Art. XV §4, R.C. 3.15, 731.02, 731.12, 733.09, 733.10, 733.24, 733.42, 733.49).

- Director of law: Must be an attorney admitted to practice in this state (R.C. 733.50).

PETITION FORM NUMBER:

#3-O

SIGNATURE REQUIREMENTS:

50 valid signatures (R.C. 3513.251).

FILING FEE:

\$30 for village office; \$45 for city office (R.C. 3513.10, 3513.261)

PETITION FILING DEADLINE:

4 p.m. on August 23, 2007 (75 days before the November 6 election)
(R.C. 3513.251, 3513.261).

FILED WITH:

County board of elections office (R.C. 3513.05)

Note: If the municipal corporation is located in more than one county, the petition is filed with the board of elections in the most populous county.

MUNICIPAL JUDGE

R.C. 1901.07 prescribes the method of nomination of municipal judges based on the jurisdiction of the court and the applicability of municipal charter provisions. Municipal judge candidates should review closely R.C. 1901.07 and consult with their local board of elections to determine particular filing requirements in their jurisdiction. All candidates for municipal judge are nominated either by nominating petition or by primary election. If two or more judges of the same court are to be elected, each person filing a declaration of candidacy or a nominating petition as a candidate for election to the office of judge of the court shall state when the term of office commences.

TERM:

Six years; commencement dates vary (R.C. 1901.07)

QUALIFICATIONS

RESIDENCY REQUIREMENT:

In the territorial jurisdiction of the court (R.C. 3.15. 1901.06)

MAXIMUM AGE:

70 years, as of the date of the general election (OH Const. Art. IV §6)

EXPERIENCE:

Six years admitted to, and engaged in, the practice of law, or prior service as a judge of a court of record in the United States, or both (R.C. 1901.06)

OTHER:

Registered voter in the territorial jurisdiction of the court (1901.06)

PETITION FORM NUMBERS:

- Party candidates: #2-H
- Independent candidates: #3-I
- Nonpartisan candidates: #3-I

SIGNATURE REQUIREMENTS:

(R.C. 1901.07, 3513.05, 3513.257)

Note: In certain charter municipal corporations, the petition, signature or filing requirements may differ. Contact your local board of elections for specific requirements.

- Judicial offices that may be nominated in a partisan primary:
 1. Major party (Petition #2-H): 50 valid signatures
 2. Independent (Petition #3-I): 50 valid signatures
- Nonpartisan judicial offices nominated by petition *or* in a nonpartisan primary (Petition #3-I): 50 valid signatures
- Municipal courts specified in R.C. 1901.07(C)(1)-(6) [*Akron, Cleveland and Toledo municipal courts, and the Auglaize, Brown, Clermont, Crawford, Franklin, Hamilton, Hocking, Jackson, Lawrence, Madison, Miami, Morrow, Portage and Wayne county municipal courts*]
(Nominated only by Petition #3-I): 50 valid signatures

FILING FEE:

\$80 (R.C. 3513.10, 3513.261)

PETITION FILING DEADLINES:

- #2-H (partisan primary election): 4 p.m. on February 22, 2007 (75 days before the May 8 primary election) (R.C. 1901.07, 3513.05)
- #3-I (independent or nonpartisan candidates): 4 p.m. on May 7, 2007 (day before the May 8 primary election) (R.C. 1901.07, 3513.257, 3513.261)

FILED WITH:

County board of elections office (R.C. 3513.05)

Note: If the court is located in more than one county, the petition is filed with the board of elections in the most populous county unless otherwise provided for in law.

MUNICIPAL COURT CLERK

Requirements for candidates for municipal court clerk are specified in R.C. 1901.31. Generally, municipal court clerks are elected in municipal court jurisdictions with populations of 100,000 or more and appointed in jurisdictions with populations under 100,000, but there are numerous exceptions (e.g., Akron, Barberton, Cuyahoga Falls, Toledo, Hamilton County, Portage County and Wayne County municipal courts).

Elected clerks are nominated and elected in the same manner provided for judges of the court. Review R.C. 1901.31 and 1901.07 and consult the appropriate county board of elections for specific information regarding this office.

Note: In certain charter municipal corporations, the petition, signature or filing requirements may differ. Contact your local board of elections for specific requirements.

TERM:

Six years, commencing 1/1/2008 (R.C. 1901.31)

QUALIFICATIONS

RESIDENCY REQUIREMENT:

In the territorial jurisdiction of the court (R.C. 3.15, 1901.06)

MINIMUM AGE:

18 years, as of the date of the general election
(OH Const. Art. V §1, Art. XV §4)

OTHER:

Registered voter in the territorial jurisdiction of the court (R.C. 1901.06, 1901.31)

PETITION FORM NUMBERS:

#2-H for party candidates
#3-I for independent candidates

SIGNATURE REQUIREMENTS:

50 valid signatures, unless otherwise provided in law (R.C. 1901.31, 3513.05, 3513.257)

FILING FEE:

\$80 (R.C. 3513.10, 3513.261)

PETITION FILING DEADLINES:

- #2-H (partisan primary election): 4 p.m. on February 22, 2007 (75 days before the May 8 primary election) (R.C. 1901.07, 3513.05)
- #3-I (independent or nonpartisan candidates): 4 p.m. on May 7, 2007 (day before the May primary election) (R.C. 1901.07, 3513.257, 3513.261)

FILED WITH:

County board of elections office (R.C. 3513.05)

Note: If the court is located in more than one county, the petition is filed with the board of elections in the most populous county unless otherwise provided for in law.

TOWNSHIP OFFICES

In 2007, there will be a fiscal officer (formerly designated as the "clerk") and one trustee elected in each township to a full term. Candidates for township office are nominated by nominating petition as nonpartisan candidates, unless a majority of the voters of the township have adopted provisions to hold a primary election (R.C. 3513.01, 3513.253).

TERM:

FISCAL OFFICER:

Four years, commencing 4/1/2008 (R.C. 507.01)

TRUSTEE:

Four years, commencing 1/1/2008 (R.C. 505.01)

QUALIFICATIONS

RESIDENCY REQUIREMENT:

In the township (R.C. 3.15)

MINIMUM AGE:

18 years, as of the date of the general election
(OH Const. Art. V §1, Art. XV §4)

OTHER:

Registered elector of the township (OH Const. Art. V §1, Art. XV §4)

PETITIONS FORM NUMBER:

#3-R

SIGNATURE REQUIREMENTS:

25 valid signatures (R.C. 3513.253)

FILING FEE:

\$30 (R.C. 3513.10, 3513.261)

PETITION FILING DEADLINE:

4 p.m. on August 23, 2007 (75 days before the November 6 election)
(R.C. 3513.253)

FILED WITH:

County board of elections office (R.C. 3513.253)

Note: If the court is located in more than one county, the petition is filed with the board of elections in the most populous county.

BOARD OF EDUCATION

The number of members of a board of education to be elected in 2007 differs in each school district. Nomination of candidates for board of education may be made by:

- nominating petition (R.C. 3513.254, 3513.255), or
- if approved by the board of education, by a nonpartisan primary election held on the same day as the primary election for nominating all other candidates for public office in that year (R.C. 3513.256).

TERM:

Four years, commencing 1/1/2008 (R.C. 3313.09)

QUALIFICATIONS

RESIDENCY REQUIREMENT:

In the territory comprising the district (R.C. 3.15, 3313.01)

MINIMUM AGE:

18 years, as of the date of the general election
(OH Const. Art. V §1, Art. XV §4)

OTHER:

Registered voter in the territory comprising the district (R.C. 3313.01)

PETITIONS - NO PRIMARY:

- City, local or exempted village board:
 - Individual candidate - #3-T
 - Group of candidates - #3-U
 - Newly formed local school board - #3-V
- Governing board of educational service center (ESC):
 - Individual candidate (at-large or district) - #3-W
 - Group of at-large candidates - #3-X
 - Newly formed ESC, individual candidate - #3-Y
 - Newly formed ESC, group of candidates - #3-YA

PETITIONS - NONPARTISAN PRIMARY:

City, local, exempted village (individual candidate) - #2-V
Individual ESC candidate - #2-W
Newly formed ESC - #2-X

SIGNATURE REQUIREMENTS:

City (#2-V, #3-T, #3-U, #3-V): based on the population of the school district (R.C. 3513.254):

Population of city school district: Number of valid signatures required:

<i>Fewer than 20,000</i>	<i>25</i>
<i>20,000 - 49,999</i>	<i>75</i>
<i>50,000 - 99,999</i>	<i>150</i>
<i>100,000 or more</i>	<i>300</i>

Local school district (#2-V, #3-T, #3-U, #3-V):
25 valid signatures (R.C. 3513.254)

Exempted Village (#2-V, #3-T, #3-U, #3-U):
25 valid signatures (R.C. 3513.254)

ESC (#2-X, #2-W, #3-W, #3-X, #3-Y, #3-YA):
50 valid signatures (R.C. 3513.255)

FILING FEE:

\$30 (R.C. 3513.10, 3513.261)

PETITION FILING DEADLINES:

- *Primary*: 4 p.m. on February 22, 2007 (the 75th day before the May 8 primary) (R.C. 3513.256(A))
- *No primary*: 4 p.m. on August 23, 2007 (the 75th day before the November 6 general election) (R.C. 3513.254, 3513.255)

FILED WITH:

County board of elections office (R.C. 3513.254)

Note: If the school district is in more than one county, the petition is filed in the most populous county.

Educational service center: petition filed with board of elections of the county in which the central administrative offices are located (R.C. 3513.255).

WRITE-IN CANDIDATES

To be a write-in candidate, a person must file a declaration of intent (Form 13). Only write-in candidates who timely file a properly completed declaration of intent will have votes counted in the primary or general election for which the candidate filed (R.C. 3513.041).

QUALIFICATIONS

A write-in candidate must meet all of the eligibility requirements of the office (*See specific office for qualifications*).

FILING FEE:

A write-in candidate must pay the same filing fee as any other candidate for the office (R.C. 3513.10).

FILING DEADLINES:

- Primary election: 4 p.m. on March 7, 2007 (62 days before the May 8 election) (R.C. 3513.041).

Note: If the primary election is eliminated pursuant to R.C. 3513.02 (see page 16), the board of elections cannot accept declarations of intent to be write-in candidates at the primary. (OAG 73-094)

- General election: 4 p.m. on September 5, 2007 (62 days before the November 6 general election). (R.C. 3513.041)

FILED WITH:

Write-in candidates must file their declaration of intent with the appropriate county board of elections.

ELIMINATION OF PRIMARY ELECTION

Section 3513.02 of the Revised Code of Ohio provides that a municipal partisan primary election shall not be conducted under certain circumstances.

In accordance with R.C. 3513.02, if:

- no valid declaration of candidacy is filed by a candidate of a political party for election to any of the offices to be voted for at the general election in that year, or
- not more than one party declaration of candidacy is filed for each office to be voted upon at the general election,

then no primary election will be conducted for that political party.

However, if the only office for which there is a primary contest is that for member of council in a ward, then a primary election will be held for that party only in the ward in which there is a contest, and only the names of the candidates for that ward office will appear on the party's ballot (R.C. 3513.02).

POLITICAL PARTY AFFILIATION OF CANDIDATES FOR PARTY NOMINATION

Revised Code §3513.191(B) provides that, regardless of how the person voted in prior partisan primary elections, either of the following persons may be candidates for nomination of any political party at a party primary:

- A person who does not hold an elective office, or
- A person who holds an elective office other than one for which candidates are nominated at a party primary election.

Additionally, R.C. 3513.191(C) provides that a person who holds an elective office for which candidates are nominated at a party primary may become a candidate for a different political party if the person completes and files the Secretary of State's prescribed Form 10-Y (*Declaration of Intent to Change Political Party Affiliation*) by 4 p.m. on the 30th day before the filing deadline for declaration of candidacy and petition. However, the person may file a Form 10-Y only once during a 10-year period.

See also R.C. 3513.04 and R.C. 3513.052 for provisions that govern and/or restrict candidacies.

PETITIONS

County boards of elections will provide a candidate with a sufficient number of petition forms; although they are not required to do so. Candidates are permitted to make copies of the forms in the manner they were provided.

GROUP PETITIONS

Ohio law provides for a "group petition" to be used by candidates nominated only by nominating petition for the following offices: member of a board of education, township trustee (used in years when two trustees are to be elected), and offices of villages of under 2,000 population. (R.C. 3513.261)

If a group of candidates for one of these offices wants to jointly circulate and file a single petition, they may do so by using the appropriate form:

- #3-K (township office);
- #3-MA (offices in villages with under 2,000 population);
- #3-U (city, local, or exempted village board of education);
- #3-X (at-large members of educational service center); or
- #3-YA (members of newly formed educational service center).

Each of the two or more candidates named in the group petition must sign the "Statement of Candidacy," and each must pay a separate filing fee. All the signatures affixed to the petition are credited to each candidate named on the petition. (R.C. 3513.10, 3513.261)

RULES GOVERNING PETITIONS

1. The "Statement of Candidacy" portion of each petition paper must be completely filled out and signed by the candidate(s) before being circulated. (R.C. 3513.07, 3513.261)
2. Only qualified electors may sign a petition. An elector's qualifications are determined as of the date the petition is filed. (R.C. 3501.38 (A))
3. Each signature must be an original signature of an elector or the elector's duly appointed attorney in fact, written in ink. "Signature" means that person's written, cursive-style legal mark written in that person's own hand. (R.C. 3501.38 (B), 3501.382, 3501.011, 3519.051)

4. Each signature must be personally affixed by a registered elector who is qualified to vote on the candidacy *or* by the elector's duly appointed attorney in fact who is acting pursuant to R.C. 3501.382. The elector's name also may be printed underneath or next to the elector's signature. (R.C. 3501.38)

5. Each signer's residence address and the date of signing must be placed on the petition after the elector's signature. (R.C. 3501.38 (C))

6. Petitions for a candidate for party nomination must be signed and circulated by qualified voters who are members of the same political party as the candidate. (R.C. 3513.05)

An elector is considered to be a member of a political party if the elector voted in the primary election of only that party within the preceding two calendar years, or did not vote in any other party's primary election within the preceding two calendar years. (R.C. 3513.05, seventh paragraph)

7. a. A candidate may circulate his or her own petition, but cannot sign his or her own petition as an elector. For the purpose of circulating his or her own petition, a candidate is exempted from the party affiliation requirements described above. (R.C. 3513.191 (C)(4))

b. A circulator may not sign the same petition paper that he or she is circulating. However, an otherwise eligible circulator may sign a petition paper being circulated for the same candidacy by a different circulator.

8. After circulating the petition, the circulator must sign a statement on each petition paper, under penalty of election falsification:

a. Indicating the number of signatures contained on the petition;

b. That the circulator witnessed the affixing of each signature on the petition;

c. That all signers, to the best of the circulator's knowledge and belief, were qualified to sign; *and*

d. That each signature is, to the best of the circulator's knowledge and belief, the signature of the person whose signature it purports to be.

If a circulator knowingly permits an unqualified person to sign a petition paper or permits a person to write a name other than the person's own on a petition paper, that petition paper is invalid; otherwise, the signature of a person not qualified to sign shall be rejected, but shall not invalidate the other valid signatures on the paper. (R.C. 3501.38 (E) and (F))

9. Once a petition has been filed in a public office, it cannot be changed, supplemented or, in the case of a candidate's petition, withdrawn. Certain initiative and referendum petitions may be withdrawn in accordance with law. (R.C. 3501.38 (I))
10. The original petition with the candidate's original signature must be filed at the same time as all part-petitions are filed. (R.C. 3501.38 (K))
11. Each petition paper shall be circulated by one person only, and shall contain signatures of qualified electors of one county only. When petitions are circulated in a district that contains more than one county, separate petition papers must be circulated in each county. (R.C. 3501.38, 3513.05, 3513.07, 3513.261)
12. No petition shall be filed with more than three times the minimum number of required signatures. (R.C. 3513.05, 3513.257, 3513.259)
13. All petitions must contain the following statement in boldface capital letters: "WHOEVER COMMITS ELECTION FALSIFICATION IS GUILTY OF A FELONY OF THE FIFTH DEGREE." (R.C. 3501.38(J), 3599.36)
14. All petitions remain open for public inspection, under reasonable regulations, at the board of elections in which they were filed. (R.C. 3513.05, 3513.262)

PROTESTS

GENERALLY

Protests against the candidacy of any person must be in writing, must set forth with specificity the legal ground(s) for the protest, and must be filed with the board of elections with which the candidate filed his/her declaration of candidacy, nominating petition or declaration of intent to be a write-in candidate. (R.C. 3513.041, 3513.05, 3513.262, 3513.263)

After a valid protest is filed, the board of elections will set a time and place for a public hearing and give notice to both the person whose candidacy is being protested and the protester. (R.C. 3513.05, 3513.262, 3513.263) Both the protester and the protested candidate, or their respective legal counsel, will have the opportunity to address the board at the hearing.

PARTISAN PRIMARY CANDIDACY

Protests against a candidate in a partisan primary may be made by the controlling committee of that party, or by any qualified elector who is a member of the same party as the candidate and who is eligible to vote for the candidate whose petition is the subject of the protest. (R.C. 3513.041, 3513.05)

- The deadline to file a protest against any candidate who filed a declaration of candidacy and nominating petition for the May 8 partisan primary is 4 p.m. on March 5, 2007 (64th day before the primary election). (R.C. 3513.05)
- The deadline to protest a write-in candidacy for the May 8 primary is 4 p.m. on March 12, 2007 (57th day before the primary election). (R.C. 3513.041)

INDEPENDENT CANDIDACY

Protests against an independent candidate may be made by any registered voter who is eligible to vote for the candidate whose petition is the subject of the protest. The deadline to file a protest against any candidate who filed a nominating petition as an independent candidate is 4 p.m. on July 30, 2007. (R.C. 3513.262)

NONPARTISAN CANDIDACY

Any elector eligible to vote on the candidacy of a candidate for nonpartisan office may protest that candidacy. The protest filing deadline is 4 p.m. on September 4, 2007 (64th day before the general election;

deadline carries over to Tuesday because of the Labor Day holiday).
(R.C. 3513.263)

WRITE-IN CANDIDACY - GENERAL ELECTION

Any elector eligible to vote on the candidacy of a write-in candidate may protest that candidacy. The protest filing deadline is 4 p.m. on September 10, 2007 (57th day before the general election.), (R.C. 3513.041)

UNEXPIRED TERMS

GENERALLY

Vacancies may occur in public elective offices due to an officeholder's death, resignation, removal, or failure to satisfy the legal requirements to take or remain in office. Some vacancies in public elective office will be filled for the remainder of the unexpired term by appointment; others will be filled by appointment only until a successor is elected for the remainder of the term.

The general statutory provisions governing elections for the remainder of unexpired terms ("unexpired term elections") are set forth in R.C. 3.02(A), which states:

When an elective office becomes vacant and is filled by appointment, such appointee shall hold the office until his successor is elected and qualified; and such successor shall be elected for the unexpired term, at the first general election for the office which is vacant that occurs more than forty days after the vacancy has occurred; provided that when the unexpired term ends within one year immediately following the date of such general election, an election to fill such unexpired term shall not be held and the appointment shall be for such unexpired term.

- **Unexpired term – partisan office.** Several statutes govern candidacies for unexpired term elections. R.C. 3513.31 is a general statute that always should be consulted in connection with an unexpired term election for an office that, under Ohio law, is subject to party primaries. R.C. 3513.31(1) provides how and when party nominees are selected for unexpired term elections for such offices, while R.C. 3513.31(J) describes how persons become independent candidates for those unexpired term elections.

- **Petition must include term-ending date.** Ohio law requires each person filing a declaration of candidacy or a nominating petition as a candidate for the unexpired term of any office shall designate the date on which that unexpired term will end (R.C. 3513.08, 3513.28). Failure to provide the correct term-ending date on the petition will result in the petition being invalidated.

MUNICIPAL OFFICES (OTHER THAN JUDGE AND CLERK OF COURTS)

- **Villages**

Vacancies in elective office of villages that have adopted a limited form of home rule will be filled as provided by the applicable home-rule provisions.

In all statutory (non-home rule) villages, the office of mayor is the only office requiring an election to fill an unexpired term, and then only if the following two conditions exist:

1. the vacancy occurs more than 40 days before the next regular municipal election, and
2. the unexpired term will end more than one year after that election.

Vacancies in other statutory village offices are filled by an appointment for the entire unexpired term (R.C. 731.43, 733.25, 733.31).

- **Cities**

In all cities operating under a charter or other plan of limited home-rule government, the applicable provisions of the charter or home-rule plan will control the filling of vacancies.

In statutory (non-home rule) cities, vacancies in municipal offices for director of law, auditor, treasurer, and in certain cases, the president of council, are filled by an election for the unexpired term if the following two conditions exist:

1. the vacancy occurs more than 40 days before the next regular municipal election, and
2. the unexpired term will end more than one year after that election.

Vacancies in other offices are filled by an appointment for the remainder of the unexpired term (R.C. 731.43, 733.08, 733.31).

MUNICIPAL JUDGE AND CLERK

- **Judge:** Except where otherwise provided by charter, a vacancy in the office of a municipal judgeship that does not appear on this year's ballot and that occurs after the 100th day (January 28, 2007) before the date of the primary election, and prior to the 40th day (September 27, 2007) before the November 6 general election, shall be filled by an election for the unexpired term (R.C. 3.02, 1901.10).
- **Clerk:** A vacancy in the office of an elected municipal court clerk is filled according to R.C. 1901.31.

TOWNSHIP OFFICES

A vacancy occurring in a township elective office that does not appear on this year's ballot shall be filled by an election for the unexpired term if the vacancy occurs prior to the 40th day (September 27, 2007) before the November 6, 2007 general election (R.C. 503.24).

BOARDS OF EDUCATION

If a vacancy in a board of education that does not appear on this year's ballot occurs prior to the 90th day (August 8, 2007) before the November 6, 2007 general election, an election shall be held for the remainder of the unexpired term (R.C. 3313.11).

DEATH OR WITHDRAWAL OF CANDIDATE

An individual's candidacy may cease to exist due to the individual's death or decision to withdraw from the election.

A candidate may withdraw his or her candidacy at any time prior to the primary or general election by filing a written statement of withdrawal with the appropriate board of elections (R.C. 3513.30).

If a candidate dies, the candidate's party organization, committee, or family should notify the appropriate county board of elections of the death.

The law provides various procedures for the replacement of a candidate who dies or withdraws during the election cycle. The procedures to be followed will be dictated by the specific facts surrounding the vacancy on the ballot; e.g., the office involved, why the vacancy occurred, the time remaining before the election, etc. Two statutes generally governing vacancies on the ballot in odd-numbered years are R.C. 3513.30 (death of candidate before a primary election, withdrawal of candidacy before or after a primary election) and R.C. 3513.31 (filling vacancies in party, independent and nonpartisan nominations).

OBSERVERS

GENERALLY

Any political party that is supporting candidates on the ballot, a group of five or more candidates, or a ballot issue committee recognized by the board of elections pursuant to law as supporting or opposing a ballot issue may appoint to each precinct or to the board of elections office one observer, who is a qualified elector. An observer appointed to a board of elections office also may observe in any precinct in the county.

An observer appointed to a precinct serves from the time the polling place opens until after the ballots in that precinct have been processed. An observer appointed to the board of elections office serves from the time the polls open until the ballots are counted or otherwise processed on election night. (R.C. 3501.21, 3506.13)

Observers may be designated to be present at the official canvass of votes. (R.C. 3505.32)

APPOINTMENT

Notice to the Board of Elections: All observers must be appointed in writing using forms prescribed by the Secretary of State. The names and addresses of the appointees, and the precinct or board of elections at which they will serve, must be provided using a properly completed and signed *Notice of Appointment or Amendment of Appointment of Observers*, which must be filed with the board of elections of the appropriate county by 4 p.m. on the 11th day before the election.

Amendment of Notice: Any amendment to the originally filed *Notice of Appointment* must be filed with the appropriate board of elections by the close of regular business hours the day before the election.

CERTIFICATES OF APPOINTMENT

1. **Appointments by a Political Party**

The chair and secretary of a party controlling committee that timely filed Form #214 must sign and issue a completed certificate of appointment to each observer (Form #215), who files the certificate with election officials at the appropriate precinct or board of elections, respectively.

2. Appointments by a Group of Five or More Candidates

The five or more candidates who timely filed Form #216 must sign and issue a completed certificate of appointment to each observer (Form #217), who files the certificate with election officials at the appropriate precinct or board of elections, respectively.

3. Appointments by a Recognized Ballot Issue Committee

First, a committee supporting or opposing an issue on the ballot must file with the board of elections Form #218 by 4 p.m. of the 20th day before the election, asking to be recognized as the committee entitled to appoint observers to the count at the election. Then, a recognized ballot issue committee timely files a completed Form #219 and issues a properly completed certificate of appointment (Form #220) to each observer to the count who files the certificate with election officials at the appropriate precinct or board of elections, respectively.

RESTRICTIONS

No uniformed peace officer, state highway patrol trooper, member of any fire department, the armed services or the organized militia, no person wearing any other uniform, and no person carrying a firearm or other deadly weapon shall serve as an observer. A candidate may not serve as an observer unless the candidate also is a member of the party controlling committee and has been appointed by the party.

Observers must sign an oath administered by a judge of elections.
Observers cannot be compensated by a county, city, village or township.
(R.C. 3505.21)

RECOUNTS AND CONTESTS

RECOUNTS

- **Mandatory.** State law requires election officials to conduct a recount if the difference between the declared winning and losing candidates, or winning and losing local question or issue after the official canvass is *equal to or less than* a margin of one-half of 1 percent of the total vote for that office, question or issue. The cost of conducting the recount is publicly funded, and no deposit is required. (R.C. 3515.011)

If the official canvass of a candidate race results in a tie, the board of elections first must break the tie by lot, then declare the winning and losing candidates and order the recount. A ballot issue that receives an equal number of votes for and against automatically fails, because the issue failed to receive a majority of the votes cast.

- **Requested.** If the difference between the declared winning and losing candidates, or winning and losing local question or issue, is *greater than* one-half of 1 percent of the total vote for that office, question or issue, a losing candidate or, in the case of a ballot issue, a group of five or more qualified electors who voted on a question or issue that was on the ballot, may request a recount. In order for the recount to be conducted, the candidate or group must file a written application for the recount of the votes cast in any or all of the precincts where that candidacy or issue appeared on the ballot.

The application must:

1. Be filed with the board of elections within five days after the board certifies the election results,
2. List the precinct(s) to be recounted, and
3. Be accompanied by a \$50 fee in currency, bank money order, bank cashier's check, or certified check for each precinct listed in the application.

The county board of elections determines the date, time and manner of the recount and gives notice of the recount to the appropriate people or entities. (R.C. 3515.01, 3515.011, 3515.02, 3515.03, 3515.07, 3515.071).

CONTEST OF ELECTION

A contest of elections is a judicial proceeding that may be brought by a declared defeated candidate, or by 25 voters who voted for or against the candidate or for or against the issue being contested. The contesteer must prove that there was some flaw, fraud or error in the way the election was conducted and that, but for such flaw, fraud or error, the result of the election would have been different.

The contesteer must file the court action (described in R.C. 3515.09 as a "petition," but it is not an elections petition, and thus is not available from election officials) with the appropriate court within 15 days after the election has been certified or, if a recount is conducted, within 10 days after the recount is certified. The contest procedures are set forth in R.C. 3515.08 - 3515.16.

CAMPAIGN FINANCE REPORT

Each candidate will receive materials from the board of elections pertaining to campaign finance compliance and reporting at the time petitions of candidacy are filed.

A "Designation of Treasurer" (Form #30-D) must be filed prior to the receipt or expenditure of any contributions, including personal funds spent by the candidate used to further the campaign (except for payment of the candidate's filing fee from the candidate's personal funds) (R.C. 3517.10).

CAMPAIGN LITERATURE

Campaign literature issued by a candidate's campaign committee must state "paid for by" followed by the name of the committee and the residence or business address of the candidate, chairperson, treasurer or secretary of the campaign committee and must be located in a conspicuous place, unless the information is contained within the communication. If more than one piece of printed matter is mailed as a single packet, the disclaimer requirement is considered to be met if one of the pieces of printed matter contains the disclaimer (R.C. 3517.20).

Exemptions to the disclaimer requirement have been granted by rule (O.A.C. 111-5-19) of the Secretary of State for specified articles. Specific exemptions for articles not exempted by rule may be requested by sending a written request to the Office of the Secretary of State, Campaign Finance Division, P.O. Box 2828, Columbus, OH 43216. The request must include the requestor's name, address and telephone number, and a full description of the item for which the exemption is requested, including the item's measurements and material.

In accordance with R.C. 3513.33, each candidate will receive, at the time of filing a declaration of candidacy, nominating petition or declaration of intent to be a write-in candidate, a copy of R.C. 3517.21, which prohibits certain unfair political campaign activities.

PERSONAL FINANCIAL DISCLOSURE STATEMENT

Any individual who becomes a candidate for or holds a state, county, or city elected office, or the position of school board member in a school district with more than 12,000 students average daily membership, is required to file a personal financial disclosure statement. All public officials and candidates for elected office file statements with the Ohio Ethics Commission, except members of and candidates for the General Assembly (who file with the Joint Legislative Ethics Committee) and judges (who file with the Board of Commissioners on Grievances and Discipline of the Supreme Court).

FILING DEADLINES

The filing deadlines for personal financial disclosure statements are *prior* to any election. Therefore, a candidate is required to file the statement, regardless of whether he/she won the election, and regardless of how much he/she spent on the campaign.

- The filing deadline for candidates whose names are printed on the ballot is 30 days prior to the earliest election in which their candidacy is to be voted upon. Thus, the filing deadline for a candidate whose name will be printed on the May 8, 2007 primary ballot is April 9, 2007.
- The deadline for write-in candidates is 20 days prior to the earliest election in which their candidacy is to be voted upon. Consequently, the filing deadline for a write-in candidate in the May 8, 2007, primary is April 18, 2007.

Also, all persons who are appointed to fill a vacancy for an unexpired term in an elected office for which financial disclosure is required must file within 15 days after they are sworn into office.

Individuals who fail to file the required statement are subject to criminal penalties, and those who file after the appropriate filing deadline incur a late filing fee.

The Ohio Ethics Commission provides blank financial disclosure statements to county boards of elections for distribution to candidates for, and persons appointed to fill an unexpired term of, elected office (members of and candidates for the General Assembly file statements provided by the Joint Legislative Ethics Commission). Persons are required to acknowledge receipt of the statement in writing. A copy of a blank statement can also be found on the Commission's Web site at: www.ethics.ohio.gov. If further information is needed, view the commission's Web site or telephone the commission at (614) 466-7090.

2007 OHIO ELECTIONS CALENDAR

(Abridged)

- Jan. 8 Last day for local option petitioners to send street listing to Div. of Liquor Control (45 days before petition filing deadline)
- *Jan. 8 Deadline for voter registration for Feb. 6 Special Election (30 days before the election)
- Feb. 6 Special Election may be held**
- Feb. 22 Declarations of Candidacy for partisan candidates must be filed by 4 p.m. (75 days before the primary)
Local questions and issues must be certified to the board by 4 p.m. (75 days before primary)
- Mar. 7 Write-in candidates for primary election must file Declaration of Intent by 4 p.m. (62 days before the primary)
- Apr. 3 Primary absentee ballots must be ready (35 days before the primary)
- *Apr. 9 Deadline for voter registration for primary election (30 days before the primary)
- Apr. 26 Pre-primary election campaign finance reports must be filed by 4 p.m. (12 days before the primary)
- May 7 Nominating petitions for independent candidates must be filed by 4 p.m. (day before the primary)
- May 8 Primary Election**
- May 19 Boards may begin official canvass (11 days after the primary)
- May 24 Local questions and issues must be certified to the board by 4 p.m. for Aug. 7 special election (75 days before the special)
- June 15 Post-primary election campaign finance reports must be filed by 4 p.m. (38 days after the primary)
- *July 9 Deadline for voter registration for Aug. 7 Special Election (30 days before the election)

July 9 Last day for local option petitioners to send street listing to Div. of Liquor Control (45 days before petition filing deadline)

Aug. 7 Special Election may be held

Aug. 23 Candidates' nominating petitions for non-partisan races must be filed by 4 p.m. (75 days before the general)
Local questions and issues must be certified to board by 4 p.m. (75 days before the general)

Sept. 5 Write-in candidates for general election must file Declaration of Intent by 4 p.m. (62 days before the general)

Oct. 2 General election absentee ballots must be ready (35 days before the general)

*Oct. 9 Deadline for voter registration for general election (30 days before the general)

Oct. 25 Pre-general election campaign finance reports must be filed by 4 p.m. (12 days before the general)

Nov. 6 General Election

Nov. 17 Boards may begin official canvass (11 days after the general)

Dec. 14 Post-general election campaign finance reports must be filed by 4 p.m. (38 days after the general)

*In some instances, the statutory deadline falls on a day when the offices of the Secretary of State and boards of elections are closed. In those instances, the deadlines are extended to the next day when the offices are open for regular business hours. (R.C. 1.14)

NO. 07-1509

IN THE SUPREME COURT OF OHIO

ORIGINAL ACTION IN MANDAMUS AND PROHIBITION
FOR ELECTION-RELATED MATTER

STATE OF OHIO EX REL.
DEBORAH S. REESE

Relator,

v.

CUYAHOGA COUNTY BOARD OF ELECTIONS, *et al.*

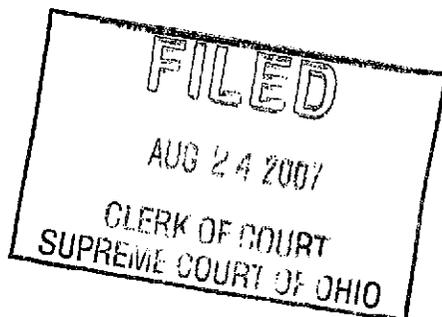
Respondents.

EXHIBITS E – F

MEMORANDUM OF RELATOR IN SUPPORT OF COMPLAINT IN MANDAMUS
AND/OR PROHIBITION/ RESPONSE TO RESPONDENTS' MOTION TO
DISMISS/MOTION FOR JUDGMENT ON THE PLEADINGS

DANIEL P. CARTER (0074848)
Counsel of Record
carter@buckleyking.com
JEFFREY W. RUPLE (00687420)
ruple@buckleyking.com
BUCKLEY KING LPA
1400 Fifth Third Center
600 Superior Avenue, East
Cleveland, OH 44114-2652
(216) 363-1400
(216) 579-1020 (*facsimile*)

Attorney for Relator
Deborah S. Reese



CUYAHOGA COUNTY
BOARD OF ELECTIONS
BOARD MEETING
TRANSCRIPT OF PROCEEDINGS

- - -

Monday, August 6th, 2007
9:00 a.m.

- - -

Cuyahoga County Board of Elections
2925 Euclid Avenue
Cleveland, Ohio

- - -

APPEARANCES:

Jeff Hastings, Chairman.
Robert S. Frost, Board Member.
Eben Sandy McNair, Board Member.
Inajo Davis Chappell, Board Member.
Jane Platten, Director.
Pat McDonald, Deputy Director.
Reno Oradini, Assistant Prosecuting Attorney.
Toni LaMarca, Secretary.



MIZANIN REPORTING SERVICE, INC.
COMPUTERIZED TRANSCRIPTION

DEPOSITIONS • ARBITRATIONS • COURT HEARINGS • CONVENTIONS • MEETINGS

50 PUBLIC SQUARE • CLEVELAND, OHIO 44113 • (216) 241-0331 • FAX: (216) 241-8044

1 * * * * *

2 PROCEEDINGS

3 THE CHAIRMAN: Okay. We're all set.
4 Good morning everybody. It is Monday,
5 August 6th, and we are going to begin our
6 meeting this morning. But let's first do
7 the Pledge of Allegiance. Everybody rise.

8 - - -

9 (Pledge of Allegiance recited.)

10 - - -

11 THE CHAIRMAN: Thank you. And if you
12 would call the roll here for us, Miss
13 LaMarca.

14 MS. LAMARCA: Mr. Frost.

15 MR. FROST: Here.

16 MS. LAMARCA: Mr. McNair.

17 MR. MCNAIR: Here.

18 MS. LAMARCA: Mr. Hastings.

19 THE CHAIRMAN: Here.

20 MS. LAMARCA: Miss Chappell.

21 MS. CHAPPELL: Present.

22 THE CHAIRMAN: We have Miss Platten
23 and Mr. McDonald here along with Mr.
24 Oradini joining us today.

25 And why don't we call the first item

1 of business, Miss LaMarca?

2 MS. LaMARCA: Approval of the July 2,
3 2007 board meeting minutes.

4 THE CHAIRMAN: I will move to approve
5 those minutes minutes.

6 If there's a second.

7 MS. CHAPPELL: Second.

8 THE CHAIRMAN: Is there any discussion
9 on those minutes from our July 2nd meeting?

10 Okay. Hearing none, all those in
11 favor, signify by saying aye.

12 MR. MCNAIR: Aye.

13 MR. FROST: Aye.

14 MS. CHAPPELL: Aye.

15 THE CHAIRMAN: It passes unanimously.

16 And then we have our second item of
17 business.

18 Miss LaMarca?

19 MS. LaMARCA: Acknowledgement of
20 Secretary of State Directive, Directive
21 2007:11.

22 THE CHAIRMAN: Okay. That was sent to
23 us, I think we received it -- well, first
24 I'll make a motion to approve the
25 Acknowledgement of Secretary of State's

1 Advisories and Directives.

2 Is there a second?

3 MS. CHAPPELL: Second.

4 THE CHAIRMAN: Seconded.

5 Miss Platten, could you comment about
6 that?

7 MS. PLATTEN: Sure. This Directive
8 gives the procedures for what's referred to
9 as the National Change of Address and
10 Supplemental Processes. This is for
11 persons who have indicated, or not
12 indicated, in some cases, that they've
13 moved in or out of any county in Ohio, but
14 particularly relative to Cuyahoga County.

15 We've done some preliminary work on
16 numbers for the National Change of Address
17 Process whereby we need to send a
18 notification to a voter that shows up on
19 this list which is obtained from the United
20 States Post Office. And we receive the
21 list from the Secretary of State's office
22 at that time.

23 We have 67,000 -- approximately 67,000
24 persons on the voter registration list that
25 are what we refer to as new in terms of us

1 needing to send them a forwardable Change
2 of Address Notification Card. We've not
3 had them on our list prior. And we also
4 have a Supplemental Process where the voter
5 has not had any initiated activity in the
6 last two years. That two-year cycle goes
7 from May, 2005 to May, 2007. There's
8 approximately 217,000 of those persons on
9 our registration lists now, so we will also
10 send them the mailing.

11 And then there's a third category of
12 persons which we do not have an analysis of
13 numbers yet. We're still working on those
14 processes and identifying those persons who
15 have had no activity in the last two
16 Federal elections. And that ultimately
17 will lead to what's referred to as a
18 purging process. But we'll keep you
19 updated as we move along on that.

20 THE CHAIRMAN: Any questions for Miss
21 Platten?

22 I just have one, I guess, Jane. Is
23 this kind of in regards to kind of cleaning
24 up our voting lists and where people say,
25 I've got -- and I'm just talking very

1 anecdotally here on the media, you know;
2 there's 10,000 people who have passed away
3 and they're still registered to vote. Is
4 this the process trying to catch that
5 problem, are you aware?

6 MS. PLATTEN: It is part of that. I'm
7 not sure if the -- the persons who have
8 passed away is another process by which we
9 get notification on from Vital Statistics,
10 but this is definitely a process that
11 should clean up the rolls, where, I may
12 have moved out of the county and never
13 notified the Board of Elections, and it
14 could be a cycle of multiple elections
15 before we catch up to that. So this -- and
16 actually Cuyahoga County, this -- I look at
17 this as our first in a long time
18 opportunity to really get a good clean-up
19 process out of the National Change of
20 Address cards and ultimately the purging
21 process, which I understand is a highly
22 sensitive process, and we need to be up
23 front and open with the community as we go
24 through that purging process. But I don't
25 believe that there's been much consistency

1 in the last years in this Agency as to how
2 we approach this.

3 And so we're trying to, number one, be
4 careful on proceeding, and to make sure we
5 are absolutely 100 percent before we cancel
6 any voters. But I do think that this is an
7 opportunity to really get a good clean-up
8 process going.

9 THE CHAIRMAN: It's something you
10 start on right now?

11 MS. PLATTEN: Yes. We have until
12 September 29th, per the Secretary of
13 State's Office, to get this mailing of
14 Change of Address Notification cards out.
15 And then the voter has, I believe, 30 days
16 to respond.

17 THE CHAIRMAN: As to if they object to
18 --

19 MS. PLATTEN: If they have moved:
20 Yes, I've moved out of the county: No, no,
21 I haven't moved out of the county, but I
22 haven't voted but I want to, you know,
23 essentially keep me on.

24 THE CHAIRMAN: Could you keep us
25 posted about how you're progressing,

1 because it is a big deal, as you point out,
2 eventually, if we don't get it right,
3 so-to-speak, it creates more provisionals,
4 because people are going to want to go
5 provisionally, if we knock them off and
6 they say, no, I still live here.

7 MS. PLATTEN: There is a significant
8 domino effect in terms of how voters are
9 affected by us not having the registration
10 rolls accurate. And so again, I look at
11 this as a good opportunity.

12 THE CHAIRMAN: Great. I'd look
13 forward to an update about how it's going,
14 if you think the data that you received is
15 good and what the reaction you're getting
16 from the mailing lists that go out. Thank
17 you.

18 Any other questions or comments for
19 Miss Platten or Mr. McDonald?

20 Okay. Hearing none, all those in
21 favor of acknowledging the Secretary of
22 State's Advisory Directive 2007:11, signify
23 by saying aye.

24 MR. MCNAIR: Aye.

25 MR. FROST: Aye.

1 MS. CHAPPELL: Aye.

2 THE CHAIRMAN: Okay. Motion passes
3 unanimately.

4 And an update on the August 7th --
5 well, Miss LaMarca?

6 MS. LaMARCA: Update on August 7, 2007
7 Special Election being conducted in the
8 City of Strongsville.

9 THE CHAIRMAN: Miss Platten?

10 MS. PLATTEN: We have a Strongsville
11 City School District tax levy on the ballot
12 tomorrow. The City of Strongsville has
13 37,255 registered voters. We'll be
14 operating out of 14 locations, 48
15 precincts. We have hired 144 poll workers,
16 and 28 election day technicians. 208
17 devices will be in operation in those
18 locations tomorrow.

19 We have received 872 requests for
20 absentee. 629 ballots have been returned.
21 And that's a 72 percent rate of return on
22 those absentee ballots. We are up and
23 ready for tomorrow's election. And tonight
24 we'll have the Monday night organizational
25 meeting and open for voting at 6:30 a.m.

1 tomorrow.

2 THE CHAIRMAN: Very good. Any
3 questions for Miss Platten as to this
4 matter? Okay.

5 And we'll remain in session, then, I
6 guess, at the conclusion of this meeting.

7 Right, Mr. Oradini?

8 MR. ORADINI: Yes.

9 THE CHAIRMAN: And reconvene tomorrow.
10 Great.

11 What's the next election after this?

12 MS. PLATTEN: We have an election on
13 September 11th, which is Broadview Heights
14 and potentially Solon. Solon has a filing
15 deadline of August 8th, which is what
16 dictates the need for a board meeting on
17 August 9th so that we can certify those
18 candidates immediately to the ballot, and
19 again immediately turn around printing of
20 absentee ballots for that September 11th
21 election.

22 So we have a September 11th election,
23 we have a September 18th election,
24 September 25th election, October 2nd, and
25 November 6th.

1 THE CHAIRMAN: All right. Any other
2 questions for Miss Platten?

3 Next item, Miss LaMarca?

4 MS. LaMARCA: Public hearing relative
5 to Candidacy of Maureen Adler Gravens for
6 Judge of Rocky River Municipal Court
7 District.

8 THE CHAIRMAN: All right, great. We
9 are here. I'll let some of my Board
10 members comment. I'll acknowledge Mr.
11 Butler is here and Miss Johnson on behalf
12 of Miss Gravens. Mr. Carter on behalf of
13 the Petitioner, Miss Reese. Thank you.
14 And next to you.

15 MR. RUPLE: Jeff Ruple.

16 THE CHAIRMAN: Thank you. Jeffrey.
17 I'm sorry, I should know that.

18 What I would like to do procedurally,
19 just so we're on the same page here, and
20 I'll certainly let my Board members
21 comment, is, I don't -- you're bringing the
22 petition, Mr. Carter. Do you intend to
23 have any evidence by way of testimony or
24 documents in regards to this, at this
25 point?

1 MR. CARTER: At this point we have one
2 witness, which we'll call which will be
3 very brief. And the evidence has been
4 appended to our briefs. The evidence that
5 we intend t -- as I said, we have some
6 other case law or perhaps statutes that
7 may be relevant that we hand up at the end
8 if the Board so wishes so that -- and we'd
9 like to reserve five minutes to rebut at
10 the end of this. My understanding is it's
11 a 15 minute --

12 THE CHAIRMAN: Well, I kind of
13 misspoke, and we talked about that, because
14 I forgot the fact that you may want to
15 present some evidence here, so it's kind of
16 almost like, you go first and then they get
17 a chance to do some cross if they chose to,
18 then they get their case in chief and you
19 can cross. So I just have an appreciation
20 where you're coming from.

21 Mr. Butler, do you intend to do
22 anything in regards to evidence?

23 MR. BUTLER: As to a live witness, no,
24 we don't have any live witnesses, but we do
25 have some documents, and we have a

1 procedural matter also to address.

2 THE CHAIRMAN: Well, yes, and I'll get
3 to that. I just want to get a sense of the
4 document. I'm anticipating we've probably
5 seen most all the documents that you intend
6 to refer to or formally introduce for
7 purposes of the record?

8 MR. BUTLER: All the documents we have
9 are public records, records of the Board,
10 and I don't know that they're all in our
11 brief, but I think there's one that wasn't
12 in the brief, at least one that wasn't.

13 THE CHAIRMAN: Mr. Carter, the
14 documents that you intend to refer to or
15 submit we've pretty much seen.

16 MR. CARTER: Yes, in public records
17 and statutes, that's it.

18 THE CHAIRMAN: Have you had a chance
19 to provide him with that document or you
20 will, when we get to that point?

21 MR. BUTLER: Yes.

22 THE CHAIRMAN: Okay. I just don't
23 want to be surprised.

24 MR. BUTLER: Before the hearing I've
25 not given him these documents, but I'll

1 certainly give them to him.

2 THE CHAIRMAN: What I would suggest
3 then procedurally, and we'll get to your
4 other issue, I know Mr. Butler in a second
5 -- is just to suggest that you start with
6 your case in chief. If you'd like to have
7 five-minute brief opening -- I think kind
8 of both parties have staked out their
9 positions in these well-written briefs
10 we've had a chance to review -- in an
11 opening and then start with your case in
12 chief, Mr. Carter, and then, of course, Mr.
13 Butler can cross, if there's a need to, and
14 then redirect, and we'll be done there, and
15 then go to Mr. Butler's portion. And I
16 guess I would then at the conclusion of the
17 evidence that we've had a chance to give
18 you all some time to argue, you know, a
19 summary position, almost your closing
20 argument, but we'll do it a little
21 differently is my suggestion is you can
22 reserve some rebuttal time as opposed to
23 you doing your closing, and then Mr. Butler
24 then you get to close. I suggest you both
25 get a chance to argue. That's my

1 suggestion. I don't know if my Board
2 members want to refine that or anything.

3 MR. McDONALD: It's fine with me.

4 MS. CHAPPELL: Fine.

5 MR. FROST: Yes.

6 THE CHAIRMAN: Kind of give your
7 openings, about five minutes, if you can,
8 then we can go with your case in chief.

9 Having said that, any questions about
10 that? Then we'll go to Mr. Butler's
11 procedural question.

12 Mr. Carter, are you okay with that?

13 MR. CARTER: I'm fine with that.

14 THE CHAIRMAN: Mr. Butler.

15 MR. BUTLER: Yes.

16 THE CHAIRMAN: Why don't you then
17 address your procedure.

18 MR. BUTLER: Michael Butler. I
19 represent Maureen Adler Gravens, the
20 nonpartisan candidate for the Rocky River
21 Municipal Court District.

22 As part of the prehearing process, I
23 had an opportunity to look at the petitions
24 of a Brian Hagan, and unfortunately, Mr.
25 Frost is one of the circulators in one of

1 the prior petitions brought this to the
2 attention of the prosecutor in a respectful
3 fashion, because I didn't want to embarrass
4 anybody when I raised the question of a
5 possible disqualification. Unfortunately,
6 time passed and we got closer to the
7 hearing, so I filed a request for a
8 voluntary disqualification on the part of
9 Mr. Frost. We believe that Mr. Frost is
10 partial to Mr. Hagan, in that he campaigned
11 for him in getting a petition signed. The
12 brief that I filed reflects the standard
13 for a Board of Elections to be fair and
14 impartial.

15 So with that in mind, we ask that Mr.
16 Frost voluntarily recuse himself and
17 disqualify himself from taking part in this
18 hearing.

19 THE CHAIRMAN: Thank you, Mr. Butler.

20 MR. BUTLER: We have not had any
21 response to that, so, unfortunately, I have
22 to bring it up in this manner.

23 THE CHAIRMAN: You need to create your
24 record. And at this point I guess Mr.
25 Frost, do you have a response?

1 MR. FROST: Thank you, Mr. Butler, Mr.
2 Chairman.

3 We do have a request by the attorney
4 on behalf of Judge Gravens that I
5 disqualify myself from -- the way you had
6 it, was phrased in the request was from,
7 quote, "participating in the hearing."

8 Now, the basis for the request, as you
9 stated, is the possibility of a conflict of
10 interest having been created by my
11 circulation of a petition on behalf of a
12 candidate for the Republican nomination to
13 the same office Judge Gravens now holds and
14 is running for re-election to. That
15 candidate whom I circulated the petition
16 was successful in receiving the Republican
17 nomination and is now Judge Gravens' sole
18 opponent for the position, as you know.

19 I thank you and Judge Gravens for
20 raising the issue at this time in the
21 manner in which you did. I don't know that
22 I would have recalled getting six
23 signatures back in November, last November.
24 And certainly my request for this
25 voluntarily is the most appropriate and

1 timely means to go about that.

2 In addition to this, going back
3 through the review of how we come to be
4 here today, the very issue of there even
5 being a possibility of a primary, and,
6 therefore, party nominations for judge and
7 clerk in Rocky River Municipal Court goes
8 back to a letter that I wrote back in
9 January to then Director Michael Vu
10 inquiring why when the Board came out with
11 its election calendar this year but did not
12 include the possibility of party
13 nominations and party primary, which Ohio
14 Revised Code clearly provided for, that
15 record dated January 18, 2007, which I
16 think should also be part of the record
17 today.

18 I think we've got a unique situation.
19 One thing I was concerned about in first
20 receiving notice that there was a part
21 petition that I had circulated and then
22 receiving the request for voluntary
23 disqualification, about what sort of
24 precedent this issue may set. But I do
25 think we are in a very unique and singular

1 situation. We, as Board of Election
2 members are discouraged from circulating
3 petitions for the singular technical
4 conflict that would be created if called
5 upon to rule upon the validity of
6 signatures on those part petitions or those
7 part petitions as a whole. Clearly, it is
8 established in Ohio law that in my position
9 as an officer of a political party, I may
10 support that party's candidates for office
11 and I'm not summarily disqualified from
12 every issue of protest that may come before
13 this Board involving either those
14 candidates or those candidates' opponents.

15 But I do think we have a very unique
16 situation here, because although now a
17 Board member and discouraged from
18 circulating petitions, this was a petition
19 that was circulated before the primary
20 election this year, before my coming on to
21 this Board.

22 I do interpret the request for
23 disqualification from the hearing, I
24 interpret that properly as a request for my
25 recusal from the decision, and I do intend,

1 I'll let you know, to take part in this
2 hearing and deliberation, although at the
3 time of taking a vote on the protest, I
4 intend to abstain.

5 THE CHAIRMAN: Okay. Thank you, Mr.
6 Frost.

7 MR. BUTLER: You're going to abstain
8 from voting on the protest, but you're
9 going to participate in the hearing of the
10 matter; did I understand you correctly?

11 MR. FROST: Right, just to address --
12 this is not -- an example would be a Court
13 of Common Pleas, or even a Court of Appeals
14 where you'd have a panel of judges and you
15 need to get a third judge. The four of us
16 here today are going to be here in the room
17 and listen to the evidence and listen to
18 the argument. But I do intend to abstain
19 from the decision.

20 MR. BUTLER: Thank you.

21 THE CHAIRMAN: I'm sorry. Mr. Butler,
22 before you sit down, I thought there was
23 another procedural matter that you had
24 raised in your reply brief with respect to
25 certain exhibits that had been put in the

1 opening brief on behalf of Miss Reese, and
2 if we can clarify that.

3 Mr. Carter, I guess as I read those, I
4 had understood them not to be introduced as
5 competent evidence in terms of these news
6 articles that occurred in other places, but
7 rather simply to apprise the Board that
8 this issue is occurring not only in this
9 State, but in other counties around the
10 State, and were really offered for that
11 limited purpose and not for us to consider
12 them on the merits.

13 MR. CARTER: I certainly wouldn't want
14 newspaper matters to be considered as
15 evidence. This is, just as you said, to
16 raise the awareness that since the Advisory
17 has been published, this issue has come up.
18 It's not unique here to this case, and not
19 unique to Cuyahoga County, correct. Thank
20 you.

21 THE CHAIRMAN: Mr. Butler, does that
22 resolve your concern on those issues?

23 MR. BUTLER: That resolves the
24 evidentiary question.

25 I think on the merit I will address

1 the impact of some other decisions on this
2 Board.

3 THE CHAIRMAN: Thank you. Anything
4 else from the Board? All right.

5 Mr. Carter, why don't we do an
6 opening, and then we'll hear from Mr.
7 Butler, and then your case in chief.

8 MR. CARTER: Thank you. I'm Dan
9 Carter. I'm here on behalf of Deborah
10 Reese, who is making a challenge to Judge
11 Gravens' candidacy in this case.

12 This really is a very simple matter.

13 The Rocky River Municipal Judge
14 Primary is a partisan election. As we have
15 attached to our brief, and we put in
16 earlier, the Board of Elections designated
17 this as a partisan election in the schedule
18 for filing.

19 Now, in a partisan election there are
20 party primaries. And as we just heard
21 earlier, after the party primary, there's a
22 candidate left, and that candidate goes on
23 the ballot for the Democrat or Republican
24 Party, or perhaps the Green Party or
25 another party that would be on there.

1 Also in a partisan election folks who
2 say they have no party affiliation also
3 run. Those individuals are considered
4 independents.

5 Now, what gets very confusing in the
6 statute, the regulations, is the term
7 nonpartisan. With the Ohio law, judicial
8 elections are often -- or municipal
9 elections are often nonpartisan. And when
10 we have a nonpartisan election, each
11 candidate is then nonpartisan. And if we
12 look at some of the regulations, we'll even
13 see that there can be nonpartisan primaries
14 which just winnows out the great number of
15 candidates you may have, leaving a few
16 other ones.

17 Now, if you're nonpartisan in a
18 nonpartisan election, there is no label to
19 you, and there's nothing that seems to
20 prohibit party affiliation doing other
21 things, because I would imagine most of the
22 folks that run, at least my experience in
23 my municipality, in nonpartisan elections,
24 which they all are, some of the folks are
25 Democrats, some of the folks are

1 Republicans. That never appears on the
2 ballot.

3 However, it all changes when you do
4 have this partisan election, as we have
5 here in Rocky River.

6 MR. MCNAIR: And who from your
7 perspective, who decides or how is it
8 decided that Rocky River is a partisan
9 election or a nonpartisan? Because it is
10 my understanding, and correct me if I'm
11 wrong, historically Rocky River had not had
12 a, quote, unquote, "partisan election", and
13 this was the first time in some time. As
14 opposed to Parma, which, as I understand
15 it, has a history of having partisan
16 elections, and yet both of those situations
17 are the same. That is to say, there are
18 municipal judge races where the territory
19 covered by the judicial territory is beyond
20 that of the community, either be it Parma
21 or be it Rocky River.

22 MR. CARTER: Well, I believe it's
23 designated by the Board of Elections
24 because that's on that schedule, if I may,
25 it's the 2007 petition filing deadline

1 dates for candidates that was promulgated
2 by the Board and it lists the various
3 filing deadlines for everyone. And the
4 February 22nd deadline, which the folks
5 that would be running in a party primary
6 was listed here as Rocky River judicial
7 partisan. And then when you come down to
8 the May deadline, which it would be for an
9 independent candidate who is not running in
10 a particular party primary, you have the
11 May 7, 2007. And again, there the Rocky
12 River judicial, the independent votes then,
13 I mean, file their petitions at that point.

14 MR. MCNAIR: I have maybe a slightly
15 different perspective, so let me kind of
16 tell you what I'm thinking and you tell me
17 how it's different.

18 My understanding is that this issue is
19 really governed by 1901.07. Would you
20 agree with that?

21 MR. CARTER: I would.

22 MR. MCNAIR: And that statute says
23 there are two different ways you can get to
24 the final, be a final candidate. One is
25 through a partisan primary, which is talked

1 about in the first part of the statute.
2 And then the second part talks about
3 nonpartisan candidates.

4 Is that a fair summary of the
5 structure of the statute from your
6 perspective?

7 MR. CARTER: Of the structure,
8 correct, those are the words that they use.
9 May I just --

10 MR. MCNAIR: Sure, get whatever you
11 need.

12 So at least as I read the statute, at
13 this moment in time, I don't see the Board
14 of Elections deciding whether or not a
15 particular race is partisan or nonpartisan.

16 Rather, as I look at the statute, the
17 statute gives a statutory right to anybody
18 who's otherwise qualified to get on the
19 ballot one of two ways. One is through
20 partisan track, or the other is -- and then
21 there's a primary. And there's a benefit
22 to doing that, presumably. Or one can be
23 nonpartisan. And, therefore, from my
24 perspective it really depends upon what
25 people do. That is to say, do people file

1 for a partisan election or not?

2 So, why don't you react to that? I'd
3 like your thoughts about that.

4 MR. CARTER: I will. I have copies of
5 this for the Board, of the statute. I
6 think what's important when you look at
7 1901.07 is they're two paragraphs in
8 Section B, and the first paragraph --

9 MR. MCNAIR: Actually my copy has
10 three, but we'll figure it out.

11 MR. CARTER: I'm sorry, there are
12 three. Well, I was going to the second one
13 in B, sir.

14 MR. MCNAIR: Yes.

15 MR. CARTER: And that lays out the
16 procedure and the registration when you are
17 dealing with a partisan election, that's
18 how folks get on the ballot in a partisan
19 election. Because in reading those
20 qualifications and what they talk about,
21 this allows then for the individual who
22 wants to follow what would be in a
23 nonpartisan election, that same type of
24 process, but they become an independent by
25 the very virtue of the law. It's the

1 operation of law that creates that.

2 While, if you look in that second
3 paragraph, the third one now, now I'm
4 referring to the third one. The third one
5 is for the nonpartisan where it mentions
6 that -- you have to look, to me, very, very
7 carefully, because they use words like
8 required, when nonpartisan is required.

9 Non partisan is only required when
10 it's a nonpartisan election. When it's a
11 partisan election, you can be a party
12 member or you can be an independent.
13 However, in the nonpartisan elections
14 you're required to be nonpartisan.

15 If I wanted to mount a challenge to my
16 mayor in Pepper Pike, Bruce Akers, I
17 couldn't all of a sudden say, I'm Dan
18 Carter, Democratic candidate for the Mayor
19 of Pepper Pike, because it's a nonpartisan
20 election. I'm required to be a nonpartisan
21 and collect my petition, file my petition
22 papers as a nonpartisan.

23 It's that requirement that I think has
24 made this such a difficult situation to
25 understand. Because for years, Rocky River

1 elected their folks in a nonpartisan
2 manner. And you went about -- the other
3 confusing thing here is a nonpartisan
4 petition and an independent petition by
5 operation of the statute are the exact same
6 petitions.

7 MR. MCNAIR: And they have the exact
8 same filing deadline.

9 MR. CARTER: Correct, for the
10 judicial. That's correct.

11 MR. MCNAIR: So when -- I don't mean
12 to get you off track. So when it comes to
13 us, in terms of the paperwork, absent some
14 other affirmative declaration, we have the
15 same paperwork at the same time for a
16 candidate who is, quote, unquote, "an
17 independent" and one who's, quote, unquote
18 "nonpartisan." And then it is for us, I
19 guess, to decide which one they are.

20 MR. CARTER: No, sir. The law
21 operates to make that individual an
22 independent. Because if we look and accept
23 what I think you're saying, that way would
24 create such a loophole in what we're trying
25 to -- what the Secretary of State is trying

1 to avoid here. That loophole would be,
2 okay, I filed this way, now I could be an
3 independent and not have anything to do
4 with my party, or I could just call myself
5 a nonpartisan and go ahead and do
6 everything with my party.

7 I think when we come down to the clear
8 meaning of the words -- I looked it up last
9 night in the World Book Dictionary -- the
10 kids just have online stuff today, so that
11 was the only one I could find. But a
12 nonpartisan and an independent are pretty
13 much the same thing. They don't have party
14 affiliation. That's what it means.

15 If you talked about partisan politics,
16 we're talking about Republican - Democratic
17 politics. That's what we're all screaming
18 about down in Washington. If you're
19 talking about Independent, it's a whole
20 different ball game. That's nonpartisan.
21 The Independents. They're not with any
22 party. You're not an Independent if you're
23 a member of the Green Party. You're not an
24 Independent if you're a member of the
25 Republican party or the Democratic party.

1 So I think what you're suggesting
2 here, Mr. McNair, would be a loophole that
3 would allow people to get around that very
4 nonpartisanship or that Independent stuff
5 and say, okay, I'm just going to call
6 myself nonpartisan. I'm going to be on the
7 central committee of my party.

8 MS. CHAPPELL: So your view,
9 Mr. Carter, is that there is no statutory
10 right of a potential candidate to elect to
11 chose partisanship or nonpartisanship under
12 the statute, 1901.07, is that what I hear
13 you saying?

14 MR. CARTER: By the way that statute
15 looks and the other regulations that are in
16 there, no, they couldn't chose. If they
17 chose to be nonpartisan, they are
18 Independent in a partisan election. In a
19 nonpartisan election, of course, they chose
20 to be nonpartisan, then they could be an
21 Independent, they could be a Democrat, they
22 could be a Republican.

23 And usually a persons who's not
24 affiliated -- and I'm just going to use
25 those three terms, a Republican or a

1 Democrat calls themselves an Independent,
2 but we don't know that in nonpartisan
3 elections.

4 When I go to vote in my municipality,
5 I don't see any kind of party affiliation
6 or even that the person's an independent.
7 I don't know, it's nonpartisan.

8 So the statute the way it operates in
9 a partisan election does not allow that
10 person to select to be nonpartisan other
11 than in the cloak of being truly an
12 Independent, and that's where the problem
13 came up here.

14 THE CHAIRMAN: Mr. Carter, as you can
15 see, you are going get to what they
16 referred to earlier as a hot chair, but I
17 want to suggest to my colleagues here --
18 just a second -- if you're kind of wrapping
19 up on your opening a little bit, why don't
20 you present your case in chief. Hold on,
21 listen. Procedurally, because this Board
22 is going to engage you and Mr. Butler, I
23 would like to get your case on the record,
24 okay. And then what I think at the closing
25 you're going to get some questions from

1 this Board after you presented your
2 position to us and clearly staked it out,
3 and Mr. Butler has had that chance, too.
4 And then I think it's best to engage both
5 of you at that time in regards to your
6 positions as opposed to kind of doing it
7 right up front, because you really haven't
8 presented your case in chief to the Board.
9 And I want to give you that chance.

10 MR. CARTER: I have an extremely
11 important procedural matter. Could I get a
12 glass of water?

13 THE CHAIRMAN: I think Mr. Butler,
14 what I'd like to do with you is get that
15 opening out of you, and then have your case
16 in chief presented, and we'll engage both
17 of you in your summaries with all the
18 evidence you've presented. I think we're
19 best going that route. So if you're about
20 done with your opening, Mr. Carter, did you
21 have anything else you wanted to add?

22 MR. MCNAIR: I think in fairness I
23 really cut him off. So why don't you take
24 whatever time is necessary to finish your
25 opening statement?

1 MR. CARTER: The beauty of this was we
2 got really into the heart of the matter.
3 My case in chief, what we do is we have a
4 valid elector who would be able to elect
5 the Rocky River Municipal Court Judge who
6 filed a protest because she became aware of
7 the fact that under the new Advisory by the
8 Secretary of State, a person who's an
9 Independent, who's not party affiliated,
10 cannot then vote in a party primary. And I
11 think what we are going to see here is the
12 operation of the law is what is very key,
13 is key here, that it's the operation of the
14 law that makes someone an Independent or a
15 nonpartisan, they are terms of art.

16 There are terms of art in the election
17 law and there are terms of art that result
18 because of the way elections are, in fact,
19 set up now in the State of Ohio, and
20 specifically as it affects the Rocky River
21 Municipal Court judge.

22 THE CHAIRMAN: Thank you very much,
23 Mr. Carter. And Mr. Butler, your opening,
24 sir.

25 MR. BUTLER: Thank you. First of all,

1 this is a statutory Board that follows the
2 statutory law in Ohio in conducting
3 elections. I have something a little
4 different than Miss Reese. We have what's
5 called a verified paper trail that might
6 appeal to the Board members as it relates
7 to conducting elections.

8 If I may approach. I have copies.

9 MR. MCNAIR: Just a minute. Have you
10 shown those to Mr. Carter yet?

11 MR. BUTLER: Yes.

12 MR. CARTER: They're right here.

13 THE CHAIRMAN: Mr. Oradini, why don't
14 you get them and distribute them on behalf
15 of Mr. Butler.

16 MR. BUTLER: There should be an
17 exhibit package for each Board member and
18 -- all four Board members and an extra copy
19 for the file.

20 Now, the reason that I've given you
21 the petition is that this case deals not
22 with some vague interpretations of
23 statutes, but specific interpretations of
24 statutes as it applies to the petition.
25 This case is solely about the petition

1 filed by Maureen Adler Gravens. And the
2 Board's decision here today will be
3 applying the various statutes to the face
4 of this petition, a very simple matter.

5 Miss Reese's attorney has put forth a
6 couple of statements here that I want to
7 clarify right from the outset.

8 Our position is that ORC Section
9 1901.07 governs and specifically provides
10 for nonpartisan candidates the concept that
11 there is the same exact language in an
12 Independent petition and a nonpartisan
13 petition is wrong. It's incorrect.

14 An Independent petition will have some
15 specific language that's provided by the
16 statute. And I think I have in front of
17 you 3501.01, which defines an Independent
18 candidate.

19 And an Independent candidate means any
20 candidate who claims not to be affiliated
21 with a political party, that's the first
22 element, who claims not to be affiliated
23 with a political party.

24 And our case will demonstrate that the
25 Exhibit 1, Gravens Exhibit 1, does not

1 contain any such reference.

2 The second element of the definition
3 3501.01(I) states that, any candidate who
4 claims not to be affiliated with a
5 political party and whose name has been
6 certified on the office-type ballot at a
7 general or special election through the
8 filing of a state candidacy in a petition
9 as described in section 3513.257 of the
10 Revised Code.

11 Judge Maureen Adler Gravens is a
12 candidate not for a position that will lead
13 to the office-type ballot, that's like
14 governor and other executive-type
15 positions, rather, she's a candidate for
16 judge. That's the nonpartisan ballot, ORC
17 Section 3505.04.

18 But if you look at Gravens' petition
19 and the statutes that are referenced at the
20 top, one statute that is not referenced is
21 the statute that governs Independent
22 petitions. 3513.257 is not referenced on
23 Gravens' petition.

24 So in presenting our case in chief, we
25 will carefully examine the petition in a

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

little greater detail, and apply these statutes.

I appreciate your attention.

THE CHAIRMAN: Thank you, Mr. Butler. Mr. Carter, your first witness.

MR. CARTER: Yes, I'd like to call my -- the petitioner here in this matter.

THE CHAIRMAN: All right.

MR. CARTER: I would call Deborah Reese.

THE CHAIRMAN: Why don't you come up here. We have got a seat up here, and why don't you sit in that, and Mr. Carter can ask you some questions. Kind of use that as our witness chair right here.

* * * * *

DEBORAH REESE, sworn.

* * * * *

THE CHAIRMAN: Please have a seat, and Mr. Carter will start asking you some questions.

Please speak up and slowly so we can all hear what you're saying.

- - -

DIRECT EXAMINATION OF DEBORAH REESE

1
2 BY MR. CARTER:

3 Q. Would you please state your name for the members of
4 the Board?

5 A. Deborah Reese.

6 Q. What is your address?

7 A. 4277 West 214th in Fairview Park.

8 Q. Are you a registered voter in Fairview Park?

9 A. I am.

10 Q. Have you participated in elections in Fairview Park?

11 A. Yes, I have.

12 Q. Are you eligible to participate in upcoming
13 elections in Fairview Park?

14 A. I am.

15 Q. How did you come to know about the subject matter of
16 this petition to challenge to Judge Gravens?

17 A. My sister brought it to my attention.

18 Q. And what did she tell you?

19 A. That Miss Gravens had filed as an Independent, and
20 then voted in the Democratic primary, and there were
21 discussions that that was not allowed.

22 MR. BUTLER: Objection as to the
23 categorization of the sections.

24 THE CHAIRMAN: Thank you. And
25 overruled.

1 MR. CARTER: Hearsay. That's what she
2 was told.

3 Q. (BY MR. CARTER) And as a result of that, what did
4 you do?

5 A. My sister presented me with a letter that was --

6 Q. Did you read that letter?

7 A. I did.

8 Q. And what did that letter contain?

9 A. Basically what I said, that there were -- that she
10 was offered as an Independent, she submitted her
11 application, she voted in the primary, then she was
12 approved as an Independent, and there was
13 attachments to it to support that case.

14 Q. And then did you send that to the Board of Elections
15 as a protest?

16 A. Yes. Each member of the Board got a copy.

17 MR. CARTER: That's all I have.

18 MR. MCNAIR: So you have no
19 independent knowledge that, in fact, Judge
20 Gravens filed as an Independent? It was
21 only based upon what your sister told you?

22 THE WITNESS: I did after discussion.

23 MR. MCNAIR: I'm sorry?

24 THE WITNESS: After my sister and I
25 were discussing it, we looked into it

1 further, but it was brought to my
2 attention.

3 MR. MCNAIR: Well, I'm asking what
4 competent evidence you have that Judge
5 Gravens as an Independent.

6 THE WITNESS: The attachments that
7 were on the letter as far as her
8 application I believe was on that.

9 MR. MCNAIR: And that's it?

10 THE WITNESS: Yes, sir.

11 MR. MCNAIR: Okay. So you looked at
12 the documents, you made a conclusion she
13 filed as an Independent, and that was your
14 basis for filing your letter with us?

15 THE WITNESS: Yes, sir.

16 MR. MCNAIR: Okay. Thank you.

17 THE CHAIRMAN: Okay.

18 MS. CHAPPELL: Are we sure that the
19 witness can be heard? Is the microphone
20 being able to pick up her testimony? I
21 think there's a little bit of unreadiness
22 on that.

23 MS. PLATTEN: It should be good now.

24 THE CHAIRMAN: Mr. Butler on cross.

25 MR. BUTLER: Hi, Ms. Reese. I'm

1 Michael Butler. I'm the attorney for
2 Maureen Adler Gravens. I'm going to ask
3 you a couple questions. I'll be brief.

4 THE WITNESS: Okay.

5 - - -

6 CROSS-EXAMINATION OF DEBORAH REESE

7 BY MR. BUTLER:

8 Q. Miss Reese, just for clarification, who's your
9 sister?

10 A. Christine Baldwin.

11 Q. And is your sister Mr. Hagan's secretary?

12 A. Yes, sir, she is.

13 Q. Okay. All right. Now, when you were getting ready
14 to file this protest, what documents did you review?

15 A. I don't remember specifically. They were attached
16 to the letter.

17 Q. Well, one of the documents that's not attached to
18 the letter is the petition that was filed by Maureen
19 Adler Gravens.

20 At any time have you looked at the petition
21 that was filed with this Board of Elections that is
22 the subject of this? Have you studied that?

23 A. No, sir.

24 Q. Okay. So you don't know what Judge Gravens said on
25 her petition, do you?

1 A. Not specifically, no, sir.

2 MR. BUTLER: Okay. No further
3 questions.

4 THE CHAIRMAN: Anything on redirect,
5 Mr. Carter?

6 MR. CARTER: No, sir.

7 THE CHAIRMAN: All right. Miss Reese,
8 thank you for your time and efforts today.
9 You may step down.

10 Mr. Carter, do you have another
11 witness?

12 MR. CARTER: No, I do not, sir.

13 THE CHAIRMAN: Okay. How about any
14 other documentary evidence that you'd like
15 to address?

16 MR. CARTER: Well, I'm not quite sure
17 how you want me to do this. We have all of
18 the matters that were attached to our
19 brief. Most of those are public record
20 with the exception of the newspaper
21 articles, of course.

22 What I'm talking about for the
23 evidentiary matters are listed --

24 THE CHAIRMAN: Mr. Carter, I guess at
25 this point, if we were having a regular

1 trial, as you know, you would kind of
2 submit -- you submit certain documents for
3 purposes of the record, and you'd ask the
4 Court, you know, your case in chief is
5 closed, except for the submission of
6 certain documents and exhibits. I guess
7 we're at that point of the case in your
8 case in chief.

9 MR. CARTER: Yes, I was just --

10 THE CHAIRMAN: Go ahead. Just for my
11 own clarification, you have certain
12 documents and exhibits you want to make
13 certain are part of the record so you can
14 preserve the record.

15 MR. CARTER: Yes, sir, I do. And I
16 was turning to them when we did it. They
17 are listed in our initial letter of July
18 16th to the Board. They would be the Board
19 of Election petition deadlines, which are
20 referenced. The Gravens statement of
21 candidacy and nominating petitions. The
22 receipt of the petition for the precheck.
23 The results of the candidate precheck. The
24 judicial receipt for petition filing
25 materials. Judge Gravens' voting record.

1 The BOE alphabetical poll book from the
2 primary of May 8, 2007, that's a two-page
3 document. And the other matters are public
4 record. And it's the Morrison opinion from
5 the 6th Circuit which doesn't need to be
6 moved in. The Secretary of State's
7 Advisory Opinion, as well.

8 And I have a real problem here with a
9 matter that I don't know what the document
10 is. I'll just be straight out. It comes
11 out of the Secretary of State's office.

12 Do you know what it is, Mr. Ruple?

13 I'm sorry. Could Mr. Ruple identify
14 this for me, please?

15 THE CHAIRMAN: Sure. Mr. Ruple?

16 MR. RUPLE: I would just -- as you
17 know, I'm here assisting Mr. Carter.

18 As you know every year or every
19 election cycle the Secretary of State puts
20 out a Campaign Requirement Guide. And
21 contained within there, and it's also
22 attached to our reply brief, is this
23 portion for the Municipal Court Judge. And
24 contained therein is -- it maybe kind of
25 gets to the heart of the matter in terms of

1 using the same form, as you'll see in that
2 attachment, which again we have copies
3 here, if it may it please the Board, that
4 you know, Independent candidates,
5 nonpartisan candidates use Form No. 3-I,
6 and that was the only other additional, I
7 think, documentary piece we have.

8 MR. CARTER: I didn't know it was out
9 of the campaign guide. That's what had me
10 stymied, and I couldn't properly identify
11 it today.

12 So with that those would be the
13 documents we would put in evidence here,
14 and at that point I would close.

15 THE CHAIRMAN: Okay. Mr. Butler, in
16 regards to the exhibits? And I want to
17 just kind of summarize, Mr. Carter,
18 basically you were referring to all the
19 exhibits that were attached to your brief
20 that you submitted on July 16th.

21 MR. CARTER: That's correct, except
22 for the newspaper articles.

23 THE CHAIRMAN: Mr. Butler, as regard
24 to the exhibit.

25 MR. BUTLER: Regard to?

1 THE CHAIRMAN: Mr. Carter's exhibits,
2 is there any objection for purposes of the
3 record just to get them in.

4 MR. BUTLER: For purposes of the
5 record, no objection.

6 THE CHAIRMAN: Okay. I will submit
7 those for purposes of the record. Do you
8 want to make sure, Mr. Carter, along with
9 our clerk, regardless of the outcome of
10 today's hearing that those are part of the
11 record for purposes of either party
12 deciding to whether to pursue this further.

13 And that being the case, I guess it's
14 it's your turn, Mr. Butler, for your case
15 in chief.

16 Mr. McNair's asking if there needs to
17 be a motion in regards to those.

18 MR. CARTER: I'll move those documents
19 into --

20 MR. MCNAIR: I was asking if the Board
21 members would move, but our counsel is
22 saying no.

23 MR. ORADINI: No, it's his decision.

24 MR. MCNAIR: So they're in.

25 THE CHAIRMAN: It's fair to ask,

1 Sandy, because I'm kind of like -- is there
2 any objections to my decision, I guess,
3 anybody on the Board have any comments?

4 Okay. Thank you.

5 Well, you know what, for purposes,
6 too, of the record, all those in favor of
7 permitting the exhibits that Mr. Carter
8 articulated should be submitted on behalf
9 of his him and his client signify by saying
10 aye.

11 MR. McNAIR: Aye.

12 MR. FROST: Aye.

13 MS. CHAPPELL: Aye.

14 THE CHAIRMAN: All right. Mr. Butler,
15 your case in chief, sir.

16 MR. BUTLER: Okay. Just so I'm clear,
17 are we having a -- I'm going to later on?
18 Summarize?

19 THE CHAIRMAN: Yes, exactly. I wanted
20 you to, but -- pour out your positions and
21 then you're going to get questions.

22 MR. BUTLER: Well, I've already given
23 you our Exhibit No. 1, which is the
24 petition. And if look briefly -- if you
25 look at Gravens Exhibit No. 2, you'll find

1 the Designation of Treasurer form that was
2 filed by Judge Gravens, and you can see
3 that in the -- about halfway down the sheet
4 where it says full name of candidate and
5 then it has the designation as to whether
6 there's a party affiliation, whether or not
7 you're independent or nonpartisan, and
8 Judge Gravens signed indicating
9 nonpartisan, and this is dated February 20,
10 2007 prior to filing her petition at the
11 Board.

12 I also have in front of you what we're
13 offering as more of a demonstrative piece
14 of evidence, that would be Gravens Exhibit
15 3, and that is the sample petition for
16 individuals who are running for school
17 Board. And when we -- as you can see that
18 this petition corresponds almost exactly to
19 the Gravens petition with two major
20 distinctions.

21 One, the Board of Education is
22 governed by a different statute as is set
23 forth on the face of the petition, that's
24 3513.254. And the second distinction is
25 Gravens petition is governed by 1901.07.

1 Now, the reason I bring this to your
2 attention, and we'll get into this in
3 argument, is that these petitions for
4 nonpartisan candidates parallel each other,
5 and so that if the argument is, as we go
6 through this case, that if you vote in a
7 party primary and you file a nonpartisan
8 petition, somehow that's going to negate
9 the declaration of nonpartisan position
10 causing it to be invalid.

11 MR. MCNAIR: Would you say that
12 sentence again, please?

13 MR. BUTLER: The issue is this, that
14 the claim is that Gravens petition is -- we
15 believe it's a nonpartisan petition, the
16 School Board candidate is a nonpartisan
17 petition. If a person files a School Board
18 petition and votes in the party primary, a
19 comparable argument would be made that that
20 School Board candidate petition is also
21 invalid because they voted in a party
22 primary. And that's the purpose of us
23 offering this as an exhibit. And that is
24 the same exact form as the Gravens
25 petition. It's a nonpartisan nominating

1 petition, both Exhibits 1 and 2 are
2 nonpartisan nominating petitions.

3 I will say again as to other evidence
4 we've offered, there is in our brief the
5 Affidavit of Judge Maureen Gravens. And in
6 our case in chief, I'd like to note that
7 Judge Gravens is at work today and is not
8 present to testify, but her Affidavit is
9 before the Board, which explains her voting
10 history.

11 In fact you'll note in looking at the
12 evidence in this case that she's been a
13 nonpartisan candidate before and has voted
14 in party primaries.

15 That would be the evidence that we
16 would offer before the Board at this point,
17 and on rebuttal, I'd -- Well, actually I
18 guess we are going to have an opportunity
19 to argue the case on its merit?

20 THE CHAIRMAN: Thank you, Mr. Butler.
21 I will move -- certainly -- Mr. Carter, is
22 there any objection in regards to -- and I
23 think Mr. Johnson gave you a copy of Judge
24 Gravens No. 1 and 2 exhibits and a No. 2
25 exhibit, are there any objections to those

1 being --

2 MR. CARTER: No objections.

3 THE CHAIRMAN: Thank you, Mr. Carter.

4 And, of course, both your initial
5 briefs, Mr. Carter and Mr. Butler, along
6 with your reply briefs and the attachments
7 thereto will be part of this record, is
8 there anything else from the Board with
9 regard to the exhibits and the evidence
10 that's been submitted/.

11 MR. McNAIR: I understood from Mr.
12 Butler he wanted to be clear that the
13 Judge's Affidavit is also admitted into
14 evidence, so we should ask perhaps
15 Mr. Carter --

16 MR. CARTER: That was my
17 understanding, Mr. McNair, that that was
18 part of that package.

19 MR. McNAIR: So we have four exhibits
20 then from Judge Gravens.

21 MS. CHAPPELL: Why don't we
22 incorporate by reference all the exhibits
23 that were attached to the pleading that was
24 filed.

25 THE CHAIRMAN: Sure, because the

1 Affidavit was a part of the initial filing
2 on behalf of Judge Gravens.

3 Great. Any other -- just to clear up
4 the record here? Any -- Okay.

5 Having said that, what I'd like to get
6 to now is, you know, give you both 15
7 minutes. If you'd like to reserve
8 something, Mr. Carter, you know, please let
9 us know, Mr. Butler, and I think you're
10 going to get some questions from the Chair
11 now because you've staked out.

12 MS. CHAPPELL: One point of order, do
13 we need to vote on accepting Mr. Butler's
14 as we did with Mr. Carter's exhibits?

15 THE CHAIRMAN: Yes. I would move that
16 the exhibits that are attached to Mr.
17 Butler's merit brief and reply brief along
18 with the ones he's introduced here today,
19 1, 2, and 3, and make it clear that that
20 Affidavit is part of his merit brief, I
21 move that it be accepted as part of the
22 record. Is there a second?

23 MS. CHAPPELL: Second.

24 THE CHAIRMAN: Okay. Any discussion?
25 All those in favor --

1 MR. MCNAIR: Yeah, I just want to be
2 clear, there aren't any exhibits to the
3 reply brief --

4 THE CHAIRMAN: No, but in his merit
5 brief.

6 Okay. All those in favor signify by
7 saying aye.

8 MR. MCNAIR: Aye.

9 THE CHAIRMAN: Aye.

10 MS. CHAPPELL: Aye.

11 THE CHAIRMAN: Okay. Motion passes
12 unanimously.

13 Well, you didn't vote, Mr. Frost, did
14 you?

15 MR. FROST: No, I didn't.

16 THE CHAIRMAN: Okay. So the vote is
17 Hastings, Chappell, and McNair with Mr.
18 Frost abstaining. Is that correct?

19 MR. FROST: That's correct.

20 THE CHAIRMAN: And on the prior
21 motion, let the record reflect, I misspoke
22 but I said it was unanimous. All right.
23 We have our record.

24 And, Mr. Carter, do you want to
25 reserve some time for rebuttal?

1 MR. CARTER: Yes, sir.

2 THE CHAIRMAN: How much time?

3 MR. CARTER: Five minutes.

4 THE CHAIRMAN: That's fine.

5 MR. CARTER: The handbook from the
6 Secretary of State that I was referring to
7 as one of our exhibits says, Petition Form
8 numbers, and it lists three Petition Form
9 numbers. A party candidate must use 2H, an
10 independent candidate must use 3I, and
11 nonpartisan candidates must also use 3I.

12 In essence, that what my learned
13 colleague was saying when he said let's
14 look at the types of petitions that they
15 file for School Board and for Judge. They
16 are the same petition. That petition is
17 used whether you're an Independent, that
18 form of petition whether you're an
19 Independent or whether you're a
20 nonpartisan.

21 The difference is, Rocky River, and
22 let's focus on Rocky River. This would go
23 through out the State, in my opinion, but
24 in Rocky River, we've got a partisan
25 election for a Judge this time around. The

1 School Board election in Rocky River is
2 still nonpartisan. So in filling out those
3 same kinds of petitions, in a partisan
4 election you are an Independent, in a
5 nonpartisan election are you nonpartisan
6 because because you can't be anything but
7 nonpartisan in a nonpartisan election.

8 MR. MCNAIR: Here's my concern with
9 that.

10 MR. CARTER: Yes, sir.

11 MR. MCNAIR: You look at 1901.07, you
12 look at the statute. And again, the
13 statute it seems to me says it gives people
14 a right to file either through the partisan
15 avenue or as a nonpartisan. And that's a
16 statutory right. And I don't see how this
17 Board, and I don't think that's -- and I
18 don't think it's the Board that says
19 whether it's a partisan or a nonpartisan
20 race. No matter what we've done as an
21 agency, I as a Board member don't think
22 that that's how it works as I look at the
23 statute.

24 As I look at the statute, you could
25 file as partisan in a partisan primary

1 because you want to be with the Republican,
2 you want the Republican denomination,
3 Democratic denomination nomination, but if
4 I still want to run as a nonpartisan, I
5 have a statutory right to do that no matter
6 what anybody else in the world does.

7 But as I hear you saying, if there's a
8 partisan election, then I who want to run
9 as a nonpartisan can no longer do that, I
10 have to run as an Independent; is that
11 right?

12 MR. CARTER: You can run as a
13 nonpartisan, you can call yourself whatever
14 you want to call yourself. Operation of
15 the law, operation of the statutes, the
16 regs, make you, for consideration under the
17 Ohio Code, an Independent, make you an
18 Independent under the Secretary of State's
19 advisory opinion that's in question that
20 we're talking about here.

21 MR. MCNAIR: See, I don't -- I'm
22 having a hard time understanding that
23 because the Secretary of State's advisory
24 opinion follows the Morrison case, right?

25 MR. CARTER: Yes.

1 MR. MCNAIR: And it was my
2 understanding that in Morrison there was an
3 affirmative representation made to the
4 Board of Elections that the person was
5 filing as an Independent, that is to say
6 they weren't affiliated with any party,
7 whereas if you file as a nonpartisan,
8 you're not making any such representation,
9 as I understand it.

10 MR. CARTER: So do you think that
11 loophole is fair? Do you think that I
12 should be able to all of a sudden say, okay
13 now I want to run and I don't want people
14 to think I'm with the Ds or the Rs, so I'm
15 going to call myself an Independent. Oh,
16 wait a minute. I'm on the Central
17 Committee of the Democrat party. I better
18 not call myself an Independent. I'll call
19 myself a nonpartisan and then I can do all
20 those things.

21 This absolutely is what the Secretary
22 of State is trying to prevent here is
23 people saying that they have no party
24 affiliation and then being active in the
25 primary, the party activities.

1 Your suggestion, while I think reading
2 the law and not reading to the end of those
3 statutes where they talk about the partisan
4 elections, I think that's a concept you can
5 come up with, because I was there for a
6 while. And then when I read all the
7 statutes, especially when I went back to
8 1701 -- I mean 1901.07, and I read that
9 second paragraph under Paragraph B, and I
10 read that third paragraph under Paragraph
11 B, it's clear to me, at least for purposes
12 of this argument and to my position on
13 behalf of my client, that that second
14 paragraph in B talks about partisan
15 elections and that's what happens in a
16 partisan election. The third paragraph
17 goes to nonpartisan elections.

18 THE CHAIRMAN: Mr. Carter, is Morrison
19 distinguishable in any manner from the
20 current facts of the law in this case?

21 MR. CARTER: Is it distinguishable?
22 Sure. I mean, the guy in Morrison did fill
23 out a thing, a statement that says I'm an
24 Independent, and I'm not part of any party
25 affiliation. He actually made that

1 statement.

2 THE CHAIRMAN: What about the
3 importance of the office-type ballot that
4 that court was looking at as opposed to
5 this ballot?

6 MR. CARTER: That ballot also had that
7 type of declaration on it, that's why I was
8 talking earlier that an Independent and a
9 nonpartisan use the same form of petition.
10 I think that perhaps the legislature was
11 trying to save us money in the boards of
12 election albeit I don't know how much that
13 one form would work for somebody who is an
14 Independent and one form would work for
15 somebody who was a nonpartisan, because
16 when you get to the essence of what an
17 Independent or a nonpartisan is, they're
18 not affiliated.

19 MS. CHAPPELL: But are we elevating
20 form over substance by saying only the form
21 is determinative of a person's choice of
22 political affiliation?

23 MR. CARTER: Absolutely not. What
24 we're taking here is the substance comes
25 into the operation of the law and the

1 filing dates. Okay? It would appear that
2 I'm making that argument, that's not true.
3 When you go back to the Board of Elections
4 schedule for filing dates, they have filing
5 dates for partisan and nonpartisan
6 elections, and in the partisan election
7 you're either a party designate or you're
8 an Independent. Then if she's nonpartisan
9 in this case, when would she have filed?
10 There's no filing date that you folks
11 specify for a nonpartisan person in Rocky
12 River. You only have down there scheduled
13 a partisan filing, which is in February, so
14 you could get in the primary and then an
15 Independent filing, which was in May.
16 There is no filing for a nonpartisan that
17 nonpartisan filings come up in, they're in
18 I guess August 26, I believe they are now
19 for offices not covered, and that would be
20 school board and judge, I understand all
21 that.

22 But there is a specific time scheduled
23 for nonpartisan filings. They are terms of
24 art that get confused with common
25 understanding and common usage. It

1 certainly is not form over substance, it's
2 operation of statute regulation and that's
3 where you have to be careful. You got to
4 know your law.

5 MS. CHAPPELL: So what then do we do
6 with this statement of candidacy and the
7 nominating form? How do we then treat that
8 if there's no representation by the
9 candidate in that document as to -- you're
10 saying it's just by operation of law and
11 this document has no --

12 What's the effect of this document, in
13 your view then?

14 MR. CARTER: In my view, if that
15 document's filed in a nonpartisan election,
16 you're not a nonpartisan candidate. If
17 it's filed in a partisan election, you're
18 an Independent. I think it's clear. I
19 think that operates. And when you read
20 1901.07, you read those paragraphs I'm
21 talking about you'll see how that fits in
22 there.

23 THE CHAIRMAN: But Mr. Carter, it goes
24 on to say, it says, If no primary election
25 shall be held for purposes of nominating

1 candidates for that party -- excuse me.

2 Let me back up.

3 It talks about the fact that as
4 candidates of one political party for
5 election to the office do not exceed the
6 number of candidates that the party's
7 entitled to nominate as its candidates for
8 election, no primary election shall be held
9 for purposes of nominating candidates for
10 that party.

11 Isn't that the case of what happened
12 in Rocky River? We had one individual for
13 the republican nomination, none for the
14 democratic nomination, therefore to -- by
15 operation of law there was no primary that
16 took place and therefore she could exist as
17 a nonpartisan. That's exactly what that
18 says?

19 MR. CARTER: No, that's not what it
20 says. It says -- I'm not sure right where
21 you were obviously.

22 THE CHAIRMAN: It's in the second
23 paragraph of B.

24 And I'm just wondering, there was no
25 primary election if I'm reading that

1 because there was only one candidate for
2 that position, there should have been two,
3 then you would have had a primary.

4 MR. CARTER: Well, then we're talking
5 perhaps that the operations -- that there
6 wasn't a primary, but that didn't mean it
7 wasn't a bipartisan election. Okay?

8 The fact that somebody didn't run
9 against them and the fact that there was no
10 Democrat candidate there, that doesn't make
11 the election all of sudden something
12 different, that says this is how you
13 conduct it. It was still a partisan
14 election as designated by the Board. And
15 the Board designated filing dates for
16 nonpartisan and independents.

17 And if you look at that sheet again,
18 there are places where the Board designates
19 nonpartisan filings. As I said before,
20 calling yourself -- I could call myself a
21 Republican and go to every Democrat party
22 meeting, support every Democrat that there
23 is, go on and on, give money, this, that,
24 and the other thing, I could still vote in
25 the Republican primary, but I'm a Democrat,

1 right, by operation?

2 I don't know. That's the kind of
3 question we have here, you can call
4 yourself an Independent, you can call
5 yourself -- because that's what somebody
6 is. They're not dependent upon either
7 party. You're a nonpartisan, you're not
8 dependent on any party.

9 Under the operation of the statute as
10 set forth by the Board of Elections regs,
11 by the statutes, she, Judge Gravens became
12 an Independent, and as an Independent, she
13 cannot vote in a party primary. And that
14 is one of the specifics, if we go back to
15 the Sixth Circuit's opinion that the
16 Secretary of State took out. They said you
17 can't vote in a primary after you've
18 declared yourself an Independent, after
19 you've represented you're an Independent.
20 All right?

21 The nonpartisan label wasn't part of
22 that, that's another way you can
23 distinguish that case, too, if you want to
24 get into that. But what I think we are
25 trying to look at here is what the

1 Secretary of State is trying to do to get
2 fair elections. And if I say I'm not
3 nonpartisan and I go vote in my party's
4 primary two days after I declare I'm a
5 nonpartisan, boy, oh boy, I'm not very
6 nonpartisan, am I?

7 Oh, wait a minute, I'm really an
8 Independent, but I don't want to call
9 myself that because if I call myself an
10 Independent, I can't vote in that primary.
11 I'm saying to you that that's where we get
12 into a real problem. That's where the
13 election laws are set up to guard against
14 folks trying to say these political parties
15 don't control me, I'm nonpartisan, I'm
16 independent. Boom, you're voting in the
17 primary pack.

18 MR. MCNAIR: But under that analysis
19 then, doesn't the distinction between
20 nonpartisan and independent collapse into
21 each other?

22 MR. CARTER: As I said, when you look
23 them up in the dictionary, they do.
24 They're defined in the statutes, and let's
25 go to that statute.

1 THE CHAIRMAN: You know what, for
2 purposes of the time, I'm going to give
3 this --

4 MR. CARTER: Yeah, I got rebuttal.

5 THE CHAIRMAN: A few more minutes, I
6 just want to keep some of --

7 MR. CARTER: If you can go to
8 3501.01(f), you come down under the
9 definitions, you get the definition of
10 independent candidate and nonpartisan
11 candidate.

12 MR. MCNAIR: I and J?

13 MR. CARTER: Yes, sir. I was just
14 going to say those are I and J.

15 And when you read through that, you
16 read about the nonpartisan candidate, you
17 get to the end that for municipal and
18 township offices in which primary elections
19 are not held for nominating candidates by
20 political parties and for offices of
21 municipal corporations having charters that
22 provide for separate ballots for elections
23 for these offices.

24 So you have to look at the nonpartisan
25 there, and then the independent there.

1 Well, in the real world and what we use in
2 day to day language, plain usage, I think
3 independent and nonpartisan meld together.
4 But I think here, we have to keep those
5 labels very, very, very, very separated
6 here because while some judicial elections
7 are in nonpartisan elections, that didn't
8 happen here. This was, in fact, a declared
9 partisan election, and you have to follow
10 the regulations, and the regulations
11 clearly mandate that Judge Gravens is, in
12 fact, an Independent, and as an Independent
13 she filed on May 6th and she voted in a
14 primary on May 8th. And under the
15 Secretary's regulations for candidacy, she
16 should be taken off the ballot.

17 MR. MCNAIR: My fundamental concern of
18 that thought is that 1901.07 -- and I said
19 this I guess before, maybe I'm just
20 repeating myself -- but it gives a person a
21 statutory right to either file through the
22 partisan means or file as a nonpartisan
23 candidate. The first paragraph in B says
24 you can be nominated either through the
25 nominating petition effectively as a

1 nonpartisan or by primary election. That's
2 a statutory right that anybody in this
3 state has as long as they meet the other
4 requirements to be a judge. And I don't
5 think this Board of Elections can say this
6 is a partisan election, it's a nonpartisan
7 election, change anybody's statutory right
8 to either vote, through it be the primary
9 vehicle or as a nonpartisan candidate.

10 MR. CARTER: The point that I believe
11 your argument -- or your question misses is
12 that third paragraph would apply, reading
13 through that election, which kind of
14 election it is. As you know, municipal
15 courts and boards of educations can be
16 nonpartisan offices and can be nonpartisan
17 elections. We never had a nonpartisan
18 election for a Governor of the state of
19 Ohio that I'm aware of.

20 These sets of regulations that you're
21 looking at, Mr. McNair, govern how it's
22 done in a nonpartisan election. Yes, you
23 have the right to go, that's the beauty of
24 the system. You have the right if you're
25 not a member of a party to go ahead and

1 come in as a nonpartisan in a nonpartisan
2 election. You look at the one above that,
3 the rather lengthy paragraph, compared to
4 the one which we were just examining where
5 they're talking about the municipal court,
6 they both talk about the same
7 jurisdictional issues in the beginning, but
8 one is for a nonpartisan election and one
9 is for a partisan election. Of course you
10 have the right to register as a nonpartisan
11 in a nonpartisan election.

12 THE CHAIRMAN: But --

13 MR. MCNAIR: I should correct myself.
14 I think I said there were three paragraphs
15 in B, but I think they're actually four.
16 But then it's the fourth one that says no
17 matter which way you went, if you went
18 through paragraph 2 on partisan or
19 paragraph three as a nonpartisan, at the
20 end of the day however you get there, you
21 all appear on the ballot in a nonpartisan
22 judicial ballot whether there's two or
23 three.

24 MR. CARTER: Exactly. It's a what
25 kind of ballot? Non partisan, it's the

1 ballot. That's the label for the ballot
2 that's used, just like the type of
3 nominating petitions here, there's
4 different types. There is a specific
5 nonpartisan ballot. So you're using a
6 nonpartisan ballot. It's how you got
7 there.

8 You were 100 percent correct, that's
9 where we have to be very careful in looking
10 at what these things are called and what
11 they are. It says the ballot is
12 nonpartisan. It doesn't say the election
13 is nonpartisan. If it said nonpartisan
14 election, I think you'd be spot-on. I
15 think the fact that it's a partisan
16 election and it uses a form of ballot that
17 is nonpartisan ballot, that's where the rub
18 comes to your argument respectfully.

19 MR. MCNAIR: Thank you.

20 MS. CHAPPELL: I just have one other
21 question. I'm having a little bit of
22 trouble with your argument that someone
23 becomes an Independent by operation of law.
24 Especially in the face of the language of
25 the definition.

1 Independent candidate means any
2 candidate who claims not to be affiliated,
3 et cetera. That suggests to me that there
4 has to be some affirmative action on the
5 part of the candidate in making some sort
6 of declaration or claim that they are not
7 affiliated in order to be an Independent.
8 Can you just tell me how this definition
9 squares with your argument that this
10 happens by operation of law?

11 MR. CARTER: Sure. Independent
12 candidate, they claim not to be affiliated
13 with any party, correct? Correct. That's
14 where we agree on. And whose name has been
15 certified on the office-type ballot in
16 general or special election through the
17 filing of statement of candidacy in
18 nominating petition as prescribed in
19 section so and so.

20 And then you look at what the
21 nonpartisan is. Those are for specific
22 usage of the labels. We now know that we
23 have an independent candidate. I would say
24 the nonpartisan candidate -- you have to
25 read the two together -- means any

1 candidate whose name is required pursuant
2 to the section to be listed on the
3 nonpartisan ballot. Okay?

4 Now, that's where all the candidates
5 for judicial office in a primary are not
6 held. You'll notice at the end of the
7 nonpartisan candidate it says in which
8 primary elections are not held for
9 nominating candidates by political parties.
10 That's where we get into that rub. In this
11 election that we're talking about, it was
12 scheduled to have primary elections held.
13 They weren't held but it was scheduled for
14 that because it's a partisan election.
15 That's why I'm saying by operation of
16 statute then, that person is considered an
17 Independent candidate because we have to
18 look at that that here was an election that
19 the Board set up as a partisan election,
20 where there could have been primaries,
21 where you could have run as a primary.

22 You know, whether people did or not,
23 that's a matter of history. However, it
24 was a partisan election. So I think you
25 have to be very careful when you're reading

1 those definitions and read that it's
2 talking about the nonpartisan in an
3 election where there's not a primary
4 election, they are terms of art, and yes,
5 by operation of statute, you are considered
6 an Independent in this situation.

7 THE CHAIRMAN: Any other questions?
8 Mr. Frost, anything?

9 MR. MCNAIR: I'm sorry.

10 THE CHAIRMAN: Go ahead.

11 MR. MCNAIR: Well, it seems to me it
12 is a fairly important point. The phrase in
13 which the primary elections are not held
14 for nominating candidates by political
15 parties in J, that's within a phrase that's
16 set off by two commas, and as I understand
17 your interpretation, that phrase has to
18 apply to the entire subsection J and not
19 just the clause that's set off by the two
20 commas.

21 MR. CARTER: It does apply to the
22 whole phrase, that's correct.

23 MR. MCNAIR: All right.

24 THE CHAIRMAN: Thank you, Mr. Carter.
25 And we're on to you, Mr. Butler.

1 MR. CARTER: Thank you.

2 MR. MCNAIR: At some point, if Mr.
3 Butler could just address that last issue,
4 I'd appreciate it.

5 THE CHAIRMAN: I'm sure he will.

6 MR. BUTLER: If I may, you heard Ms.
7 Reese's testimony today that she did not
8 bother to examine Judge Gravens' petition
9 before she brought this matter to the
10 Board's attention. We heard from counsel
11 for Ms. Reese, who did a nice job talking
12 about a variety of other things, but one
13 thing he did not do was analyze the face of
14 Judge Gravens' petition to show this Board
15 the infirmity that would allow this Board
16 to validate this petition. Why? There is
17 none. There is none.

18 There is no statement, no magical
19 Harry Potter incantation by operation of
20 law, someone suddenly becomes an
21 Independent. That's not contained in the
22 body of Judge Gravens' petition. And I
23 will suggest to you that as statutory Board
24 operating and interpreting 3501.39 that
25 statute that allows you to evaluate

1 protests. It also evaluated the validity
2 of the petitions.

3 You have to find a specific flaw, and
4 those natural flaws are not enough
5 signatures, whatever, all those typical
6 flaws that are found in petitions, none of
7 those flaws are found in Judge Gravens'
8 position.

9 Now if I may if we could walk through
10 the statutes quickly here. 1901.07,
11 contrary to counsel's argument, this is the
12 governing statute for elections in the
13 Rocky River Municipal Court District. When
14 we get over to subsection J of 3501.01(J),
15 I'm going to get back to that point because
16 this is a district that encompasses, not
17 Rocky River municipality, but several
18 cities, and the Board's records reflect
19 that. You conduct elections in a district
20 that includes at least five or six suburbs.

21 A couple of the Board members have
22 focused on the statute. Mr. Carter seemed
23 to indicate that when you file your
24 petition the day before the primary, you
25 automatically become an Independent. The

1 very black letter language in 1901.07, and
2 this would be the third full paragraph
3 under Section B states, Nonpartisan
4 candidates for the office of municipal
5 court judge shall file nominating petitions
6 not later than 4:00 p.m. of the day before
7 the day of the primary election in the form
8 prescribed by section 35, of the Revised
9 Code. That's what we have before you.

10 This business that somehow the Board
11 of Elections put out a piece of paper that
12 set forth some deadlines and it left out
13 that part, it left out that reference,
14 nonpartisan, that is a while --

15 The bottom line is the statute
16 controls.

17 THE CHAIRMAN: Mr. Butler, I mean the
18 fact is and we can see, that Judge Gravens
19 is a Democrat, right?

20 MR. BUTLER: That's correct.

21 THE CHAIRMAN: Reflects she voted --

22 MR. BUTLER: Her affidavit reflects
23 that.

24 THE CHAIRMAN: But your position is
25 that yes, she's a Democrat, but she's on a

1 nonpartisan ballot. I mean she never
2 declared she was an Independent at some
3 point. And I want to make that
4 distinction, I mean that is what this
5 protest is all about, that somehow she's
6 trying to hide her Democratic credentials,
7 and say I'm an Independent. That's the way
8 I perceive it.

9 MR. BUTLER: I want to say, when you
10 file a nonpartisan, you're not trying to
11 hide anything. The law allows you to be a
12 nonpartisan candidate, and it allows to you
13 participate in as part of the primary
14 election because certain statutory offices
15 are nonpartisan offices. And as Mr. McNair
16 asked earlier, if I would go back to
17 3501.01(J), and I will read the commas
18 allowed here, the nonpartisan candidate
19 means any candidate. So this really
20 applies to the office that we're talking
21 about, any candidate whose name is required
22 pursuant to section 3505.04 that's the
23 judicial ballot section, the nonpartisan
24 ballot section to be listed on a
25 nonpartisan ballot, comma, including

1 candidates for judicial office, comma, for
2 member of any board of education, comma.

3 Let's see here. For municipal or
4 township offices in which primary elections
5 are not held for nominating candidates by
6 political parties, comma, and for offices
7 of municipal corporations having charters
8 that provide for separate ballots for
9 election of these offices.

10 The fact is that there was no Rocky
11 River municipal primary that was voted in.
12 It was the Rocky River Municipal Court
13 district primary. That section that
14 Mr. Carter has pointed out to you has no
15 application here.

16 Judicial officers, judicial candidates
17 are nonpartisan candidates, period, under
18 the statute.

19 MR. MCNAIR: Mr. Butler, if his
20 interpretation were correct that he gave at
21 the end with respect to J, your client
22 would lose this matter, would she not?

23 MR. BUTLER: If Maureen Gravens -- I
24 will say this. Let me turn it around a
25 little bit here.

1 If Maureen Gravens filed a Morrison
2 petition that said that she claimed to not
3 be affiliated with any political party, she
4 would lose. Those are the only facts and
5 circumstances that would allow Judge
6 Gravens to lose. It's not --

7 MR. MCNAIR: You're answering a
8 question I didn't put to you. So I'd like
9 you to answer the question I put to you.

10 MR. BUTLER: And what is that
11 question?

12 MR. MCNAIR: As it relates back to the
13 position that I asked Mr. Carter, I asked
14 Mr. Carter his analysis with respect to
15 subsection J and whether that clause in
16 these primary elections are not held for
17 nominating candidates by political parties,
18 if that applies to the entire subsection.
19 His view is that it does. And my question
20 to you is if he is correct, then does his
21 petition -- the protest must be affirmed by
22 us and your client?

23 MR. BUTLER: He's not correct.

24 MR. MCNAIR: Excuse me.

25 MR. BUTLER: Sorry to interrupt.

1 MR. MCNAIR: That's okay. If his
2 interpretation is correct, then that's
3 dispositive of the matter before us. Is
4 that fair to say?

5 MR. BUTLER: No, it's not dispositive,
6 because it's a misstatement of how the
7 statute reads. And so this Board would be
8 incorrect in validating Judge Gravens'
9 petition.

10 MR. MCNAIR: Let me try and ask it the
11 other way cause I'm trying to get clarity
12 to narrow the issue for us to decide. Is
13 that not really the issue before us today?

14 MR. BUTLER: No it's not, sir. I
15 believe the issue before you is the
16 petition and whether or not the petition
17 contains the language that would cause
18 Judge Gravens' petition to be invalidated.
19 That is, if we apply Morrison, if we apply
20 the Secretary of State's advisory to
21 Gravens petition, if we got into that
22 analysis -- and we're not because it's
23 inapplicable -- but if we did, you would
24 have to find on the face of Gravens'
25 petition the statement where she claimed to

1 not be affiliated with a political party.

2 Those are the only facts and
3 circumstances in the statute that would
4 apply to causing you to get into a Morrison
5 analysis and a Morrison invalidation of the
6 petition.

7 And if I may, the Morrison case is not
8 Marbury versus Madison here. You know, the
9 Morrison case is a one-issue case on the
10 constitutionality of 3513.257, which
11 governs independent candidates.

12 Underlying that was Morrison.
13 Morrison was a candidate in Franklin
14 County, and the Franklin County Board of
15 Elections with a tie-breaker for the
16 Secretary of State looked at Morrison's
17 petition that contained the Section I, by
18 all reports, Section I claimed not to be
19 affiliated with a political party that we
20 know, and Morrison was very active in
21 partisan politics as we read the case, at
22 least six or seven high-level involvements.

23 And so the election officials found
24 that his petition was invalid because it
25 contained a claim not to be affiliated

1 when, in fact, he was affiliated.

2 If I may, while we're on this point
3 here, this is an approach -- this is a
4 Board of Elections form that I've marked as
5 Gravens Exhibit 4 that I think is
6 demonstrative of the whole threshold issue
7 before the Board, and I think will help
8 answer your question, Mr. McNair, about
9 when you can invalidate Gravens petition.

10 I put a little arrow midway through
11 the petition. If you look at the top of
12 this thing, you can see that this is
13 contrary to what Mr. Carter says, there are
14 petitions for independents, there are
15 petitions where people like -- let's say
16 Morrison wanted to be an Independent
17 candidate for Congress, I asked the Board
18 of Elections here to produce to me that
19 form that a Morrison type-of candidacy
20 would use. And that's what this is.

21 You know, he wants to run for
22 Congress, he wants to indicate that he is
23 not affiliated. He circles one of those
24 indicators down there where it says circle
25 one. Otherwise, Morrison has many of the

1 same components as the Gravens' petition,
2 but there is that legal distinction, not
3 some interpretation of the law or
4 application, there is an overt declaration
5 where a person claims not to be affiliated,
6 and that distinguishes the nonpartisan
7 candidate petition from the independent
8 candidate petition. That unto itself.

9 Now, this is not a loophole, there's
10 no loopholes here. This is a strict
11 interpretation of the statutes that allow
12 nonpartisan candidates to go to the ballot.
13 If you recall at the beginning here I asked
14 you to look at Exhibit 3 in your packet as
15 it relates to Gravens' position, and the
16 concepts and the arguments that the Reese
17 protest brings forward, you file a
18 nonpartisan petition for a school board,
19 that's a different deadline, that's 75 days
20 before the election.

21 But back in May you went and you voted
22 in a partisan primary. You're a Democrat
23 or a Republican, and you want to
24 participate, but you want to be on the
25 school Board. And you filed a nonpartisan

1 petition because you voted in the party
2 primary in May, does that in validate your
3 school board petition? I'd say not. I'd
4 say that the definition in 3501.01 clearly
5 state otherwise.

6 The school Board candidate who votes
7 in a party primary, his petition would be
8 as valid as Judge Gravens nonpartisan
9 nominating petition that she filed while
10 voting in a party.

11 MR. FROST: Mr. Butler, if I could
12 inquire, and I do want to inquire because
13 we as a Board need to get this right, even
14 if I'm going to be abstaining from the
15 decision today as you may know. We may be
16 revisiting this issue.

17 The issue before us I think is whether
18 or not the holding in Morrison applies to
19 the instant matter, would you agree?

20 MR. BUTLER: Well, the holding in
21 Morrison being that a candidate, Mr.
22 Morrison, who makes a claim not to be
23 affiliated with a political party and his
24 petition is invalid --

25 MR. FROST: Hold on a second, because

1 I forgot to say that.

2 As I read Morrison the holding of
3 Morrison as I read it is one of the
4 requirements to be nominated by a petition
5 pursuant to 3513.257, is a freedom from
6 affiliation with either major political
7 party. Not a claim of freedom from
8 affiliation, but an actual lack of
9 affiliation. They actually go so far as to
10 say actually to be nominated under 3513.257
11 process, you actually do have to be free
12 from affiliation from either major
13 political party.

14 MR. BUTLER: Mr. Frost, I don't want
15 it to sound like a lawyer argument here,
16 but that's not the holding of the Morrison
17 case. The holding of the Morrison case is
18 that the statute was constitutional. That
19 certainly is referenced in the Morrison
20 case, but more importantly for this boards
21 purposes, and I will answer your question,
22 the Secretary of State has incorporated the
23 discussion of the Morrison in a litany of
24 events that occurred in that advisory.

25 And this Board you know has that

1 before it. That's one county, Franklin
2 County looked at Morrison's position with
3 the help of Secretary of State. He
4 declared it to be invalid, and I agree with
5 you that Morrison's petition was invalid
6 because according to the reported case and
7 the Secretary of State, his petition
8 contained a claim, as you stated, not to be
9 affiliated with a political party, a claim
10 not to be affiliated with a political
11 party.

12 So the question that Miss Reese has
13 brought to you and I believe the issue
14 before this Board is, does Gravens'
15 petition contain the Morrison claim?

16 MR. FROST: I want to get back to my
17 point here. You are correct in terms of
18 what the holding is, but I don't think the
19 statement by the Court that an actual
20 freedom from affiliation was necessary, we
21 should just stick to either. It was one of
22 the factors on which the Court based its
23 holding. Not just the fact that there was
24 a claim or that there needed to be a claim,
25 but the Court said it's actually a freedom

1 from affiliation as necessary under
2 3513.257.

3 MR. BUTLER: I agree that is a part of
4 the Board's discussion.

5 MR. FROST: You are getting into
6 township trustees or board of education
7 members, but they don't file pursuant to
8 3513.257.

9 MR. BUTLER: Neither did Judge
10 Gravens.

11 MR. FROST: You said a couple of times
12 what controls her is 1901.07, correct.
13 1901.07(b), second paragraph, last sentence
14 reads this way, The petition shall conform
15 to the requirements provided for those
16 petitions of candidacy contained in Section
17 3513.257 of the Revised Code, except for
18 the signature so that 1901.07 says you've
19 got to conform to the requirements of
20 3513.257, correct?

21 MR. BUTLER: That's exactly what it
22 says.

23 MR. FROST: And Morrison never
24 referenced 3501.01(J), did he? Never said
25 anything about nonpartisan candidates one

1 way or the other.

2 MR. BUTLER: Correct, that part is
3 correct. If I may, where you were citing
4 from, 1901.07, prior to that it says that
5 the individuals who filed nonpartisan
6 candidates for the office shall file use of
7 form as prescribed by 3513.261.

8 This Board, this Board of Elections,
9 and whether or not this is three-one or
10 three-dash-three-one is marked on the
11 bottom of Gravens' petition, this Board of
12 Elections, the form that Gravens used is in
13 strict conformity and compliance with
14 3513.261.

15 I will suggest to you -- and Mr. Frost
16 has brought this point out -- well, could a
17 candidate -- could a candidate then go
18 ahead and file pursuant to 3513.257? Could
19 Judge Gravens have made a Morrison
20 declaration? And I'm going to suggest to
21 you in reading that statute, first it's not
22 before you, most importantly that's not
23 before you.

24 But secondly, yes, Gravens did not do
25 that. Gravens did not submit a petition

1 with the Morrison claim to not be
2 affiliated.

3 And Mr. Frost, I know you're not
4 voting, but you have these other issues
5 coming up here, so I appreciate your
6 interest in examining these petitions.

7 Those other cases, hypothetically,
8 let's just say there were some clerk
9 petitions, if those petitions had the
10 claim, the Morrison claim to not be
11 affiliated, that would be the kind of issue
12 that Miss Reese is bringing to the Board.
13 That would raise a question of their
14 infirmities.

15 But in Gravens' case -- and I hate to
16 be a stickler about this -- the Board is
17 only looking at Gravens' petition, the
18 statements contained therein, which are, I
19 am Maureen Gravens, here's where I live,
20 I'm a qualified electorate, and if I'm
21 elected, I will qualify for the position of
22 judge. That's all she says.

23 THE CHAIRMAN: Mr. Butler -- and it's
24 your position that she use a petition that
25 was prescribed by Section 3513.261,

1 correct?

2 MR. BUTLER: Yes, sir.

3 THE CHAIRMAN: Then it goes on to say
4 -- and I guess I want some clarification as
5 Mr. Frost is making this point -- that that
6 petition, that .261 requires, has to
7 conform to the requirements provided for
8 petitions of candidacy in 3513.257, right?

9 MR. BUTLER: Yes.

10 THE CHAIRMAN: And your position would
11 be -- I mean, Mr. Frost would say -- and
12 this is where you're getting to the essence
13 of it, that the one she signed did not
14 conform to .257?

15 MR. FROST: Well, look, for example,
16 at Gravens Exhibit Number 4. It's a little
17 bit off-point, but Exhibit 4 has the circle
18 1, non party candidate, other party
19 candidate, no designation.

20 Now it doesn't have anywhere on here,
21 a Morrison-type declaration. But I think
22 we are all in the opinion that if you fill
23 out one of these, you either are going to
24 be an other party candidate, or you're
25 going to be an Independent. You're going

1 to be one or the other like Morrison was.

2 In fact, if you look at 3513.257, it's
3 hard to tell you which paragraph, but it's
4 under 3513.257(c), and there are one, two,
5 three, four, five -- sixth paragraph of C
6 talks about nonjudicial candidate, it talks
7 about this exact form, this exact form that
8 Gravens Exhibit Number 4, any non judicial
9 candidate who files a nominating petition
10 may request at the time of filing that the
11 candidate be designated on the ballot as a
12 non party or as another party or that it be
13 placed on the ballot without any party
14 designation. I paraphrased slightly.

15 So if you're a non-judicial candidate,
16 you're going to get this form, and you're
17 going to say I either want to be
18 nonpartisan, or no designation when it
19 comes to the general election, how I appear
20 on the ballot.

21 But it's clear, all judges appear on
22 the general election ballot as nonpartisan,
23 they all appear with no party affiliation,
24 but we are not talking here today about how
25 someone appears on the general election

1 ballot, what we are talking about today is
2 the process of nomination.

3 The process of nomination in a
4 municipal court district where you extend
5 beyond the boundaries of one municipality
6 is by party primary or by 3513.257
7 petition. That's what 1901.07 says.

8 MR. BUTLER: No, sir. You left out
9 one of the key components in 1901.07, and
10 that is the specific authority for filing
11 as a nonpartisan candidate.

12 MR. FROST: They're all nonpartisan,
13 Brian Hagan is a nonpartisan. Her opponent
14 initially was.

15 MR. BUTLER: Initially, he wasn't.

16 MR. FROST: We are talking about the
17 method in which someone is nominated.
18 Brian Hagan was nominated through a party
19 process for a primary, and will now appear
20 on the general election ballot as a
21 nonpartisan.

22 MR. BUTLER: That's correct.

23 MR. FROST: Judge Gravens was
24 nominated presumptively through a petition
25 process and will also appear on the general

1 election ballot as a nonpartisan. Both are
2 nonpartisan.

3 MR. BUTLER: Sir, I don't want to
4 argue with you, but Gravens filed a
5 nonpartisan petition that does not contain
6 any of the Morrison claims to not be
7 affiliated, so therefore, that is a
8 nonpartisan petition.

9 MR. FROST: Did she or did she not
10 file a petition that conformed with
11 3513.257.

12 MR. BUTLER: She did not.

13 MR. FROST: Then under 1901.07, her
14 petition turned valid. On what basis do
15 you say that her petition doesn't conform
16 to 3513.257.

17 MR. BUTLER: Well, here. If you look
18 at the top of 35 -- let me qualify what I
19 said. It complies in part with 3513.257.
20 It does not -- in that it is a nominating
21 petition. If you look at 3513.257 the
22 title, it says Independent Candidate
23 Statement of Candidacy and Nominating
24 Petitions. So we have a two-prong statute.
25 One, the statute governs as it says in the

1 first paragraph, each person desiring to
2 become an independent candidate for office
3 in which candidates may be nominated at a
4 primary election, and it goes on to attach
5 itself back to 3513.261. These are read in
6 tandem.

7 But it does have as you go through it,
8 the ability of someone, a Morrison-type
9 person as Mr. Frost read, for any
10 non-judicial candidate to make his
11 Morrison-type claim to not be affiliated.

12 So when I said that 3513.257 doesn't
13 apply to Gravens, I want it clear that I
14 said it, it's in the context that she did
15 not make a Morrison declaration. That is
16 stated in that full paragraph that Mr.
17 Frost read into the record.

18 She does comply with the other
19 requirements as to the general petition
20 requirements.

21 THE CHAIRMAN: We've got about 25
22 minutes in Mr. Butler's argument --

23 MR. BUTLER: I'd like another minute
24 or so for rebuttal.

25 THE CHAIRMAN: I'm going to give that

1 to you.

2 MR. BUTLER: Thank you very much.

3 THE CHAIRMAN: Mr. Carter, about three
4 minutes of rebuttal and I'll give you three
5 minutes, Mr. Butler.

6 MR. CARTER: Thank you.

7 The comments as to Ms. Reese's
8 challenge, Ms. Reese is an electorate.
9 None of her qualifications as an electorate
10 for this position was challenged. How she
11 got her information, what was set forth, it
12 was sufficient to bring a hearing up.

13 There was a formal objection as well
14 that we prepared on her behalf as submitted
15 to you. So I think that trying to talk
16 about what Ms. Reese's motivation is is not
17 right. The problem really is, is she an
18 elector, could she bring it? She did.

19 I was glad that counsel brought up the
20 nominating petition for the Congress,
21 because the congressional offices aren't
22 nonpartisan offices. That's what I was
23 saying before as to the Governor of Ohio,
24 and if you look at that, even looking at
25 the form that's Exhibit 4, you are either a

1 non-party candidate, other party candidate,
2 or no designation.

3 So it doesn't necessarily say
4 nonpartisan there, either, but be that as
5 it may, it's not performed. And if we look
6 back to the Secretary of State's
7 regulation, the same form is used in this
8 case, whether you're an independent or
9 you're a nonpartisan. That's in the
10 handbook, we'll pass the handbook out.

11 So I think that's kind of a red
12 herring when we come to this. We have a
13 situation where we had a non -- an
14 individual who had run as a nonpartisan in
15 a nonpartisan election before that followed
16 that same application-type situation. The
17 election changed, the law changed, it's now
18 a partisan election.

19 In a partisan election, you have to do
20 it differently.

21 MR. MCNAIR: How is it that the law
22 changed?

23 MR. CARTER: Because it's now a
24 nonpartisan election. It changed that way.
25 The law is now saying you have got to file

1 this time and this time and this time
2 because the nature of the election changed.

3 MR. MCNAIR: But no law changed with
4 respect to to it, did it?

5 MR. CARTER: Well, I would think that
6 it would be the law that changed the form
7 of the election or regulation, regulation
8 of law, I may not have been broad enough in
9 my characterization.

10 MR. MCNAIR: Okay. So what regulation
11 are you talking about?

12 MR. CARTER: I'm talking about the
13 regulations promulgated by the Board of
14 Elections that said that this would be a
15 partisan election.

16 MR. MCNAIR: Thank you.

17 MR. CARTER: And going back to the
18 other example where we are talking about a
19 school board person, nonpartisan petitions
20 are due on August 23rd. The primaries are
21 always in May. The Secretary of State's
22 regulation doesn't say how you voted before
23 you filed your petition, it talks about how
24 you voted after you filed your petition.

25 So if you didn't file your petition

1 until August and you voted in the primary,
2 that's okay under the Secretary of State's
3 regulation. If you file your petition and
4 you vote, that's not okay under the
5 Secretary's regulation, and I think that's
6 what's important.

7 That's where we get to some of this
8 confusion that we are looking at back and
9 forth. Obviously the nonpartisans are
10 going to be able to participate in those
11 primary elections because they file after
12 the primary elections. The independents
13 are, it was filed as an independent, it was
14 a partisan election.

15 If you'll read what was going on back
16 and forth, the definition of nonpartisan
17 candidate again with 1901.07, the smaller
18 paragraphs, if the jurisdiction, if you'll
19 read those two together, you'll see that
20 Ms. Gravens did not qualify as a
21 nonpartisan. She became an Independent for
22 purposes of this election when you look at
23 the regulations, the laws that we have in
24 front of us. And because she voted in that
25 primary, she is not properly put on the

1 ballot and should be stricken.

2 Thank you very much.

3 THE CHAIRMAN: Thank you.

4 MR. MCNAIR: Are you familiar with the
5 Mitchell case that's presently pending
6 before the Ohio Supreme Court?

7 MR. CARTER: I am not.

8 MR. MCNAIR: Thank you.

9 THE CHAIRMAN: Thank you, Mr. Carter.
10 Mr. Butler.

11 MR. MCNAIR: Could you just address
12 that question as well before you start?
13 Are you familiar with the Mitchell case
14 pending before the Ohio Supreme Court?

15 MR. BUTLER: Yes, I am.

16 MR. MCNAIR: And is it your view that
17 that case will be dispositive of this case?

18 MR. BUTLER: The Mitchell case -- I
19 don't know exactly what happened at the
20 Board of Elections in Warren County, but
21 the Mitchell case is a mandamus action
22 challenging the decision of a Board of
23 Elections where they just determined that
24 the candidates who file certain petitions
25 were deemed to be independent, and the

1 claim is that the Board of Elections is
2 under a clear legal duty to make -- to
3 determine if those petitions were
4 nonpartisan under 1901.07.

5 I think that is the sum and substance
6 of the Mitchell case. But it is not
7 dispositive of this case, because this
8 Board has its individual duty to determine
9 the validity of the protest as applied to
10 Judge Gravens' petition.

11 MR. MCNAIR: Really the legal issue is
12 effectively the same before the Ohio
13 Supreme Court in Mitchell as it is before
14 us today. Is that a fair statement?

15 MR. BUTLER: I believe so.

16 MR. MCNAIR: I believe so.

17 MR. BUTLER: But if I may -- I hate to
18 be argumentative about some things as
19 lawyers sometimes are -- that is not a
20 regulation from the Secretary of State,
21 that's an advisor, Mr. Hastings, who was
22 kind enough to advise me last time I was
23 here. I mischaracterized it myself, that
24 that's merely an advisory.

25 I will say that the whole issue as I

1 believe it is Miss Reese has the burden of
2 proving 3501.39 that Judge Gravens has some
3 of infirmity in her petition that would
4 cause it to be deemed invalid, she never
5 met that burden.

6 The face of this petition controls,
7 and I would ask this Board not apply some
8 magical incantation and turn this into an
9 Independent petition, but stick with the
10 simple statutory scheme of 1901.07 as it's
11 stated on the face of this petition, and
12 the simple declarative sentences that Judge
13 Gravens made, none of which contained a
14 claim not to be affiliated with a political
15 party.

16 If she had that kind of a statement
17 circled, written, whatever on her petition,
18 we have a problem. Those statements aren't
19 here, Judge Gravens' petition is valid. I
20 initially came to you and I said that you
21 made a simple mistake in the process of
22 this, hopefully a simple innocent mistake,
23 as to how her petition got to be noted in
24 the clerical records as being independent
25 when in fact there was no statement on her

1 petition. So I ask that you would look at
2 her petition when it first came and correct
3 her records noting her to be a nonpartisan
4 candidate.

5 I would also ask in denying the
6 protest that you perform your statutory
7 duty, and I would like you to consider that
8 the well-settled principal of law that in
9 election cases are to be determined in
10 light of public policy favoring free and
11 competitive elections.

12 I want to thank you for your patience
13 in listening to all of this. Thank you
14 very much.

15 THE CHAIRMAN: Thank you, Mr. Butler,
16 Mr. Carter. I both just want to comment
17 that I appreciate your accuracy here, those
18 are well written briefs. I think you
19 articulated in great fashion on behalf of
20 your clients and they were well-served by
21 the accuracy, and I want to thank you for
22 that.

23 At this point, I guess I would ask the
24 Board how should we proceed?

25 MR. MCNAIR: Just one more procedural

1 issue.

2 I believe Mr. Butler gave us what he
3 marked as Gravens Exhibit 4. I don't know
4 if he's requesting that it be moved into
5 evidence. If he is, I don't know if there
6 is an objection.

7 MR. BUTLER: Yes, I would like that
8 exhibit to be moved into evidence.

9 MR. CARTER: No objection to that.

10 THE CHAIRMAN: Thank you, Mr. Carter,
11 and I will so move. On behalf of the
12 Board, is there a second?

13 MS. CHAPPELL: Second.

14 THE CHAIRMAN: To bring in Exhibit 4
15 as evidence by Mr. Butler.

16 All in favor signify by saying aye.

17 MS. CHAPPELL: Aye.

18 MR. McNAIR: Aye.

19 THE CHAIRMAN: Aye. Three votes, and
20 Mr. Frost abstains.

21 MR. FROST: I did want to make a
22 comment here because I want to be careful.

23 I don't want anyone here, fellow Board
24 members, Mr. Butler, opposing counsel, to
25 construe my questioning or my comments as

1 indicating that I feel Judge Gravens -- or
2 I feel the evidence shows Judge Gravens'
3 petition is containing inefficiency or not
4 or indicating one way or the other on how I
5 might vote.

6 I was undertaking an academic exercise
7 because I think it's relevant before our
8 going forward because I think these issues,
9 these protests, turn on the basis of the
10 Morrison decision and the language of the
11 statutes on whether or not the petitions in
12 question in this case, Judge Gravens'
13 petitions, complied with 3513.257.

14 The academic exercise, I asked Mr.
15 Butler if his client's petitions conformed
16 with that particular statute. His initial
17 answer was no, and based on that answer I
18 was saying well, then if that were the
19 case, then these would be invalid, he
20 qualified his answer, and I want to make
21 sure I was not indicating one way or the
22 other whether I believe the evidence shows
23 they comply or don't comply.

24 I was merely wanting to get to the
25 heart of the issue as to whether or not.

1 The question of whether or not they comply
2 would be the construction of the issue in
3 my mind.

4 MR. BUTLER: I'm glad that you
5 clarified that, Mr. Frost and thank you. I
6 won't make any other comment.

7 THE CHAIRMAN: All right. Thank you.
8 We're going to -- what I would ask is there
9 any motions in regards to this matter from
10 my Board members?

11 MS. CHAPPELL: I would make the motion
12 that the Board deny the protest based on my
13 feeling that the petition is valid on its
14 face. I think the facts in Morrison are
15 readily distinguishable in this case, and I
16 believe we should deny the process and
17 amend the previous certification of Judge
18 Gravens as an independent to reflect that
19 she is a nonpartisan candidate.

20 THE CHAIRMAN: Is there a second?

21 MR. MCNAIR: I would prefer to go into
22 executive session first to discuss this
23 with counsel. I would prefer to do that
24 before we either second the motion or vote
25 on the motion.

1 THE CHAIRMAN: Okay. Well, I will
2 defer to you, Mr. McNair. You know, it's
3 pending litigation. I imagine we are going
4 to get sued, so I'll give you that
5 opportunity, regardless of the decision
6 here.

7 Is there a motion then in the record?
8 Do you want to withdraw your motion?

9 MS. CHAPPELL: I will withdraw my
10 motion and move that we go into executive
11 session for purposes of discussing
12 potential litigation, pending potential
13 litigation.

14 THE CHAIRMAN: Is there a second?

15 MR. MCNAIR: I will second.

16 THE CHAIRMAN: We'll take take a roll
17 call.

18 Ms. LaMarca.

19 MS. LaMARCA: Mr. Frost?

20 MR. FROST: Before I vote, I'm going
21 to voluntarily abstain myself from that
22 executive session. And I will then abstain
23 on the vote for executive session.

24 MR. MCNAIR: Personally I prefer that
25 you not.

1 MS. CHAPPELL: I would prefer that he
2 did. Nothing personal. I would support
3 that wholeheartedly.

4 MR. FROST: We can have executive
5 session with a Board member absent, if I
6 just weren't even here today. And I am
7 going to voluntarily abstain myself from
8 that executive session and abstain from the
9 vote.

10 MS. LaMARCA: Okay. On the vote of
11 the executive session. Mr. McNair?

12 MR. MCNAIR: Yes.

13 MS LaMARCA. Mr. Hastings?

14 THE CHAIRMAN: Yes.

15 MS. LaMARCA: Miss Chappell?

16 MS. CHAPPELL: Yes.

17 THE CHAIRMAN: We're going to go into
18 executive session.

19 (Executive Session held.)

20 THE CHAIRMAN: Okay. We are back on
21 on the record here, and I will make a
22 motion to recess from executive session and
23 back into open session.

24 Is there a second?

25 MS. CHAPPELL: Second.

1 THE CHAIRMAN: Take a roll call,
2 please.

3 MS. LaMARCA: Mr. Frost?

4 MR. FROST: Aye.

5 MS. LaMARCA: Mr. McNair?

6 MR. McNAIR: Yes.

7 MS. LaMARCA: Mr. Hastings?

8 THE CHAIRMAN: Yes.

9 MS. LaMARCA: Miss Chappell?

10 MS. CHAPPELL: Yes.

11 THE CHAIRMAN: Back in open session,
12 and we are concluded with the hearing on
13 the public hearing relative to the
14 candidacy of Judge Maureen Adler Gravens.

15 And is there a motion?

16 MS. CHAPPELL: Yeah, I would like to
17 first thank counsel. Both of you did a
18 great job again on behalf of your clients.
19 But I would, after having heard all the
20 evidence, move that the Board deny the
21 protest and amend the previous
22 certification of Judge Gravens as an
23 independent candidate to reflect that she's
24 a nonpartisan candidate.

25 THE CHAIRMAN: Is there a second?

1 MR. McNAIR: Second.

2 THE CHAIRMAN: Is there any discussion
3 on Miss Chappell's motion?

4 Okay. Hearing none, is there a vote?
5 And you would take a roll call vote,
6 please?

7 MS. LaMARCA: Mr Frost?

8 MR. FROST: Abstain.

9 MS. LaMARCA: Mr. McNair?

10 MR. McNAIR: Yes.

11 MS. LaMARCA: Mr. Hastings.

12 THE CHAIRMAN: Prior to announcing my
13 vote, I do want to again thank counsel.
14 And from my perspective, what this is is
15 that Morrison is completely distinguishable
16 on its facts and as the law. And I will
17 vote to deny the protest.

18 So that is a yes on your motion.

19 MS. LaMARCA: Miss Chappell?

20 MS. CHAPPELL: Yes.

21 MR. McNAIR: I, too, would just like
22 to briefly explain my vote.

23 THE CHAIRMAN: Please.

24 MR. McNAIR: While I voted against the
25 protest, I do not respectfully disagree

1 with Mr. Butler, that the sole issue really
2 before us was to look at simply the
3 petition itself. I think that I do believe
4 that it comes down to interpretation of
5 Subsection J and how you read that phrase
6 in which primary elections are held, et
7 cetera, if that's within the clause or
8 outside of the clause. And I read it as
9 within, within the commas, and I believe if
10 Mr. Carter is correct, then I believe the
11 protest should have been upheld.

12 But, in my view, 1901.07 gives two
13 different statutory bases upon which to
14 proceed and one cannot trump the other. So
15 if there's partisan election pursuant to
16 the second paragraph in B, candidate still
17 has the right to get on the ballot as a
18 nonpartisan candidate in the third
19 paragraph. So thank you.

20 THE CHAIRMAN: Thank you.

21 And Mr. Carter, Mr. Butler, you may
22 want to get Mary's card here when you're
23 ready for your records, so thank you for
24 your time.

25 Back to the docket. We have item, I

1 believe 5. Miss LaMarca.

2 MS. LaMARCA: Requesting approval of
3 ballot count procedures for the August 7,
4 2007 Special Election.

5 THE CHAIRMAN: Miss Platten?

6 MS. PLATTEN: These ballot count
7 procedures are relative to precinct with no
8 ballots, remakes, absentee ballot voter
9 intent, Certificate No. 1.

10 There is just one change on these
11 procedures from your past approval of them,
12 and that is that the precinct with no
13 ballots and remakes will be determined by
14 the Director and Deputy Director, now that
15 we have Mr. McDonald on Board, and/or the
16 Board members present.

17 Other than those changes, these are
18 the same procedures that you have approved
19 in the recent past.

20 THE CHAIRMAN: Okay. I will move to
21 approve the ballot count procedures for
22 August 7th, 2007 Special Election. Is
23 there a second?

24 MS. CHAPPELL: Second.

25 THE CHAIRMAN: Any further discussion

1 on this matter?

2 All right. Hearing none, all those in
3 favor of approving the ballot count
4 procedures for August 7th, 2007 signify by
5 saying aye.

6 MR. FROST: Aye.

7 MR. McNAIR: Aye.

8 THE CHAIRMAN: Aye.

9 MS. CHAPPELL: Aye.

10 THE CHAIRMAN: Motion passes
11 unanimously on Item 6.

12 MS. LaMARCA: Requesting certification
13 of Republican candidates in the City of
14 Rocky River and authorization for placement
15 on the ballot for the September 18, 2007
16 primary election.

17 THE CHAIRMAN: Okay. And Miss
18 Platten?

19 MS. PLATTEN: Based on the filings, we
20 do have a Republican primary in Rocky River
21 on September 10, 2007. That's with counsel
22 Ward 3. Candidates moving to that ballot
23 would be Michael W. Mylen, Michael P.
24 O'Donnell, and Gregory L. Thompson. Filing
25 deadline was July 20, 2007, and the

1 candidate petitions are in order.

2 THE CHAIRMAN: Thank you. I will move
3 to request the certification of these
4 Republican candidates in the city of Rocky
5 River and authorize their placement on the
6 ballot for September 18th. Is there a
7 second?

8 MS. CHAPPELL: Second.

9 THE CHAIRMAN: Is there any
10 discussion?

11 Hearing none, all those in favor of
12 the motion signify by saying aye.

13 MR. FROST: Aye.

14 MR. McNAIR: Aye.

15 THE CHAIRMAN: Aye.

16 MS. CHAPPELL: Aye.

17 THE CHAIRMAN: Opposed? Same sign.
18 The motion passes unanimously. And on to
19 Item 7.

20 MS. LaMARCA: Requesting certification
21 of Democratic candidates in the Cities of
22 Brook Park and Maple Heights and
23 authorization for placement on the ballot
24 for the September 25, 2007 Primary
25 Election.

1 THE CHAIRMAN: Thank you. Miss
2 Platten?

3 MS. PLATTEN: Members for Brook Park
4 Democratic ballot, Law Director, Neal M.
5 Jamison, Brian P. Mooney; Council Ward 3,
6 Mark C. Miller, Sr.; Jim Wilson; as well as
7 Maple Heights nonpartisan mayor Rodney D.
8 Colley; Jeffrey Lansky; Neomia Mitchell;
9 and Frank Rives, as well as Council
10 District 7 in Maple Heights, Robert
11 C. Bailey; Jameelah Gaines; Joseph G.
12 Szumski; Dianna L. Zanglin.

13 Filing deadline was July 27, 2007.
14 Candidate petitions are in order.

15 THE CHAIRMAN: Thank you. I will move
16 to request the certification of these
17 democratic candidates in the Cities of
18 Brook Park and Maple Heights and authorize
19 for placement on the ballot for September
20 25th primary.

21 Is there a second?

22 MR. FROST: If I could just offer an
23 amendment to your motion. I think the
24 Director requested certification of
25 Democrat candidates in the City of Brook

1 Park and nonpartisan candidates in the City
2 of Maple Heights. Is that correct?

3 MS. LAMARCA: Yes, thank you.

4 THE CHAIRMAN: Thank you, Mr. Frost.

5 I will amend my motion to reflect your
6 suggestion that it's Democratic candidates
7 in the City of Brook Park, and nonpartisan
8 candidates for Maple Heights.

9 Is there a second?

10 MR. FROST: Second.

11 THE CHAIRMAN: Okay. Mr. Frost. And
12 is there any further discussion?

13 Hearing none. All those in favor
14 signify by saying aye.

15 MR. MCNAIR: Aye.

16 MR. FROST: Aye.

17 MS. CHAPPELL: Aye.

18 THE CHAIRMAN: Aye. Passes
19 unanimously.

20 On to item 8, request for
21 certification.

22 MS. LaMARCA: Nonpartisan candidates
23 and authorization for placement on the
24 ballot for the October 2nd primary
25 election.

1 THE CHAIRMAN: Miss Platten?

2 MS. PLATTEN: This is for Berea.

3 And, Ms. LaMarca, I'm going to ask you
4 to clarify this. It says partisan on the
5 agenda. The agenda item reads nonpartisan.

6 Do you have clarification for that?

7 THE CHAIRMAN: Well, I know North
8 Royalton is nonpartisan', cause I live
9 there.

10 MR. FROST: And Lakewood where I live
11 is also nonpartisan.

12 MS. PLATTEN: If we could, just for a
13 moment, then take up the like two or three
14 other items until I get clarification of
15 whether this is a clerical error. I just
16 want to make sure I have this correct.

17 Lakewood nonpartisan Mayor; Ryan
18 Patrick Demro, Edward Fitzgerald, Thomas J.
19 George.

20 Council Ward 2 in Lakewood; Thomas R.
21 Bullock, Thomas E. Gallagher, Dan Shields.

22 Council Ward 3, Joseph P. Dangelo,
23 Diane Hope Helbig, Michael P. Summers,
24 Colleen M. Wing.

25 North Royalton nonpartisan Mayor,

1 Denise M. Bobulsky, David D. Perry, Robert
2 A. Stefanik.

3 Filing deadline was July 19, 2007.
4 And August 3, 2007 candidate petitions are
5 in order.

6 I just need to get a copy of the
7 calendar, filing deadline calendar. Okay.

8 Berea August 3rd filing deadline is
9 for partisan and independent candidates.
10 So this is a partisan primary. Mayor, Jo
11 Hamrick; Cyril Kleem.

12 Council Ward 2, Kathy Brown, Nick
13 Hasch --

14 THE CHAIRMAN: Haschka.

15 MS. PLATTEN: Haschka.

16 THE CHAIRMAN: I will amend my motion
17 to request the certification of partisan
18 candidates in the City of Berea and
19 nonpartisan candidates in the City of
20 Lakewood and North Royalton, and authorize
21 their placement on the ballot for October
22 2nd. Excuse me. When is it in Berea? Is
23 it a different date?

24 MS. PLATTEN: The filing deadline --
25 I'm sorry, was August 3rd.

1 THE CHAIRMAN: All going to appear on
2 the ballot on October 2nd?

3 MS. PLATTEN: All going to appear on
4 the ballot on October 2nd, yes.

5 THE CHAIRMAN: Thank you. Is there a
6 second to that motion?

7 MS. CHAPPELL: Second.

8 MR. FROST: Second.

9 THE CHAIRMAN: Okay, tie vote,
10 Chappell and Frost. And is there any
11 further questions?

12 All right. Hearing none, all those in
13 favor signify by saying aye.

14 MR. MCNAIR: Aye.

15 MR. FROST: Aye.

16 MS. CHAPPELL: Aye.

17 THE CHAIRMAN: The motion passes
18 unanimously. On to item 9.

19 MS. LaMARCA: Requesting certification
20 of candidates and authorization for
21 placement on the ballot for the November
22 6th, 2007 General Election.

23 THE CHAIRMAN: Great.

24 Miss Platten?

25 MS. PLATTEN: We have some candidates

1 in Berea. Council President, James Brown.

2 Council at Large, Dale A. Lange, and
3 Dean W. Vandress.

4 Council Ward 1, Adrian Moldonado.

5 Council Ward 4, George Capellas.

6 Council Ward 5, Mary K. Brown.

7 City of Brook Park, President of
8 Council, Michael D. Gammella.

9 Council at Large, Carl J. Burgio,
10 Danny V. Colonna, Richard A. Salvatore.

11 Council Ward 1, Ray Barr.

12 Council Ward 2, Patti Patton Astorino.

13 Council Ward 4, Brian Higgins.

14 Lakewood Council Ward 1, Kevin M.
15 Butler, Paul Conroy.

16 Council Ward 4, Mary Louise Madigan.

17 Maple Heights: President of Council,
18 Jackie Albers, B. Lee Miami.

19 Council District 1, Alex F. Adams.

20 Council District 2, Fortunato Spadaro,
21 Toni Jones.

22 Council District 3, George J.
23 Hasenohrl, Anthony Cefaratti.

24 Council District 4, Freddie Jackson,
25 Ron Jackson.

1 Council District 5, Richard A. Taylor,
2 Gaius Vaduva.

3 Council District 6, Patricia Houston.
4 North Royalton.

5 Council President, Vincent A. Gentile.
6 Rocky River Mayor, Pamela E. Bobst.

7 Law Director, Andrew D. Bemer, Jr.

8 Council at Large, Anjanette Arabian,
9 David W. Furry, Thomas T. Long, John
10 Patrick Zuercher.

11 Council Ward 4, Thomas J. Hunt, Joe --
12 I'm sorry, Council Ward 1, Thomas J. Hunt,
13 Joe Kotoch.

14 Council Ward 2, James W. Moran.

15 Council Ward 3, Steve Dever.

16 Council Ward 4, H. Brian Ruic and John
17 Shepherd.

18 THE CHAIRMAN: Okay. Thank you.

19 I will move to request the
20 certification of candidates as set forth in
21 item 9 and authorization for their
22 placement on the ballot for the November 6,
23 2007 General Election.

24 If there's a second.

25 MS. CHAPPELL: Second.

1 THE CHAIRMAN: Yes, Mr. Frost?

2 MR. FROST: Actually I have two
3 questions. One is in Berea. And that
4 certification in Berea is with regard to
5 the General Election of Council Wards 1, 4
6 and 5, and I see looking back for the
7 primary, that it was Council Ward 2. But
8 were there no candidates filed for the
9 Council Ward 3 in Berea?

10 MS. PLATTEN: Brent Waller is here,
11 and he will address the issue.

12 MR. FROST: And then stay up here,
13 'cause my second question is probably for
14 you, too.

15 MR. LAWLER: Brent Lawler, Assistant
16 Manager of Candidate Voter Systems. The
17 answer to your question is we have not
18 certified any of the independent
19 candidates, for Rocky River, Berea or Brook
20 Park, pending a legal ruling from Reno
21 regarding how we should proceed as it
22 relates to the protest. So those will be
23 forthcoming.

24 MR. FROST: You already answered my
25 second question.

1 MR. LAWLER: There is one candidate
2 that filed as an Independent.

3 THE CHAIRMAN: In Ward 3?

4 MR. LAWLER: Yes.

5 THE CHAIRMAN: And that's why the name
6 doesn't appear, until you heard from our
7 legal counsel.

8 MR. LAWLER: Yes. Then you will
9 receive a certification of all the
10 independent candidates for Rocky River,
11 Brook Park and Berea.

12 THE CHAIRMAN: I see.

13 MR. FROST: That was my second
14 question, regarding whether there were
15 candidates in Rocky River, independent
16 candidates were not on this list. And you
17 have already answered why they're not, and
18 Brook Park.

19 THE CHAIRMAN: Any other questions or
20 comments on my motion? Item 9? Okay.

21 Hearing none, all those in favor of
22 certifying the candidates and authorizing
23 their placement on the ballot for November
24 6, 2007 as set forth in item 9, signify by
25 saying aye.

1 MR. MCNAIR: Aye.

2 MR. FROST: Aye.

3 MS. CHAPPELL: Aye.

4 THE CHAIRMAN: Motion passes
5 unanimously.

6 Item 10.

7 MS. LaMARCA: Acknowledgement of
8 Withdrawal from the November 6, 2007
9 General Election.

10 THE CHAIRMAN: Thank you. I will move
11 to acknowledge the withdrawal of Mr. Elkins
12 from the November 6, 2007 election.

13 Is there a second?

14 MS. CHAPPELL: Second.

15 THE CHAIRMAN: Any discussions on his
16 withdrawal?

17 All those in favor, signify by saying
18 aye.

19 MR. MCNAIR: Aye.

20 MR. FROST: Aye.

21 MS. CHAPPELL: Aye.

22 THE CHAIRMAN: Motion passes
23 unanimously.

24 On to item 11.

25 MS. LaMARCA: Acknowledgement of

1 Registrations from Public Office.

2 THE CHAIRMAN: And we have those
3 resignations of Mr. Mark Pepera, Treasurer
4 of Westlake City Schools submitting
5 a letter of resignation; for David Beal,
6 Carol McConoughey, Clerk of Council,
7 submitted a letter of resignation; for Mr.
8 Goudy; Mr. Strelau has submitted a letter
9 of resignation as a Trustee in Olmsted
10 Township; and Mr. Ted Buczek, Councilman of
11 Moreland Hills is retiring.

12 I will move to accept the
13 acknowledgement of resignation from public
14 office of these individuals.

15 Is there a second?

16 MS. CHAPPELL: Second.

17 THE CHAIRMAN: Is there any
18 discussions? Hearing none, all those if
19 favor signify by saying aye.

20 MR. FROST: Aye.

21 MS. CHAPPELL: Aye.

22 MR. MCNAIR: Aye.

23 THE CHAIRMAN: Motion passes
24 unanimously.

25 And on to item 12, Election Support

1 Division.

2 MS. LaMARCA: Requesting allocation of
3 187 TSX units for the September 11, 2007
4 Nonpartisan Primary in the Cities of
5 Broadview Heights and Solon.

6 THE CHAIRMAN: All right. I'll make a
7 motion to request the allocation of these
8 187 TSX units in Broadview Heights and
9 Solon.

10 Is there a second?

11 MS. CHAPPELL: Are we approving the
12 request or not approving the request?

13 THE CHAIRMAN: I'm just making the
14 motion for a second.

15 MS. CHAPPELL: But to approve the
16 request? You said you were going to move
17 to request.

18 THE CHAIRMAN: Oh. Request the
19 approval of the allocation. Thank you.

20 MS. CHAPPELL: All right.

21 THE CHAIRMAN: Is there a second?

22 MS. CHAPPELL: Second.

23 THE CHAIRMAN: Is there some
24 discussion? Miss Platten, any comments?

25 MS. PLATTEN: I don't have a comment

1 on this one.

2 THE CHAIRMAN: These are the sort of
3 things -- well, it gets into chargebacks,
4 right? I mean you'll be able to charge
5 this, either you or the Board can charge
6 these cities back for these elections?

7 MS. PLATTEN: We will charge cities
8 back for certain items relative to the
9 elections in these cities, yes.

10 THE CHAIRMAN: Then if the number of
11 units that are deployed are consistent
12 with the number of voters per unit that
13 you're looking for?

14 MS. PLATTEN: Yes, it's 178.5 voters
15 per voting unit.

16 THE CHAIRMAN: And some are back ups,
17 just in case?

18 MS. PLATTEN: There will be additional
19 back ups outside of the 187 at --

20 THE CHAIRMAN: Any other questions or
21 comments for Miss Platten? Okay.

22 Hearing none, all those in favor of
23 approving the request for the allocation of
24 187 TSX units on September 11 in Broadview
25 Heights and Solon, signify by saying aye.

1 MS. CHAPPELL: aye.

2 MR. MCNAIR: Aye.

3 MR. FROST: Aye.

4 THE CHAIRMAN: Okay. Motion passes
5 unanimately.

6 Item 13.

7 MS. LaMARCA: Requesting authority to
8 process the payroll in the amount not to
9 exceed \$42,000 for 192 Poll Workers, 28
10 Election Day Technicians and 20 Standbys
11 for actual hours worked on August 7, 2007
12 Special Election.

13 THE CHAIRMAN: Okay. Is there a
14 motion?

15 MS. CHAPPELL: I move we approve this
16 request.

17 THE CHAIRMAN: I will second that.

18 Is there any questions or comments in
19 regard to this matter? All right.

20 Hearing none, all those in favor of
21 requesting, or approving the request for
22 authority to process of the payroll in the
23 amount not to exceed \$42,000 for 192 Poll
24 Workers, 28 EDTs and 20 Standbys for actual
25 hours worked on August 7th, that's

1 tomorrow, signify by saying aye.

2 MR. FROST: Aye.

3 MR. MCNAIR: Aye.

4 MS. CHAPPELL: Aye.

5 THE CHAIRMAN: The motion passes
6 unanimately. And on to item 14,
7 Administrative and Fiscal Services, Item
8 14.

9 MS. LaMARCA: Office of Human
10 Resources requesting approval of Personnel
11 agenda.

12 THE CHAIRMAN: Miss Platten?

13 MS. PLATTEN: The only item on the
14 Personnel agenda this week is the
15 retirement of Maryann McBride who is an
16 employee in our poll worker department.
17 The retirement would be effective August
18 31, 2007.

19 THE CHAIRMAN: Any comments?

20 I'll move to approve that item,
21 approve the personal agenda item on the
22 retirement of Miss McBride.

23 Is there a second?

24 MS. CHAPPELL: Second.

25 THE CHAIRMAN: Any discussions or

1 comments?

2 MS. CHAPPELL: I just have one quick
3 question. Is this amount, 34,000 --

4 MS. PLATTEN: That's her annual
5 salary.

6 MS. CHAPPELL: Okay.

7 THE CHAIRMAN: Any other questions or
8 comments from Miss Platten?

9 Hearing none; all those in favor of
10 this agenda item, and I think it relates
11 specifically not only to a retirement,
12 Jane, but also the fact that she'd like to
13 be compensated for the remaining vacation
14 and sick time.

15 MS. PLATTEN: That would be a follow
16 up item on the agenda once she actually
17 retires on August 31st, then we'll be able
18 to determine her payout based on her
19 remaining hours of vacation as well as any
20 additional sick hours that she might have.
21 That will be on the September agenda.

22 THE CHAIRMAN: All those in favor of
23 the motion, signify by saying aye.

24 MR. FROST: Aye.

25 MR. MCNAIR: Aye.

1 MS. CHAPPELL: Aye.

2 THE CHAIRMAN: Motion passes
3 unaniously.

4 Item 15.

5 MS. LaMARCA: Office of Human
6 Resources requesting approval of Staff
7 Development agenda.

8 THE CHAIRMAN: Miss Platten.

9 MS. PLATTEN: Board members, this is
10 for the continued participation of Patrick
11 McNamee, an employee in our Candidate
12 Services Division, to participate in the
13 tuition reimbursement program he's
14 currently enrolled at Cuyahoga Community
15 College.

16 THE CHAIRMAN: Thank you. I'll move
17 to approve that agenda item for staff
18 development in regards to Mr. McNamee's
19 request for tuition reimbursement.

20 Is there a second?

21 MS. CHAPPELL: Second.

22 THE CHAIRMAN: Okay. Is there any
23 discussion, questions or comments?

24 Hearing none, all those in favor of
25 Mr. McNamee's participating in the tuition

1 reimbursement program as set forth by Item
2 15, signify by saying aye.

3 MR. FROST: Aye.

4 MS. CHAPPELL: Aye.

5 MR. MCNAIR: Aye.

6 THE CHAIRMAN: Motion passes
7 unanimously.

8 And on to Item 16.

9 MS. LaMARCA: Office of Fiscal
10 Services requesting approval of vouchers.

11 THE CHAIRMAN: Miss Platten?

12 MS. PLATTEN: Board members, these are
13 the invoices that we are asking payment,
14 approval for payment on. There are a
15 couple of them that I'd like to just bring
16 to your attention and give an explanation
17 for.

18 THE CHAIRMAN: Please.

19 MS. PLATTEN: The first is the item
20 for Melamed Communications. This item is
21 for \$6,187.50. I believe at the last Board
22 meeting I had an invoice on from May for
23 Melamed. It was brought to my attention by
24 the vendor that there was still another
25 outstanding invoice that they had not

1 gotten paid for which was from April of
2 '07.

3 So this would take care of any
4 additional outstanding invoices for Melamed
5 Communications. We do not have any further
6 bills from them right now, and they have
7 not performed any additional work for us in
8 the recent past. If they do perform
9 additional work, it would be at the request
10 of the Board of Elections, only. They
11 would not just take it upon themselves to
12 conduct work.

13 So we are asking to get the remaining
14 invoice cleaned up for Melamed
15 Communications.

16 THE CHAIRMAN: Excuse me, Miss
17 Platten. Thank you for pointing that out.
18 They provided you or submitted to you some
19 sort of error that they set forth?

20 MS. PLATTEN: Yes, they submitted a
21 detailed invoice of what the amount was
22 utilized for.

23 The second item I want to bring
24 to your attention is a bill for Benesch,
25 Friedlander which was the law firm that was

1 hired by the Board of Elections I believe
2 in 2006. I could be wrong on that, it may
3 have been prior to 2006. But they were
4 hired to -- it was actually, wasn't it,
5 they were here from the beginning of the
6 contract negotiations with Diebold. They
7 performed some additional work in both 2006
8 and then in the early part of 2007 relative
9 to one contractual item, which was the
10 integration issue. And it was a component
11 of the DIMS GEMS System. It was a
12 contractual issue that they had done some
13 additional work on. And the bill for 2007,
14 \$1,807.95 we are requesting that to be paid
15 for. They have not -- since early 2007, I
16 believe March was when we did this work --
17 they have not performed any additional
18 work. And at this point, number one, I
19 don't have any additional budget dollars
20 for them to continue to do any legal work
21 on this. I at this point don't have any
22 work for them to do relative to the
23 contract.

24 THE CHAIRMAN: And here too, again,
25 thank you, Jane. You have a detailed bill

1 from them?

2 MS. PLATTEN: Yes.

3 THE CHAIRMAN: And this is something
4 that Reno took a look at?

5 MS. PLATTEN: Actually Reno was not
6 involved in this. This was Dave Lambert.
7 But because the contract was between the
8 County Commissioners and Diebold for the
9 additional equipment and the work that
10 Benesch originally did was approved by
11 the -- the funding for them to do the work
12 was approved by the Commissioners, Dave
13 Lambert was involved in this. I'm note
14 sure to what degree Reno was involved.

15 THE CHAIRMAN: This can't get done
16 without your office, without Mr. Mason
17 approving the outside counsel being hired,
18 first and foremost?

19 MR. ORADINI: The outside counsel,
20 yeah, went through the process of hiring
21 outside counsel.

22 THE CHAIRMAN: It's not something
23 unilaterally, we as the Board or Pat or
24 Jane can call up a law firm and say, do
25 some work for us. They have to get your

1 permission, they have go through you, the
2 Prosecutor's office?

3 MR. ORADINI: Right, it went through
4 the proper channels.

5 THE CHAIRMAN: The Prosecutor has to
6 go to the Commissioners, the Commissioners
7 have to say okay.

8 MS. PLATTEN: And that process took
9 place.

10 MR. ORADINI: Long time ago.

11 MS. PLATTEN: Yes.

12 MR. MCNAIR: So this contract is then
13 finished, this payment?

14 MS. PLATTEN: Yes. I don't have any
15 knowledge of any further bills that will be
16 coming from Benesch once this is paid.

17 MR. MCNAIR: And we don't have any
18 contractual obligation to pay them for any
19 other work?

20 MS. PLATTEN: Unless I get something
21 different from the Prosecutor's office.

22 MR. ORADINI: I could check to see if
23 there was a time limit on the contract. I
24 think there was a stated amount.

25 MS. PLATTEN: There was a stated

1 amount, and it was actually, there were a
2 couple amendments to the original contract.
3 I don't know the status of that right now.
4 This was work that, again, they did a
5 little bit of work in March and that's what
6 this bill is for, and that's what I'm
7 trying to get resolved and cleaned up.

8 THE CHAIRMAN: Well, and I understand,
9 I guess Sandy's question. But this is
10 something they should have told you if they
11 hadn't; said -- Dave should have looked at
12 this and said, hey, Jane, it needs do get
13 paid.

14 MS. PLATTEN: They did. I have
15 communication saying, get this taken care
16 of.

17 THE CHAIRMAN: Any other questions
18 from Miss Platten as to this item?

19 Mr. Frost?

20 MR. FROST: I do. First the item on
21 there on consultation services rendered,
22 what budget dollars do those come under?

23 MS. PLATTEN: The dollars that this
24 comes out of, those dollars were moved from
25 salary items within our 2007 budgets to

1 contractual items. That transfer was made
2 when the -- just after the consulting
3 agreements for those two individuals were
4 let by the former Board. So we moved
5 dollars out of our salary line into a
6 contractual line item.

7 MR. FROST: And actually some budgets
8 dollars here to cover salary for the
9 Current Director and Deputy Director and
10 the these contractual items?

11 MS. PLATTEN: We are, in our request
12 for additional appropriations for 2007,
13 including a dollar amount that, in part,
14 represents the dollars that we are paying
15 these two. Well at least now, one
16 individual out of that salary line. We
17 have to go and ask the commissioners for
18 additional appropriations in the salary
19 line as a result of this.

20 MR. FROST: Okay.

21 MS. PLATTEN: If I could?

22 THE CHAIRMAN: Please.

23 MS. PLATTEN: Just, Mr. Chairman,
24 please.

25 Diebold, there are two items on the

1 vouchers for Diebold and I'd like to
2 identify those. One is for \$16,343.20,
3 that's for the server configuration, and
4 the additional digital Guardian software
5 that we were mandated by the Secretary of
6 State's office to install on to our servers
7 to the GEMS system. Those two items were
8 from the prior to the May election.

9 Server configuration means that we
10 have the server, we need to get digital
11 guardian on it. Diebold sends a
12 representative up to our agency to
13 configure the server. And then the
14 Secretary of State's office, Tyrone Howard,
15 actually installed Digital Guardian, on to
16 the server.

17 The second Diebold item is \$37,158.74.
18 A portion of this bill is from November,
19 '06 election, and it had to do with the
20 absentee voting ballots having identified a
21 candidate as a, I believe the candidate was
22 identified as a Republican, when, in fact,
23 he was a Democrat, and they had to reissue
24 absentee ballots.

25 And there's also in this amount 37,000

1 billing for support from the February, '07
2 election that would have been for ballot
3 testing and some tech support as well as
4 May '07 election ballot testing on-site
5 support and database review. A good
6 portion of the May was from having an
7 on-site tech everyday in this agency five
8 days a week prior to the May election.

9 MS. CHAPPELL: I have a question. Can
10 you break out, of this 37,000 amount, what
11 portion is attributable to the election
12 support, the last two items there; the
13 ballot testing and travel expenses?

14 MS. PLATTEN: I'm going to ask Camilla
15 Williams to come to the podium and identify
16 that question. Camilla is our Interim
17 Fiscal Services Coordinator.

18 MS. WILLIAMS: Camilla Williams,
19 Interim Fiscal Services Coordinator. What
20 I can do, I don't have the break down in
21 front of me, but they are on the vouchers
22 there, and I can bring them down for you
23 real quick. It's a combination of
24 invoices.

25 THE CHAIRMAN: Let me try to find it,

1 Camilla.

2 MS. CHAPPELL: Do you have any idea
3 what the cost of reissuing the ballot? If
4 you can just back out that amount. You
5 don't recall?

6 MR. WILKINS: I'm sorry, I don't,
7 'cause it wasn't prepared by me. But for
8 future, we will make break downs so
9 everyone can see.

10 MS. PLATTEN: We're actually going
11 to -- I talked to the Deputy Director about
12 revising the format of which the office
13 voucher spread sheet is presented to you,
14 so that we are far more detailed and far
15 more open in terms of what exactly these
16 invoices are and the cost for each.

17 THE CHAIRMAN: What I'm doing,
18 Camilla, is I've given Miss Chappell copies
19 of those invoices that she was inquiring
20 about.

21 MS. CHAPPELL: So it looks like to
22 reissue the ballot was only \$525, and the
23 majority was for travel expenses and time
24 for Diebold for that election.

25 MS. PLATTEN: Yeah, it would have been

1 the May election.

2 MS. CHAPPELL: Okay. \$34,000 was for
3 the May election. And then this other
4 database review was only an \$800 charge.
5 Ballot testing was 900. So, the bulk of
6 this was for the election support.

7 MS. PLATTEN: In the future we will
8 have this in individual vouchers. And
9 again, you're going to see a much different
10 document in the near future relative to
11 vouchers so it's a lot more clear in terms
12 of what we're dealing with on a monthly
13 basis.

14 MS. CHAPPELL: I know this may be an
15 issue for the Committee that's going to be
16 looking, maybe your folks are going to be
17 looking at this question more closely. But
18 is there some way to talk to the Diebold
19 folks so that -- these are big ticket items
20 for testing, for support and I think the
21 Commissioners made it clear to us they
22 wanted us to be on top of this and
23 cognizant of the cost associated with
24 running these elections. And I'm just
25 wondering if there's some way if you think

1 support services are going to be a
2 significant amount of dollars. We test
3 ballots from our printer with Diebold. We
4 -- let's -- I will leave it at the fact
5 that we will do an analysis of both the
6 contract services to execute elections.
7 And, in addition, the support services,
8 which is a dollar amount above and beyond
9 what we anticipated originally when the
10 system came on. So we'll do that.

11 MS. CHAPPELL: One other question to
12 you on the security software. I understand
13 that we were mandated to purchase that.
14 I'm just wondering, does that acquisition
15 come with any guarantees, if you will, any
16 warranties about how it functions? Was
17 this just the ticket price to purchase it?
18 Do we get any kind of support or anything
19 along with this purchase?

20 MS. PLATTEN: I would have to defer to
21 Lou Irizarry on that, who is the
22 Information Systems Administrator.

23 MR. IRIZARRY: Good afternoon. The
24 software in question was Digital Guardian.
25 And when it was discovered shortly this

1 year that the configuration of our three
2 GEMS servers required Digital Guardian per
3 SOS contract. It was never on there. So
4 that was the reason for the purchase, to be
5 in compliance with Secretary of State
6 guidelines. The license is a one time cost
7 of 5,000 per server, and every year there's
8 an annual licensing fee. So that's what we
9 paid for the initial licenses. We get one
10 year of maintenance with that. Next year
11 we'll pay a maintenance charge only.

12 MS. CHAPPELL: So the \$16,000 was just
13 for the purchase of the software?

14 MR. IRIZARRY: 15,000 of it. 1,300
15 was for the configuration.

16 MS. CHAPPELL: Okay. So there's no
17 software support or anything associated
18 with that?

19 MR. IRIZARRY: No. Just basically
20 what it does is monitor the server for any
21 illegal use. It doesn't let you create
22 accounts or change passwords, those type of
23 things.

24 MS. CHAPPELL: Okay.

25 THE CHAIRMAN: Any other questions?

1 Or Miss Platten, is there anything else you
2 want to go over?

3 MS. PLATTEN: Those are the items that
4 I had relative to the voucher.

5 THE CHAIRMAN: I do have a -- on WDOK,
6 if you can comment on that. Six hundred
7 dollars was spent, and it talks about a
8 booth rental fee for the purpose of voter
9 education. I'm just wondering how DOK came
10 in.

11 MS. PLATTEN: I'm going to ask Cheryl
12 Ellis to step up to the podium. And Cheryl
13 is the manager of our Community Outreach
14 Department, and Cheryl can speak to the
15 item.

16 THE CHAIRMAN: Hi, Miss Ellis.

17 MS. ELLIS: Good afternoon. Cheryl
18 Ellis, manager of the Community Outreach
19 Department.

20 We did a booth rental with WDOK, it's
21 a lunch time event where we do a voter
22 registration recruitment. And this has
23 gone on for, I think we are doing like
24 three events, four events throughout the
25 summer. And the original cost was over

1 one each month, and two is at Star Plaza,
2 two is going to be at Mall C on the mall.
3 So they sponsor just everybody coming in
4 for booth space, web site access, we have a
5 link on their web site, also.

6 THE CHAIRMAN: Again, just to
7 understand, you mean the radio channel
8 says, you know what, we are going to be on
9 Mall C on this date and time, come on down
10 and visit us. I mean I'm just trying to
11 understand the concept.

12 MR. ANDERSON: Then they have a number
13 of different vendors for that particular
14 location for that event.

15 THE CHAIRMAN: But, I mean it's like
16 if you have a fair on the square, you know,
17 everybody comes down because there's a
18 festival going on and everything else.
19 What does WDOK do? They just kind of
20 promote themselves for this event or what?

21 MR. ANDERSON: They are the main
22 sponsors for the event. And then they have
23 other people sponsoring with them, also, to
24 participate. They charge booth space,
25 rental space.

1 MS. PLATTEN: What is the event,
2 Dennis?

3 MR. ANDERSON: It's called a Lunch
4 Time Program. In lunch time program,
5 Johnsonville Brats sponsors free food.
6 Other vendors are down there, as far as
7 exposure for whatever their products may
8 be.

9 MS. ELLIS: It's about seven -- 'cause
10 I did one of the events. It's about eight
11 different vendors down there and that's
12 what they do for lunch time, and like WDOK
13 is the sponsor for all of this.

14 MS. CHAPPELL: So we pay \$600 as booth
15 rent, 'cause we are considered a vendor
16 along with these other vendors?

17 MS. ELLIS: Yes.

18 THE CHAIRMAN: And that reflects all
19 four events?

20 MS. ELLIS: Yes, right.

21 THE CHAIRMAN: It's like \$150 or so.
22 Thank you. I just didn't understand. I
23 have never been to one of these things
24 before.

25 MS. ELLIS: And just so you'll know,

1 that's the way most of our events are. We
2 have to pay -- sometimes they waive the
3 fee, but a lot times we have to pay.

4 THE CHAIRMAN: Sure. Like Middleburg
5 Heights and North Royalton, those are your
6 booth fees for those events.

7 MS. ELLIS: Right.

8 THE CHAIRMAN: That is self-
9 explanatory for me. I'm sorry. I just
10 didn't know what DOK meant.

11 MR. ANDERSON: Dennis Anderson,
12 Community Outreach Assistant.

13 THE CHAIRMAN: Any other questions for
14 Ms. Platten or the staff in regards to
15 those vouchers?

16 I would ask, there is an item, and I
17 guess just -- there's one for \$6 for
18 parking for me, and then some mileage that
19 I incurred. And I kind of asked those to
20 be -- I'd like to vote on this, but I
21 shouldn't vote on my own reimbursements,
22 obviously. So if could I just move those
23 off as separate item, and then I will speak
24 on my behalf if I need to on those
25 reimbursements.

1 So, I'll make a motion to approve the
2 vouchers as set forth on Item 16, with the
3 exception that the ones involving the
4 reimbursement for mileage to the Secretary
5 of State Summer Conference for me, Jeff
6 Hastings, and parking in the amount of \$6
7 for that Secretary of State's conference be
8 removed and not be considered.

9 Is there a second?

10 MR. FROST: Second.

11 MS. CHAPPELL: I had a question.
12 Because I had expenses and all that. Did
13 that come to be approved, from that
14 conference? Did that come to this Board
15 for approval?

16 MS. PLATTEN: To be honest with you --

17 MS. ELLIS: It was on last month's.

18 MS. CHAPPELL: Okay. I voted on my
19 own reimbursement.

20 THE CHAIRMAN: I imagine, Reno, that I
21 probably shouldn't vote to reimburse
22 myself.

23 MR. ORADINI: It's probably fine for
24 you to vote, but --

25 MR. McDONALD: It's all approved

1 internally and initially approved?

2 MR. ORADINI: Right.

3 THE CHAIRMAN: So there isn't a second
4 for my motion?

5 MR. McDONALD: Did you make a motion?
6 Second.

7 THE CHAIRMAN: All right. Any
8 discussion on the voucher items
9 specifically as opposed to -- any further
10 discussion? Okay. All those in favor,
11 signify by saying aye.

12 MR. MCNAIR: Aye.

13 MR. FROST: Aye.

14 MS. CHAPPELL: Aye.

15 THE CHAIRMAN: Motion passes
16 unanimously. And then I would add -- well,
17 I can't.

18 MR. FROST: I'll move that we approve
19 the expenses and mileage or mileage and
20 parking expense incurred and submitted by
21 Chairman Jeff Hastings.

22 MS. CHAPPELL: Second.

23 MR. FROST: On attending the
24 conference.

25 THE CHAIRMAN: Any discussion on that

1 motion?

2 All those in favor signify by saying
3 aye.

4 MS. CHAPPELL: Aye.

5 MR. McNAIR: Aye.

6 MR. FROST: Aye.

7 THE CHAIRMAN: And I abstain.

8 So it past passed unanimously. All
9 right. We are through that.

10 And then we are on to new business.
11 Correspondence, Miss LaMarca.

12 MS. LaMARCA: Correspondence from
13 Noreen O'Malley relative to candidacy as an
14 Independent of John Sweeney, Sheila McGinty
15 Delay and Jeanne Gallagher.

16 THE CHAIRMAN: Miss Platten?

17 MS. PLATTEN: Board members, on July
18 30th at approximately 3:00 p.m. we received
19 three documents stating opposition to the
20 candidacy filings of these three
21 individuals who had filed for Rocky River
22 Municipal Court District Clerk of Courts.
23 These persons are identified by the agency
24 currently as independent candidates.

25 We sent correspondence to the three

1 individuals as well as the petitioner for
2 the protest stating that we would have
3 their item recognized at this Board meeting
4 and that a hearing date and time relative
5 to the matter would be set.

6 THE CHAIRMAN: Thank you.

7 Does anybody else want to be heard on
8 this in the public who may be attending?

9 MR. SWEENEY: If I may.

10 THE CHAIRMAN: You may, sir. Come up,
11 identify yourself and we're glad you
12 waited.

13 MR. SWEENEY: So am I.

14 THE CHAIRMAN: Yes.

15 MR. SWEENEY: Thank you very much for
16 recognizing me. There's been a challenge.

17 THE CHAIRMAN: Excuse me, sir. What's
18 your name?

19 MR. SWEENEY: Oh, I'm sorry. John
20 Sweeney. And I'm on the ballot for Clerk
21 of Courts, Rocky River, and I live --

22 THE CHAIRMAN: Where do you live, Mr.
23 Sweeney? Just your address, for the
24 record.

25 MR. SWEENEY: My address is 18477

1 Edgewood Drive in Rocky River, 44116.

2 THE CHAIRMAN: And Miss O'Malley, you
3 are one of the individuals she's filed a
4 protest against?

5 MR. SWEENEY: Say again?

6 THE CHAIRMAN: You are one of the
7 individuals Miss O'Malley has filed a
8 protest against; is that it?

9 MR. SWEENEY: She filed a protest
10 against me. I don't know who else she
11 filed a protest.

12 THE CHAIRMAN: And you would like to
13 be heard. Please.

14 MR. SWEENEY: Yes, I have been out of
15 state until late Saturday evening, and
16 obviously I didn't get a chance to read
17 this until Sunday afternoon. And so I
18 would like at least three weeks so I could
19 consult with counsel, and get prepared for
20 this challenge, if you would.

21 By the way, this challenge is very
22 similar to the challenge against Judge
23 Gravens. Same type of thing. It seems to,
24 since that thing was in the paper,
25 everybody's challenging everybody.

1 THE CHAIRMAN: Thank you, Mr. Sweeney.
2 And I appreciate you're making the request.
3 In regards to times, I would defer to Miss
4 Platten or Mr. Oradini, 'cause I know
5 you're up against -- you know, this Board
6 has to make some decisions in regards to
7 these matters, Miss Platten, I understand,
8 so you can get your ballots ready.

9 MS. PLATTEN: Right.

10 THE CHAIRMAN: So what's your time
11 table look like in that regard?

12 MS. PLATTEN: I'm going to ask Brent
13 Lawler to help me out on that. I'm not
14 certain.

15 THE CHAIRMAN: Do you see the question
16 I'm asking, Mr. Sweeney? We are going to
17 try to accommodate you. I'm going to hear
18 from my other Board members on this. And I
19 also want to balance out the Board's
20 concerns about being in the position
21 you're in.

22 MR. SWEENEY: Thank you very much.

23 MR. LAWLER: Brent Lawler, Assistant
24 Manager of Candidate and Voter Services.

25 These candidates were already

1 certified by the Board as we know. The
2 reason I was late coming back in, there was
3 a response from one of the protesters, one
4 of the candidates being protested is
5 downstairs, and we'll bring it up for the
6 Board and Deputy Director to get copies of
7 it.

8 In answer to your question, we have to
9 certify candidates who are filing on August
10 the 23rd, I believe the following Tuesday,
11 that's like the 28th or 27th of August.

12 MR. FROST: The following Tuesday is
13 the 28th

14 MR. LAWLER: The sooner we get it on
15 the agenda. I know there's no Board
16 meeting between Thursday, for Solon and
17 Bedford Heights. And then I think the next
18 Board meeting scheduled is that meeting to
19 certify those candidates that are filing at
20 the end of August.

21 THE CHAIRMAN: So you would like to
22 see the hearing done on or before what
23 date, Mr. Lawler?

24 MR. LAWLER: Before the 23rd.

25 THE CHAIRMAN: Before the 23rd?

1 MR. LAWLER: My belief is if we wait
2 to certify this again, you will have other
3 candidates potentially that will be
4 challenging the petitions and have to hold
5 hearings for those, also, and that will
6 make for a very long perhaps meeting and
7 you may not want to mix those issues in
8 with these protests.

9 THE CHAIRMAN: So the filing deadline
10 is on or before August 23rd?

11 MR. LAWLER: That's the major one for
12 the count, yes.

13 THE CHAIRMAN: So you would want to us
14 wait shortly sometime after that, because
15 everything would be in?

16 MR. LAWLER: I personally would prefer
17 that you move before that.

18 Because the agenda for the
19 certifications for August 23rd
20 isn't very long. It would be a couple
21 hundred candidates. It's not long. We
22 have all the school boards have already
23 been filed.

24 MS. PLATTEN: So you're suggesting we
25 separate out these protests, deal with

1 them on a separate meeting?

2 MR. LAWLER: I do.

3 THE CHAIRMAN: Because of the time
4 that could be involved with hearing the
5 protestS?

6 MR. LAWLER: Yes.

7 MR. FROST: But the date that you all
8 need to know whether or not these
9 candidates are being protested are, with
10 whether the protest is upheld or denied.
11 What's the day operationally that we need
12 to know that decision so the ballots for
13 the General Election can be prepared?

14 MR. LAWLER: We have a filing deadline
15 September 7th, I believe.

16 MS. PLATTEN: The latest filing
17 deadline that we have is Brecksville,
18 September 22nd.

19 Right now we are internally trying to
20 figure out how we are going to -- this
21 actually goes to a very much larger issue
22 that we're internally trying to figure out.
23 Because the filing deadline of September
24 22nd is so late, and we have an October 2nd
25 primary, we will not know until after the

1 October 2nd primary some candidates who
2 will be moving to the ballot in November.
3 That is just about a month away from the
4 actual General Election. We have a
5 significant number of other communities who
6 we can set the ballot for, get the absentee
7 ballots out and proceed with the election.
8 Because based on the system and the way by
9 which you close down the election or lock
10 down the election within the system itself,
11 the GEMS system, you have to have all
12 details for all municipalities set prior to
13 being able to lock that election down,
14 print your absentee ballots and move ahead
15 for the election.

16 We are right now working to identify a
17 process by which we can set the ballot for
18 those municipalities that we know we have
19 candidates and who they are, as opposed to
20 those we need to hold open for a longer
21 period of time.

22 What we're trying to determine is the
23 process that we can go to set some of those
24 cities being able to produce our ballots
25 for absentee, and I'm going to ask Matt

1 Jaffey, Manager of the Ballot Department,
2 Interim Manager of the Ballot Department,
3 if you can identify if not the date, a time
4 frame by which we would be setting the
5 ballot for a city like Rocky River, who
6 would be determined essentially outside of
7 any extenuating circumstances, by August
8 23rd filing deadline who those candidates
9 would be valid. A time frame, if nothing
10 else. And if you're uncomfortable doing
11 that, I'll ask you not to.

12 MR. JAFFEY: At this point we haven't
13 worked out all the details of when we are
14 going to be able to set the election. We
15 haven't explored all the options all the
16 way through yet. If everything was
17 happening on August 23rd, and we were able
18 to move ahead from there, or if one of our
19 options allows us to move ahead partially
20 from that, we would be able to set
21 everything by the first week of September.

22 MR. FROST: And absentee voting in
23 this election will start on October 2nd;
24 is that correct?

25 MR. JAFFEY: Yes.

1 MR. LAWLER: Correct.

2 MS. PLATTEN: Absentee voting, by
3 statute, is to start on October 2nd. We
4 have a primary on October 2nd. There are
5 municipalities that are going to be
6 effected whereby absentee voting will not
7 be open on October 2nd.

8 MR. FROST: But that doesn't impact
9 the Rocky River Municipal Court?

10 MS. PLATTEN: Unless we can figure out
11 the way to set the ballots for certain
12 municipalities outside of the October 2nd
13 primary, if we can figure out how to set
14 those ballots and get them printed, then
15 Rocky River and other communities will not
16 be affected.

17 If the system doesn't allow us to do
18 that, and we cannot set the ballot until
19 after the primary, then we will not have
20 absentee voting until after certification
21 of the October 2nd second primary.

22 MR. FROST: Thank you for that.

23 THE CHAIRMAN: When is our next
24 meeting?

25 MS. CHAPPELL: The 9th.

1 THE CHAIRMAN: Do we need to meet on
2 the 9th?

3 MS. PLATTEN: To certify the Solon
4 candidates.

5 THE CHAIRMAN: Then when is our next
6 regularly scheduled meeting after the 9th?

7 MS. CHAPPELL: The 28th.

8 THE CHAIRMAN: The 28th?

9 MS. CHAPPELL: Of August.

10 THE CHAIRMAN: And that's for
11 purposes?

12 MS. PLATTEN: That would be for
13 certification of candidates from the August
14 23rd filing deadline.

15 MR. LAWLER: And issues and local
16 options.

17 THE CHAIRMAN: And Strongsville needs
18 their vote certified right at some point,
19 right?

20 MS. PLATTEN: Strongsville
21 certification, is that the August 30th
22 meeting? That would be August 30th,
23 because you have 21 days after election, I
24 believe.

25 MR. LAWLER: Yes.

1 THE CHAIRMAN: So we are going to meet
2 on the 28th, which will be a long meeting,
3 as Brent points out.

4 Then the 30th we are going to meet
5 again to do the Strongsville certification.
6 Is there any reason Strongsville couldn't
7 be certified on the 28th?

8 MR. JAFFEY: I think Strongsville
9 should be certified on the 28th, 21 days
10 after the election.

11 THE CHAIRMAN: Okay.

12 MS. CHAPPELL: I just need to note
13 that I actually am not going to be able to
14 be at either of those two meetings. I'm
15 going to be out of the country the 28th and
16 30th. And so I would like, if there was
17 some way we could call a special meeting to
18 hear these protests after that, maybe the
19 early part of September.

20 MR. MCNAIR: I thought Brent was
21 asking if they can hold before that.

22 MS. CHAPPELL: Is that what you were
23 saying?

24 THE CHAIRMAN: Only for reasons, if I
25 understood them, they didn't want to have

1 them on the same agenda with all these
2 other certifications, and that's the only
3 reason.

4 MS. CHAPPELL: While I'm interested
5 certainly in giving, you know, the folks
6 who have received the process and who are
7 being challenged, sufficient time to get
8 counsel and do forth, and I recognize that
9 we have a duty to make sure the stuff gets
10 on the ballot, not holding up the process.
11 I really would like to participate in that
12 process. I just won't be here. Obviously,
13 if scheduling won't allow, that's fine.
14 But I will not be able to either attend the
15 28th or the 30th meeting.

16 MR. FROST: Would the 23rd or 24th be
17 an option that would reasonably accommodate
18 Mr. Sweeney's request and just give one
19 working day shy of three working weeks?

20 MS. PLATTEN: If I might, I would
21 suggest not have a meeting on August 23rd,
22 it's a massive filing deadline for us. We
23 could do it but it would be --

24 THE CHAIRMAN: What about the 24th?

25 MS. CHAPPELL: I'm not here on the

1 24th.

2 MR. FROST: 'Cause we do need some
3 time, and it sounds like one of the
4 protested candidates just filed a reply
5 today.

6 THE CHAIRMAN: Sir, did you want to be
7 heard, sir?

8 MR. DELAY: Yeah. Member of the
9 public on behalf of Sheila McGinty Delay.
10 This might help you on the scheduling.

11 THE CHAIRMAN: Why don't you come to
12 the microphone. It's going to be
13 specifically limited to this agenda item.
14 Okay?

15 MR. DELAY: Thank you. I'm from Ward
16 9. My name is Brendan Delay. And I just
17 filed this motion to strike protest of
18 Noreen O'Malley and the motion to determine
19 political party by a nonprotester. I think
20 you could take this under advisement by
21 next week, the 9th.

22 Here's what I discovered why. I
23 researched this. Under under Revised Code
24 3513.262, it is the protester that must be
25 the person who files the election protest.

1 And it is a fact, as elucidated in the
2 affidavit by Sheila McGinty Delay that she
3 was there at the moment that a nonprotester
4 filed on behalf of the elector, Noreen
5 O'Malley these three election challenges.
6 In fact, it was value Valerie Voight, who
7 lives in Bay Village, who filed this and
8 filed this on behalf of a neighbor.

9 So I think you might be able to
10 dispense of this for reasons of not
11 complying with the procedural requirement
12 that the elector, him or herself, file it.
13 And there's an important reason for that.
14 And it says that it's supposed to be filed
15 with the Board of Election officials, then
16 that means the Board of Election officials
17 that doesn't say the Department of Motor
18 Vehicles. It should have the signature
19 data, the election registration data of the
20 protestant, should be able to verify right
21 at the counter that the person has not
22 moved away, for example, to Lorain County
23 or, in fact, died, or been rendered
24 ineligible due to a felony. And that
25 wasn't done.

1 THE CHAIRMAN: Mr. Delay, I'm sorry.
2 We're not here for an argument today.

3 MR. DELAY: I think procedural
4 aspects --

5 THE CHAIRMAN: As you know, they get a
6 chance to respond, so we got to get your
7 reply out, which you should do. They get
8 to respond. We get to read. Then we get
9 to hear argument.

10 So your point is, hey, we'll be ready
11 and willing whenever.

12 MR. DELAY: On the 9th is fine with
13 us.

14 THE CHAIRMAN: But that's Thursday.
15 The 9th of August?

16 MR. DELAY: Whenever you next meet.

17 THE CHAIRMAN: We'll get a date. I
18 think the big thing right here, we need to
19 get the date, okay. And you stay, you need
20 to hear what the date is.

21 Let me just kind of boil this down.
22 We're trying to accommodate you, Inajo.

23 MS. CHAPPELL: If you could.

24 THE CHAIRMAN: The first time you are
25 available then.

1 MS. CHAPPELL: Is the last week in
2 August. Actually hold on. I'm actually
3 gone, with the exception of August 20th
4 through 23rd -- I'm sorry, 22nd; I could do
5 something those days; August 22nd --
6 Monday, August 20th, Tuesday, August 21st,
7 and then Wednesday, August 22nd.

8 THE CHAIRMAN: So the 20th, 21st and
9 22nd are good for you?

10 MS. CHAPPELL: Right. And then I'm
11 going basically -- go ahead.

12 MR. MCNAIR: That's consistent with
13 what Mr. Lawler is looking for in terms of
14 a decision from the Board.

15 THE CHAIRMAN: And it's a little
16 sooner than Mr. Sweeney wanted. Mr. Frost,
17 is that open on your-

18 MR. FROST: It's open on my calendar.

19 THE CHAIRMAN: The 20th is the best
20 date for me.

21 MS. CHAPPELL: Fine. And for you, Mr.
22 Frost?

23 THE CHAIRMAN: Mr. Sweeney, I think
24 what the conclusion is; you got two weeks,
25 okay. And inasmuch as you may very well be

1 similar to what you just heard earlier this
2 morning, I'm sure you can contact some
3 attorneys and talk to them. Okay. What I
4 would ask is we'll meet to hear these
5 protests on the 20th. It's going to be a
6 little accelerated, but that's just the
7 nature of the beast right right now. Then
8 I would suggest that the parties get in to
9 us, on or before, you know, we'll give you
10 a week from today, the 13th, your merit
11 briefs as far as your position goes. And
12 Mr. Delay, that would be, I guess your
13 client's position about this whole matter
14 then the reply briefs on or before Friday
15 before 5:00 that would be the 17th; so we
16 would have the benefit of those briefs.

17 I mean Mr. McNair asked me if is it
18 necessary to have two sets of briefs, and I
19 don't know. If you feel it's necessary to
20 file a reply to the merit brief, then I
21 guess it's your choice.

22 MR. MCNAIR: Mr. Chairman, I would
23 respectfully suggest move it back to the 15
24 to give Mr. Sweeney a couple more days. I
25 don't think we are going to make it, to

1 make it noon on the 15th. I don't think
2 you're going to need more than a day on
3 reply, so give him a little more time.

4 THE CHAIRMAN: Sure. It's suggested
5 then that the merit briefs on behalf of the
6 parties be submitted on or before noon, the
7 15th with reply briefs, if, necessary on
8 the 17th.

9 Is that okay with the Board, those
10 dates?

11 MS. CHAPPELL: Yes.

12 THE CHAIRMAN: You will be contacted,
13 Mr. Delay, and Mr. Sweeney, the other
14 parties with those dates. So here are what
15 we are going to do: We are going to hear
16 those protests at 9:00 August 20th, Monday.
17 And prior to that, the parties can submit
18 their merit briefs in support of their
19 respective positions on or before noon, the
20 15th of August. And, of course, share
21 those briefs with the other side, let the
22 other side know what you're doing, 'cause
23 they are required to give you notice too.
24 And then a reply brief, in you chose to
25 submit one on or before Friday the 17th.

1 Well, Mr. Delay, thank you for coming
2 down. Mr. Sweeney.

3 Is there anybody else regards to this
4 matter that wants to introduce themselves
5 or be heard or have a question?

6 Ma'am, come on up, name and address.

7 MS. GALLAGHER: My name is Jeanne
8 Gallagher. I live at 20863, Stratford
9 Avenue in Rocky River, Ohio.

10 I'm up here to agree with Mr. Delay
11 that this procedure be invalid, due to the
12 fact that Noreen O'Malley did not file
13 this, and I just want to say that also that
14 it says -- my name is crossed out or John
15 Sweeney's named is crossed out. I only
16 received copies, I never received an
17 original of their complaint. My name is
18 handwritten in, and I'd also like to say
19 that it says I've been active in Democratic
20 party politics and campaign and supported
21 Democratic candidates. I'd just like to
22 say I represented both Democrats and
23 Republicans and have worked on campaigns
24 strictly on the person, not the party.

25 THE CHAIRMAN: Thank you, Miss

1 Gallagher, for coming down. I appreciate
2 it. Of course, you'll want to get in some
3 written responses in support of your
4 position with us, too.

5 MR. MCNAIR: Could we just be clear
6 that the three people that are here are
7 available on the 20th themselves?

8 THE CHAIRMAN: Mr. Delay, on behalf of
9 your client?

10 MR. DELAY: Yes.

11 THE CHAIRMAN: Miss Gallagher?

12 MS. GALLAGHER: Yes.

13 THE CHAIRMAN: Mr. Sweeney?

14 MR. SWEENEY: I believe so, yes.

15 THE CHAIRMAN: Now, you had a comment,
16 Mr. Sweeney. If you do, come on up to the
17 microphone, if you would.

18 MR. SWEENEY: Thank you. I really
19 don't have a comment. My question was, I
20 think I heard you say that we will be
21 contacted by the Board of with all of this
22 pertinent information, what's required,
23 when it's required; is that correct?

24 THE CHAIRMAN: Right, we'll let you
25 know you can file a merit brief. In other

1 words, something supporting your position
2 on or before the 15th of August at noon.
3 Then if you chose, what will happen is the
4 other side has to serve you, too, with
5 their position, in this case, the protester
6 if she chooses. Then you get to reply to
7 that brief if you chose. And on or before
8 Friday the 17th. And I think Miss Platten
9 or someone from her staff will let you know
10 via a letter, that you can do that as well
11 as when the meeting time is in the letter
12 you'll get from us.

13 MR. SWEENEY: Excellent.

14 THE CHAIRMAN: Thank you, Mr. Sweeney.

15 MR. FROST: If I could make a request.
16 Miss Gallagher raises the point here with
17 regard to the name being crossed out and
18 name being written in. If I just ask the
19 staff that we have available for inspection
20 by the Board members on the date of that
21 hearing the originals.

22 THE CHAIRMAN: Okay. Any one else
23 wish to be heard or need to comment on this
24 particular process? Okay. Great. Thank
25 you for coming down, your patience through

1 sitting through this meeting, I appreciate
2 that.

3 We are on to now the Director's Agency
4 Issue Report.

5 MS. PLATTEN: There's just a couple
6 items relative to the voting system that I
7 wanted to address.

8 The first of which is this past
9 weekend I received correspondence from
10 representatives from Diebold, Robert Chen,
11 who's actually the Director of the DIMS
12 portion organization of Diebold Election
13 Systems that the Secretary of State in
14 California had rescinded approving and had
15 granted additional reapproval of the
16 Diebold Election System in the State of
17 California. I do have the paperwork that
18 the Secretary of State's office in
19 California outlined the situation as well
20 as some paperwork. A press release that
21 Mr. Chen forwarded me from Diebold. I
22 forwarded those items on to the Board
23 as well as the employees, management team
24 from this agency. I have not read them in
25 significant detail. I did read the

1 resolution the Secretary of State's office
2 in California passed, but again not no
3 significant detail.

4 I did talk to Chris Nance this morning
5 early, he is the Assistant Secretary of
6 State in the State of Ohio, and my question
7 to him was, what impact is this going to
8 have on us in Cuyahoga County, as well as
9 the other counties in the State of Ohio
10 that do use the same TSX system. And at
11 this point Mr. Nance responded that they
12 are going to monitor closely the events and
13 that they expect the counties to continue
14 to implement procedures to safeguard
15 against any known vulnerabilities that the
16 system presents. We will continue to have
17 conversations with the Secretary of State's
18 office and aggressively stay on top of the
19 issues both that come out of California and
20 any changes that potentially may come to
21 Ohio.

22 At this point, though, I did not
23 anticipate any immediate action on the
24 Secretary of State's office based on my
25 conversation with Mr. Nance.

1 The other two items are actually a
2 little bit more detailed, but both of which
3 I believe I've talked to you about. And I
4 just want to make sure I followed up. One
5 of the items came out of the discussion
6 that we had in Columbus with the
7 representatives from Diebold. The original
8 meeting that we had relative to the
9 issues that we are constantly monitoring
10 with the vendor. And that is the issue of
11 a project manager. It was discussed in the
12 meeting with Columbus that they would
13 identify one point of contact for Cuyahoga
14 County to continue to work through all the
15 issues to resolution that we identified
16 going back as long as a year or a year and
17 a half ago. And the discussion was at the
18 time that they would anticipate some level
19 of funding for us to provide that support.

20 And after various discussions, they
21 have come forward to say that between now
22 and the end of the year they will provide
23 us a point of contact, a project manager,
24 if you will. His name is John Davenport.
25 He's from the DIMS project management

1 office. Robert Chen has assigned him to
2 work directly with Cuyahoga County on the
3 issues and through resolution at no cost at
4 this point through the end of this year,
5 and that at the turning point into '08, we
6 would analyze where we are in terms of the
7 issues that need to be resolved and move
8 from and there.

9 Then the other item is the TSX device
10 itself. After an election, according to
11 Ohio Revised Code, needs to be not touched
12 for 60 days after an election. That's
13 based on the fact that there is a flash
14 drive on that device, there's ballot votes,
15 a history of voting on that device.

16 This presented us with a problem with
17 having so many consecutive elections in the
18 next weeks leading up to obviously a larger
19 primary election on October 2nd, but
20 ultimately and most significantly the
21 November election whereby if we had to hold
22 back devices for 60, days we would been in
23 significant trouble with a lower number of
24 devices to utilize for a county-wide
25 election.

1 The Secretary of State's office, based
2 on our inquiry, has since given us
3 procedures whereby we would recanvas the
4 actual memory card and upload the memory
5 cards from each election after the official
6 canvas is completed. So it's actually not
7 to the degree I was fearful of which would
8 have been a full audit of the paper trail
9 after each of those elections.

10 So we have now a simplified process
11 from the Secretary of State's office in
12 order to alleviate the issue of not having
13 the devices available to us for multiple
14 elections. And that was great news that we
15 got from the Secretary of State's office on
16 Friday.

17 We are now able to move into the next
18 elections only with the process of actually
19 uploading and comparing the results from
20 the initial canvas to what they call the
21 recanvassing of those memory cards, and if
22 they match, we're going to use those
23 devices again. That is significant to us.

24 THE CHAIRMAN: That's something that
25 you do internally with your staff.

1 MS. PLATTEN: Yes, it's done in the
2 ballot department.

3 THE CHAIRMAN: Then they confirm that
4 this is the case and there's some sort of
5 documentation?

6 MS. PLATTEN: Yes. And if there is
7 anything that does not match, then they've
8 given us procedures on how to handle that,
9 as well.

10 THE CHAIRMAN: They have?

11 MS. PLATTEN: The Secretary of State's
12 office.

13 THE CHAIRMAN: As through a directive
14 or kind of internal?

15 MS. PLATTEN: It was actually a memo
16 that we received from Pat Wolf the Director
17 of the Elections Commission.

18 THE CHAIRMAN: So you're going to
19 begin that fairly soon?

20 MS. PLATTEN: We will begin it
21 immediately after the official canvas is
22 done for the upcoming elections.

23 MS. CHAPPELL: I just have a question.
24 Backtrack just a little bit in terms of the
25 State of California's withdrawal of the

1 approval of Diebold's system. You had
2 indicated that you were going to give to us
3 basically your analysis of our system
4 versus their system.

5 MS. PLATTEN: Uh-huh.

6 MS. CHAPPELL: Is that going to be
7 forthcoming soon?

8 MS. PLATTEN: Yeah, we have not sat
9 down with our staff as of right now, the
10 management team, in terms of analyzing,
11 for instance; there is this issue with
12 remote access into the system that
13 California was vulnerable to, I believe, in
14 the review that was done. There are other
15 elements to the system that, you know,
16 staff beyond me understands far better than
17 I do. So we'll sit down with them in the
18 next day and we have a management team
19 meeting scheduled for tomorrow where we can
20 start diving into that, and this new
21 resolution gives us, you know, better
22 information in terms of doing an analysis,
23 as well.

24 MS. CHAPPELL: I don't know if this
25 has been discussed previously. I thought

1 at one time that Secretary of State Brunner
2 had indicated that her office was going to
3 undertake state-wide testing of all the
4 voting machines, and that would include
5 Diebold. Do we know where that is? Did
6 that go forward or is that tabled? What's
7 the status of that?

8 MS. PLATTEN: My understanding is that
9 they did send out an RFP for that, and I
10 can certainly inquire. I don't know.

11 MR. MCNAIR: Mr. Monroe's here. Maybe
12 he can speak to that. My understanding is
13 they gotten the articles back and they are
14 analyzing that.

15 MR. MONROE: Ed Monroe, Liason from
16 the Secretary of State's Office. That is
17 request we do have RFPs back. At this
18 point they are determining how to proceed
19 and move forward with it. But as far as I
20 know personally, they are moving forward
21 with the audit of the systems.

22 MR. MCNAIR: And it's also my
23 understanding that your office is closely
24 monitoring what happened in California and
25 monitoring what's about to happen in

1 Florida with respect to those reports
2 coming out of those respective Secretaries
3 of States.

4 MR. MONROE: At this time I personally
5 I'm not sure exactly what's happening
6 there.

7 MS. CHAPPELL: I see Gladys Dunbar
8 here, also. Maybe she has some
9 information.

10 MS. DUNBAR: Good afternoon. It is my
11 understanding from the Secretary of State
12 herself that they are reviewing the
13 information from California. In fact,
14 Assistant Secretary, Chris Nance, is at a
15 meeting in Boston now with the people who
16 did that study from California, 'cause we
17 are still preparing it to decide to what
18 extent we are reviewing all of the systems
19 that are in Ohio.

20 MS. CHAPPELL: Thank you.

21 THE CHAIRMAN: Anything else, Miss
22 Platten?

23 MS. PLATTEN: Those are the items I
24 have.

25 THE CHAIRMAN: Just for edification,

1 we are going to go in recess. We are going
2 to get some public comment, if there is
3 any, and any other items. Because we are
4 just going to kind of recess. Do we have
5 to readjourn tomorrow at some point, or
6 reconvene tomorrow? We do?

7 MR. ORADINI: Yes.

8 THE CHAIRMAN: We have to get together
9 tomorrow at some point; and why is that?

10 MS. PLATTEN: Actually we just need to
11 keep the meeting open in the event if we
12 need you to get back. So I don't need to
13 formally set a time.

14 THE CHAIRMAN: We are going to meet on
15 the 9th, right and the agenda item there
16 specifically is?

17 MS. PLATTEN: That would be the
18 certification of the candidates for the
19 Solon ballot, because we have a filing
20 deadline August 8th.

21 THE CHAIRMAN: And other than that, it
22 shouldn't be a big docket, correct?

23 MS. PLATTEN: I don't believe so.

24 THE CHAIRMAN: Can we come back and
25 reconvene and then convene again or do we

1 need to come back here at some point
2 tomorrow or Wednesday?

3 MR. MCNAIR: We haven't in the past.

4 MS. PLATTEN: At this point right now
5 I do not need to set a time for to you come
6 back, but you need to have the board
7 meeting at the commencement of the
8 election, so we need to keep this Board
9 meeting open.

10 THE CHAIRMAN: Then what we could do
11 procedurally is, we meet on Thursday, kind
12 of adjourn that Board meeting and that
13 began today, and open up our next Board
14 meeting.

15 MR. ORADINI: That's fine.

16 THE CHAIRMAN: So we need to be back
17 here on Thursday at 9:00.

18 MR. MCNAIR: 1:00.

19 MS. CHAPPELL: Oh, it's at 1:00?

20 THE CHAIRMAN: Would you all prefer
21 9:00 or would you like 1:00?

22 MR. MCNAIR: I would prefer 1:00 just
23 because I have a 7:30 meeting. I'm not
24 sure how long it's going to go.

25 THE CHAIRMAN: Do you want to do

1 10:00?

2 MR. MCNAIR: If that's better for the
3 other Board members I think.

4 MS. CHAPPELL: That would work for me.

5 MR. FROST: I don't have a preference.

6 THE CHAIRMAN: You think you can get
7 out in a couple hours? Let's have the
8 meeting at 10:00. All right. And, of
9 course, you're invited to stop by tomorrow
10 afternoon or evening if you like.

11 Anything, Miss Platten, as far as the
12 agency or any other items?

13 MS. PLATTEN: No.

14 THE CHAIRMAN: From the Board members,
15 any items?

16 Is there any public comment from the
17 public that would like to be heard?

18 Anything?

19 Is there a motion to adjourn this
20 meeting?

21 MS. CHAPPELL: Second.

22 THE CHAIRMAN: Seconded. And a motion
23 to recess. Excuse me.

24 MR. FROST: I amend my motion.

25 THE CHAIRMAN: Amend it. I will

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

second it.

All those in favor, signify by saying
aye.

MR. MCNAIR: Aye.

MS. CHAPPELL: Aye.

MR. FROST: Aye.

THE CHAIRMAN: See you back here
Thursday at 10:00.

- - -

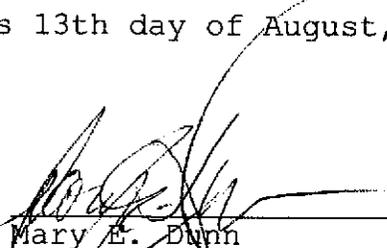
(Meeting adjourned at 12:30.)

- - -

C E R T I F I C A T E

I, Mary E. Dunn, a Stenographic Reporter, do hereby certify that I attended the foregoing proceedings in their entirety; that I wrote the same in Stenotype, which was subsequently transcribed into typewriting by means of computer-aided transcription under my direction; and that the foregoing Transcript of Proceedings is a true and correct transcript of my Stenotype notes.

Signed this 13th day of August, 2007.



Mary E. Dunn
Mizapin Reporting Service, Inc.
50 Public Square
1511 Terminal Tower
Cleveland, OH 44113

IN THE BOARD OF ELECTIONS
CUYAHOGA COUNTY, OHIO

RECEIVED 11-03-07 BOE

IN RE:)
)
Challenge to Maureen Adler Gravens) REPLY BRIEF OF
) DEBORAH REESE
)

I. INTRODUCTION

In her brief, Ms. Adler Gravens (“Ms. Gravens”) argues to the Board of Elections (“BOE”) that she is a “nonpartisan” candidate as opposed to an “independent” candidate. Unfortunately for Ms. Gravens’ argument, the Rocky River Municipal Court race is a partisan election- there is no “nonpartisan” candidate in this election. Therefore, since Ms. Gravens voted in the Democrat primary, evidencing her partisanship, the 6th Circuit Court of Appeals Opinion in *Morrison v. Colley*, 467 F.3d 503 (6th Cir. 2006) and the Ohio Secretary of State’s Advisory Opinion 2007-05. Both mandate that she must be decertified and/or disqualified from this election.

II. RESTATEMENT OF FACTS

Perhaps Ms. Gravens confusion comes from the fact that Form 3-I is used for both Nonpartisan candidates and Independent candidates. (See Ex A: Ohio Secretary of State, Candidate Requirement Guide for Municipal Court Judge) As set forth in the Ohio Secretary of State’s candidate requirement guide for a Municipal Court Judge, the forms to be used are:

- Judicial officers that may be nominated in a partisan primary:
 1. Major Party (Petition #2-h): 50 valid signatures
 2. Independent (Petition #3-I): 50 valid signatures
- Nonpartisan judicial officers nominated by petition or in a nonpartisan primary (Petition #3-1): 50 valid signatures’.

Ms. Gravens argues that she is a “nonpartisan” candidate. She further argues that she has not indicated she is an “Independent” candidate on her declaration of candidacy. Unfortunately, for this argument, the BOE’s 2007 Petition Filing Deadline Dates for Candidates, clearly provides that the Rocky River Judicial race is a “partisan” race. (See Brief of Deborah Reese to BOE, dated July 16, 2007, Ex. A: Petition Deadlines.) The form utilized does not control, it is the office being sought that controls.

As for Ms. Gravens statement that Ms. Deborah Reese’s (“Ms. Reese”) letter does not constitute a protest, it is apparent that the Board considered the letter a valid protest by setting a briefing schedule and also a hearing on the matter. Despite this action by the BOE, Ms. Reese, out of an abundance of caution, submitted a second letter on July 12, 2007 setting forth that she is “formally protesting” the candidacy of Ms. Gravens.

II. LAW AND ARGUMENT

A. MS. GRAVENS’ PETITION IS AN UNACCEPTABLE PETITION AND SHOULD NOT BE ACCEPTED ACCORDING TO REV. CODE §3501.39(A) .

In her Brief, Ms. Gravens asserts that her petition is valid and therefore the BOE cannot disqualify her candidacy. The law provides otherwise. Rev. Code §3501.39(A), the provision that deals with Unacceptable Petitions, specifically provides that:

(A) The secretary of state or a board of elections shall accept any petition described in section 3501.38 of the Revised Code **unless one of the following occurs:**

- (1) a written protest against the petition or candidacy, naming specific objections, is filed, a hearing is held, and a determination is made by the election officials with whom the protest is filed that the petition is invalid, in accordance with any section of the Revised Code providing protest procedure.
- (2) A written protest against the petition or candidacy, naming specific objections, is filed, a hearing is held, and a determination is made by the election officials with whom the protest is filed that the petitions violates any requirement established by law.
- (3) The candidate's candidacy or the petition violates the requirements of this chapter, Chapter 3513 of the Revised Code, or any other requirements established by law.

The written protest was filed by Ms. Reese and a hearing has been scheduled for August 6, 2007 by the BOE. Ms. Gravens' petition is invalid as it violates the requirements established by the Sixth Circuit's decision in *Morrison v. Colley*, 461 F.3d 503 (6th Cir. 2006) and the Ohio Secretary of State's Advisory Opinion No. 2007-05 that Ms. Gravens must be an "Independent" Candidate. The "unless" requirements of the statute have been met; therefore, Ms. Graven's petitions are unacceptable.

B. MS. GRAVENS CANNOT BE A NONPARTISAN CANDIDATE BECAUSE THE POSITION OF ROCKY RIVER MUNICIPAL COURT JUDGE IS A PARTISAN POSITION FOR WHICH CANDIDATES ARE EITHER AFFILIATED WITH A MAJOR PARTY OR INDEPENDENT.

Ohio Rev. Code §1901.07(B) permits municipal judges to be elected either in a partisan primary or by nomination in a nonpartisan election. This is also set forth in the Ohio Secretary of State's Candidate Requirement Guide for Municipal Court Judges (Ex. A).

As the BOE is fully aware, the judicial race in question is a "partisan" race where primary elections were held for this position. The Filing Deadlines of the BOE indicate

that in Rocky River's race for judicial office, there was to be a Party Primary Filing, denoted by a "P" and an Independent Filing in a city with a partisan primary, denoted by an "IND". (See Brief of Deborah Reese to BOE, dated July 16, 2007, Ex. A: Petition Deadlines) By contrast, the cities within Cuyahoga County that hold nonpartisan elections are those cities that are denoted with a "NP" after the name of the city. The Filing Deadlines list "Rocky River Judicial" followed by a "P" and an "IND" which clearly shows that Rocky River's judicial office is a partisan race as Ms. Gravens contends.

In a partisan election, candidates are either affiliated with one of the major parties or they are Independent. (See Brief of Deborah Reese to BOE, dated July 16, 2007, Ex. A: BOE Petition Deadlines). Otherwise, the election itself would be considered a nonpartisan election. Therefore, while it is true, as Ms. Graves points out, that §3501.01(B) says that nonpartisan candidates shall file not later than 4 p.m. of the day before the primary election, Ms. Gravens petition cannot be considered a nonpartisan petition solely because she filed on May 2, 2007.

The fallacy of Ms. Gravens' argument is that in a partisan election, there is no "nonpartisan" candidate. There are several statutory provisions discussing the issue of "nonpartisan," elections and "nonpartisan" candidates.

As set forth in Ohio Rev. Code §3501.01, a nonpartisan candidate is defined as:

(J) "Nonpartisan Candidate" means any candidate whose name is required, pursuant to § 3505.04 to be listed on the nonpartisan ballot, including candidates for judicial office, for member of any board of education, for municipal or township offices **in which primary elections are not held for nominating candidates by political parties, and for offices of municipal corporations having charters that provide for separate ballots for elections for these offices.** (emphasis added)

Further, Further, R.C. §3505.04 Nonpartisan Ballot, provides:

On the nonpartisan ballot shall be printed the names of all nonpartisan candidates for election to judicial office, office of member of the state board of education, office of member of a board of education, municipal or township offices for municipal corporations and townships **in which primary elections are not held for nomination of candidate by political parties** , and municipal offices of municipal corporate having charters which provide for separate ballots for elections for such municipal offices.

As is readily apparent, the word “nonpartisan” has no place in the General Election for the Rocky River Municipal Court. As can be seen in both of these statutes “nonpartisan candidate” and “nonpartisan ballot,” refer to cases where there is no primary election. There is no dispute that a primary election was held for this judicial race.

Ms. Gravens also fails to read R.C. §1901.07(B) in its entirety. The statutory provision also states:

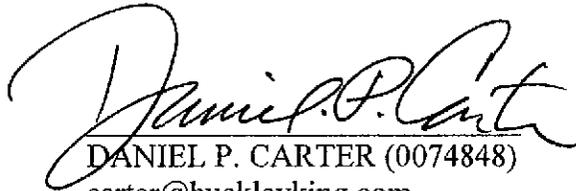
If the jurisdiction of a municipal court extends beyond the corporate limits of the municipal corporation in which it is located ... nonpartisan candidates for the office of municipal court judge shall filing nominating petitions not later than four p.m. of the day before the day of the primary election in the form prescribed by section 3513.261 of the Revised Code. **The petition shall conform to the requirements provided for those petitions of candidacy contained in Section 3513.257 of the Revised Code.**

Of course, as noted, supra, §3513.257, is the provision of the Revised Code addressing **Independent Candidates**.

In sum, “nonpartisan” is not interchangeable with “independent.” An election is either partisan or nonpartisan. This election is a “partisan” election, therefore, a candidate must be a member of a political party or independent. Here- Ms. Gravens declared herself an “independent” by filing Form 3-I with the BOE. Ms. Gravens subsequent voting in the Democrat Primary disqualifies her from the ballot because Ohio law requires an “independent candidate,” must truly be “independent.” *Morrison v.*

Colley, 467 F.3d 503 (6th Cir. 2006); Ohio Secretary of State Advisory Opinion 2007-05.
Accordingly, Ms. Reese requests that the BOE decertify and/or disqualify Ms. Gravens
from the 2007 General Election.

Respectfully submitted,



DANIEL P. CARTER (0074848)

carter@buckleyking.com

JEFFREY W. RUPLE (0068742)

ruple@buckleyking.com

1400 Fifth Third Center

600 Superior Avenue, East

Cleveland, Ohio 44114-2652

(216) 363-1400

(216) 579-1020 (*facsimile*)

OF COUNSEL:

BUCKLEY KING, LPA

8129\001\017 Reese Response Brief.doc

Municipal Court Judge



R.C. 1901.07 prescribes the method of nomination of municipal judges based on the jurisdiction of the court and the applicability of municipal charter provisions. Municipal judge candidates should review closely R.C. 1901.07 and consult with their local board of elections to determine particular filing requirements in their jurisdiction. All candidates for municipal judge are nominated either by nominating petition or by primary election. If two or more judges of the same court are to be elected, each person filing a declaration of candidacy or a nominating petition as a candidate for election to the office of judge of the court shall state when the term of office commences.

Term:

Six years; commencement dates vary (R.C. 1901.07)

Qualifications

Residency Requirement:

In the territorial jurisdiction of the court (R.C. 3.15, 1901.06)

Maximum Age:

70 years, as of the date of the general election (OH Const. Art. IV §6)

Experience:

Six years admitted to, and engaged in, the practice of law, or prior service as a judge of a court of record in the United States, or both (R.C. 1901.06)

Other:

Registered voter in the territorial jurisdiction of the court (1901.06)

Petition Form Numbers:

- Party candidates: #2-H
- Independent candidates: #3-I
- Nonpartisan candidates: #3-I

Signature Requirements:

(R.C. 1901.07, 3513.05, 3513.257)

Note: In certain charter municipal corporations, the petition, signature or filing requirements may differ. Contact your local board of elections for specific requirements.

- Judicial offices that may be nominated in a partisan primary:
 1. Major party (Petition #2-H): 50 valid signatures
 2. Independent (Petition #3-I): 50 valid signatures
- Nonpartisan judicial offices nominated by petition or in a nonpartisan primary (Petition #3-I): 50 valid signatures
- Municipal courts specified in R.C. 1901.07(C)(1)-(6) [Akron, Cleveland and Toledo municipal courts, and the Auglaize, Brown, Clermont, Crawford, Franklin, Hamilton, Hocking, Jackson, Lawrence, Madison, Miami, Morrow, Portage and Wayne county municipal courts] (Nominated only by Petition #3-I): 50 valid signatures

Filing Fee:

\$80 (R.C. 3513.10, 3513.261)

Petition Filing Deadlines:

- #2-H (partisan primary election): 4 p.m. on February 22, 2007 (75 days before the May 8 primary election) (R.C. 1901.07, 3513.05)
- #3-I (independent or nonpartisan candidates): 4 p.m. on May 7, 2007 (day before the May 8 primary election) (R.C. 1901.07, 3513.257, 3513.261)

Filed With:

County board of elections office (R.C. 3513.05)

Note: If the court is located in more than one county, the petition is filed with the board of elections in the most populous county unless otherwise provided for in law.

BUCKLEY KING

1400 FIFTH THIRD CENTER /

600 SUPERIOR AVENUE EAST • CLEVELAND, OHIO 44114-2652

Tel: 216.363.1400 • 800.255.2825 • Fax: 216.579.1020

www.buckleyking.com

Writer's Direct E-Mail: carter@buckleyking.com

July 16, 2007

Daniel P. Carter, Esq.
Also Admitted in Pennsylvania

Jane M. Platten
Director
Cuyahoga County Board of Elections
2925 Euclid Avenue
Cleveland, OH 44115-2497

Re: Challenge to Maureen Adler Gravens

Dear Ms. Platten:

This submission is on behalf of Ms. Deborah Reese ("Ms. Reese"), a qualified elector for the 2007 General Election. On June 19, 2007, Ms. Reese filed a protest with the Cuyahoga County Board of Elections ("BOE") as to the candidacy of Maureen Adler Gravens ("Ms. Gravens") for the position of Rocky River Municipal Court Judge. After receiving this June 19, 2007 letter, the BOE requested briefs from the interested parties to be filed by the close of business on July 16, 2007. Ms. Reese additionally filed a formal protest on July 13, 2007.

Ms. Reese hereby submits her brief as well as the following exhibits:

- Ex. A: BOE Petition Deadlines
- Ex. B: Gravens Statement of Candidacy and Nominating Petitions
- Ex. C: Receipt of Petition for Pre-check
- Ex. D: Results of Candidate Pre-check
- Ex. E: Judicial Receipt for Petition filing materials
- Ex. F: Gravens Voting Record
- Ex. G: BOE Alphabetical Poll Book from the Primary May 8, 2007 (2 pages)
- Ex. H: Morrison Opinion
- Ex. I: Secretary of State Opinion
- Ex. J: Articles regarding Mahoning County
- Ex. K: Articles regarding Warren County
- Ex. L: Articles regarding Trumbull County

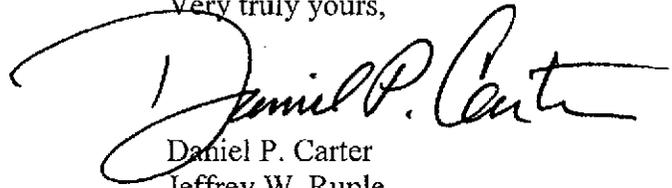
JUL 16 '07 PM 3:41 BOE

Jane M. Platten
July 16, 2007

BUCKLEY KING

If you have any questions, please do not hesitate to contact the undersigned.

Very truly yours,

A handwritten signature in black ink, appearing to read "Daniel P. Carter". The signature is fluid and cursive, with a large initial "D" and "C".

Daniel P. Carter
Jeffrey W. Ruple

DPC/jls
Enclosures

In Re Challenge : Cuyahoga County
to Maureen Adler Gravens : Board of Elections

BRIEF OF DEBORAH REESE IN SUPPORT OF THE CHALLENGE TO THE
INDEPENDENT CANDIDATE MAUREEN ADLER GRAVENS

The issue before the Cuyahoga County Board of Elections (“BOE”) is a simple one: Should Independent Candidate Maureen Adler Gravens be disqualified as a candidate from the Rocky River Municipal Court election for voting in the Democratic Party Primary? Based upon the clear mandate of the Ohio Secretary of State and the opinion of the Sixth Circuit Court of Appeals, Ms. Gravens must be disqualified as a candidate for the 2007 General Election.

I. FACTS:

According to the filing deadlines set forth by the BOE, a candidate running in a party primary must have filed for the election of the Judge of the Rocky River Municipal Court no later than February 22, 2007. (Ex. A: BOE Petition Deadlines) Further, Independent Candidates, had up to and through May 7, 2007 to file their petitions. (Ex. A: BOE Petition Deadlines)

Rev. Code §1901.07 permits municipal judges to be elected either in a partisan primary or by nomination in a nonpartisan election. There is no dispute that the Rocky River Municipal Court is a “partisan” office, therefore, a candidate must have been included in the partisan primary or filed as an Independent Candidate. (Ex. A: BOE Petition Deadlines)

Ms. Gravens followed the rules for filing as an Independent Candidate by filing her petitions on May 2, 2007. (Ex. A: BOE Petition Deadlines; Ex. B: Gravens Statement of Candidacy and Nominating Petitions; Ex. C: Receipt of Petition for Pre-check; Ex. D: Results of Candidate Pre-check; Ex. E: Judicial Receipt for Petition filing materials) Despite filing as an Independent, Ms. Gravens voted in the Democratic primary election on May 8, 2007 (Ex. F: Gravens Voting Record; Ex. G: BOE Alphabetical Poll Book from the Primary May 8, 2007 (2 pages)). Such participation in a primary election is not permissible if she is claiming to be an Independent Candidate. (Ex. B: Gravens Statement of Candidacy and Nominating Petitions; Ex. H: Morrison Opinion; Ex. I: Secretary of State Opinion) The timing of the filings locks Ms. Gravens into the position of an Independent Candidate.

II. LAW AND ARGUMENT

A. Ms. Gravens must be disqualified from the 2007 General Election by law.

In the State of Ohio, an Independent Candidate is defined by statute. Rev. Code § 3501.01 defines an Independent Candidate as:

(I) "Independent candidate" means any candidate who claims not to be affiliated with a political party, and whose name has been certified on the office-type ballot at a general or special election through the filing of a statement of candidacy and nominating petition, as prescribed in section 3513.257 of the Revised Code.

Further, as set forth in R.C. 3513.257 (Independent Candidates Statement of Candidacy and Nominating Petitions):

Each person desiring to become an independent candidate for an office for which candidates may be nominated at a primary election, ... shall file no later than four p.m. of the day before the day of the primary election immediately preceding the general election at which such candidacy is to be voted for by the voters, a statement of candidacy and nominating petition as provided in section 3513.261 of the Revised Code.

By filing her petitions on May 2, 2007, Ms. Gravens could not run as anything but an Independent Candidate, by operation of the BOE deadlines as set forth in Exhibit “A”. Therefore, there can be no factual dispute that Ms. Gravens filed as an Independent candidate for the position of Rocky River Municipal Court Judge. (Ex. B: Gravens Statement of Candidacy and Nominating Petitions)

Both the U.S. Court of Appeals for the Sixth Circuit and the Ohio Secretary of State have made it clear that an “Independent” candidate, must be truly Independent. Ms. Gravens’ subsequent declaration and/or voting in a major primary party requires that the Board of Elections cannot certify and/or must disqualify her candidacy.

In *Morrison v. Colley*, 467 F.3d 503 (6th Cir. 2006) (Ex. H: Morrison Opinion), the Sixth Circuit Court of Appeals held that an independent candidate must *actually* be unaffiliated with any political party and when such unaffiliation is claimed, it must be in good faith (emphasis added).

The relevant facts of *Morrison* are as follows: The day before the 2006 primary election, Charles Morrison filed nominating petitions with the Franklin County Board of Elections in order to run as an independent candidate for the office of United States Representative of Ohio’s Fifteenth Congressional District. *Id.* at 505. The next day, Mr. Morrison requested a Republican ballot and voted in the Republican primary, and his name also appeared on the ballot for election to the Madison County Republican Party Central Committee and the Ohio Republican Party State Central Committee. *Id.* Three qualified electors filed a written protest with the Board of Elections challenging Mr. Morrison’s candidacy as an independent candidate for U.S. Representative. The Board of Elections and the Secretary of State, who voted to break a tie vote by the

Board, decided in favor of the protestors and against Mr. Morrison's certification. *Id.* As a result, Mr. Morrison brought suit seeking injunctive relief requesting placement on the November 2006 ballot as an independent candidate. *Id.* at 506.

The Sixth Circuit agreed with the District Court's reasoning that "a person of ordinary intelligence would understand that an aspiring Independent candidate must actually be independent, rather than merely claim it." Citing *United States v. Gjeli*, 717 F.2d 968, 972 (6th Cir. 1983) (emphasis added). The court continued, "[a] candidate possessing ordinary intelligence and common sense would readily understand that the claim of independence must be made in good faith—otherwise there would be no reason for having the claim requirement, and none of the state interests animating the claim requirement would be served." *Id.*

In order to provide guidance to local Boards of Elections after the *Morrison* decision, the Ohio Secretary of State, Jennifer Brunner, promulgated Advisory Opinion No. 2007-05. (Ex. I: Secretary of State Opinion). The opinion concluded that the *Morrison* court and Ohio Rev. Code § 3513.257 require that (1) "an independent candidate actually be unaffiliated, or disaffiliated from any political party, and (2) "the required claim of unaffiliation by an independent candidate must be in good faith." *Id.*

The Secretary of State went on to provide boards of elections with guidelines on how to determine whether or not an independent candidate is actually affiliated with a political party or whether the independent candidate has claimed unaffiliation in good faith. One such guideline says that "if an independent candidate votes in a party primary election after filing as an independent, the candidate is not actually unaffiliated, and the candidate's claim of independence was either not made in good faith or is no

longer current.” *Id.* (Emphasis added.) This is precisely what Ms. Gravens did on May 8, 2007 when she voted in the Democratic primary after filing a statement of candidacy and nominating petitions with the Cuyahoga County Board of Elections just six days prior, on May 2, 2007.

Ms. Gravens would not be the first candidate to be denied certification or disqualified for such actions following the *Morrison* decision and the publication of the Ohio Secretary of State’s Opinion. This precise issue has recently been faced by the Mahoning, Warren and Trumbull Counties Boards of Elections. Each of the Boards voted to not certify the candidates because it was found that the candidates could not be considered truly independent. (Ex. J: Articles regarding Mahoning County; Ex. K: Articles regarding Warren County; Ex. L: Articles regarding Trumbull County)

B. MS. GRAVENS IS NOT A “NONPARTISAN” CANDIDATE.

Ms. Gravens may argue that she is a “nonpartisan” candidate rather than an “independent” candidate.

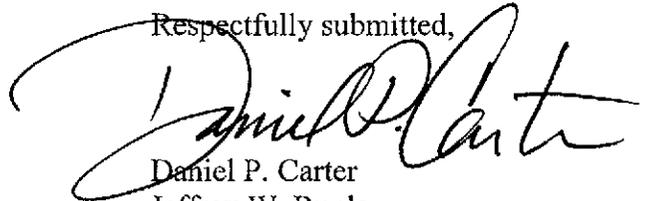
“Nonpartisan candidate” means any candidate whose name is required, pursuant to R.C. §3505.05 of the Revised Code, to be listed on the nonpartisan ballot, including candidates for judicial office, for member of any board of education, for municipal or township offices **in which primary elections are not held for nominating candidates by political parties, and for offices of municipal corporations having charters that provide for separate ballots for elections for these offices.** R.C. §3501.01(J).

There is no dispute that Rocky River held a primary election in which Ms. Gravens voted as a democrat and that the position of Municipal Court Judge is a partisan position. Therefore, Ms. Gravens does not meet the definition of a non-partisan candidate. Further, Ms. Reese opposes any attempt by Ms. Gravens or her campaign to

have the BOE change its minutes from the last meeting to indicate that she is “nonpartisan.”

Accordingly, Ms. Reese respectfully requests that the Board of Elections decertify and/or disqualify Ms. Gravens as a candidate for the 2007 General Election based on the clear mandate of the 6th Circuit and the Secretary of State.

Respectfully submitted,



Daniel P. Carter
Jeffrey W. Ruple

2007 PETITION FILING DEADLINE DATES FOR CANDIDATES

P=Party Primary Filing

NP=Nonpartisan Filing

IND = Independent Filing in a city with a partisan primary

Solon

February 22, 2007

Newburgh Hts. (P)
North Olmsted (NP)
Parma City (P)
Parma Judicial (P)
Rocky River Judicial (P)
Strongsville (NP)

March 24, 2007

Oakwood (NP)

April 19, 2007

Cleveland - Ward 21 only
- at midnight (NP)

May 7, 2007

Newburgh Hts. (IND)
Parma City (IND)
Parma Judicial (IND)
Rocky River Judicial (IND)

June 13, 2007

Broadview Hts. (NP)

July 19, 2007

Lakewood (NP)
North Royalton Mayor &
Council President only (NP)

July 20, 2007

Rocky River City (P & IND)

July 27, 2007

Brook Park (P & IND)
Maple Hts. (NP)

August 3, 2007

Berea City (P & IND)

August 8, 2007

(ALL NONPARTISAN)
Bedford Hts.
East Cleveland Council
Richmond Hts.

August 23, 2007

(ALL NONPARTISAN)
Bay Village
Beachwood
Bedford City
Bentleyville
Bratenahl
Brooklyn
Brooklyn Hts.
Chagrin Falls Township
Chagrin Falls Village
Cleveland Judicial 4:00 p.m.
Cuyahoga Hts.
Euclid City
Fairview Park
Garfield Hts. City
Gates Mills
Highland Hts.
Highland Hills
Hunting Valley
Linddale
Lyndhurst City
Mayfield Hts.
Mayfield Village
Middleburg Hts.
Moreland Hills
North Randall
North Royalton Council only
Olmsted Township
Orange Village
Parma Hts.
Pepper Pike
Seven Hills
Shaker Hts. City
South Euclid City
Valley View
Walton Hills
Woodmere
And all Boards of Education

September 7, 2007

(ALL NONPARTISAN)
Cleveland Hts. City
Glenwillow
Independence
Olmsted Falls
Warrensville Heights
University Hts.

September 22, 2007

Brecksville (NP)

NO ELECTION 2007

Cleveland City
East Cleveland Mayor
Westlake (NP)

Bedford Judicial
Berea Judicial
Cleveland Hts. Judicial
East Cleveland Judicial
Euclid Judicial
Garfield Judicial
Lakewood Judicial
Lyndhurst Judicial
Shaker Hts. Judicial
South Euclid Judicial (NP)

2008 Presidential Primary

January 4, 2008

All Partisan Candidates &
Republican Precinct
Committeepersons.

JUDGE OR CLERK OF THE MUNICIPAL COURT

For Board of Elections use only - Do not write in this space

Office Sought: JUDGE - ROCKY RIVER

80.00 Filing Fee MIN 50-MAX 150 Signature Requirements MAY 7 2007 4PM Last Filing Date/Time

The candidate must fill in, sign and date this statement of candidacy before petitions are circulated.

STATEMENT OF CANDIDACY

Revised Code, Sections 1901.07, 1901.31, 3601.38, 3513.261

I, MAUREEN ADLER GRAVENS (Name of candidate), the undersigned, hereby declare under penalty of election falsification that my voting residence address is ROCKY RIVER (Enter city, village or township name) is 21370 SNOWFLOWER (Street address) 44116 (Zip code).

And I am a qualified elector. I further declare that I desire to be a candidate for election to the office of JUDGE (Judge or Clerk) in the ROCKY RIVER (Enter court name) Municipal Court District, for the full term commencing JANUARY 1, 2008 or unexpired term ending _____ (Check one of the boxes and fill in the appropriate date) at the general election next hereafter to be held.

I hereby declare that, if elected to this office or position, I will qualify therefor.

BOARD USE ONLY	
City, Ward & Precinct	
PARTY / YEAR	
SIGNATURE	
INITIALS	

Dated this 6th day of FEBRUARY, 20 07

MAUREEN ADLER GRAVENS
(Print name as it should appear on the ballot)

Maureen Adler Gravens
(Signature of candidate)

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

I, MAUREEN ADLER GRAVENS (Name of candidate) hereby designate the persons named below a committee to represent me:

NAME	STREET ADDRESS
TERRANCE P. GRAVENS	21370 SNOWFLOWER, ROCKY RIVER, OH 44116
GARY JOHNSON	1250 RUE ST. GEORGES, WESTLAKE, OH 44145
PATRICIA A. GAUL	2751 COUNTRY CLUB, ROCKY RIVER, OH 44115
MICHAEL CARLIN	4140 DIANE, FAIRVIEW PARK, OH 44126
KATHLEEN MAHONEY	30122 EDNIL, BAY VILLAGE, OH 44140

NOMINATING PETITION

We, the undersigned, qualified electors whose voting residence set opposite our names, hereby nominate the above-named candidate for election to the office and term as stated above of the above named municipal court district, to be voted for at the next general election, and certify said person is, in our opinion, well qualified to perform the duties of the office or position the candidate desires to be elected.

Electors must write signatures on this petition in ink.

SIGNATURES (Must be written in Ink)	PRINTED NAME OF SIGNER	STREET ADDRESS (Must be the address on file with the Board of Elections)	DATE OF SIGNING
<i>Susane E. Madden</i>	SUSANE E. MADDEN	1670 East Hill Rd	3-15-07
<i>Maureen M. Sweeney</i>	MAUREEN M. SWEENEY	21055 South Park Dr	3/15/07

SIGNATURES (Must be written in ink)	PRINTED NAME OF SIGNER	STREET ADDRESS (Must be the address on file with the Board of Elections)	DATE OF SIGNING
<i>3. Thomas P. Costello</i>	Thomas P. Costello	4994 Green Flower	3/15/07
<i>4. Bridget McCafferty</i>	Bridget McCafferty	3031 5 Adams Lane WML 40145	3/15/07
<i>5. Joseph Burke</i>	Joseph Burke	22006 Chestnut No 44070	3/15/07
<i>6. Kevin Atkins</i>	Kevin Atkins	9617 6 th Street NW Olmet Falls	3/15/07
<i>7. Thomas J. Kraus</i>	THOMAS J. KRAUS	20647 Beaconsfield Blvd Rocky River OH 44116	3/15/07
8.			
9.			
10.			
11.			
12.			
13.			
14.			
15.			
16.			
17.			
18.			
19.			
20.			

MR

I, JAMES P. MADDEN, JR., declare under penalty of election falsification that I am a
(Printed name of circulator)

qualified elector of the State of Ohio and reside at the address appearing below my signature; that I am the circulator of the foregoing petition containing 7 signatures; that I witnessed the affixing of every signature; 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 or of an attorney-in fact acting pursuant to section 3501.382 of the Revised Code.

James P. Madden Jr.
(Signature of circulator)

1670 BARKETT RD.
(Street address)

WESTAKE, OHIO 44145
(Municipality and zip code)

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

BOARD USE ONLY		
	CAND	CIRC
C.W. & PRCT		
PARTY / YEAR		
SIGNATURE		
PROBLEM		
OK PETITION		
INITIALS		

JUDGE OR CLERK OF THE MUNICIPAL COURT

2

For Board of Elections use only - Do not write in this space

Office Sought: JUDGE - ROCKY RIVER

80.00 Filing Fee MIN 50-MAX 150 Signature Requirements MAY 2 2007 4PM Last Filing Date/Time

The candidate must fill in, sign and date this statement of candidacy before petitions are circulated.

STATEMENT OF CANDIDACY

Revised Code, Sections 1901.07, 1901.31, 3501.38, 3513.261

I, MAUREEN ADLER GRAVENS, the undersigned, hereby declare under penalty of election falsification that my voting residence address is ROCKY RIVER is 21370 SNOWFLOWER 44116
(Enter city, village or township name) (Street address) (Zip code)

And I am a qualified elector. I further declare that I desire to be a candidate for election to the office of JUDGE in the ROCKY RIVER Municipal Court District,
(Judge or Clerk) (Enter court name)

for the full term commencing JANUARY 1, 2008 or unexpired term ending _____
(Check one of the boxes and fill in the appropriate date)

at the general election next hereafter to be held.

I hereby declare that, if elected to this office or position, I will qualify therefor.

BOARD USE ONLY	
City, Ward & Precinct	
PARTY / YEAR	
SIGNATURE	
INITIALS	

Dated this 6th day of FEBRUARY, 20 07

MAUREEN ADLER GRAVENS
(Print name as it should appear on the ballot)

Maureen Adler Gravens
(Signature of candidate)

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

I, MAUREEN ADLER GRAVENS hereby designate the persons named below a committee to represent me:
(Name of candidate)

NAME	STREET ADDRESS
TERRANCE P. GRAVENS	21370 SNOWFLOWER, ROCKY RIVER, OH 44116
GARY JOHNSON	1250 RUE ST. GEORGES, WESTLAKE, OH 44145
PATRICIA A. GAUL	2751 COUNTRY CLUB, ROCKY RIVER, OH 44116
MICHAEL CARLIN	4140 DIANE, FAIRVIEW PARK, OH 44126
KATHLEEN MAHONEY	30122 EDNIL, BAY VILLAGE, OH 44140

NOMINATING PETITION

We, the undersigned, qualified electors whose voting residence set opposite our names, hereby nominate the above-named candidate for election to the office and term as stated above of the above named municipal court district, to be voted for at the next general election, and certify said person is, in our opinion, well qualified to perform the duties of the office or position the candidate desires to be elected.

Electors must write signatures on this petition in ink.

SIGNATURES <small>(Must be written in ink)</small>	PRINTED NAME OF SIGNER	STREET ADDRESS <small>(Must be the address on file with the Board of Elections)</small>	DATE OF SIGNING
<i>Patricia A. Costello</i>	PATRICIA A. COSTELLO	1660 BASSETT RD. WESTLAKE, OH 44145	3/8/07
<i>James P. Madsen Jr.</i>	JAMES P. MADSEN JR.	1670 BASSETT RD. WESTLAKE, OH 44145	3/15/07

SIGNATURES (Must be written in ink)	PRINTED NAME OF SIGNER	STREET ADDRESS (Must be the address on file with the Board of Elections)	DATE OF SIGNING
<i>[Signature]</i>	JOHN P. CORRIGAN, JR	3810 W. Valley Dr. Fairview Pk 0 44126	3-15-07
<i>[Signature]</i>	EILEEN A GALLAGHER	46 POND DRIVE Rocky River, OH 44116	3-15-07
<i>[Signature]</i>	Michael H. Murphy	4036 Brendan Lane #315 North Olmsted, OH 44070	3-15-07
<i>[Signature]</i>	FRANK X. O'GANDY	3879 SANDY DR. Fairview Pk 0 44126	3-15-07
<i>[Signature]</i>	William T. ANGERT	28728 MILLEND DR. 44142 RR 011	3-15-07
<i>[Signature]</i>	WALTER N GALVIN	44116 RR 011 22851 Hilliard Rd #1	3-15-07
<i>[Signature]</i>	Barbara Galvin	22851 Hilliard Rd #1	3-15-07
<i>[Signature]</i>	Michael O'Shea	RR 44116 21714 Abscon Rd	3-15-07
<i>[Signature]</i>	KAREN GANNON	RR 44116 3901 Higley Rd	3-15-07
<i>[Signature]</i>	JAMES GANNON	RR 44116 3901 Higley Rd	3-15-07
<i>[Signature]</i>	PATRICIA D. BAKER	RR 44116 27681 Caroline Ck	3-15-07
<i>[Signature]</i>	Ursula Patton	RR 44116 1840 Hunter Rd	3-15-07
<i>[Signature]</i>	LINDA TRAVIS	RR 44116 25145 Lake Rd	3-15-07
<i>[Signature]</i>	George HINECK, Sr.	RR 44116 19850 Roslyn Dr. #1	3-15-07
<i>[Signature]</i>	Brendan Sheehan	RR 44116 20060 Fairview Ln	3-15-07
18.			
19.			
20.			

I, SUSAN E. MADDEN, declare under penalty of election falsification that I am a
(Printed name of circulator)

qualified elector of the State of Ohio and reside at the address appearing below my signature; that I am the circulator of the foregoing petition containing 17 signatures; that I witnessed the affixing of every
(Number)
signature; 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 or of an attorney in fact acting pursuant to section 3501.382 of the Revised Code.

Susan E. Madden
(Signature of circulator)

1670 Bessett Rd
(Street address)

Westlake, Ohio 44145
(Municipality and zip code)

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

BOARD USE ONLY		
	CAND	CIRC
C.W. & PRCT		
PARTY / YEAR		
SIGNATURE		
PROBLEM		
OK PETITON		
INITIALS		

JUDGE OR CLERK OF THE MUNICIPAL COURT

For Board of Elections use only - Do not write in this space		
Office Sought: <u>JUDGE - ROCKY RIVER</u>		
80.00 <small>Filing Fee</small>	MIN 50-MAX 150 <small>Signature Requirements</small>	MAY 7 2007 4PM <small>Last Filing Date/Time</small>

The candidate must fill in, sign and date this statement of candidacy before petitions are circulated.

STATEMENT OF CANDIDACY

Revised Code, Sections 1901.07, 1901.31, 3501.38, 3513.261

I, MAUREEN ADLER GRAVENS, the undersigned, hereby declare under penalty of election

falsification that my voting residence address is ROCKY RIVER is 21370 SNOWFLOWER 44116

(Enter city, village or township name) (Street address) (Zip code)

And I am a qualified elector. I further declare that I desire to be a candidate for election to the office of JUDGE in the ROCKY RIVER Municipal Court District,

(Judge or Clerk) (Enter court name)

for the full term commencing JANUARY 1, 2008 or unexpired term ending _____

(Check one of the boxes and fill in the appropriate date)

at the general election next hereafter to be held.

I hereby declare that, if elected to this office or position, I will qualify therefor.

BOARD USE ONLY	
City, Ward & Precinct	
PARTY/YEAR	
SIGNATURE	
INITIALS	

Dated this 6th day of FEBRUARY, 20 07

MAUREEN ADLER GRAVENS
(Print name as it should appear on the ballot)

Maureen Adler Gravens
(Signature of candidate)

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

I, MAUREEN ADLER GRAVENS hereby designate the persons named below a committee to represent me:

(Name of candidate)

NAME	STREET ADDRESS
TERRANCE P. GRAVENS	21370 SNOWFLOWER, ROCKY RIVER, OH 44116
GARY JOHNSON	1250 RUE ST. GEORGES, WESTLAKE, OH 44145
PATRICIA A. GAUL	2751 COUNTRY CLUB, ROCKY RIVER, OH 44116
MICHAEL CARLIN	4140 DIANE, FAIRVIEW PARK, OH 44126
KATHLEEN MAHONEY	30122 EDNIL, BAY VILLAGE, OH 44140

NOMINATING PETITION

We, the undersigned, qualified electors whose voting residence set opposite our names, hereby nominate the above-named candidate for election to the office and term as stated above of the above named municipal court district, to be voted for at the next general election, and certify said person is, in our opinion, well qualified to perform the duties of the office or position the candidate desires to be elected.

Electors must write signatures on this petition in ink.

SIGNATURES (Must be written in ink)	PRINTED NAME OF SIGNER	STREET ADDRESS (Must be the address on file with the Board of Elections)	DATE OF SIGNING
<i>James Goggin</i>	JAMES GOGGIN	25980 William DR. WL 44145	3/15/07
<i>James Swaney</i>	JAMES SWANEY	900 BRICK MILL RD #301 WL 44145	3/15/07

SIGNATURES (Must be written in ink)	PRINTED NAME OF SIGNER	STREET ADDRESS (Must be the address on file with the Board of Elections)	DATE OF SIGNING
<i>[Signature]</i>	GARY W. JOHNSON	44145 Westlake, OH 1250 Ruest, George RIVER	3/15/07
<i>[Signature]</i>	SHEILA P. ADLER	RR 44116 7934 WESTOVER	3/15/07
<i>[Signature]</i>	RALPH T. DEFRANCO	44145 WESTLAKE 30330 HILLIARD RD	3/15/07
<i>[Signature]</i>	MARY PAT SMITH	1129 CHATHAM	3/15/07
<i>[Signature]</i>	MARK S. JALPONI	5490 Pleasant Walk N. O. Rd 44070	3/15/07
<i>[Signature]</i>	Maurcen Rosfelder	RR 44116 21398 Stratford Ave	3/15/07
<i>[Signature]</i>	Richard N. Rosfelder	RR 44116 21398 STRATFORD AVE	3/15/07
<i>[Signature]</i>	Thomas S. Campanella	44116 Rocky Hill 3423 BRADFORD GATE	3/15/07
<i>[Signature]</i>	MARY B. SCHERZER	EP 44126 20790 BRANDY WINE DR	3/15/07
<i>[Signature]</i>	DOBOHY J. O'DONNELL	EP 44126 22295 SYCAMORE	3/15/07
<i>[Signature]</i>	MICHAEL F. DONNELL	EP 44126 22295 SYCAMORE	3/15/07
<i>[Signature]</i>	BERNDETTE M. GOSK	608 River Dr. Bay 44140	3/15/07
<i>[Signature]</i>	MARIELLA KUNZE	5683 Columbus Rd ND 44116	3/15/07
<i>[Signature]</i>	MARY PAT SMITH	1129 CHATHAM 44116	3/15/07
<i>[Signature]</i>	JAMES V. PATTON	WL 44145 1844 WINTER'S POINT	3/15/07
<i>[Signature]</i>	BONITA A. FOY	PR 44116 3620 ARCHWOOD DR	3/15/07

I, PATRICIA A. COSTELLO, declare under penalty of election falsification that I am a
(Printed name of circulator)

qualified elector of the State of Ohio and reside at the address appearing below my signature; that I am the circulator of the foregoing petition containing 17 signatures; that I witnessed the affixing of every signature; 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 or of an attorney in fact acting pursuant to section 3501.362 of the Revised Code.

Patricia A. Costello
(Signature of circulator)
1660 Bassett Road
(Street address)
Westlake, OH 44145
(Municipality and zip code)

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

BOARD USE ONLY		
	CAND	CIRC
C.W. & PRCT		
PARTY / YEAR		
SIGNATURE		
PROBLEM		
OK PETITON		
INITIALS		

JUDGE OR CLERK OF THE MUNICIPAL COURT

For Board of Elections use only - Do not write in this space		
Office Sought: <u>JUDGE - ROCKY RIVER</u>		
<u>80.00</u> <small>Filing Fee</small>	<u>MIN 50-MAX 150</u> <small>Signature Requirements</small>	<u>MAY 2 2007 4PM</u> <small>Last Filing Date/Time</small>

The candidate must fill in, sign and date this statement of candidacy before petitions are circulated.

STATEMENT OF CANDIDACY

Revised Code, Sections 1901.07, 1901.31, 3601.38, 3613.261

I, MAUREEN ADLER GRAVENS, the undersigned, hereby declare under penalty of election

falsification that my voting residence address is ROCKY RIVER is 21370 SNOWFLOWER 44116
(Enter city, village or township name) (Street address) (Zip code)

And I am a qualified elector. I further declare that I desire to be a candidate for election to the office of JUDGE in the ROCKY RIVER Municipal Court District,
(Judge or Clerk) (Enter court name)

for the full term commencing JANUARY 1, 2008 or unexpired term ending _____
(Check one of the boxes and fill in the appropriate date)

at the general election next hereafter to be held.

I hereby declare that, if elected to this office or position, I will qualify therefor.

BOARD USE ONLY	
City, Ward & Precinct	
PARTY / YEAR	
SIGNATURE	
INITIALS	

Dated this 6th day of FEBRUARY, 20 07

MAUREEN ADLER GRAVENS
(Print name as it should appear on the ballot)

Maureen Adler Gravens
(Signature of candidate)

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

I, MAUREEN ADLER GRAVENS hereby designate the persons named below a committee to represent me:
(Name of candidate)

NAME	STREET ADDRESS
TERRANCE P. GRAVENS	21370 SNOWFLOWER, ROCKY RIVER, OH 44116
GARY JOHNSON	1250 RUE ST. GEORGES, WESTLAKE, OH 44145
PATRICIA A. GAUL	2751 COUNTRY CLUB, ROCKY RIVER, OH 44115
MICHAEL CARLIN	4140 DIANE, FAIRVIEW PARK, OH 44126
KATHLEEN MAHONEY	30122 EDNIL, BAY VILLAGE, OH 44140

NOMINATING PETITION

We, the undersigned, qualified electors whose voting residence set opposite our names, hereby nominate the above-named candidate for election to the office and term as stated above of the above named municipal court district, to be voted for at the next general election, and certify said person is, in our opinion, well qualified to perform the duties of the office or position the candidate desires to be elected.

Electors must write signatures on this petition in ink.

SIGNATURES <small>(Must be written in ink)</small>	PRINTED NAME OF SIGNER	STREET ADDRESS <small>(Must be the address on file with the Board of Elections)</small>	DATE OF SIGNING
<i>Patricia A. Corrigan</i>	PATRICIA A. CORRIGAN	1045 BROOKLAVE	3-15-07
<i>Mary S. Johnson</i>	MARY S. JOHNSON	1250 RUE ST. GEORGES	3-15-07

SIGNATURES (Must be written in ink)	PRINTED NAME OF SIGNER	STREET ADDRESS (Must be the address on file with the Board of Elections)	DATE OF SIGNING
<i>Deirdre Geib</i>	Deirdre Geib	3869 Savoy Rd ⁴⁴¹²⁶	3/15/07
<i>Kathy Ward</i>	Kathy Ward	3852 ⁴⁴¹²⁶ Savoy Rd	3/15/07
<i>Mary Pat Hargis</i>	Mary Pat Hargis	30896 ⁴⁴¹⁴⁵ Prestwick Crossing Westlake, OH	3-15-07
6.			
7.			
8.			
9.			
10.			
11.			
12.			
13.			
14.			
15.			
16.			
17.			
18.			
19.			
20.			

I, Peter H. Corrigan, Jr., declare under penalty of election falsification that I am a
 (Printed name of circulator)

qualified elector of the State of Ohio and reside at the address appearing below my signature; that I am the circulator of the foregoing petition containing 5 signatures; that I witnessed the affixing of every
 (Number)
 signature; 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 or of an attorney in fact acting pursuant to section 3501.382 of the Revised Code.

Peter H. Corrigan, Jr.
 (Signature of circulator)
20096 Bonnie Bank Blvd.
 (Street address)
Rocky River 44116
 (Municipality and zip code)

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

BOARD USE ONLY		
	CAND	CIRC
C.W. & PRCT		
PARTY / YEAR		
SIGNATURE		
PROBLEM		
OK PETITION		
INITIALS		

JUDGE OR CLERK OF THE MUNICIPAL COURT

For Board of Elections use only - Do not write in this space		
Office Sought:	<u>JUDGE - ROCKY RIVER</u>	
<u>80.00</u> Filing Fee	<u>MIN 50-MAX 150</u> Signature Requirements	<u>MAY 7 2007 4PM</u> Last Filing Date/Time

The candidate must fill in, sign and date this statement of candidacy before petitions are circulated.

STATEMENT OF CANDIDACY

Revised Code, Sections 1901.07, 1901.31, 3501.38, 3513.261

I, MAUREEN ADLER GRAVENS, the undersigned, hereby declare under penalty of election

falsification that my voting residence address is ROCKY RIVER is 21370 SNOWFLOWER 44116

And I am a qualified elector. I further declare that I desire to be a candidate for election to the office of JUDGE in the ROCKY RIVER Municipal Court District,

for the full term commencing JANUARY 1, 2008 or unexpired term ending _____

at the general election next hereafter to be held.

I hereby declare that, if elected to this office or position, I will qualify therefor.

Dated this 6th day of FEBRUARY, 2007

BOARD USE ONLY	
City, Ward & Precinct	
PARTY / YEAR	
SIGNATURE	
INITIALS	

MAUREEN ADLER GRAVENS
(Print name as it should appear on the ballot)

Maureen Adler Gravens
(Signature of candidate)

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

I, MAUREEN ADLER GRAVENS hereby designate the persons named below a committee to represent me:

NAME	STREET ADDRESS
TERRANCE P. GRAVENS	21370 SNOWFLOWER, ROCKY RIVER, OH 44116
GARY JOHNSON	1250 RUE ST. GEORGES, WESTLAKE, OH 44145
PATRICIA A. GAUL	2751 COUNTRY CLUB, ROCKY RIVER, OH 44116
MICHAEL CARLIN	4140 DIANE, FAIRVIEW PARK, OH 44126
KATHLEEN MAHONEY	30122 EDNIL, BAY VILLAGE, OH 44140

NOMINATING PETITION

We, the undersigned, qualified electors whose voting residence set opposite our names, hereby nominate the above-named candidate for election to the office and term as stated above of the above named municipal court district, to be voted for at the next general election, and certify said person is, in our opinion, well qualified to perform the duties of the office or position the candidate desires to be elected.

Electors must write signatures on this petition in ink.

SIGNATURES (Must be written in ink)	PRINTED NAME OF SIGNER	STREET ADDRESS (Must be the address on file with the Board of Elections)	DATE OF SIGNING
<i>Patricia A. Gaul</i>	Patricia A. Gaul	2751 Country Club RR 44116	3-15-07
<i>Patricia O'Grady</i>	Patricia O'Grady	20096 Bonnie Bank	3-15-07

SIGNATURES (Must be written in ink)	PRINTED NAME OF SIGNER	STREET ADDRESS (Must be the address on file with the Board of Elections)	DATE OF SIGNING
<i>Susan A. Carlin</i>	Susan A. Carlin	4140 Diane Dr Fairview ⁴⁴¹⁰⁶	3/15/07
<i>James M. Adler</i>	James M. Adler	30578 Atlanta Lane ^{Westlake} ₄₄₁₂₆ ⁰⁸⁴⁴¹⁴	3/15/07
<i>Charles F. Adler</i>	Charles F. Adler	20740 Saratoga Pr. ⁴⁴¹²⁶ Fairview Park	3/15/07
<i>Thomas C. Murphy</i>	Thomas C. Murphy	1931 King James ^{Westlake} ₄₄₁₂₆	3/15/07
<i>Edward T. Konopka</i>	Edward T. Konopka	23159 ^{ND 44070} Stony Brook Dr	3/15/07
<i>Marylou Konopka</i>	Marylou Konopka	23159 ^{ND 44070} Stonebreak Dr	3/15/07
<i>Ed Konopka</i>	Ed Konopka	25470 ⁴⁴¹⁴⁰ Wolf Rd ^{Big Hill}	3/15/07
<i>Dennis M. Lambert</i>	Dennis M. Lambert	25057 ⁴⁴⁰⁷⁰ Carey Ln ^{Plato}	3-15-07
<i>Christine Dorsey</i>	Christine Dorsey	24024 Center Rd ⁴⁴¹²⁶	3/15/07
<i>Joseph M. Gaul</i>	Joseph M. Gaul	21778 Eaton ^{FR 44126}	3/15/07
<i>Mary Sue Fooksman</i>	MARY SUE FOOKSMAN	3915 Colonial Ct	3/15/07
<i>John Duffy</i>	JOHN DUFFY	26888 ⁴⁴⁰⁷⁰ Sudbury Dr ^{N. Olmsted}	3/15/07
<i>Linda DeSalvo</i>	LINDA DeSalvo	3907 Kings Mill Run R.R.	3/15/07
<i>Petrit Sulejmanaj</i>	PETRIT SULEJMANAJ	2529 ⁴⁴¹²⁶ Sasser Blvd, R.R.	3/15/07
<i>Liljana Sulejmanaj</i>	LILJANA SULEJMANAJ	2529 ⁴⁴¹²⁶ Sasser Blvd, R.R.	3/15/07
<i>Denore G. Henry</i>	DENORE G. HENRY	19040 ⁴⁴¹¹⁶ Inglewood Ave ^{RR}	3/15/07
<i>Colleen Dunn</i>	Colleen Dunn	44126 ⁴⁴¹²⁶ 4564 W. 213 ^{FR}	3/15/07
<i>Peter H. Corrigan, Jr.</i>	PETER H. CORRIGAN, JR.	1048 ⁴⁴¹²⁶ Brook Lane ^{RR. off}	3/15/07

I, Peter H. Corrigan, Jr., declare under penalty of election falsification that I am a
(Printed name of circulator)

qualified elector of the State of Ohio and reside at the address appearing below my signature; that I am the circulator of the foregoing petition containing 20 signatures; that I witnessed the affixing of every
(Number)
signature; 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 or of an attorney in fact acting pursuant to section 3501.382 of the Revised Code.

Peter H. Corrigan, Jr.
(Signature of circulator)

20096 Bonnie Bank Blvd.
(Street address)

Rocky River OH 44116
(Municipality and zip code)

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

BOARD USE ONLY		
	CAND	CIRC
C.W. & PRCT		
PARTY / YEAR		
SIGNATURE		
PROBLEM		
OK PETITION		
INITIALS		

JUDGE OR CLERK OF THE MUNICIPAL COURT

For Board of Elections use only - Do not write in this space		
Office Sought: <u>JUDGE - ROCKY RIVER</u>		
<u>80.00</u>	<u>MIN 50 - MAX 150</u>	<u>MAY 7 2007 4PM</u>
Filing Fee	Signature Requirements	Last Filing Date/Time

The candidate must fill in, sign and date this statement of candidacy before petitions are circulated.

STATEMENT OF CANDIDACY

Revised Code, Sections 1901.07, 1901.31, 3501.38, 3513.261

I, MAUREEN ADLER GRAVENS, the undersigned, hereby declare under penalty of election

falsification that my voting residence address is ROCKY RIVER is 21370 SNOWFLOWER 44116

And I am a qualified elector. I further declare that I desire to be a candidate for

election to the office of JUDGE in the ROCKY RIVER Municipal Court District,

for the full term commencing JANUARY 1, 2008 or unexpired term ending _____

at the general election next hereafter to be held.

I hereby declare that, if elected to this office or position, I will qualify therefor.

Dated this 6th day of FEBRUARY, 20 07

BOARD USE ONLY	
City, Ward & Precinct	
PARTY / YEAR	
SIGNATURE	
INITIALS	

MAUREEN ADLER GRAVENS
(Print name as it should appear on the ballot)

Maureen Adler Gravens
(Signature of candidate)

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

I, MAUREEN ADLER GRAVENS hereby designate the persons named below a committee to represent me:

NAME	STREET ADDRESS
TERRANCE P. GRAVENS	21370 SNOWFLOWER, ROCKY RIVER, OH 44116
GARY JOHNSON	1250 RUE ST. GEORGES, WESTLAKE, OH 44145
PATRICIA A. GAUL	2751 COUNTRY CLUB, ROCKY RIVER, OH 44116
MICHAEL CARLIN	4140 DIANE, FAIRVIEW PARK, OH 44126
KATHLEEN MAHONEY	30122 EDNIL, BAY VILLAGE, OH 44140

NOMINATING PETITION

We, the undersigned, qualified electors whose voting residence set opposite our names, hereby nominate the above-named candidate for election to the office and term as stated above of the above named municipal court district, to be voted for at the next general election, and certify said person is, in our opinion, well qualified to perform the duties of the office or position the candidate desires to be elected.

Electors must write signatures on this petition in ink.

SIGNATURES (Must be written in ink)	PRINTED NAME OF SIGNER	STREET ADDRESS (Must be the address on file with the Board of Elections)	DATE OF SIGNING
<u>Maureen F. Butterick</u>	<u>Maureen F. Butterick</u>	<u>2159 Wooster Rd #23 Rocky River, OH 44116</u>	<u>3/15/07</u>
<u>Peter H. Corrigan, Jr.</u>	<u>Peter H. Corrigan, Jr.</u>	<u>20096 Bonnie Bank Rd. 44116</u>	<u>3/15/07</u>

SIGNATURES (Must be written in ink)	PRINTED NAME OF SIGNER	STREET ADDRESS (Must be the address on file with the Board of Elections)	DATE OF SIGNING
✓ 3. Edward J. McNamee	EDWARD J. McNAMEE	3930 West 212 ^{EP 44126}	4/21/07
✓ 4. Nancy A. Eberlein	NANCY A. EBERLEIN	23000 ^{ND 44070} Delaware Dr	4/21/07
70 ✓ 5. Colleen C. Dunn	Colleen C. Dunn	4564 ⁴⁴¹²⁶ W. 213 FPK	4/21/07
✓ 6. John T. Dunn	JOHN T. DUNN JR	4569 ⁴⁴¹²⁶ W. 213th FPK	4/21/07
3L ✓ 7. Patricia A. Gaul	PATRICIA A. GAUL		
✓ 8. Mary M. O'Grady	MARY M. O'GRADY	4146 ^{ND 44070} B. Mendota	4/21/07
BL ✓ 9. Kathryn A. Carey	KATHRYN A. CAREY	4464 Bieder Lane	
✓ 10. Kathryn A. Carey	KATHRYN A. CAREY	4464 ^{ND 44070} Bieder Lane	4/21/07
✓ 11. Albert V. Fratini	ALBERT V. FRATINI	930 ⁴⁴¹⁴⁵ 1632 Remington Dr. ^{WESTAKE}	4/21/07
✓ 12. Mary Ellen Greaves	MARY ELLEN GREAVES	31056 ⁴⁴⁰⁷⁰ delaware No. Olmsted	4-21-07
✓ 13. Michael J. Greaves	MICHAEL GREAVES	31050 ⁴⁴⁰⁷⁰ delaware No. Olmsted	4-21-07
✓ 14. Jerry R. Haughey	22976 ⁴⁴¹²⁶ MAPLE Road	22976 ⁴⁴¹²⁶ MAPLE Road	4-21-07
✓ 15. Rosemary Gaughan	22976 ⁴⁴¹²⁶ Maple Road	Rosemary Gaughan	4-21-07
✓ 16. Thomas F. O'Grady	THOMAS F. O'GRADY	6328 ⁴⁴⁰⁷⁰ Heston Dr, No.	4/21/07
✓ 17. Daniel G. O'Grady	DANIEL G. O'GRADY	28123 ⁴⁴¹⁴⁵ Shearwood Wadala	4/21/07
✓ 18. Kathy O'Grady	KATHY O'GRADY	28123 ⁴⁴¹⁴⁵ Shearwood Dr.	4/21/07
✓ 19. Tricia O'Grady	TRICIA O'GRADY	23156 ^{ND 44070} Stoner break	4/21/07
✓ 20. John K. Moran	John K. Moran	21425 ^{EP 44126} Kings Highway	4/21/07

I, Patricia A. Gaul, declare under penalty of election falsification that I am a
(Printed name of circulator)

qualified elector of the State of Ohio and reside at the address appearing below my signature; that I am the circulator of the foregoing petition containing 18 signatures; that I witnessed the affixing of every signature; 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 or of an attorney in fact acting pursuant to section 3501.382 of the Revised Code.

Patricia A. Gaul (pf)
(Signature of circulator)

2751 Country Club Blvd.
(Street address)

Rocky River, OH 44126
(Municipality and zip code)

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

BOARD USE ONLY		
	CAND	CIRC
C.W. & PRCT		
PARTY / YEAR		
SIGNATURE		
PROBLEM		
OK PETITION		
INITIALS		

JUDGE OR CLERK OF THE MUNICIPAL COURT

For Board of Elections use only - Do not write in this space		
Office Sought: <u>JUDGE - ROCKY RIVER</u>		
<u>80.00</u> <small>Filing Fee</small>	<u>MIN 50-MAX 150</u> <small>Signature Requirements</small>	<u>MAY 7, 2007 4PM</u> <small>Last Filing Date/Time</small>

The candidate must fill in, sign and date this statement of candidacy before petitions are circulated.

STATEMENT OF CANDIDACY

Revised Code, Sections 1901.07, 1901.31, 3501.38, 3513.261

I, MAUREEN ADLER GRAVENS, the undersigned, hereby declare under penalty of election

falsification that my voting residence address is ROCKY RIVER is 21370 SNOWFLOWER 44116

And I am a qualified elector. I further declare that I desire to be a candidate for election to the office of JUDGE in the ROCKY RIVER Municipal Court District,

for the full term commencing JANUARY 1, 2008 or unexpired term ending _____

at the general election next hereafter to be held.

I hereby declare that, if elected to this office or position, I will qualify therefor.

BOARD USE ONLY	
City, Ward & Precinct	
PARTY/YEAR	
SIGNATURE	
INITIALS	

Dated this 6th day of FEBRUARY, 20 07

MAUREEN ADLER GRAVENS
(Print name as it should appear on the ballot)

Maureen Adler Gravens
(Signature of candidate)

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

I, MAUREEN ADLER GRAVENS hereby designate the persons named below a committee to represent me:

NAME	STREET ADDRESS
TERRANCE P. GRAVENS	21370 SNOWFLOWER, ROCKY RIVER, OH 44116
GARY JOHNSON	1250 RUE ST. GEORGES, WESTLAKE, OH 44145
PATRICIA A. GAUL	2751 COUNTRY CLUB, ROCKY RIVER, OH 44116
MICHAEL CARLIN	4140 DIANE, FAIRVIEW PARK, OH 44126
KATHLEEN MAHONEY	30122 EDNIL, BAY VILLAGE, OH 44140

NOMINATING PETITION

We, the undersigned, qualified electors whose voting residence set opposite our names, hereby nominate the above-named candidate for election to the office and term as stated above of the above named municipal court district, to be voted for at the next general election, and certify said person is, in our opinion, well qualified to perform the duties of the office or position the candidate desires to be elected.

Electors must write signatures on this petition in ink.

SIGNATURES (Must be written in ink)	PRINTED NAME OF SIGNER	STREET ADDRESS (Must be the address on file with the Board of Elections)	DATE OF SIGNING
<i>James M. Kille</i>	JAMES M. KILBOA	4217 BRENOAK RD.	04/21/07
<i>Terrance P. Gravens</i>	TERRANCE P. GRAVENS	21370 RR 44116 Snowflower	04/21/07

SIGNATURES (Must be written in Ink)	PRINTED NAME OF SIGNER	STREET ADDRESS (Must be the address on file with the Board of Elections)	DATE OF SIGNING
<i>[Signature]</i>	Louise Kurbwe	4124 ^{NO 441070} BRENDAN LANE	4/21/0
<i>[Signature]</i>	FED BRADY	1902 ^{WL} ROOS CT 44105	4/21/0
<i>[Signature]</i>	DONNA MURPHY	4143 ^{NO 441070} BRENDAN LANE	4/21/07
<i>[Signature]</i>	THOMAS O'GRADY	6328 ^{NO 441070} HASTINGS DR.	4/24/0
<i>[Signature]</i>	JOHN E. DALEY JR	24277 ^{NO 441070} VINCENT DR	4/21/07
<i>[Signature]</i>	Julie Dailey	24277 ^{NO 441070} VINCENT DR	4/21/07
<i>[Signature]</i>	CLIFFORD THOMPSON	26603 ^{NO 441070} CHAPEL HILL	4/21/0
<i>[Signature]</i>	CLIFFORD THOMPSON	26603 ^{NO 441070} Chapel Hill	4/21/0
12.			
13.			
14.			
15.			
16.			
17.			
18.			
19.			
20.			

I, Patricia A. Gaul declare under penalty of election falsification that I am a
(Printed name of circulator)

qualified elector of the State of Ohio and reside at the address appearing below my signature; that I am the circulator of the foregoing petition containing 10 signatures; that I witnessed the affixing of every signature; 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 or of an attorney in fact acting pursuant to section 3501.382 of the Revised Code.

Patricia A. Gaul (pg)
(Signature of circulator)

2751 Country Club Blvd.
(Street address)

Rocky River, OH 44116
(Municipality and zip code)

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

BOARD USE ONLY		
	CAND	CIRC
C.W. & PRCT		
PARTY / YEAR		
SIGNATURE		
PROBLEM		
OK PETITION		
INITIALS		

JUDGE OR CLERK OF THE MUNICIPAL COURT

For Board of Elections use only - Do not write in this space

Office Sought: JUDGE - ROCKY RIVER

80.00 Filing Fee MIN 50-MAX 150 Signature Requirements MAY 7 2007 4PM Last Filing Date/Time

The candidate must fill in, sign and date this statement of candidacy before petitions are circulated.

STATEMENT OF CANDIDACY

Revised Code, Sections 1901.07, 1901.31, 3501.38, 3513.261

I, MAUREEN ADLER GRAVENS, the undersigned, hereby declare under penalty of election

falsification that my voting residence address is ROCKY RIVER is 21370 SNOWFLOWER 44116

And I am a qualified elector. I further declare that I desire to be a candidate for election to the office of JUDGE in the ROCKY RIVER Municipal Court District,

for the full term commencing JANUARY 1, 2008 or unexpired term ending _____

at the general election next hereafter to be held.

I hereby declare that, if elected to this office or position, I will qualify therefor.

BOARD USE ONLY	
City, Ward & Precinct	
PARTY / YEAR	
SIGNATURE	
INITIALS	

Dated this 6th day of FEBRUARY, 20 07

MAUREEN ADLER GRAVENS
(Print name as it should appear on the ballot)

Maureen Adler Gravens
(Signature of candidate)

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

I, MAUREEN ADLER GRAVENS hereby designate the persons named below a committee to represent me:

NAME	STREET ADDRESS
TERRANCE P. GRAVENS	21370 SNOWFLOWER, ROCKY RIVER, OH 44116
GARY JOHNSON	1250 RUE ST. GEORGES, WESTLAKE, OH 44145
PATRICIA A. GAUL	2751 COUNTRY CLUB, ROCKY RIVER, OH 44116
MICHAEL CARLIN	4140 DIANE, FAIRVIEW PARK, OH 44126
KATHLEEN MAHONEY	30122 EDNIL, BAY VILLAGE, OH 44140

NOMINATING PETITION

We, the undersigned, qualified electors whose voting residence set opposite our names, hereby nominate the above-named candidate for election to the office and term as stated above of the above named municipal court district, to be voted for at the next general election, and certify said person is, in our opinion, well qualified to perform the duties of the office or position the candidate desires to be elected.

Electors must write signatures on this petition in ink.

SIGNATURES (Must be written in Ink)	PRINTED NAME OF SIGNER	STREET ADDRESS (Must be the address on file with the Board of Elections)	DATE OF SIGNING
<i>Philip J Wall</i>	PHILIP J WALL	24113 Bussell Rd Bay Village, OH	02-24-07
<i>Regis McGann</i>	Regis McGann	2682 Chadwick West	4-24-07

SIGNATURES (Must be written in ink)	PRINTED NAME OF SIGNER	STREET ADDRESS (Must be the address on file with the Board of Elections)	DATE OF SIGNING
<i>Vicky Polito</i>	Vicky Polito	3954 Woodside North Olmsted	4/24/07
<i>Michael H. Murphy</i>	Michael H. Murphy	4036 Brendan Lane #315 North Olmsted 44070	4/24/07
<i>Paul Michael Ward</i>	PAUL MICHAEL WARD	3852 SANDY DR FAIRVIEW PARK 44126	4-24-07
<i>Hugh A. Carlin</i>	Hugh A. Carlin	2671 Forestview Rocky River Ohio	4-24-07
<i>Paul Ziebler</i>	PAUL ZIEBLER	486 Edinburg Bay Village	4/24/07
<i>John Bolino</i>	JOHN BOLINO	3954 Woodside Drive North Olmsted, OH 44070	4/24/07
<i>George G. Lavinos Jr</i>	George G. Lavinos Jr	1708 Westhill Westlake 44145	4-24-07
<i>Patrick Nixon</i>	PATRICK NIXON	3110 VILLAGE GREEN DR WESTLAKE OH 44145	4/24/07
<i>John J. Spallone</i>	John J. Spallone	2167 Savannah Pl Westlake OH 44145	4/24/07
<i>George Mineff Jr</i>	George MINEFF JR.	19950 ROSLYN DR R. Riv OH	4/24/07
<i>Mark Stanton</i>	MARK STANTON	18849 Candy on Rd. Young	4/24/07
<i>Margaret E. Standard</i>	Margaret E. Standard	7330 Framer Dr Rocky River Ohio	4/24/07
<i>Philip J. Korey</i>	PHILIP J. KOREY	2307 E. Kiplin Rocky	4-24-07

I, KATHLEEN G. MAHONEY, declare under penalty of election falsification that I am a
(Printed name of circulator)

qualified elector of the State of Ohio and reside at the address appearing below my signature: that I am the circulator of the foregoing petition containing 16 signatures; that I witnessed the affixing of every
(Number)
signature; 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 or of an attorney in fact acting pursuant to section 3501.382 of the Revised Code.

Kathleen G. Mahoney
(Signature of circulator)

30122 Edna Dr.
(Street address)

Bay Village, OH 44140
(Municipality and zip code)

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

BOARD USE ONLY		
	CAND	CIRC
C.W. & PRCT		
PARTY / YEAR		
SIGNATURE		
PROBLEM		
OK PETITION		
INITIALS		

9

JUDGE OR CLERK OF THE MUNICIPAL COURT

For Board of Elections use only - Do not write in this space

Office Sought: JUDGE - ROCKY RIVER

80.00 MIN 50-MAX 150 MAY 7, 2007 4PM
Filing Fee Signature Requirements Last Filing Date/Time

The candidate must fill in, sign and date this statement of candidacy before petitions are circulated.

STATEMENT OF CANDIDACY

Revised Code, Sections 1901.07, 1901.31, 3501.38, 3513.261

I, MAUREEN ADLER GRAVENS, the undersigned, hereby declare under penalty of election

(Name of candidate)

falsification that my voting residence address is ROCKY RIVER is 21370 SNOWFLOWER 44116
(Enter city, village or township name) (Street address) (Zip code)

And I am a qualified elector. I further declare that I desire to be a candidate for election to the office of JUDGE in the ROCKY RIVER Municipal Court District,
(Judge or Clerk) (Enter court name)

for the full term commencing JANUARY 1, 2008 or unexpired term ending _____
(Check one of the boxes and fill in the appropriate date)

at the general election next hereafter to be held.

I hereby declare that, if elected to this office or position, I will qualify therefor.

BOARD USE ONLY	
City, Ward & Precinct	
PARTY / YEAR	
SIGNATURE	
INITIALS	

Dated this 6th day of FEBRUARY, 20 07

MAUREEN ADLER GRAVENS

(Print name as it should appear on the ballot)

Maureen Adler Gravens
(Signature of candidate)

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

I, MAUREEN ADLER GRAVENS hereby designate the persons named below a committee to represent me:
(Name of candidate)

NAME	STREET ADDRESS
TERRANCE P. GRAVENS	21370 SNOWFLOWER, ROCKY RIVER, OH 44116
GARY JOHNSON	1250 RUE ST. GEORGES, WESTLAKE, OH 44145
PATRICIA A. GAUL	2751 COUNTRY CLUB, ROCKY RIVER, OH 44116
MICHAEL CARLIN	4140 DIANE, FAIRVIEW PARK, OH 44126
KATHLEEN MAHONEY	30122 EDNIL, BAY VILLAGE, OH 44140

NOMINATING PETITION

We, the undersigned, qualified electors whose voting residence set opposite our names, hereby nominate the above-named candidate for election to the office and term as stated above of the above named municipal court district, to be voted for at the next general election, and certify said person is, in our opinion, well qualified to perform the duties of the office or position the candidate desires to be elected.

Electors must write signatures on this petition in ink.

SIGNATURES <small>(Must be written in ink)</small>	PRINTED NAME OF SIGNER	STREET ADDRESS <small>(Must be the address on file with the Board of Elections)</small>	DATE OF SIGNING
<i>Lindsay Smith</i>	Lindsay Smith	31100 Manchester Bay Village	4/24/07
<i>Kathleen Mahoney</i>	KATHLEEN MAHONEY	30122 Ednil Dr Bay Village	4/24/07

SIGNATURES (Must be written in Ink)	PRINTED NAME OF SIGNER	STREET ADDRESS (Must be the address on file with the Board of Elections)	DATE OF SIGNING
<i>Charles M. Young</i>	Charles M. Young	11 Astor Place Rocky River Ohio 44116	4/24/20
<i>Daniel J. Ryan</i>	DANIEL J. RYAN	26734 SUBURBY WALKSTED O	4/24/20
<i>W. Grant McGinty</i>	W. Grant McGinty	18847 N. Valley Dr Fairview Park Ohio	4/24/07
<i>John D. Wheeler</i>	John D. Wheeler	1117 Spring Tree Westlake OH	4/24/07
<i>Kevin Catterkay</i>	KEVIN CATTERKAY	18424 EDGEWOOD DR Rocky Hill, OH	4/24/07
<i>John B. Gibbons</i>	JOHN B. GIBBONS	1918 Newbury Dr WEST LAKE OH	4/24/07
<i>Margaret Muehl</i>	M. G. MUEHLE	4586 CONCORD EP - 44126	4/24/10
10.			
11.			
12.			
13.			
14.			
15.			
16.			
17.			
18.			
19.			
20.			

I, Patricia A. Gaul, declare under penalty of election falsification that I am a
(Printed name of circulator)

qualified elector of the State of Ohio and reside at the address appearing below my signature; that I am the circulator of the foregoing petition containing 9 signatures; that I witnessed the affixing of every
(Number)
signature; 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 or of an attorney in fact acting pursuant to section 3501.382 of the Revised Code.

Patricia A. Gaul (Pz)
(Signature of circulator)

2751 Country Club Blvd.
(Street address)

Rocky River, OH 44116
(Municipality and zip code)

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

BOARD USE ONLY		
	CAND	CIRC
C.W. & PRCT		
PARTY / YEAR		
SIGNATURE		
PROBLEM		
OK PETITION		
INITIALS		



CUYAHOGA COUNTY
BOARD OF ELECTIONS

RECEIPT OF PETITION FOR PRE-CHECK

PLEASE READ

A PRE-CHECK INCLUDES SIGNATURE VERIFICATION AND NOT A LEGAL EXAMINATION OF THE PETITION. WE RECOMMEND THAT A CANDIDATE FILE TWICE THE SIGNATURES NEEDED. AFTER OFFICIALLY FILING, IF ONE OR MORE PART-PETITIONS ARE RULED INVALID FOR ANY REASON, BY NOT FILING MORE THAN THE MINIMUM SIGNATURES, A CANDIDATE RISKS THE CHANCE OF BEING REMOVED FROM THE BALLOT.

We ask that you pick up or file the petition within three business days after notification that the pre-check is complete.

We have accepted the following petition for a pre-check:

Date: 4-23-2007

Name of Candidate: Maureen Adler Spadens
(Please Print Name)

Office Sought: Judge

Municipality or district: Rocky River Muni Court.

Daytime telephone number and, if not the candidate, the contact person's name:

Area Code (216) 348-5280 () (216) 832-5206
Home Work Cell

* Patricia Gaul

*With
Maureen
part
Patricia
Gaul
4-24-07
Jan Keane*

Number of part-petitions received & number of signatures required:

7 (Part-petitions received) 50 (Signatures required)

Signature of person bringing in petition: Patricia A. Gaul

Jan Keane

Signature of Board of Elections clerk receiving the petition
(Copy to candidate/Original attached to petition)

PETITION RETURNED TO CANDIDATE:

Signature of Candidate (Representative): Patricia A. Gaul Date: 4-24-07

Candidate and Voter Services Division
2925 Euclid Avenue • Cleveland, Ohio 44115-2497 • (216) 443-3298
www.cuyahogacounty.us/boe • Ohio Relay Service 711



APR 23 '07 AM 11:50 CUS
APR 23 '07 AM 11:50 CUS

Results of Candidate Petition Pre-Check

Candidate Name and Office Sought Maureen Allen Graves

The following items on your petition represent certain flaws that could render your petition invalid. A "NO" checked indicates that area on one or more of your part-petitions require further review before filing. Review this list when returning petition to the candidate. Give Verbal notice to the candidate of any discrepancies that may have been found.

<u>ITEM</u>	<u>YES</u>	<u>NO</u>	<u>SEE PETITION #</u>
Statement of Candidacy:			
Complete and accurate:	<input checked="" type="checkbox"/>	<input type="checkbox"/>	_____
Office sought and term clearly stated:	<input checked="" type="checkbox"/>	<input type="checkbox"/>	_____
Dated by candidate correctly:	<input checked="" type="checkbox"/>	<input type="checkbox"/>	_____
Signed by candidate:	<input checked="" type="checkbox"/>	<input type="checkbox"/>	_____

Comments: _____

Signature Problems:			
Signatures of electors verifiable:	<input checked="" type="checkbox"/>	<input type="checkbox"/>	_____
Addresses of electors complete and valid:	<input checked="" type="checkbox"/>	<input type="checkbox"/>	_____
Signing dates filled-in and valid:	<input checked="" type="checkbox"/>	<input type="checkbox"/>	_____
Petition contains minimum signatures required:	<input checked="" type="checkbox"/>	<input type="checkbox"/>	_____

Comments: _____

Circulator's Clause:			
Circulator's name printed on the proper line:	<input checked="" type="checkbox"/>	<input type="checkbox"/>	_____
Accurate number of signatures shown:	<input checked="" type="checkbox"/>	<input type="checkbox"/>	_____
Circulator's signature verifiable:	<input checked="" type="checkbox"/>	<input type="checkbox"/>	_____
Circulator's address complete and valid:	<input checked="" type="checkbox"/>	<input type="checkbox"/>	_____

Comments: _____

Ann Keane
Signature - Absentee Voting/Candidate Services Staff Reviewer

4-24-07
Date

Patricia A. Gault
Candidate (or representative) Signature

5-2-07
Date



Judicial Receipt for Petition filing materials

The undersigned with this acknowledges receipt of the following materials:

- Campaign Finance Compliance & disclosure Guide CD;
- Helpful hints for Candidates and Treasurers;
- Check-off list for Candidate or PAC Treasurer;
- Campaign Finance Reports & Candidate Reporting Deadlines;
- Items Available Through the Cashiers Office;
- Ohio Rules of Court Code of Judicial Conduct;
- Instructions for Electioneering Communication;
- Listing of Required Judicial Candidate Seminars;
- A personal financial disclosure statement form to be filed with the Ohio Ethics Commission.

The undersigned candidate, or his/her representative, this acknowledges receipt of the above items concerning filing of campaign finance reports required by O.R.C. 3517.10(A).

Maureen Adler Gravens Judge - Rocky River Municipal
 Name of Candidate (print) Office sought (include political subdivision) Court District

21370 SNOWFLOWER, RR 44116 440-331-2454
 Street Address, including city and zip code Phone Number of Candidate

Patricia A. Gaul Patricia A. Gaul 5-2-07
 Signature of Candidate/Agent Printed name of Candidate/Agent Date of signing

The Cuyahoga County Board of Elections may need to reach you to advise you of a Board Meeting, questions concerning your candidacy, recount election, etc.

Candidate: Please provide us with a phone number in which you can be immediately contacted.

paa810@aol.com
 E-mail address (print clearly)

216-832-5206 216-832-5205
 Phone number with area code (print clearly) Alternate phone number (print clearly)

The Cuyahoga County Board of Elections is required to create an audio ballot for each election. To facilitate the pronunciation of your name as it should appear on the ballot, please spell you name phonetically (example: Phillip Keane - phonetically: Fill up Cane) below:

Maureen Adler Gravens More-Ène ~~Adler~~ Grayvins
 Name as it appears on ballot (print clearly) Name phonetically (print clearly)



#	Date	Title	Elig	Vote	Cons Prec	Party	Poll	AV F	AV F	Cate	Sout	Chal	Ret	FS F	FS F	Prov	Prov	Orig. Precinc	Orig. Party	Elec
1	05/08/2007	MAY 8, 2007 PRIMARY ELECTION	Y	Y	RRIV02F	DEM	Y	N	N					N	N	N	N	RRIV02F.01	DEM	124
2	11/07/2006	2006_NOV_GENERAL	Y	Y	RRIV02F		Y	N	N					N	N	N	N	RRIV02F.01		122
3	05/02/2006	2006_MAY_PRIMARY	Y	Y	RRIV02F	DEM	Y	N	N					N	N	N	N	RRIV02F.01	DEM	119
4	11/08/2005	GENERAL_NOV_2005	Y	Y	RRIV02F		Y	N	N					N	N	N	N	RRIV02F.01		115
5	05/03/2005	PRIMARY_MAY_2005	Y	Y	RRIV02F		Y	N	N					N	N	N	N	RRIV02F.01		107
6	11/02/2004	GENERAL_NOV_2004	Y	Y	RRIV02F		Y	N	N					N	N	N	N	RRIV02F.01	DEM	97
7	03/02/2004	2004_MAR_PRIMARY	Y	Y		DEM		N	N					N	N	N	N			94
8	11/04/2003	2003_NOV_GENERAL	Y	Y		NONE		N	N					N	N	N	N			89
9	05/06/2003	PRIMARY ELECTION	Y	Y		NOPI		N	N					N	N	N	N			87
10	11/05/2002	2002_NOV_GENERAL	Y	Y		NONE		N	N					N	N	N	N			85
11	05/07/2002	2002_MAY_PRIMARY	Y	Y		DEM		N	N					N	N	N	N			83
12	11/06/2001	2001_NOV_GENERAL	Y	Y		NONE		N	N					N	N	N	N			78
13	11/07/2000	2000_NOV_GENERAL	Y	Y		NONE		N	N					N	N	N	N			70
14	03/07/2000	2000_MAR_PRIMARY	Y	Y		DEM		N	N					N	N	N	N			68
15	11/02/1999	GENERAL ELECTION	Y	Y		NONE		N	N					N	N	N	N			66
16	11/03/1998	GENERAL ELECTION	Y	Y		NOPI		N	N					N	N	N	N			55
17	05/05/1998	PRIMARY ELECTION	Y	Y		DEM		N	N					N	N	N	N			53
18	11/04/1997	GENERAL ELECTION	Y	Y		NOPI		N	N					N	N	N	N			45
19	11/05/1996	GENERAL ELECTION	Y	Y		NOPI		N	N					N	N	N	N			43
20	03/19/1996	COUNTY WIDE PRIMARY ELECTION	Y	Y		DEM		N	N					N	N	N	N			39
21	11/07/1995	GENERAL ELECTION	Y	Y		NOPI		N	N					N	N	N	N			32
22	10/03/1995	PRIMARY ELECTION	Y	Y		NOPI		N	N					N	N	N	N			31

All Elections

OK

A
B
C
D
E
F
G
H
I
J
K
L
M
N
O
P
Q
R
S
T
U
V
W
X
Y
Z

Name & Address	Apt. No. If Required	Pre-Printed Signature	Voter Signature Only	Voter Registration#
GRAHAM, CONRAD K JR 22074 RIVER OAKS DR 19700113			Must Vote Provisional	2110615 - A
	APT. 8B		↑ Please sign here ↑	
GRANT, DAVID M 2735 PEASE DR 04668922	REP			0739524 - A
	APT.		Please sign here	
GRASKEMPER, SUSANNA 21700 RIVER OAKS DR 19591004			Verify Residence Address <i>Notice Returned to the Board of Elections</i>	0936351 - I
	APT. # 304-B		↑ Please sign here ↑	
GRAVENS, CLARE B 21771 SNOWFLOWER DR 0930111				2210111 - A
	APT.		Please sign here	
GRAVENS, MAUREEN A 21370 SNOWFLOWER DR 19530121	DEM			0466259 - A
	APT.		↑ Please sign here ↑	

GRA - GRA

REGULAR VOTERS

Names, Addresses and Stub Numbers to be WRITTEN BY AN ELECTION OFFICER

	NAMES IN FULL		ADDRESSES	Stub No. 1	Stub No. 2	Stub No. 3
1	O'MALLEY MARTIN F.	D	2773 PEASE DR. C	1		
2	GRAVES MAUREEN A.	D	21370 SNOWFLOWER DR.	2		
3	GRAVES TERRANCE J.	D	21370 SNOWFLOWER DR.	3		
4	LANZOLA J. MARGARET	R	2958 KINGSBURY DR	4		
5	LIVINGOOD JEANNE	D	2826 PEASE DR. 112	5		
6	REGAS, HARRY T.	D	21860 RIVER OAKS DR. 6-3	6		
7	TIRPAK, ELIZABETH A.	D	2845 PEASE DR.	7		
8	AKER, THORA D.	R	2157 PEASE DR.	8		
9	GREEN, WILLIAM P.	R	2780 WAGAR RD.	9		
10	SCHICKEL, MILDRED F	I	2736 PEASE DR 1140	10		
11	TURK, JOSEPH M	D	22895 COTTONWOOD DR	11		
12	GARATE, MELTON J.	D	2770 WAGAR RD	12		
13	KELLY, ESTHER	D	2781 PEASE DR	13		
14	BREIL, ROBERT P.	D	2761 WILDFLOWER DR.	14		
15	Ginley, Martin R.	D	2885 Pease Dr.	15		
16	CLEARY THOMAS J.	D	21896 RIVER OAKS DR 8007	16		
17	JAKER PATRICIA	D	2825 PEASE DR - 2-414	17		
18	APPLETOWN JUDITH - D	D	2727 PEASE DR.	18		
19	O'MALLEY MARGARET, A.	D	2773 PEASE DR. C	19		
20	STIGLIC, DON, T	D	2864 PEASE DR 104	20		

DEMOCRATIC

PROVISIONAL (WALK-IN) VOTERS

LEXSEE 467 F3D 503

CHARLES R. MORRISON, DONALD E. ECKHART, and ALEXANDER SMITH,
Plaintiffs-Appellants, v. MICHAEL F. COLLEY, CAROLYN C. PETREE,
WILLIAM A. ANTHONY, JR., KIMBERLY E. MARINELLO, and FRANKLIN
COUNTY BOARD OF ELECTIONS, Defendants-Appellees.

No. 06-4216

UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

06a0373p.06;

467 F.3d 503; 2006 U.S. App. LEXIS 25416; 2006 FED App. 0373P (6th Cir.)

September 20, 2006, Argued
September 22, 2006, Decided
September 22, 2006, Filed *

* An interim opinion was filed in this matter on September 22, 2006. The court is now filing this more detailed opinion.

PRIOR HISTORY: [**1] Appeal from the United States District Court for the Southern District of Ohio at Columbus. No. 06-00644. George C. Smith, District Judge. *Morrison v. Colley*, 2006 U.S. App. LEXIS 24028 (6th Cir.) (6th Cir. Ohio, 2006)

DISPOSITION: Affirmed.

CASE SUMMARY:

PROCEDURAL POSTURE: Seeking preliminary and permanent injunctions, plaintiff candidate sued defendants, a county elections board and several individuals, under 42 U.S.C.S. § 1983, alleging violation of the candidate's rights under the First and Fourteenth Amendments to the Constitution of the United States. The United States District Court for the Southern District of Ohio at Columbus denied the candidate all relief. The candidate appealed.

OVERVIEW: The candidate alleged defendants violated his constitutional rights by excluding him from a ballot as an independent candidate for a congressional seat because he was affiliated with a political party. In an interim order, the instant court upheld the trial court's decision denying the candidate injunctive relief. In the instant order, the court expounded on that decision. *Ohio Rev. Code Ann. § 3513.257* did not impose a severe restriction on an independent candidate's First and Fourteenth Amendment rights, so the statute only had to survive review for reasonableness. The First and Fourteenth Amendments did not prohibit a state from requiring independent candidates to claim on the day before a primary that they were not affiliated with any political party. *Ohio Rev. Code §§ 3513.19(A)(3); 3513.05, para. 7; 3513.19(B); 3513.20; and § 3599.11(A)* put the candidate on notice that "claims" of party affiliation or nonaffiliation must be made in good faith. When the candidate declared that he was not affiliated with a political party, he had already made sworn statements to the contrary. Under the facts of the case, *Ohio Rev. Code Ann. § 3513.257* was not overbroad or void for vagueness.

OUTCOME: The court affirmed the judgment of the district court.

COUNSEL: SARGUED: David R. Langdon, LANGDON & HARTMAN LLC, Cincinnati, Ohio, for Appellants.

Patrick J. Piccininni, PROSECUTING ATTORNEY'S OFFICE FOR THE COUNTY OF FRANKLIN, Columbus, Ohio, for Appellees.

ON BRIEF: David R. Langdon, Curt C. Hartman, Joshua B. Bolinger, LANGDON & HARTMAN LLC, Cincinnati, Ohio, Christopher P. Finner, FINNEY, STAGNARO, SABA & KLUSMEIER CO., L.P.A., Cincinnati, Ohio, for Appellants.

Patrick J. Piccininni, Nick A. Soulas, Jr., PROSECUTING ATTORNEY'S OFFICE FOR THE COUNTY OF FRANKLIN, Columbus, Ohio, for Appellees.

JUDGES: Before: SILER, GILMAN, and GRIFFIN, Circuit Judges.

OPINION BY: Griffin

OPINION:

[*504] GRIFFIN, Circuit Judge. Plaintiff-appellant Charles R. Morrison sought to run as an independent candidate for the office of United States Representative in Ohio's Fifteenth Congressional District ("CD") in the November 7, 2006, election. Defendants-appellees Franklin County Board of Elections ("BOE"), *et al.*, excluded Morrison from the ballot on the ground that, under Ohio election law, he [*505] did not [**2] qualify as an independent candidate because he was affiliated with a political party. Morrison filed an action in the United States District Court for the Southern District of Ohio seeking preliminary and permanent injunctions requiring the BOE to place him on the ballot. Morrison claimed that the Ohio statutory provision violated his *First and Fourteenth Amendment* rights and those of his would-be voters because it was allegedly overbroad, illegally discriminatory, and void for vagueness. After the district court denied Morrison all relief, Morrison appealed to this court. We granted Morrison's motion to expedite the appeal and heard oral argument on September 20, 2006. On September 22, 2006, we issued a per curiam interim opinion unanimously affirming the district court, stating, "despite any constitutional infirmities that *may* exist in the relevant Ohio statutes as they might apply to others, there is no reasonable basis for Morrison to claim in good faith that he is not affiliated with a political party." (Emphasis added.) Today we explain our holding in greater detail.

I.

In December 2005 and January 2006, Morrison began circulating petitions seeking placement on the May 2, 2006, ballot [**3] for the Madison County Republican Party Central Committee and the Ohio Republican Party State Central Committee. Morrison filed his petitions, was certified as a candidate in the Republican primary for the state and county committee positions, and appeared on the May 2, 2006, Republican primary ballot. He lost both races.

Morrison filed his declaration of candidacy for the county committee on a form that stated, "This petition shall be circulated only by a member of the same political party as stated above by the candidate." Morrison signed the declaration, which also required him to state, under penalty of "election falsification," that he was a member of the Republican Party. Likewise as to the state committee, Morrison signed a declaration of candidacy that required him to state, under penalty of election falsification, that he was a member of the Republican Party.

Approximately three weeks before the May 2, 2006, Republican primary, Morrison purchased local newspaper advertisements supporting his state and county committee candidacies. In his ads, Morrison stated that he was a Republican. On May 2, 2006, Morrison requested a Republican ballot and voted in the Republican primary. [**4]

On May 1, 2006, the day before Morrison's name appeared on the ballot in the Republican primary, he filed nominating petitions with the BOE to run as an independent candidate in Ohio's Fifteenth CD.

On May 22, 2006, three residents and qualified electors from the Fifteenth CD filed a written protest challenging Morrison's congressional candidacy on the ground that he was not an independent under Ohio law, and the BOE responded by holding a protest hearing. After receiving briefs and hearing argument at the hearing, the BOE deadlocked 2-2 on whether to certify Morrison as an independent candidate. Pursuant to *Ohio Rev. Code § 3501.05*, the matter was referred to the Ohio Secretary of State, who voted in favor of the protestors and against certification.

Morrison brought suit in the district court under *42 U.S.C. § 1983*, and thereafter the district court held a hearing on the merits.

II.

Because Morrison alleged the violation of rights recognized by the *First* and [*506] *Fourteenth Amendments to the U.S. Constitution*, the district court had federal-question jurisdiction under 28 U.S.C. § 1331. Regarding [**5] our jurisdiction, the district court consolidated the hearing on Morrison's preliminary injunction application with the hearing on the merits, and its order disposed of Morrison's complaint and request for permanent injunctive relief. Accordingly, the district court's order is final and immediately appealable. We review the district court's legal conclusions de novo and its factual findings for clear error. *Planned Parenthood Cincinnati Region v. Taft*, 444 F.3d 502, 507 (6th Cir. 2006) (citing *Taubman Co. v. Webfeats*, 319 F.3d 770, 774 (6th Cir. 2003)).

III.

Recently, in *Clingman v. Beaver*, 544 U.S. 581, 125 S. Ct. 2029, 161 L. Ed. 2d 920 (2005), the Supreme Court emphasized that not all election regulations that burden *First Amendment* rights are subject to a strict scrutiny analysis. Rather, unless a state election regulation places a heavy or severe burden on a party, "a State's important regulatory interests will usually be enough to justify reasonable, nondiscriminatory restrictions." *Id.* at 587 (quoting with approval *Timmons v. Twin Cities Area New Party*, 520 U.S. 351, 358, 117 S. Ct. 1364, 137 L. Ed. 2d 589 (1997)).

In holding [**6] that an Oklahoma statute allowing political parties to open their primary elections to only their own party members and voters registered as independents did not violate the *First Amendment*, the Supreme Court refused to apply a strict scrutiny analysis because the burden was not "severe":

[O]ur cases since *Tashjian [v. Republican Party]*, 479 U.S. 208, 107 S. Ct. 544, 93 L. Ed. 2d 514 (1986) have clarified [that] strict scrutiny is appropriate only if the burden is severe. [*California Democratic Party v. Jones*, 530 U.S. 567, 120 S. Ct. 2402, 147 L. Ed. 2d 502 (2000)], *supra*, at 582, 147 L. Ed. 2d 502, 120 S. Ct. 2402; *Timmons*, 520 U.S. at 358, 137 L. Ed. 2d 589, 117 S. Ct. 1364.

* * *

Many electoral regulations, including voter registration generally, require that voters take some action to participate in the primary process. *See, e.g., Rosario v. Rockefeller*, 410 U.S. 752, 760-62, 36 L. Ed. 2d 1, 93 S. Ct. 1245 (1973) (upholding requirement that voters change party registration 11 months in advance of the primary election). Election laws invariably "affect[] -- at least to some degree -- the individual's [**7] right to vote and his right to associate with others for political ends." *Anderson v. Celebrezze*, 460 U.S. 780, 788, 75 L. Ed. 2d 547, 103 S. Ct. 1564 (1983).

These minor barriers between voter and party do not compel strict scrutiny. *See Bullock v. Carter*, 405 U.S. 134, 143, 31 L. Ed. 2d 92, 92 S. Ct. 849 (1972). To deem ordinary and widespread burdens like these severe would subject virtually every electoral regulation to strict scrutiny, hamper the ability of States to run efficient and equitable elections, and compel federal courts to rewrite state electoral codes. The Constitution does not require that result, for it is beyond question "that States may, and inevitably must, enact reasonable regulations of parties, elections, and ballots to reduce election- and campaign-related disorder." *Timmons, supra*, 520 U.S. at 358, 137 L. Ed. 2d 589, 117 S. Ct. 1364; *Storer v. Brown*, 415 U.S. 724, 730, 39 L. Ed. 2d 714, 94 S. Ct. 1274 (1974). Oklahoma's semiclosed primary system does [*507] not severely burden the associational rights of the state's citizenry.

C

When a state electoral provision places [**8] no heavy burden on associational rights, "a State's important regulatory interests will usually be enough to justify reasonable, nondiscriminatory restrictions." *Timmons, supra*, at 358, 137 L. Ed. 2d 589, 117 S. Ct. 1364 (internal quotation marks omitted); *Anderson, supra*, at 788, 75 L. Ed. 2d 547, 103 S. Ct. 1564.

Clingman, 544 U.S. at 592-93. *Clingman* follows, and is consistent with *Timmons*, which likewise refused to apply strict scrutiny to a challenge to a Minnesota election law prohibiting multi-party or "fusion" candidates from appearing

on the ballot. In rejecting a claim that the Minnesota regulation violated the plaintiff's *First* and *Fourteenth Amendment* rights, the Supreme Court stated,

[I]t is also clear that States may, and inevitably must, enact reasonable regulations of parties, elections, and ballots to reduce election- and campaign-related disorder. *Burdick [v. Takushi]*, 504 U.S. 428, 119 L. Ed. 2d 245, 112 S. Ct. 2059 (1992)], *supra*, at 433 ("[A]s a practical matter, there must be a substantial regulation of elections if they are to be fair and honest and if some sort [**9] of order, rather than chaos, is to accompany the democratic process") (quoting *Storer v. Brown*, 415 U.S. 724, 730, 94 S. Ct. 1274, 39 L. Ed. 2d 714 (1974)); *Tashjian*, *supra*, at 217 (The Constitution grants States "broad power to prescribe the 'Time, Places and Manner of holding elections for Senators and Representatives', Art. I, § 4, cl. 1, which power is matched by state control over the election process for state offices").

When deciding whether a state election law violates *First* and *Fourteenth Amendment* associational rights, we weigh the "character and magnitude" of the burden the State's rule imposes on those rights against the interests the State contends justify that burden, and consider the extent to which the State's concerns make the burden necessary. *Burdick*, *supra*, at 434 (quoting *Anderson v. Celebrezze*, 460 U.S. 780, 789, 103 S. Ct. 1564, 75 L. Ed. 2d 547 (1983)). Regulations imposing severe burdens on plaintiffs' rights must be narrowly tailored and advance a compelling state interest. Lesser burdens, however, trigger less exacting review, and a State's "important regulatory interests" will usually be enough to justify [**10] "reasonable, nondiscriminatory restrictions." *Burdick*, *supra*, at 434 (quoting *Anderson*, *supra*, at 788); *Norman [v. Reed]*, 502 U.S. 279, 116 L. Ed. 2d 711, 112 S. Ct. 698 (1992)], *supra*, at 288-289 (requiring "corresponding interest sufficiently weighty to justify the limitation"). No bright line separates permissible election-related regulation from unconstitutional infringements on *First Amendment* freedoms. *Storer*, *supra*, at 730 ("[N]o litmus-paper test . . . separat[es] those restrictions that are valid from those that are invidious The rule is not self-executing and is no substitute for the hard judgments that must be made.").

Timmons, 520 U.S. at 358-59.

The district court concluded correctly that *Ohio Rev. Code § 3513.257* does not impose a severe restriction on the *First* and *Fourteenth Amendment* rights of Morrison or other potential independent candidates or voters. *See Lawrence v. Blackwell*, 430 F.3d 368 (6th Cir.) (Ohio [*508] statute requiring independent congressional candidates to file statement of candidacy and nominating [**11] petition on the day preceding the primary election did not impose a severe burden on independent candidates' or voters' constitutional rights, so strict scrutiny was not warranted), *cert. denied*, ___ U.S. ___, 126 S. Ct. 2352, 165 L. Ed. 2d 278 (2006). The election regulation at issue is merely a reasonable, nondiscriminatory regulation to require would-be independent candidates to claim, no later than 4:00 p.m. of the day before the primary elections, that they are free of affiliation with any political party. Therefore, Ohio need only show that this requirement advances an important state interest, not a compelling state interest. *Id.* For the reasons stated by the district court, the non-affiliation requirement passes muster under this deferential standard. In addition, the statute itself specifies the following important state interests furthered by the election regulation:

The purpose of establishing a filing deadline for independent candidates prior to the primary election immediately preceding the general election at which the candidacy is to be voted on by the voters is to recognize that the state has a substantial and compelling interest [**12] in protecting its electoral process by encouraging political stability, ensuring that the winner of the election will represent a majority of the community, providing the electorate with an understandable ballot, and enhancing voter education, thus fostering informed and educated expressions of the popular will in a general election. The filing deadline for independent candidates required in this section prevents splintered parties and unrestrained factionalism, avoids political fragmentation, and maintains the integrity of the ballot. The deadline, one day prior to the primary election, is the least drastic or restrictive means of protecting these state interests. The general assembly finds that the filing deadline for independent candidates in primary elections required in this section is reasonably related to the state's purpose of ensuring fair and honest elections

while leaving unimpaired the political, voting, and associational rights secured by the *first* and *fourteenth* amendments to the United States Constitution.

OHIO REV. CODE § 3513.257.

As the Supreme Court recognized in *Timmons*, a state may, consistent with the *First Amendment*, ban **[**13]** "fusion" or multi-party candidates in order to reduce election disorder. *Cf. Libertarian Party of Ohio v. Blackwell*, 462 F.3d 579, 462 F.3d 579, 2006 U.S. App. LEXIS 22639 (6th Cir. 2006).

In summary, we hold that the *First* and *Fourteenth Amendments* do not prohibit the Ohio General Assembly from requiring independent candidates to claim on the day before the primary that they are not affiliated with any political party.

IV.

Next, Morrison argues that the statute is void for vagueness because it allegedly fails to specify what a putative independent candidate must do to get on the ballot, and because it does not provide objective standards for enforcement. His argument is wholly unpersuasive under the facts of this case.

Under *Grayned v. City of Rockford*, 408 U.S. 104, 108, 92 S. Ct. 2294, 33 L. Ed. 2d 222 (1972), a statute must "give the person of ordinary intelligence a reasonable opportunity to know what is prohibited" or, in this case, what is required. In addition, the statute "must provide explicit standards for those who apply them." *Id. Cf. Risbridger v. Connelly*, 275 F.3d 565, 572 **[*509]** (6th Cir. 2002) ("[T]he void-for-vagueness doctrine requires that a penal statute define the criminal **[**14]** offense with sufficient definiteness that ordinary people can understand what conduct is prohibited and in a manner that does not encourage arbitrary and discriminatory enforcement.") (quoting *Kolender v. Lawson*, 461 U.S. 352, 357, 103 S. Ct. 1855, 75 L. Ed. 2d 903 (1983)).

The district court rejected Morrison's argument that the statute "creates confusion as to . . . whether a person desiring to become an independent candidate can merely claim not to be affiliated with a political party or whether they must truly be unaffiliated with a political party." The district court reasoned, "a person of ordinary intelligence, when considering *O.R.C. § 3513.257* [which requires the candidate to claim independence] and *O.R.C. § 3501.01(I)* [which defines an 'independent' candidate as one 'who claims not to be affiliated with any political party'] in the whole legislative scheme, would understand that an aspiring independent candidate 'must actually be independent, rather than merely claim it.'" A candidate possessing ordinary intelligence and common sense would readily understand that the claim of independence must be made in **[**15]** good faith -- otherwise there would be no reason for having the claim requirement, and none of the state interests animating the claim requirement would be served. *See United States v. Gjeli*, 717 F.2d 968, 972 (6th Cir. 1983).

In addition to the common-sense meaning of "claim" in *Ohio Rev. Code § 3513.257*, other sections of the Ohio election code put Morrison on notice that his actions were incompatible with his contemporaneous claim that he was not affiliated with any political party. Provisions of the Ohio election code other than *§ 3513.257* discuss political party affiliation and specify how it may be determined when challenged. This is significant, because typically "identical words used in different parts of the same act are intended to have the same meaning." *OfficeMax, Inc. v. United States*, 428 F.3d 583, 591 (6th Cir. 2005) (quoting *Gustafson v. Alloyd Co., Inc.*, 513 U.S. 561, 570, 115 S. Ct. 1061, 131 L. Ed. 2d 1 (1995)). n1

n1 *See also Lewis v. Philip Morris, Inc.*, 355 F.3d 515, 536 (6th Cir.) (Moore, J., for the court, joined in pertinent part by Katz, U.S.D.J.) (referring to "[t]he usual presumption that 'the same words used twice in the same act have the same meaning'" (quoting 2A NORMAN J. SINGER, SUTHERLAND ON STATUTES AND STATUTORY CONSTRUCTION, § 46.06, at 193 (6th ed. 2000)), *cert. denied*, 543 U.S. 821, 125 S. Ct. 61, 160 L. Ed. 2d 31 (2004); *Lake Cumberland Trust, Inc. v. EPA*, 954 F.2d 1218, 1222 (6th Cir. 1994) ("We must presume that words used more than once in the same statute have the same meaning.") (citation omitted).

[16]**

First, *Ohio Rev. Code § 3513.19(A)(3)* provides that a person's right to vote in a party's primary can be challenged on the basis that he "is not affiliated with or is not a member of" that party. That section also states, in pertinent part, that "[s]uch party affiliation shall be determined by examining the elector's voting record for the current year and the

immediately preceding two calendar years as shown on the voter's registration card, using the standards of affiliation specified in the seventh paragraph of *section 3513.05* of the Revised Code." *OHIO REV. CODE, § 3513.19(A)(3)*. In turn, *§ 3513.05 P 7* considers a voter to be affiliated with a party if he was registered with that party and voted in that party's primaries during the current year and the two preceding years. Morrison has never denied that he was registered as a Republican and voted in the May 2, 2006, Republican primary, nor has he claimed that he was ever registered [*510] as something other than a Republican or that he voted in non-Republican primaries during the preceding two calendar years.

Moreover, the next subsection of the statute, *Ohio Rev. Code § 3513.19(B) [**17]*, provides:

When the right of a person to vote is challenged upon the ground set forth in division (A)(3) of this section, membership in or political affiliation with a political party shall be determined by the person's statement, *made under penalty of election falsification*, that the person desires to be affiliated with and supports the principles of the political party whose primary ballot the person desires to vote.

(Emphasis added.) By registering as a Republican and then affirmatively requesting and voting the Republican Party primary ballot on May 2, 2006, Morrison necessarily evinced a desire to be affiliated with the Republican Party at that time. Indeed, when Morrison presented himself as eligible to vote in the Republican primary on May 2, 2006, Ohio law required him to be prepared to prove, *under penalty of punishment for false statement*, that he was affiliated with the Republican Party:

Before any challenged person shall be allowed to vote at a primary election, the person shall make a statement, *under penalty of election falsification*, before one of the precinct officials . . . stating that the person desires to be affiliated [**18] with and supports the principles of the political party whose ballot the person desires to vote; and giving all other facts necessary to determine whether the person is entitled to vote in that primary election. The statement shall be returned to the office of the board with the poll-books and tally sheets.

OHIO REV. CODE § 3513.20.

If there were any doubt whether registering Republican, running as a Republican in the primary, and voting in the Republican primary precluded a good faith claim to be unaffiliated with any party, Morrison's own Federal Election Commission ("FEC") filing dispels it. Morrison conceded that his own congressional campaign committee's statement of organization, FEC Form 1, listed him as affiliated with the Republican Party.

Morrison cannot complain if his own campaign committee's express statement of his party affiliation is considered and used to rule against him. *Cf. In re El-Amin, 252 B.R. 652, 659 (Bankr. E.D. Va. 2000)* ("The party who made the admission cannot complain that they [sic] were prejudiced by their own words."); *Levy v. United States, 1858 U.S. Ct. Cl. LEXIS 58, 1858 WL 4645, at *27 (Ct. Cl. May 4, 1858) [**19]* Morrison cannot complain if his own campaign committee's express statement of his party affiliation is considered and used to rule against him. *Cf. In re El-Amin, 252 B.R. 652, 659 (Bankr. E.D. Va. 2000)* ("The party who made the admission cannot complain that they [sic] were prejudiced by their own words."); *Levy v. United States, 1858 U.S. Ct. Cl. LEXIS 58, 1858 WL 4645, at *27 (Ct. Cl. May 4, 1858) [**19]* ("The petitioner cannot object to this conclusion, because it is in exact accordance with his own export manifest, rendered on his own oath."). n2

n2 *Cf. also United States v. Beal, 940 F.2d 1159, 1162 (8th Cir. 1991)* ("[D]efendant cannot complain if his own admissions . . . [are] received in evidence against him.");

United States v. Alvarez, 810 F.2d 879, 889 (9th Cir. 1987) ("The defendant cannot complain when his own testimony fixes the time of his arrest.");

Courtney v. United States, 518 F.2d 514, 517 (4th Cir. 1975) ("[T]he defendant cannot be heard to complain that he was convicted on the basis of his own testimony.");

467 F.3d 503, *; 2006 U.S. App. LEXIS 25416, **;
2006 FED App. 0373P (6th Cir.)

United States v. Bates, 141 F.2d 436, 439 (7th Cir.) ("Defendant cannot complain if the jury accepted at their face value his own statements . . ."), *vac'd on other grounds*, 323 U.S. 15, 65 S. Ct. 15, 89 L. Ed. 13 (1944);

The Eroe, 9 Ben. 191, 8 F. Cas. 774, 775, F. Cas. No. 4521 (E.D.N.Y. 1877) (No. 4,521) ("[T]he respondents can resort to this bill rendered . . . there being no other proof, it must be taken of evidence of the amount of such difference. Of this the consignees cannot complain, as it is their own bill."), *aff'd*, 17 Blatchf. 16, 8 F. Cas. 775, F. Cas. No. 4522 (C.C.S.D.N.Y. 1879) (No. 4,522).

[**20]

[*511] Most importantly, under Ohio law, if Morrison was unaffiliated with any political party on May 1, 2006, as he contends, he could not also claim in good faith to be a Republican at the same time without risking consequences more serious than exclusion from the ballot. Specifically, *Ohio Rev. Code § 3599.11(A)* provides the following criminal penalties for false swearing: "No person shall knowingly swear or affirm falsely upon a lawful examination by or before any registering officer; or make, print, or issue, any false . . . certificate of registration No person shall . . . knowingly make any false statement on any form for registration or change of registration Whoever violates this division is guilty of a felony of the fifth degree."

A person of ordinary intelligence in the position of Morrison is put on notice that "claims" of party affiliation or non-affiliation must be made in good faith; otherwise the person is subject to criminal prosecution.

We conclude that the statutes at issue gave Morrison sufficient notice that his claims of party affiliation or non-affiliation had to be made in good faith when he filed his independent congressional [**21] candidacy petition on May 1, 2006. Further, under the undisputed facts of this case, Morrison's claim of unaffiliation with a political party was not made in good faith.

For these reasons, we hold that, under the facts of this case, *Ohio Rev. Code § 3513.257* is not void for vagueness. *Cf. McEntee v. MSPB*, 404 F.3d 1320, 1333-34 (Fed. Cir.), *cert. denied*, ___ U.S. ___, 126 S. Ct. 381, 163 L. Ed. 2d 167 (2005). In addition, for the reasons stated by the district court, we hold that *Ohio Rev. Code § 3513.257* is not overbroad, nor was it applied in a manner that illegally discriminated against Morrison.

V.

In conclusion, we affirm the district court's denial of Morrison's application for preliminary and permanent injunctive relief. Morrison has not provided grounds to enjoin defendants from excluding him from the November 2006 congressional ballot due to his non-compliance with *Ohio Rev. Code § 3513.257*.

Affirmed.



JENNIFER BRUNNER
OHIO SECRETARY OF STATE

180 East Broad Street, 15th floor
 Columbus, Ohio 43215-3726 USA
 Tel.: 1-614-466-2655
 Fax: 1-614-644-0649
 www.sos.state.oh.us

ADVISORY NO. 2007-05

June 4, 2007

To: All County Boards of Elections
 Re: Independent Candidates and Party Affiliation

It has come to the attention of the Secretary of State's office that the United States Court of Appeals for the Sixth Circuit decided a case in September of 2006 that has a direct impact upon the function of Ohio's boards of elections and the candidacies of some independent candidates in Ohio. The case is *Morrison v. Colley*, 467 F.3d 503 (6th Cir. 2006) (attached). The ruling in *Morrison* changes longstanding practice in Ohio, and this Advisory is intended to inform boards of elections of this change.

Longstanding practice in Ohio and the interpretations of R.C. 3513.257 made by former Ohio Secretaries of State required only that the *candidacy* of an independent candidate be independent of political party affiliation, but not that the *individual* himself or herself be entirely unaffiliated. The *Morrison* case now requires that independent candidates actually be unaffiliated and that when an unaffiliation is claimed, it must be claimed in good faith.

Facts and History of Morrison

In December 2005 and January 2006 Charles Morrison circulated petitions seeking election to the Madison County Republican Party Central Committee and to the Ohio Republican Party State Central Committee. Mr. Morrison subsequently filed his petitions and appeared on the ballot in the May 2006 Republican primary ballot for these positions. To appear on the ballot in these races Mr. Morrison affirmed his affiliation with the Republican Party under penalty of election falsification. Additionally, Mr. Morrison advertised his candidacy as a Republican in a newspaper advertisement.

On May 1, 2006, the day before the primary, Mr. Morrison filed as an "independent" candidate in the race for the Ohio 15th U.S. Congressional District. By filing as an independent Mr. Morrison affirmed, under penalty of election falsification, that he had no affiliation with a political party. Mr. Morrison also filed documents with the Federal Election Commission, related to his "independent" candidacy, clearly stating his affiliation with the Republican Party.

On May 2, 2006 Mr. Morrison voted in the Republican primary election in Madison County. By voting in the Republican primary Mr. Morrison again affirmed his affiliation with the Republican Party under penalty of election falsification.

On May 22, 2006 three electors protested Mr. Morrison's candidacy for the congressional seat in the 15th District, alleging that Mr. Morrison was not independent of political party affiliation under Ohio law. The Franklin County Board of Elections (the most populous county) held a protest hearing, and the Board tied 2-2 on the protest. The Board certified the tie vote to this office, and former Assistant Secretary of State Monty Lobb, presumably acting on behalf of then

Secretary of State Blackwell, broke the tie vote in favor of the protest and against certification of Mr. Morrison's candidacy. Assistant Secretary Lobb based his rationale for not certifying Mr. Morrison's petition on Mr. Morrison's failure to disaffiliate himself from the Republican Party and thereby be truly independent of political party affiliation:

[T]he relevant law clearly requires a more definitive representation to demonstrate one's status as an independent candidate for elected office in Ohio. R.C. §3501.01 (I). Because the Supreme Court permits Ohio to determine and devise its own standard for saying when a member of a major political party has transitioned into the status of being an independent, and therefore no longer a member of that party, and because R.C. §3501.01 (I) provides that standard, the law and the facts show that Mr. Morrison was never *truly independent* at any point relevant to this matter.

Mr. Morrison filed suit in the U.S. District Court for the Southern District of Ohio seeking preliminary and permanent injunctions to preclude the Board from invalidating his candidacy and alleging that R.C. 3513.257 was unconstitutional. The district Court upheld Assistant Secretary Lobb's decision, and Mr. Morrison appealed.

The Appellate Court's Analysis

It is important to note at the outset that the *Morrison* court did not attempt to set forth specific guidelines for boards of elections to follow when determining the validity and sufficiency of independent candidates' nominating petitions. Rather, the court simply determined, under the facts of the case, that R.C. 3513.257 was not unconstitutional. However, the portion of the court's opinion relating to Mr. Morrison's claim that the statute was "void for vagueness" does indicate that there are certain threshold requirements an independent candidate must meet in order to be actually "independent." Further, the opinion indicates that the facts of each case will determine whether or not the candidate in question is actually independent and whether or not a candidate made his or her claim of unaffiliation in good faith.

The *Morrison* circuit court noted, and extended, the district court's reasoning:

a person of ordinary intelligence, when considering O.R.C. § 3513.257 which requires the candidate to claim independence and O.R.C. § 3501.01(I) which defines an 'independent' candidate as one who claims not to be affiliated with any political party in the whole legislative scheme, would understand that an aspiring independent candidate must actually be independent, rather than merely claim it. A candidate possessing ordinary intelligence and common sense would readily understand that the claim of independence must be made in good faith -- otherwise there would be no reason for having the claim requirement, and none of the state interests animating the claim requirement would be served.

Morrison, F.3d at 509 (internal quotations omitted).

In reaching its conclusion, the circuit court noted that the statutory scheme in Ohio recognizes only voter history as a means to determine party affiliation. However, the court also noted that even if some doubt existed as to Mr. Morrison's affiliation after considering that he had voted Republican prior to 2006 as well as in the 2006 Republican primary election, and had run in the 2006 Republican primary, all doubt was dispelled by Mr. Morrison's own FEC filings (for his "independent candidacy"). Those filings indicated his affiliation with the Republican Party, and the court stated that "Morrison cannot complain if his own campaign committee's express statement of his party affiliation is considered and used to rule against him." Thus, the court concluded that because Mr. Morrison had voted in past Republican primaries, and most importantly, in the Republican primary held the day after he filed as an independent candidate, and because so voting required him to state under penalty of criminal prosecution for election falsification that he was affiliated with the Republican party, Mr. Morrison could not claim in good faith that he actually was independent of party affiliation.

The court also stated that, "most importantly, under Ohio law, if Morrison was unaffiliated with any political party on May 1, 2006," as indicated by his filing as an independent, "he could not also claim in good faith to be a Republican at the same time," as indicated by his voting in the Republican primary the next day, "without risking consequences more serious than exclusion from the ballot" such as criminal prosecution under, among other statutes, R.C. 3599.11(A).

The Court concluded that under the facts of the case, Morrison had not provided grounds to enjoin the Franklin County Board of Elections from excluding him from the ballot because he had, in fact, failed to comply with the requirements of R.C. 3513.257.

Conclusion

We advise, as indicated by the *Morrison* court, that R.C. 3513.257 requires that:

- an independent candidate actually be unaffiliated, or disaffiliated from any political party; and
- the required claim of unaffiliation by an independent candidate must be made in good faith.

However, as mentioned above, the *Morrison* court did not provide clear guidelines for determining when an independent is actually affiliated with a political party, or how to determine whether an independent candidate has claimed unaffiliation in good faith.

Absent direction from the General Assembly or a court, this office is attempting to provide some guidance on this matter to the boards of elections. Thus:

- If an independent candidate votes in a party primary election after filing as an independent, the candidate is not actually unaffiliated, and the candidate's claim of independence was either not made in good faith or is no longer current; and
- If an independent candidate was on a political party's central or executive committee at the time he or she filed as an independent candidate, or becomes such a committee member at any time during his or her independent candidacy, the candidate is not

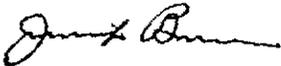
actually unaffiliated, and the candidate's claim of independence was either not made in good faith or is no longer current.

Additionally, as indicated by the *Morrison* court, indications of party affiliation such as past voting history, information submitted on required election-related filings, political advertisements, participation as a political party officer or member, or holding a public office for which the office holder was nominated through a political party's primary election and elected on a partisan ticket may serve as evidence, though not necessarily conclusive evidence, of party affiliation to support a protest against an independent candidate's candidacy. For example, voting *history*, alone, is an insufficient basis on which to disqualify an independent candidate because Ohioans are freely entitled to change or revoke their party affiliation at any time. However, voting history, together with other facts tending to indicate party affiliation, may be sufficient grounds to disqualify an independent.

Finally, please note that it is well established that boards of elections may accept filed petitions at face value. That is, because candidates file their petitions under penalty of election falsification, a board may accept the declaration of the candidate without further inquiry. However, if a board has personal knowledge or reason to believe that the declaration made by a candidate is false, or a protest is filed against an independent candidate, the board may inquire further to determine whether sufficient grounds exist to invalidate the candidate's petition and disqualify the candidate from running as an independent.

If you have additional questions or concerns please feel free to direct them to your assigned Elections Counsel at (614) 466-2585, or by e-mail to any of them.

Sincerely,



Jennifer Brunner
Ohio Secretary of State



Board removes eight from ballot

Friday, June 15, 2007

The state advisory that disqualified the candidates was issued last week.

By DAVID SKOLNICK

VINDICATOR POLITICS WRITER

YOUNGSTOWN — Not only are eight independent candidates for Youngstown City Council seats no longer on the ballot, they can't even run as write-ins, according to the Ohio Secretary of State's Office.

A recent secretary of state advisory opinion left the Mahoning County Board of Elections with no choice but to disqualify the eight, said Thomas McCabe, the board's director. They can't run as write-ins on the November general election ballot either, said Brian Green, elections counsel for the secretary of state.

The advisory opinion that led to Thursday's disqualification of eight council candidates states those who run as independents and then vote in a party primary election can no longer be considered independents. The opinion also states candidates aren't independents if they serve on a political party's central or executive committees when they file as independents.

Seven of the candidates voted in the Democratic primary May 8, one day after the filing deadline for independents. Moses H. Mahdee of the 5th Ward also serves as a Democratic central committee member. Tyrone Peakes of 5th Ward didn't vote in the primary, but serves as a Republican central committee member.

The opinion is based on a September 2006 federal appeals court decision that interprets state law's definition of an independent candidate. It wasn't until last week — about a month after the independent candidate filing deadline — that

the secretary of state's office issued the advisory opinion.

"It's unfortunate when someone wants to run for office, and we can't let them," said Mark Munroe, the elections board's vice chairman. "It is disappointing, and we're certainly not happy."

Common practice

Before the court decision, the long-standing practice in Ohio was to let candidates run as independents regardless of political affiliation.

"We're getting penalized for something that's been happening in Ohio for years," said Maggy Lorenzi, who was an independent candidate for the 6th Ward. Lorenzi was the only candidate among the eight disqualified who attended Thursday's elections board meeting.

"You're changing past practices," she told the board. "I'm sick and tired of the people being responsible for following the law, but there's no consequences, none, for government when it doesn't follow the law. It took a federal court to tell the state of Ohio to follow its law."

Lorenzi said she plans to run as a write-in candidate. But Green said state law forbids those who file declarations of candidacy or submit nominating petitions for partisan state, county and municipal positions to then run for that same office as a write-in if they are disqualified. The law took effect Dec. 23, 2003, and was upheld by the Ohio Supreme Court in an Oct. 25, 2005, decision, after a legal challenge.

The secretary of state's office has told Mahoning elections officials they can't accept write-in petitions from disqualified candidates, McCabe said.

Other candidacies in question

With the disqualifications, the only competitive Youngstown council races in November are in the 1st, 3rd and 7th Wards. There are seven wards in the city.

Trumbull County has seven independent candidates who voted in the May 8 Democratic primary. Their eligibility is in question. That county's board of elections is planning to certify the independent candidates July 10.

In Columbiana County, two independent candidates — Ginny Hanlon, running for East Liverpool mayor, and Donald E. Brown, running for Wellsville mayor — voted in the May 8 primary, said Lois Gall, the county's elections board director. That county's elections board will vote to certify independent candidates July 5.

skolnick@vindy.com

[Click to Print](#)[SAVE THIS](#) | [EMAIL THIS](#) | [Close](#)

Warren County First Assistant Prosecutor Keith Anderson provided that advice.

"It's the fact that they voted Republican, combined with the fact that they petitioned to run as Independents," he said. "There is a line in that opinion that specifically says they shouldn't be certified."

Allen said he will file a writ of mandamus with the Supreme Court — a request to have the court force the board to correct what he says is a mistaken reading of election law. He said he believes the local board of elections misconstrued Brunner's opinion because it dealt with Independent candidates in partisan elections, whereas a judgeship is a non-partisan elected position — regardless of the fact the primary is a partisan election.

"We are running in a non-partisan election. Even the people who got the Democratic nomination or the Republican nomination are non-partisan candidates for purposes of being a judge," he said. "There are no Republican judges or Democratic judges. I think the board of elections confused an Independent candidate with a non-partisan candidate."

Allen and the others also have the option of asking for a hearing before the election board, but he said he doubts he could change their minds — and what's more, he believes this is a problem that needs solving statewide.

"I think my preference is to go to the Supreme Court, argue it out and let the Supreme Court make a decision," he said.

Parker would not comment of whether or not he plans to take any action on the board's decision. Whitaker said he is mulling his next move.

The deadline for asking for a hearing before the local board is July 30; a writ can be filed any time.

Contact this reporter at (513) 696-4525 or dcallahan@coxohio.com.

Sponsored Links

[Buy a link here](#)

- [Home](#)
- [News](#)
- [Sports](#)
- [Entertainment](#)
- [Opinions](#)
- [Living](#)

- [Cars](#)
- [Jobs](#)
- [Homes & Apts.](#)

Western-Star.com:

- [Advertise](#)
- [Customer Service](#)
- [Our Partners](#)
- [Rated with ICRA](#)
- [Valid CSS](#)
- [Valid XHTML](#)

Copyright ©2007 Cox Ohio Publishing, Dayton, Ohio, USA. All rights reserved.

By using Western-Star.com, you accept the terms of our [visitor agreement](#) and [privacy policy](#). You may wish to note our [other business policies](#).



Find this article at:

<http://www.western-star.com/n/content/oh/story/news/local/2007/07/11/pjm071207independents.html>

 [Click to Print](#)

[SAVE THIS](#) | [EMAIL THIS](#) | [Close](#)

Check the box to include the list of links referenced in the article.

 Print |  Close Window



THE ENQUIRER

Last Updated: 6:03 pm | Thursday, June 14, 2007

Judge hopefuls' status at issue

Three declared as 'independent'

BY JANICE MORSE | JMORSE@ENQUIRER.COM

MASON - The five-way field for municipal judge here - which includes controversial incumbent George Parker - could shrink if officials declare that Parker or other independent candidates aren't truly "independent."

The Warren County elections board has asked the county prosecutor's office whether any of the independent candidates should be disqualified, said Michael E. Moore, county elections director. He hopes Assistant Prosecutor Keith Anderson will have an opinion ready in time for the election board's July 3 meeting.

For now, the candidates include Republican D. Andrew Batche, Democrat Valerie Finn-Deluca and three independents: Parker and local attorneys James Whitaker and Mitchell Allen.

The Municipal Court judgeship is a six-year term that oversees traffic cases, misdemeanors, and the initial stages of more serious felony cases that occur in Mason and Deerfield Township. The question about whether any of the independents should be disqualified arose after Ohio Secretary of State Jennifer Brunner issued a June 3 advisory to all county elections boards.

A federal appeals court decision "changes longstanding practice in Ohio," Brunner said. Previously, the state only required an independent candidate's campaign to be unaffiliated with a political party. The candidate himself did not have to be "entirely unaffiliated," Brunner said.

The court ruling changes that.

Now, a candidate must be "unaffiliated or disaffiliated from any political party," Brunner said.

Moore declined to disclose the voting histories of any of the three independents, so it's unclear whether that factor could affect the three candidates.

However, Parker was elected to office on the Republican ticket - a factor that could be considered when weighing whether his candidacy as an independent is valid, according to Brunner's advisory.

 Print |  Close Window | Copyright 2007, *Enquirer.com*

[Print Article](#)[Close Window](#)

'Independents' day over at polls Elections board nixes 7 hopefuls

By STEPHEN ORAVECZ Tribune Chronicle

Despite claims they were being unfair, the Trumbull County Board of Elections on Tuesday disqualified seven candidates who wanted to run in November as independents.

As a result, the incumbent mayors in Girard and Hubbard have no opposition, and there is no candidate in Niles 1st Ward. That could change, as write-in candidates have until September to declare they are running, but the write-in option is not open to any of the seven. State law prevents a candidate from filing petitions twice in for the same seat in the same election.

Following an advisory from Ohio's top election official, Secretary of State Jennifer Brunner, the elections board said the seven candidates were not really independents. After filing their nominating petitions, they then voted in the May 8 Democratic primary.

Under Ohio law, party affiliation is determined by voting in the Democratic or Republican primary. The advisory, based on a federal court decision, says anyone with a clear party affiliation cannot run as an independent.

Two of the seven candidates who attended the board meeting objected to the timing of the advisory. Independents were required to file nominating petitions by May 7, the day before the primary. But the advisory did not come out until June 4.

Myron A. Esposito, who had planned to run for mayor of Hubbard, said the only fair thing to do would be to grandfather people who filed petitions before the advisory was issued. Past practice in Ohio allowed independents to vote in the primary, and, he said, "No one went around the law intentionally."

Niles 1st Ward Councilman David Wilkerson said, "It's not right. We did everything asked of us."

Wilkerson was trying to run as an independent after he failed to submit enough valid signatures to run in the Democratic primary last May.

Since he cannot run as a write-in, it appears Wilkerson will lose his seat if a write-in candidate files. If no write-ins run, Democrats will appoint someone to fill the vacancy.

Both Wilkerson and Esposito said they are considering legal action. Esposito said he asked board employees if he had to change his party affiliation to run as an independent and he was told no. He also asked if he could vote in the Democratic primary, and he was told he could.

Both answers were correct at the time, but the advisory changed the rules.

Assistant Prosecutor James Saker, who reluctantly advised the board to disqualify the candidates, said the Ohio Supreme Court has ruled governments cannot be held liable for bad advice given by their employees. While the board expressed regret for its unanimous decision, Saker said ignoring Brunner's advisory would put them in a bad legal position if a candidate who is on the ballot challenged their decision.

Saker also said ignorance of the law is no excuse.

"How were we supposed to know?" Wilkerson said, adding that the secretary of state's office are the ones who are ignorant. "Now we have to get a judge to change that."

Board member Ronald Knight said it was the board's duty to follow the law "whether we like it or not. Obviously to more people this does not seem fair to change the rules in the course of the game. Everyone empathizes with the candidates, but the board does not have a choice."

The Mahoning County Board of Elections last month decertified eight independent candidates. The board had placed their names on ballot in May, but reversed its decision following Brunner's advisory.

Both election boards are awaiting a ruling from Brunner about whether her advisory on independents applies to write-in candidates who voted in the May primary. That ruling is still several weeks away.

Also Tuesday, the board hired two part-time employees in response to a request from additional help from the director and deputy director. That decision was a compromise between Democrats, who wanted to hire two full-time workers as the director and deputy director recommended, and the Republicans, who want to hire more part-time and seasonal workers.

On a tie vote, the board rejected a proposal from Knight, a Republican, to merge precincts to save money. He proposed merging 150 precincts into 75 precincts. Democrats oppose major changes until after the 2008 presidential election. Brunner declined to break a tie vote on an earlier proposal from Knight, telling the board to work out a precinct consolidation plan on its own.

The board did make minor changes in Niles. People living in the Howland school district were moved from Precincts 1C and 1F to Precinct 1D and combined Precincts 1C and 1F, eliminating 1F.

soravec@tribune-chronicle.com

Section: News Date Posted: 7/11/2007

BOARD OF ELECTIONS
CUYAHOGA COUNTY, OHIO

IN RE:)
)
1) Nonpartisan Petition of)
Maureen Adler Gravens)
)
2) Correspondence of)
Deborah Reese)
)
)

BRIEF OF
MAUREEN ADLER GRAVENS

Now comes Maureen Adler Gravens, nonpartisan candidate for Judge, Rocky River Municipal Court, by and through counsel, Michael P. Butler and hereby submits her brief in support of her petition and in response to the correspondence of Ms. Reese.

STATEMENT OF THE CASE

Maureen Adler Gravens, pursuant to O.R.C. §1901.07, on February 6, 2007 signed a Statement of Candidacy which states the following:

“I, Maureen Adler Gravens, the undersigned, hereby declare under penalty of election falsification that my voting residence address is Rocky River is 21370 Snowflower 44116; And I am a qualified elector. I further declare that I desire to be a candidate for election to the office of Judge in the Rocky River Municipal Court District, for the full term commencing January 1, 2008 at the general election next hereafter to be held.

I hereby declare that, if elected to this office or position. I will qualify therefor.

Dated this 6th day of February, 2007.”

Maureen Adler Gravens
(Print name as it should appear on ballot)

Signed by Maureen Adler Gravens
(Signature of candidate)

Exhibit A is attached hereto.

JUL16'07 PM12:27 DLR

In compliance with O.R.C. §1901.07, the nominating petition, containing the requisite number of signatures, was timely filed. O.R.C. §1901.07(B) states in pertinent part:

“ . . . nonpartisan candidates for the office of municipal court judge shall file nominating petitions not later than four p.m. of the day before the day of the primary election in the form prescribed by section 3513.261 of the Revised Code.” (emphasis added).

The Board of Elections, on May 29, 2007, found the Petition to be valid and certified the candidate to the ballot. The Board has somehow mischaracterized Judge Gravens' petition. The Board has mislabeled Judge Gravens as being an independent candidate for Judge despite the clear statement of candidacy referenced herein and the operation of O.R.C. 1901.07. (nonpartisan candidate). Counsel for Judge Gravens requested that the Board's minutes be corrected to accurately reflect the facts (nonpartisan). There is no reference to the term "Independent" nor is there any declaration of candidacy specifying an intent to be an independent candidate within the Petition of Judge Gravens.

On June 19, 2007, Ms. Reese submitted a letter with attachments, to the Board asserting the following:

- 1) Maureen Adler Gravens filed petitions to be an Independent candidate for Judge on May 2, 2007;
- 2) Maureen Adler Gravens voted in the May 8, 2007 Democratic Primary;
- 3) The Board of Elections certified Maureen Adler Gravens as an Independent candidate for Judge.

The attachments submitted by Ms. Reese include an advisory by the Secretary of State referencing Independent Candidate and Party Affiliation and a copy of Morrison, et al. v. Colley, et al., 467 F.3d 503 (2006).

The Reese correspondence failed to include any evidence supporting the contentions that Maureen Adler Gravens filed a petition as an Independent nor did the letter cite any legal authority which specifically prohibits a nonpartisan candidate from voting in a party primary.

The Board now has set the matter for hearing. Candidate Gravens submits this Brief preserving her right to argue that the Reese letter does not give rise to a protest as defined by law.

DUTIES OF BOARD

The Board of Elections, as a statutory body, has only those powers as specified by the Ohio Revised Code. Under O.R.C. 3501.11(K), the Board has a duty to inspect petitions and to determine their validity and legal sufficiency. O.R.C. §3501.38 provides the general rules governing candidate petitions.

O.R.C. 3501.39, titled Unacceptable Petitions, states in pertinent part:

(A) The secretary of state or a board of elections shall accept any petition described in section 3501.38 of the Revised Code unless one of the following occurs:

(1) A written protest against the petition or candidacy, naming specific objections, is filed, a hearing is held, and a determination is made by the election officials with whom the protest is filed that the petition is invalid, in accordance with any section of the Revised Code providing a protest procedure.

(2) A written protest against the petition or candidacy, naming specific objections, is filed, a hearing is held, and a determination

is made by the election officials with whom the protest is filed that the petition violates any requirement established by law.

(3) The candidate's candidacy or the petition violates the requirements of this chapter, Chapter 3513 of the Revised Code, or any other requirements established by law. (emphasis added).

In short, the petition is valid absent a specific violation of Chapter 35 or any other requirements established by law.

LAW and ARGUMENT

A. THE NOMINATING PETITION OF MAUREEN ADLER GRAVENS IS VALID AND SUFFICIENT

Significantly, the Board has previously certified the petition as valid and legally sufficient.

From the beginning, O.R.C. §1901.07, titled Term of Judge – Nomination, Election governs the candidacy in question. This section states in pertinent part:

“A) All municipal court judges shall be elected on the nonpartisan ballot . . .

B) All candidates for municipal judge may be nominated either by nominating petition or by primary election . . .”

“. . . nonpartisan candidates for the office of municipal court judge shall file nominating petitions not later than four p.m. of the day before the day of the primary in the form prescribed by section 3513.261 of the Revised Code.”

An examination of the petition reveals it is in compliance with the statutes referenced on the Board prescribed form, e.g. O.R.C. 1901.07, 3501.38 and 3513.261. §1901.31 while referenced on the petition, applies to the Clerk of Court. As stated earlier, §3501.38 governs general petition requirements while §3513.261 titled Nominating Petition form and Fee sets forth

the specific requirements for a nominating petition. It is undisputed that the petition meets the essential statutory requirements referenced in these sections.

B. THE NONPARTISAN CANDIDATES FOR THE OFFICE OF MUNICIPAL COURT JUDGE SHALL FILE NOMINATING PETITIONS NOT LATER THAN FOUR P.M. OF THE DAY BEFORE THE DAY OF THE PRIMARY IN THE FORM PRESCRIBED BY SECTION 3513.261 OF THE REVISED CODE.

The concept of a **nonpartisan candidate** as referenced in §1901.07 has apparently confused matters. Some believe, without authority, if a petition is filed after the party filing deadline, then the candidate automatically becomes an Independent. On the contrary the law also provides for nonpartisan candidates. Fortunately, O.R.C. 3501.01 titled Election Procedure – Election Officials Definitions provides absolute legal distinctions. As to nonpartisan candidates, this section states in pertinent part:

(J) “Nonpartisan candidate” means any candidate whose name is required, pursuant to section 3505.04 of the Revised Code, to be listed on the nonpartisan ballot, including all candidates for judicial office, for member of any board of education, for municipal or township offices in which primary elections are not held for nominating candidates by political parties, and for offices of municipal corporations having charters that provide for separate ballots for elections for these offices.

The nonpartisan definition begins the statutory trail, beginning with the statement of candidacy and nominating petition and ending with name on the nonpartisan ballot (O.R.C. 3505.04). This section states in pertinent part:

“On the nonpartisan ballot shall be printed the names of all nonpartisan candidates for election to judicial office, office of member of state board of education, office of member of a board of education, . . .”

For Judge Gravens, the specific language of O.R.C. §1901.07 specifically enables a candidate to seek to appear on the ballot as a nonpartisan candidate.

Judge Gravens' statement of candidacy does not assert that she is an independent nor does the printed petition supplied by the Board and authorized by the Secretary of State make any reference to the term independent. The petition form does not prohibit voting in a primary election, nor does it specifically restrict political affiliation. For example, a nonpartisan school board candidate, who files a similar petition, is not restricted from party affiliation or party primary voting.

In summary, Judge Gravens, under the law, has filed a valid nonpartisan petition as authorized by O.R.C. 1901.07 and 3501.01(J). There is no statement in her statement of candidacy which prohibits voting in either party's primary. Judge Gravens, in the attached affidavit asserts the facts as stated herein.

C. MS. REESE'S CORRESPONDENCE IS FACTUALLY AND LEGALLY INCORRECT AND IS INAPPLICABLE

First, as stated above, Judge Gravens' nonpartisan candidacy is specifically authorized by statute. Judge Gravens is not an independent candidate. There is no petition or other evidence supporting this contention.

Ms. Reese has supplied a Secretary of State advisory which references Independent Candidates and Party Affiliation by examining Morrison v. Colley, supra, as attached to the advisory. This case has no legal application in that its holding is limited to finding that O.R.C.

§3513.257, titled Independent Candidates Statement of Candidacy and Nominating Petition

was constitutional and as such, the statute was not vague or overbroad.

Factually, Mr. Morrison sought to challenge the statute in Federal Court after the Assistant Secretary of State voted to break a tie of the Franklin County Board of Elections granting a protest and voting against certification of Morrison's petition. Mr. Morrison, in succession, did the following:

- Filed a petition for election as Republican State Committeeman
- Filed a petition for election as Republican County Committeeman
- Advertised/campaigned as a Republican for Committee office
- After affirming Republican affiliation, Morrison filed a petition the day before the May 2006 primary as an **"Independent"** candidate for Congress
- Filed with Federal Election Commission a statement of Republican affiliation
- Voted in Republican Primary

The Congressional candidacy was protested and ultimately the Congressional petition was not certified. The Assistant Secretary of State stated in pertinent part:

“. . . and because R.C. 3501.01(I) provides a standard, the law and facts show that Mr. Morrison was never truly independent at any point relevant to this matter.”

For background, O.R.C. §3501.01(I) states the following:

(I) “Independent candidate” means any candidate who claims not to be affiliated with a political party, and whose name has been certified on the office-type ballot at a general or special election through the filing of a statement of candidacy and nominating petition, as prescribed in section 3513.257 [3513.25.7] of the Revised Code. (Emphasis added)

In short, Morrison could not have it both ways as the specific statutory limitation of §3501.01(I) which governs Independent candidates controlled.

Ms. Reese's reliance on this case and the Secretary of State's advisory is totally inapplicable based on the facts and law of this case.

In Morrison, the Secretary of State, in breaking the tie vote, applied the clear language of 3501.01(I) which defines an independent as one who claims not to be affiliated with a political party against a candidate who claimed not to be affiliated (independent petition) while declaring his party affiliation repeatedly!

In contrast, 3501.01(J), has no limiting language, in that a nonpartisan candidate means any candidate whose name is required pursuant to section 3505.04 to be listed on the nonpartisan ballot. A nonpartisan candidate's petition makes no claims of status (independent or not) or any claims to affiliation. Judge Gravens' nonpartisan petition contains only the statement of candidacy which asserts the following: The name, address, assertion of qualification as an elector, a desire to be Judge of the specific office at the general election and finally declares, if elected, that Judge Gravens is qualified for the office. The Morrison "declaration of independent," and the Secretary of State's advisory concerning independent candidate petitions has no legal or factual application to Judge Gravens' petition.

CONCLUSION

This is a petition case. It is a well settled principal of Ohio election law that decisions concerning possible invalidation of a petition are determined in light of public policy favoring free, competitive elections. See Stern v. Board of Elections, (1968) 14 Ohio St.2d 175, 184; Beck

v. Casey, (1990) 51 Ohio St.3d 79 at Page 80. A Board of Elections, as a statutory body, examines the four corners of the petition to determine its validity.

This Board has previously determined that Judge Gravens' petition is valid. The petition is nonpartisan as specifically authorized by O.R.C. 1901.07. The petition does not assert that Judge Gravens is an Independent nor does the printed form supplied by the Board make any reference to the term Independent. There is no specific prohibition or reference to party affiliation. Instead, the Petition, being a nonpartisan nominating petition recites the mandatory statutory elements needed to qualify as a candidate for Judge.

It is respectfully requested that the Board amend its record to properly certify Judge Gravens' petition as nonpartisan. Also, as the petition has been previously certified as valid, the Board is requested to deny the relief sought by Ms. Reese and direct that Maureen Adler Gravens appear on the General Elections ballot as a nonpartisan candidate for Rocky River Municipal Court Judge.

Respectfully submitted,



Michael P. Butler (#0022180)

Attorney at Law

55 Public Square, Suite 1260

Cleveland, Ohio 44113

(216) 621-8005

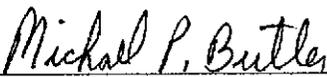
Fax: (216) 621-8378

CERTIFICATE OF SERVICE

A copy of the following was served by ordinary U.S. Mail this 16th day of July, 2007 upon:

Daniel P. Carter, Esq.
Jeffrey Ruple, Esq.
Buckley King LPA
1400 Fifth Third Center
600 Superior Avenue, East
Cleveland, Ohio 44114-2652

Attorneys for Deborah S. Reese



Michael P. Butler (#0022180)
Attorney at Law

STATE OF OHIO)
) SS
COUNTY OF CUYAHOGA)

AFFIDAVIT

Now comes Maureen Adler Gravens, after being duly sworn, deposes and states the following:

1. I am Maureen Adler Gravens. I am presently serving as Judge of the Rocky River Municipal Court. This is my third term.

2. On February 6, 2007, I signed a Statement of Candidacy which is demonstrated on a part petition marked as Exhibit A, attached hereto. The completed nominating petition with signatures of nominating electors was filed with the Board of Elections. It is my understanding, that the petition has previously been certified as valid by the Board of Elections..

3. In the past, I have filed nonpartisan nominating petitions and have also voted in party primaries, all in accordance with the law.

4. I am a nonpartisan candidate as is authorized by operation of Ohio Revised Code §1901.07.

5. It is my understanding that there is no Ohio statute that specifically prohibits a nonpartisan candidate for any office from voting in a party primary. Accordingly, I exercised my right to vote in the May Democratic Primary held in Rocky River.

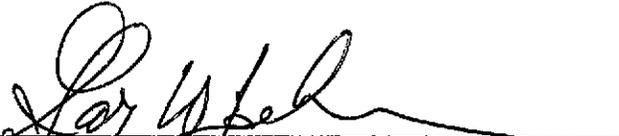
6. My nomination petition does not make any claim or assertion that I am an Independent candidate nor does it make any claim that I am not affiliated with a political party. Instead, my statement of candidacy clearly asserts the statutory qualifications mandated by Ohio Election law.

FURTHER AFFIANT SAYETH NAUGHT.



MAUREEN ADLER GRAVENS

SWORN TO BEFORE ME, and subscribed in my presence this 15th day of July,
2007.



NOTARY PUBLIC

GARY W. JOHNSON, Attorney at Law
Notary Public, State of Ohio
My commission has no expiration date.
Section 147.03 O.R.C.

Prepared By:
MICHAEL P. BUTLER
Attorney at Law (#0022180)
55 Public Square, Suite 1260
Cleveland, Ohio 44113
(216) 621-8005

BOARD OF ELECTIONS
CUYAHOGA COUNTY, OHIO

IN RE:)
)
1) Nonpartisan Petition of)
Maureen Adler Gravens)
)
2) Protest of) **REPLY BRIEF OF**
Deborah Reese) **MAUREEN ADLER GRAVENS**
)
)

Now comes Maureen Adler Gravens, nonpartisan candidate for Judge, Rocky River Municipal Court, by and through counsel, Michael P. Butler and hereby submits this Brief in support in reply to the Brief of Ms. Reese.

RESTATEMENT OF THE CASE

This is a petition case.

There are two matters that are pending before the Board. First, pursuant to O.R.C. §1901.07, §3501.01(J) and the plain language contained in her nominating petition, Judge Gravens has asked that the Board correct its records to reflect her nonpartisan candidacy. Second, Ms. Reese, after initially sending in correspondence, has now submitted a protest.

ISSUES PRESENTED

Does O.R.C. §1901.07 specifically authorize nonpartisan candidates for the office of Judge of Rocky River Municipal Court District?

Does candidate Gravens' nominating petition comply with the requirements of O.R.C. §1901.07?

Does the statement of candidacy signed by Candidate Gravens, made pursuant to O.R.C. §1901.07, contain any declaration of being an “independent”?

Is there a specific statute that prohibits nonpartisan candidates including candidates for judicial office, and school board candidates, from voting in a party primary election?

LAW AND ARGUMENT

I. O.R.C. §1901.07 SPECIFICALLY AUTHORIZES NONPARTISAN CANDIDATES FOR THE OFFICE OF JUDGE, INCLUDING JUDGE OF THE ROCKY RIVER MUNICIPAL COURT DISTRICT.

Ms. Reese asserts at page 1 of her Brief:

“. . . Rocky River Municipal Court is a ‘partisan’ office, therefore, a candidate must have been included in the partisan primary or filed as an independent candidate.”

This statement is in conflict with the language of O.R.C. §1901.07. This statute, titled Term of Office of Judge - Nomination, Election states in pertinent part the following:

“A) All municipal court judges shall be elected on the nonpartisan ballot for terms of six years.

B) All candidates for municipal judge may be nominated either by nominating petition or by primary election . . .”

“If the jurisdiction of a municipal court extends beyond the corporate limits of the municipal corporation in which it is located or if the jurisdiction of the court does not extend beyond the corporate limits of the municipal corporation in which it is located and no charter provisions apply, **nonpartisan candidates for the office of municipal court judge shall file nominating petitions not later than four p.m. of the day before the day of the primary in the form prescribed by section 3513.261 of the Revised Code.**” (Emphasis Added)

The Rocky River Municipal District, as reflected in the Board's records, extends beyond the corporate limits of the city of Rocky River and includes several other municipalities. By law, nonpartisan candidates for Rocky River Municipal Court District shall file nominating petitions by the end of the day before the primary. Ms. Reese asserts that this time of filing results in an automatic label of "independent". This assertion is factually and legally incorrect.

The Ohio Constitution, Article IV Section 6 titled Election and Compensation of Judges provides in pertinent part:

4) ". . .and laws shall be enacted to prescribe the times and mode of their election."

From this, separate statues have been enacted for various judicial offices. For municipal courts, §1901.07 controls.

Judge Gravens has timely filed a petition in conformity with O.R.C. §1901.07 and has met the general petition requirements of O.R.C. §3513.261 and §3501.38.

II. THE BOARD OF ELECTION'S DUTY IS TO INSPECT PETITIONS AND TO DETERMINE THEIR VALIDITY AND LEGAL SUFFICIENCY.

The Brief of Ms. Reese is captioned "Challenge to Maureen Adler Gravens". The Brief asks the Board to consider this question:

"Should . . . Candidate Maureen Adler Gravens be disqualified as a candidate from the Rocky River Municipal Court for voting in the Democratic Party Primary?"

This Board examines petitions. Ms. Reese's protest and Brief, while making conclusory allegations, fails to specify the defect in the petition that would cause this Board to rule it invalid.

The nominating petition contains the following Statement of Candidacy:

“I, Maureen Adler Gravens, the undersigned, hereby declare under penalty of election falsification that my voting residence address is Rocky River is 21370 Snowflower 44116; And I am a qualified elector. I further declare that I desire to be a candidate for election to the office of Judge in the Rocky River Municipal Court District, for the full term commencing January 1, 2008 at the general election next hereafter to be held.

I hereby declare that, if elected to this office or position, I will qualify therefor.

Dated this 6th day of February, 2007.”

Maureen Adler Gravens
(Print name as it should appear on ballot)

Signed by Maureen Adler Gravens
(Signature of candidate)

A reading of Judge Gravens’ petition provides the simplest solution to this case. Judge Gravens does not assert that she is an “independent” nor does she claim to not be affiliated with a political party. Instead, in conformity with O.R.C. §1901.07, Judge Gravens has stated her qualifications as an elector and as a candidate for the office.

Ms. Reese’s contention that Judge Gravens filed as an independent is not supported by the facts. While relying on the nominating petition (Reese, Exhibit B), Ms. Reese does not specify the term or phrase contained in the petition which supports this fanciful assertion.

Ms. Reese also references certain Board documents (Exhibits A, C, D and E). Of these, only Exhibit A, a Board generated list of deadlines, references the term independent in regard to the Office of Rocky River Municipal Court. This form is incorrect as it is in conflict with the express language of O.R.C. §1901.07 (deadline for nonpartisan candidates). It is a well settled principle of law that the errors of Board employees will not create an estoppel against a public

official, as to prevent the correct application of law. See State, ex rel. Svete v. Board of Elections, 4 Ohio St.2d 16 (1965).

Ms. Reese's protest fails as she has failed to produce any facts demonstrating that Judge Gravens filed an "independent" petition.

III. THERE IS NO STATUTE WHICH INVALIDATES THE NOMINATING PETITION OF A NONPARTISAN CANDIDATE WHO EXERCISES THE RIGHT TO VOTE IN PARTY PRIMARY ELECTIONS.

Ms. Reese contends that voting in a party primary results in an automatic disqualification for a nonpartisan candidate. There is no statute that supports this contention. To the contrary, O.R.C. §1901.07, which allows a nonpartisan judicial candidate, requires only that a valid nominating petition be timely filed.

Ms. Reese confuses an independent candidate and a nonpartisan candidate. An independent candidate, as specified by O.R.C. §3501.01 means "any candidate who claims not to be affiliated with a political party". Ms. Reese relies on Morrison, et al. v. Colley, 467 F.3d 503 (2006) which began as a petition case. Morrison's petition, according to the Court and the Secretary of State asserted that he was filing as an independent. Because this claim was factually incorrect, his petition was ruled invalid.

Morrison, supra, and the Secretary of State Advisory apply only to independent candidates. As Judge Gravens' petition does not contain any assertion of this nature, Morrison and the Secretary of State Advisory have no application.

Finally, Ms. Reese attempts to ignore the plain language of O.R.C. §3501.01(J), the nonpartisan candidate definition. This statute is to be read in conformity with O.R.C. §1.42, titled Common and Technical Usage which states:

“Words and phrases shall be read and construed according to the rules of grammar and common usage.”

Nonpartisan candidate means any candidate whose name is required pursuant to §3505.04 of the Code, to be listed on the nonpartisan ballot, including all candidates for judicial office, and candidates of any board of education. The statute then further defines nonpartisan candidates to include municipal or township officials in which primary elections are not held for nominating candidates by political parties. The office of Judge of the Rocky River Municipal Court District is not a municipal or township office but is a statutory office governed by the operation of O.R.C. §1901.07. Again, this statute specifically provides for a **nonpartisan** candidate.

PROCEDURAL OBJECTION

Ms. Reese has submitted newspaper reports concerning other counties and other petitions. This Board is to consider candidate Gravens’ petition in accordance with the law. Accordingly, there is an ongoing objection to the “news” articles based on relevancy and hearsay.

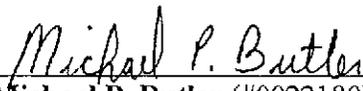
CONCLUSION

The nominating petition of candidate Gravens is valid and in accordance with O.R.C. §1901.07 which specifically provides for a nonpartisan candidate. The Board, in applying this

statute to the facts, is asked to correct its records, properly referencing Maureen Adler Gravens as a nonpartisan candidate.

The protest of Ms. Reese fails in that it is not supported by law or fact.

Respectfully submitted,



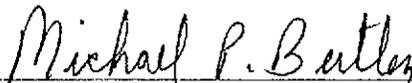
Michael P. Butler (#0022180)
Attorney at Law
55 Public Square, Suite 1260
Cleveland, Ohio 44113
(216) 621-8005
Fax: (216) 621-8378

CERTIFICATE OF SERVICE

A copy of the following was served by ordinary U.S. Mail this 23rd day of July, 2007 upon:

Daniel P. Carter, Esq.
Jeffrey Ruple, Esq.
Buckley King LPA
1400 Fifth Third Center
600 Superior Avenue, East
Cleveland, Ohio 44114-2652

Attorneys for Deborah S. Reese



Michael P. Butler (#0022180)
Attorney at Law

BOARD OF ELECTIONS
CUYAHOGA COUNTY, OHIO

IN RE:)	
)	
1) Nonpartisan Petition of Maureen Adler Gravens)	• Notice of Conflict of Interest
)	
2) Protest of Deborah Reese)	• Request for Voluntary Disqualification by Board Member Robert S. Frost
)	
)	

Now comes Maureen Adler Gravens, nonpartisan candidate for Judge, Rocky River Municipal Court District, by and through counsel, Michael P. Butler and hereby respectfully submits the following Notice of Conflict of Interest and Request for Voluntary Disqualification.

STATEMENT OF THE CASE

Maureen Adler Gravens has submitted a nominating petition in conformity with O.R.C. §1901.07 as a nonpartisan candidate for Judge of the Rocky River Municipal Court District. The petition was determined by the Board to be valid but in certifying her name to the ballot, the Board's minutes referred to Mrs. Gravens as an "Independent" candidate. The Board has been asked to correct its minutes to conform with the operation of O.R.C. §1901.07, thereby properly referencing Mrs. Gravens as a nonpartisan candidate.

Deborah Reese has filed a protest which asserts that Mrs. Gravens is an Independent candidate and should be disqualified because she voted in a party primary election. This matter has been set for a Protest Hearing.

FACTUAL BACKGROUND

In addition to Maureen Adler Gravens, the only other candidate certified to the ballot is Brian Hagan.

Mr. Hagan's petition contained several part petitions. One of the part petitions was circulated by Robert S. Frost. A copy of the part petition is attached as Exhibit A.

NOTICE OF CONFLICT OF INTEREST

In conducting a protest hearing, a Board of Elections acts in a quasi-judicial capacity. This long settled principle is stated in State ex. rel. Pucel v. Green (1965), 165 Ohio St. 175. The Court stated:

“In dealing with this question, the election board was acting in a quasi-judicial capacity. Its function was to determine the validity of the petitions offered by the relator with impartiality and fairness both to the candidate and to the electors of the County.” (Emphasis added)

This language was again recited in Beck v. Casey (1990), 51 Ohio St.3d 79 at p. 81.

A conflict of issue arises if a Board member actively participates in a protest hearing concerning the validity of a candidate's petition after having actively campaigned for the only other candidate. Circulating a petition for a candidate is a primary act of political campaigning. Accordingly, if a Board Member circulated Exhibit A, participating in the Protest Hearing concerning the opponent creates a conflict of interest.

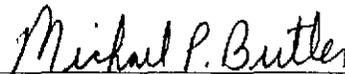
REQUEST FOR VOLUNTARY DISQUALIFICATION

Please note Chapter 35 does not provide a specific statutory means of seeking disqualification. This issue, as a courtesy, has been discussed with the Board's legal advisor,

Assistant Prosecutor Oradini, prior to this submission. This request is made in this manner as there is no other clearly stated means available in the law.

It is respectfully requested, in order to insure impartiality and to avoid the appearance of impropriety that Robert S. Frost voluntarily disqualify himself from participating in the Protest Hearing.

Respectfully submitted,



Michael P. Butler (#0022180)

Attorney at Law

55 Public Square, Suite 1260

Cleveland, Ohio 44113

(216) 621-8005

Fax: (216) 621-8378

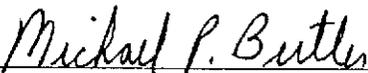
CERTIFICATE OF SERVICE

A copy of the following was served by ordinary U.S. Mail this 25th day of July, 2007 upon:

Daniel P. Carter, Esq.
Jeffrey Ruple, Esq.
Buckley King LPA
1400 Fifth Third Center
600 Superior Avenue, East
Cleveland, Ohio 44114-2652

Reno Oradini, Esq.
Assistant Prosecuting Attorney
1200 Ontario Street
Cleveland, Ohio 44113

Attorneys for Deborah S. Reese



Michael P. Butler (#0022180)
Attorney at Law

**DECLARATION OF CANDIDACY
PARTY PRIMARY ELECTION
For Judge or Clerk of the Municipal Court**

To be filed with the Board of Elections not later than 4 p.m. of the 75th day before the primary election.
Revised Code 1901.07, .31, 3513.05, .07, .08, .09, .10, .191, 3501.38

NOTE - THE CANDIDATE MUST FILL IN, SIGN AND DATE THE STATEMENT OF CANDIDACY BEFORE PETITIONS ARE CIRCULATED.

I, BRIAN F. HAGAN, the undersigned, hereby declare under penalty of election falsification that my voting residence address is 3926 Mark Avenue
(Street and Number, if any, or Rural Route Number)
Rocky River, Ohio 44116, and I am a qualified elector.
(City or Village) (Zip Code)

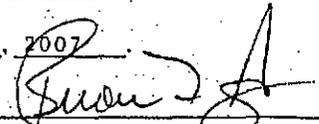
I further declare that I desire to be a candidate for nomination to the office of Judge
(Insert "Judge," or "Clerk")
of the Rocky River Municipal Court, as a member of the Republican

Party for the: full term commencing 01/01/2008 or unexpired term ending _____
(Check one box and fill in the appropriate date)

at the primary election to be held on the 8th day of May, 2007

I further declare that, if elected to this office or position, I will qualify therefor, and I will support and abide by the principles enunciated by the Republican Party.

Dated this 1st day of February, 2007



(Signature of Candidate)

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

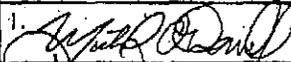
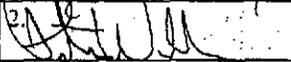
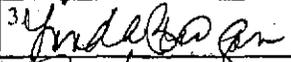
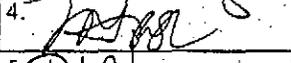
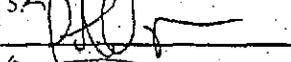
PETITION FOR CANDIDATE

(This petition shall be circulated only by a member of the same political party as stated above by the candidate)

We, the undersigned qualified electors of the State of Ohio, whose voting residence is in the county, city, village, or township, set opposite our names, and members of the Republican Party, hereby certify that Brian F. Hagan, whose declaration of candidacy is filed herewith, is in our opinion, well
(Name of Candidate)

qualified to perform the duties of the office or position to which the person desires to be elected.

Signatures on this petition must be from only one county and must be written in ink. Signatures on this petition shall be of persons who are of the same political party as stated above by the candidate.

SIGNATURE	VOTING RESIDENCE ADDRESS STREET AND NUMBER	CITY, VILLAGE, TOWNSHIP	COUNTY	DATE OF SIGNING
	2347 Winifred Ave	Rocky River	Cuyahoga	2/1/2007
	21179 Stratford	Rocky River	Cuyahoga	2/6/07
	19550 Beach Cliff	R.R.	Cuyahoga	2-6-07
	21179 Stratford	R.R.	Cuyahoga	2-6-07
	20309 Kramer Dr.	Rocky River	Cuyahoga	2-6-07
	3600 ELDOORA DR.	ROCKY RIVER	CUYAHOGA	2-7-07
7.				

SIGNATURE	VOTING RESIDENCE ADDRESS STREET AND NUMBER	CITY, VILLAGE, TOWNSHIP	COUNTY	DATE OF SIGNING
8.				
9.				
10.				
11.				
12.				
13.				
14.				
15.				
16.				
17.				
18.				
19.				
20.				
21.				

CIRCULATOR STATEMENT - Must be completed and signed by circulator.

I, ROBERT S. FROST, declare under penalty of election falsification that I am a qualified elector of
 (Printed Name of Circulator)
 the State of Ohio and reside at the address appearing below my signature; that I am a member of the
REPUBLICAN Party; that I am the circulator of the foregoing petition containing 6
 (Number)

signatures; that I witnessed the affixing of every signature; 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 or of an attorney in fact acting pursuant to section 3501.382 of the Revised Code

[Handwritten Signature]

(Signature of Circulator)

18126 W. Clayton Rd.

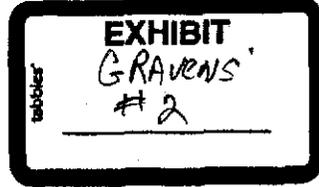
(Permanent residence address in this state)

Lakewood, OH 44107

(City or Village and Zip Code)

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

County Board of Elections
 Form 2-H -- Declaration of Candidacy of
 Candidate for _____
 Filed _____
 Certificate of Validity
 REVISED CODE 3501.11
 We, the undersigned members of the Board of Elections of this county, certify that we have reviewed and examined the foregoing petition and find it to be sufficient and valid, and caused our signatures and official seal to be affixed at _____, Ohio,
 this _____ day of _____
 Chairperson
 Member
 Member
 Member
 Director
 (seal)



Designation of Treasurer

Prescribed by Secretary of State 03/05

All Committees

Full Name of Committee COMMITTEE TO RE-ELECT JUDGE MAUREEN ADLER GRAVENS			
Street Address 4140 DIANE DRIVE	Telephone Number 440-333-8880	e-mail Address	
City FAIRVIEW PARK	State O H	Zip Code 44126	FAX Number
Full Name of Treasurer MICHAEL A. CARLIN			
Street Address 4140 DIANE DRIVE	Telephone Number 440-333-8880	e-mail Address	
City FAIRVIEW PARK	State O H	Zip Code 44126	FAX Number
Full Name of Deputy Treasurer (if any) BRIAN A. CARLIN			
Street Address 4140 DIANE DRIVE	Telephone Number 440-333-8880	e-mail Address	
City FAIRVIEW PARK	State O H	Zip Code 44126	FAX Number

Candidate's Campaign Committees Only

Full Name of Candidate MAUREEN ADLER GRAVENS		Party Affiliation/Independent/Non-Partisan NON-PARTISAN	
Street Address 21370 SNOWFLOWER	Office Sought JUDGE, ROCKY RIVER MUNY COURT	Subdivision/District ROCKY RIVER	
City ROCKY RIVER	State O H	Zip Code 44116	Election Year 2007
Signature of Candidate <i>Maureen Adler Gravens</i>		Date 2/20/07	

Political Action Committees Only

Is the PAC sponsored by a labor organization or corporation? <input type="checkbox"/> No <input type="checkbox"/> Yes		If Yes, name the sponsor	Acronym, if any
PAC Registration Number	Authorized Signature	Date	List any affiliated PACs

Political Parties or Legislative Campaign Funds Only

Authorized Signature <i>Maureen Adler Gravens</i>	Date 2/20/07	Ballot Issue PAC? <input type="checkbox"/> Yes <input type="checkbox"/> No
--	------------------------	---

Signature of Treasurer: *Michael A. Carlin* Date: **2/16/2007**

- Reason(s) for filing this form:
- Original Designation of Treasurer/Acknowledgement of Appointment
 - Change of Treasurer/Acknowledgement of Appointment
 - Designation or change of Deputy Treasurer
 - Change of Address for _____
 - Change of Committee name. The previous name was: _____
 - Change of Filing Location. The previous location was: _____
The new location is: _____
 - Change of Office Sought from _____ to _____
 - Other. Please explain: _____

Designation of Treasurer — Form 30-D

A Designation of Treasurer form must be filed before a candidate's campaign committee, political action committee (PAC), legislative campaign fund or political party makes any expenditures or receives any contributions. It is recommended that candidates who do not anticipate receiving or spending anything also file this form. [R.C. 3517.10(D)]

This form has been designed so that candidates' campaign committees, legislative campaign committees, political action committees and political parties all use the same form. Each type of committee should complete the top third of the form. Note that a street address, *not* a post office box is required in all addresses.

The State block should be completed with the U.S. Post Office's standard two-letter abbreviation. For example, Ohio would appear as OH.

A candidate, legislative campaign committee, PAC or political party registers by filing a Designation of Treasurer form. Thereafter, the form is used to update basic information. For example, if a committee has already registered, but subsequently changes its address, the Designation of Treasurer form is used to update the information. In addition to address changes, the form can be used to update a committee name change, a treasurer or deputy treasurer change, change of place of filing or to indicate that a candidate is running for a different office. The appropriate box at the bottom of the form should be marked to reflect why the form is being filed. **The form should be completed in *full* each time it is filed.**

A Designation of Treasurer form should *not* be filed as part of a report. It is a separate filing. It is not required whenever a report is filed.

Political action committees filing with the secretary of state that have not yet been assigned a registration number may leave that block empty.

The name of a candidate's campaign committee must include the last name of the candidate. A candidate may have only one campaign committee.

If a committee wishes to change its place of filing, it does not have to terminate the committee. For example, a candidate or PAC may decide to change its focus from the local level to the statewide level. The committee may send an original Designation of Treasurer form to register with the new place of filing, while sending a photocopy of the form to the old place of filing so that no further reports are expected at the prior location. The box indicating a change in the place of filing should be checked.

A PAC must indicate whether it is a "ballot-issue PAC."

Candidates must, and the treasurers should, sign their Designation of Treasurer forms. Any authorized person may sign PAC and political party forms.

When a treasurer or deputy treasurer resigns or is replaced, a revised Designation of Treasurer form should be filed immediately. The fact that the previous treasurer's name is no longer listed will indicate that he or she no longer holds the position.

EXHIBIT
GRAVENS
#3

For Board of Elections use only - Do not write in this

Office Sought: _____

Filing Fee
Signature Requirements
Last Filing Date/Time

NOMINATING PETITION AND STATEMENT OF CANDIDACY

FOR MEMBER OF BOARD OF EDUCATION
For use in city, local, or exempted village school districts
(INDIVIDUAL CANDIDATES)

To be filed with the Board of Elections not later than 4:00 p.m. of the 75th day before the day of the general election.
Revised Code, Sections 3501.38, 3513.234, 3513.261, 3513.263

NOTE: Each candidate must fill in, sign and date the statement of candidacy before petitions are circulated.

STATEMENT OF CANDIDACY

I, _____, the undersigned, hereby declare under penalty of
(Name of candidate)

election falsification that my voting residence address in _____
(Enter city, village or township name)

is _____; and I am a qualified elector in the
(Street Address) (Zip code)

school district. I further declare that I desire to be a candidate for election to the office of Member of the Board of Education of the _____ School District, for the _____ to be
(Full term or unexpired term)

voted for at the general election next hereafter to be held.

I hereby declare that, if elected to this office or position, I will qualify therefore.

Dated this _____ day of _____, 20 _____

BOARD USE ONLY	
City, Ward & Precinct	
Voter ID	
SIGNATURE	
INITIALS	

(Print name as it should appear on the ballot)

(Signature of candidate)

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

I, _____ hereby designate the persons named below a committee to represent me:
(Name of candidate)

NAME	STREET ADDRESS

NOMINATING PETITION

We, the undersigned, qualified electors of the school district stated above whose address is set opposite our names, hereby nominate the above-named candidate for election to the office and term of Member of the Board of Education of the above named school district, to be voted for at the next general election, and certify said person is, in our opinion, well qualified to perform the duties of the office or position to which the person desires to be elected.

Electors must write signatures on this petition in ink and be from only one county

SIGNATURES (Must be written in ink)	PRINTED NAME OF SIGNER	STREET ADDRESS (Must be the address on file with the Board of Elections)	DATE OF SIGNING
1.			
2.			
3.			
4.			
5.			
6.			
7.			
8.			
9.			
10.			
11.			
12.			
13.			
14.			
15.			
16.			
17.			
18.			
19.			
20.			

I, _____, declare under the penalty of election falsification that I am a qualified
 (Printed name of circulator)
 elector of the State of Ohio and I reside at the address appearing below my signature; that I am the circulator of the
 foregoing petition containing _____ signatures; that I witnessed the affixing of every signature; that all signers
 (Number)
 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 or of an attorney in fact acting pursuant to section
 3501.382 of the Revised Code.

 (Signature of circulator)

 (Street address)

 (Municipality and zip code)

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

BOARD USE ONLY		
	CAND	CIRC
C.W. & PRCT		
PARTY / YEAR		
SIGNATURE		
PROBLEM		
OK PETITION		
INITIALS		

For Board of Elections use only - Do not write in this

Office Sought: _____

Filing Fee Signature Requirements Last Filing Date/Time



**NOMINATING PETITION AND STATEMENT OF CANDIDACY
FOR DISTRICT OFFICE**

For Representative to Congress

To be filed with the Board of Elections of the most populous county or part county of the district not later than 4:00 p.m. of the day before the primary election.
Revised Code 3613.257, .28, .261, .262; 3601.36

NOTE - THE CANDIDATE MUST FILL IN, SIGN AND DATE THIS STATEMENT OF CANDIDACY BEFORE PETITIONS ARE CIRCULATED.

STATEMENT OF CANDIDACY

I, _____, the undersigned, hereby declare under penalty of election falsification that my voting residence address is _____
(Name of Candidate) (Street and Number, if any, or Rural Route Number)

_____ Ohio _____
(City or Village) (Zip Code)

I further declare that I desire to be a candidate for election to the office of Representative to Congress for the: full term; or unexpired term ending _____ from the _____ District of Ohio, at the general election to be held on the 4th day of November 2008. (Number of District)

I hereby declare that, if elected to this office or position, I will qualify therefore.

Dated this _____ day of _____

BOARD USE ONLY	
City, Ward & Precinct	
Voter ID	
SIGNATURE	
INITIALS	

(Print name as it should appear on the ballot)

(Signature of candidate)

Circle One: "Nonparty Candidate" "Other-Party Candidate" "No Designation"
WHOEVER COMMITS ELECTION FALSIFICATION IS GUILTY OF A FELONY OF THE FIFTH DEGREE.

I, _____, hereby designate the persons named below as a committee to represent me:
(Name of Candidate)

NAME	FULL STREET ADDRESS

NOMINATING PETITION

We, the undersigned qualified electors of the State of Ohio, whose voting residence is in the county, city, village, or township set opposite our names, hereby nominate _____ as a candidate for election to the office of Representative to Congress in the _____ District, for the full term; or unexpired term ending _____
(Number of District)

to be voted for at the next general election, and certify said person is, in our opinion, well qualified to perform the duties of the office or position to which the person desires to be elected.

Signatures on this petition must be from only one county and must be written in ink.

	SIGNATURE	VOTING RESIDENCE ADDRESS STREET AND NUMBER	CITY, VILLAGE OR TOWNSHIP	COUNTY	DATE OF SIGNING
1.					
2.					
3.					
4.					

	SIGNATURE	VOTING RESIDENCE ADDRESS STREET AND NUMBER	CITY, VILLAGE OR TOWNSHIP	COUNTY	DATE OF SIGNING
5.					
6.					
7.					
8.					
9.					
10.					
11.					
12.					
13.					
14.					
15.					
16.					
17.					
18.					
19.					
20.					

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

CIRCULATOR STATEMENT -Must be completed and signed by circulator.

I, _____ declare under penalty of election falsification that I am a qualified
(Printed Name of Circulator)
 elector of the State of Ohio and reside at the address appearing below my signature; that I am the circulator of the
 foregoing petition containing _____ signatures; that I witnessed the affixing of every signature; that all
(Number)
 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 or of an attorney in fact acting
 pursuant to section 3501.382 of the Revised Code.

 (Signature of Circulator)

 (Permanent residence address in this state)

 (City or Village and Zip Code)

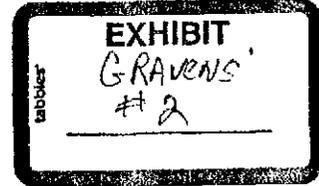
If applicable, name and address of employer
 of the person circulating this petition.

 (Print Name of Employer)

 (Street and Number or Rural Route)

 (City or Village and Zip Code)

BOARD USE ONLY	
C.W. & PRCT	
PARTY / YEAR	
SIGNATURE	
PROBLEM	
OK PETITION	
INITIALS	



Designation of Treasurer

Prescribed by Secretary of State 03/05

All Committees			
Full Name of Committee COMMITTEE TO RE-ELECT JUDGE MAUREEN ADLER GRAVENS			
Street Address 4140 DIANE DRIVE	Telephone Number 440-333-8880	e-mail Address	
City FAIRVIEW PARK	State OH	Zip Code 44126	FAX Number
Full Name of Treasurer MICHAEL A. CARLIN			
Street Address 4140 DIANE DRIVE	Telephone Number 440-333-8880	e-mail Address	
City FAIRVIEW PARK	State OH	Zip Code 44126	FAX Number
Full Name of Deputy Treasurer (if any) BRIAN A. CARLIN			
Street Address 4140 DIANE DRIVE	Telephone Number 440-333-8880	e-mail Address	
City FAIRVIEW PARK	State OH	Zip Code 44126	FAX Number
Candidates Campaign Committees Only			
Full Name of Candidate MAUREEN ADLER GRAVENS		Party Affiliation/Independent/Non-Partisan NON-PARTISAN	
Street Address 21370 SNOWFLOWER	Office Sought JUDGE, ROCKY RIVER MUNY COURT	Subdivision/District ROCKY RIVER	
City ROCKY RIVER	State OH	Zip Code 44116	Election Year 2007
Signature of Candidate <i>Maureen Adler Gravens</i>		Date 2/20/07	
Political Action Committees Only			
Is the PAC sponsored by a labor organization or corporation? <input type="checkbox"/> No <input type="checkbox"/> Yes. If Yes, name the sponsor		Acronym, if any	
PAC Registration Number	Authorized Signature	Date	List any affiliated PACs
Political Parties or Legislative Campaign Funds Only			
Authorized Signature <i>Michael A. Carlin</i>		Date 2/16/2007	Ballot Issue PAC? <input type="checkbox"/> Yes <input type="checkbox"/> No

Signature of Treasurer

Date

Reason(s) for filing this form:

- Original Designation of Treasurer/Acknowledgement of Appointment
- Change of Treasurer/Acknowledgement of Appointment
- Designation or change of Deputy Treasurer
- Change of Address for _____

Change of Committee name. The previous name was: _____

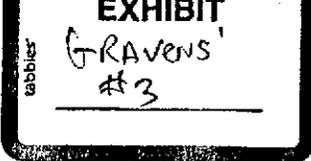
Change of Filing Location. The previous location was: _____

The new location is: _____

Change of Office Sought from _____ to _____

Other. Please explain: _____

FEB22'07 PM 3:52 CUS



For Board of Elections use only - Do not write in this

Office Sought: _____

Filing Fee Signature Requirements Last Filing Date/Time

NOMINATING PETITION AND STATEMENT OF CANDIDACY

FOR MEMBER OF BOARD OF EDUCATION

For use in city, local, or exempted village school districts

(INDIVIDUAL CANDIDATES)

To be filed with the Board of Elections not later than 4:00 p.m. of the 75th day before the day of the general election.

Revised Code, Sections 3501.38, 3513.254, 3513.261, 3513.263

NOTE: Each candidate must fill in, sign and date the statement of candidacy before petitions are circulated.

STATEMENT OF CANDIDACY

I, _____ the undersigned, hereby declare under penalty of election falsification that my voting residence address in _____ (Enter city, village or township name) is _____ (Street Address) _____ (Zip code); and I am a qualified elector in the school district. I further declare that I desire to be a candidate for election to the office of Member of the Board of Education of the _____ School District, for the _____ (Full term or unexpired term) to be voted for at the general election next hereafter to be held.

I hereby declare that, if elected to this office or position, I will qualify therefore.

Dated this _____ day of _____, 20 _____

BOARD USE ONLY	
City, Ward & Precinct	
Voter ID	
SIGNATURE	
INITIALS	

(Print name as it should appear on the ballot)

(Signature of candidate)

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

I, _____ (Name of candidate) hereby designate the persons named below a committee to represent me:

NAME	STREET ADDRESS

NOMINATING PETITION

We, the undersigned, qualified electors of the school district stated above whose address is set opposite our names, hereby nominate the above-named candidate for election to the office and term of Member of the Board of Education of the above named school district, to be voted for at the next general election, and certify said person is, in our opinion, well qualified to perform the duties of the office or position to which the person desires to be elected.

Electors must write signatures on this petition in ink and be from only one county

SIGNATURES (Must be written in ink)	PRINTED NAME OF SIGNER	STREET ADDRESS (Must be the address on file with the Board of Elections)	DATE OF SIGNING
1.			
2.			
3.			
4.			
5.			
6.			
7.			
8.			
9.			
10.			
11.			
12.			
13.			
14.			
15.			
16.			
17.			
18.			
19.			
20.			

I, _____, declare under the penalty of election falsification that I am a qualified
(Printed name of circulator)

elector of the State of Ohio and I reside at the address appearing below my signature; that I am the circulator of the foregoing petition containing _____ signatures; that I witnessed the affixing of every signature; that all signers
(Number)

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 or of an attorney in fact acting pursuant to section 3501.382 of the Revised Code.

(Signature of circulator)

(Street address)

(Municipality and zip code)

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

BOARD USE ONLY		
	CAND	CIRC
C.W. & PRCT		
PARTY / YEAR		
SIGNATURE		
PROBLEM		
OK PETITION		
INITIALS		



J. KENNETH BLACKWELL
Ohio Secretary of State

180 E. Broad Street, 16th Floor, Columbus OH 43215
614.466.2655 / Toll Free: 877.767.6446 / Fax: 614.644.0649
e-mail: blackwell@sos.state.oh.us
www.sos.state.oh.us

Special Notice

TO: All County Boards of Elections
FROM: Judy Grady, Director of Elections
DATE: October 4, 2005

Handwritten note:
10.00 \$/1000
2-clerk \$40

SUMMARY STATEMENTS

Pursuant to R.C. 3505.27, all boards of elections shall accumulate all vote totals at the board of elections' office or its designated tabulation site. Therefore, poll workers will not be required to post summary statements at the polling place.

If you have any questions, please call the Elections Division at 614-466-2585.

JUDGE OR CLERK OF THE MUNICIPAL COURT

For Board of Elections use only - Do not write in this space		
Office Sought: <u>JUDGE - ROCKY RIVER</u>		
<u>80.00</u> Filing Fee	<u>MIN 50-MAX 150</u> Signature Requirements	<u>MAY 7 2007 4PM</u> Last Filing Date/Time

The candidate must fill in, sign and date this statement of candidacy before petitions are circulated.

STATEMENT OF CANDIDACY

Revised Code, Sections 1901.07, 1901.31, 3501.38, 3513.261

I, MAUREEN ADLER GRAVENS, the undersigned, hereby declare under penalty of election falsification that my voting residence address is ROCKY RIVER is 21370 SNOWFLOWER 44116

(Name of candidate) (Enter city, village or township name) (Street address) (Zip code)

And I am a qualified elector. I further declare that I desire to be a candidate for election to the office of JUDGE in the ROCKY RIVER Municipal Court District,

for the full term commencing JANUARY 1, 2008 or unexpired term ending _____

(Check one of the boxes and fill in the appropriate date)
at the general election next hereafter to be held.

I hereby declare that, if elected to this office or position, I will qualify therefor.

BOARD USE ONLY	
City, Ward & Precinct	
PARTY / YEAR	
SIGNATURE	
INITIALS	

Dated this 6th day of FEBRUARY, 2007

MAUREEN ADLER GRAVENS
(Print name as it should appear on the ballot)

Maureen Adler Gravens
(Signature of candidate)

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

I, MAUREEN ADLER GRAVENS hereby designate the persons named below a committee to represent me:

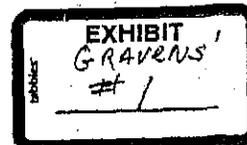
NAME	STREET ADDRESS
TERRANCE P. GRAVENS	21370 SNOWFLOWER, ROCKY RIVER, OH 44116
GARY JOHNSON	1250 RUE ST. GEORGES, WESTLAKE, OH 44145
PATRICIA A. GAUL	2751 COUNTRY CLUB, ROCKY RIVER, OH 44116
MICHAEL CARLIN	4140 DIANE, FAIRVIEW PARK, OH 44126
KATHLEEN MAHONEY	30122 EDNIL, BAY VILLAGE, OH 44140

NOMINATING PETITION

We, the undersigned, qualified electors whose voting residence set opposite our names, hereby nominate the above-named candidate for election to the office and term as stated above of the above named municipal court district, to be voted for at the next general election, and certify said person is, in our opinion, well qualified to perform the duties of the office or position the candidate desires to be elected.

Electors must write signatures on this petition in ink.

SIGNATURES (Must be written in ink)	PRINTED NAME OF SIGNER	STREET ADDRESS (Must be the address on file with the Board of Elections)	DATE OF SIGNING
<i>Patricia A. Costello</i>	PATRICIA A. COSTELLO	1660 BASSETT RD, WESTLAKE, OH 44145	3/15/07
<i>James P. Madson</i>	JAMES P. MADSON	1670 BASSETT RD, WESTLAKE, OH 44145	3/15/07



SIGNATURES (Must be written in ink)	PRINTED NAME OF SIGNER	STREET ADDRESS (Must be the address on file with the Board of Elections)	DATE OF SIGNING
<i>[Signature]</i>	JOHN P. CORRIGAN, Jr	3810 W. VALLEY DR. FAIRVIEW OH 44126	3-15-07
<i>[Signature]</i>	EILEEN A. GALLAGHER	46 POND DRIVE ROCKY RIVER, OH 44116	3-15-07
<i>[Signature]</i>	Michael H. Murphy	4036 Brendan Lane #315 North Olmsted, OH 44070	3-15-07
<i>[Signature]</i>	FRANK X. D'GRANDY	3879 SAVOY DR. FAIRVIEW PARK OH 44126	3-15-07
<i>[Signature]</i>	William T. ANGLETT	28728 MILLARD DR. BAY VILLAGES OH 44140	3-15-07
<i>[Signature]</i>	Walter N. GABLER	44116 RR 2857 Hilliard Rd	3-15-07
<i>[Signature]</i>	Bartara Golcra	2225 Hilliard	3-15-07
<i>[Signature]</i>	Michael O'Shea	RR 44116 21714 Abscon Rd	3-15-07
<i>[Signature]</i>	KAREN GANNON	RR 44116 3901 Higley Rd	3/15/07
<i>[Signature]</i>	JAMES GANNON	RR 44116 3901 Higley Rd	3/15/07
<i>[Signature]</i>	PATRICIA D. BAKER	RR 44116 27681 Caroline Cdr	3/15/07
<i>[Signature]</i>	URSULA PATTON	RR 44116 1840 Hunter Dr	3/15/07
<i>[Signature]</i>	LINDA TRAVIS	RR 44116 25145 Lake Blvd	3/15/07
<i>[Signature]</i>	George Mineff, Jr.	RR 44116 19950 Roslyn Dr. S.W.	3/15/07
<i>[Signature]</i>	Brennan Sheehan	RR 44116 20060 Fairview Dr	3/15/07

I, SUSAN E. MADDEN, declare under penalty of election falsification that I am a
(Printed name of circulator)

qualified elector of the State of Ohio and reside at the address appearing below my signature; that I am the circulator of the foregoing petition containing 17 signatures; that I witnessed the affixing of every signature; 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 or of an attorney in fact acting pursuant to section 3501.382 of the Revised Code.

Susan E. Madden
(Signature of circulator)
1670 Bissett Rd
(Street address)
Westlake, Ohio 44145
(Municipality and zip code)

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

BOARD USE ONLY		
	CAND	CIRC
C.W. & PRCT		
PARTY / YEAR		
SIGNATURE		
PROBLEM		
OK PETITON		
INITIALS		

BOARD OF ELECTIONS
CUYAHOGA COUNTY, OHIO

IN RE:)
)
1) Nonpartisan Petition of)
Maureen Adler Gravens)
)
2) Protest of)
Deborah Reese)
)

**REPLY BRIEF OF
MAUREEN ADLER GRAVENS**

Now comes Maureen Adler Gravens, nonpartisan candidate for Judge, Rocky River Municipal Court, by and through counsel, Michael P. Butler and hereby submits this Brief in support in reply to the Brief of Ms. Reese.

RESTATEMENT OF THE CASE

This is a petition case.

There are two matters that are pending before the Board. First, pursuant to O.R.C. §1901.07, §3501.01(J) and the plain language contained in her nominating petition, Judge Gravens has asked that the Board correct its records to reflect her nonpartisan candidacy. Second, Ms. Reese, after initially sending in correspondence, has now submitted a protest.

ISSUES PRESENTED

Does O.R.C. §1901.07 specifically authorize nonpartisan candidates for the office of Judge of Rocky River Municipal Court District?

Does candidate Gravens' nominating petition comply with the requirements of O.R.C. §1901.07?

Does the statement of candidacy signed by Candidate Gravens, made pursuant to O.R.C. §1901.07, contain any declaration of being an “independent”?

Is there a specific statute that prohibits nonpartisan candidates including candidates for judicial office, and school board candidates, from voting in a party primary election?

LAW AND ARGUMENT

I. O.R.C. §1901.07 SPECIFICALLY AUTHORIZES NONPARTISAN CANDIDATES FOR THE OFFICE OF JUDGE, INCLUDING JUDGE OF THE ROCKY RIVER MUNICIPAL COURT DISTRICT.

Ms. Reese asserts at page 1 of her Brief:

“ . . . Rocky River Municipal Court is a ‘partisan’ office, therefore, a candidate must have been included in the partisan primary or filed as an independent candidate.”

This statement is in conflict with the language of O.R.C. §1901.07. This statute, titled Term of Office of Judge - Nomination, Election states in pertinent part the following:

“A) All municipal court judges shall be elected on the nonpartisan ballot for terms of six years.

B) All candidates for municipal judge may be nominated either by nominating petition or by primary election . . .”

“If the jurisdiction of a municipal court extends beyond the corporate limits of the municipal corporation in which it is located or if the jurisdiction of the court does not extend beyond the corporate limits of the municipal corporation in which it is located and no charter provisions apply, **nonpartisan candidates for the office of municipal court judge shall file nominating petitions not later than four p.m. of the day before the day of the primary in the form prescribed by section 3513.261 of the Revised Code.**” (Emphasis Added)

The Rocky River Municipal District, as reflected in the Board's records, extends beyond the corporate limits of the city of Rocky River and includes several other municipalities. By law, nonpartisan candidates for Rocky River Municipal Court District shall file nominating petitions by the end of the day before the primary. Ms. Reese asserts that this time of filing results in an automatic label of "independent". This assertion is factually and legally incorrect.

The Ohio Constitution, Article IV Section 6 titled Election and Compensation of Judges provides in pertinent part:

4) ". . .and laws shall be enacted to prescribe the times and mode of their election."

From this, separate statues have been enacted for various judicial offices. For municipal courts, §1901.07 controls.

Judge Gravens has timely filed a petition in conformity with O.R.C. §1901.07 and has met the general petition requirements of O.R.C. §3513.261 and §3501.38.

II. THE BOARD OF ELECTION'S DUTY IS TO INSPECT PETITIONS AND TO DETERMINE THEIR VALIDITY AND LEGAL SUFFICIENCY.

The Brief of Ms. Reese is captioned "Challenge to Maureen Adler Gravens". The Brief asks the Board to consider this question:

"Should . . . Candidate Maureen Adler Gravens be disqualified as a candidate from the Rocky River Municipal Court for voting in the Democratic Party Primary?"

This Board examines petitions. Ms. Reese's protest and Brief, while making conclusory allegations, fails to specify the defect in the petition that would cause this Board to rule it invalid.

The nominating petition contains the following Statement of Candidacy:

“I, Maureen Adler Gravens, the undersigned, hereby declare under penalty of election falsification that my voting residence address is Rocky River is 21370 Snowflower 44116; And I am a qualified elector. I further declare that I desire to be a candidate for election to the office of Judge in the Rocky River Municipal Court District, for the full term commencing January 1, 2008 at the general election next hereafter to be held.

I hereby declare that, if elected to this office or position. I will qualify therefor.

Dated this 6th day of February, 2007.”

Maureen Adler Gravens

(Print name as it should appear on ballot)

Signed by Maureen Adler Gravens

(Signature of candidate)

A reading of Judge Gravens’ petition provides the simplest solution to this case. Judge Gravens does not assert that she is an “independent” nor does she claim to not be affiliated with a political party. Instead, in conformity with O.R.C. §1901.07, Judge Gravens has stated her qualifications as an elector and as a candidate for the office.

Ms. Reese’s contention that Judge Gravens filed as an independent is not supported by the facts. While relying on the nominating petition (Reese, Exhibit B), Ms. Reese does not specify the term or phrase contained in the petition which supports this fanciful assertion.

Ms. Reese also references certain Board documents (Exhibits A, C, D and E). Of these, only Exhibit A, a Board generated list of deadlines, references the term independent in regard to the Office of Rocky River Municipal Court. This form is incorrect as it is in conflict with the express language of O.R.C. §1901.07 (deadline for nonpartisan candidates). It is a well settled principle of law that the errors of Board employees will not create an estoppel against a public

official, as to prevent the correct application of law. See State, ex rel. Svete v. Board of Elections, 4 Ohio St.2d 16 (1965).

Ms. Reese's protest fails as she has failed to produce any facts demonstrating that Judge Gravens filed an "independent" petition.

III. THERE IS NO STATUTE WHICH INVALIDATES THE NOMINATING PETITION OF A NONPARTISAN CANDIDATE WHO EXERCISES THE RIGHT TO VOTE IN PARTY PRIMARY ELECTIONS.

Ms. Reese contends that voting in a party primary results in an automatic disqualification for a nonpartisan candidate. There is no statute that supports this contention. To the contrary, O.R.C. §1901.07, which allows a nonpartisan judicial candidate, requires only that a valid nominating petition be timely filed.

Ms. Reese confuses an independent candidate and a nonpartisan candidate. An independent candidate, as specified by O.R.C. §3501.01 means "any candidate who claims not to be affiliated with a political party". Ms. Reese relies on Morrison, et al. v. Colley, 467 F.3d 503 (2006) which began as a petition case. Morrison's petition, according to the Court and the Secretary of State asserted that he was filing as an independent. Because this claim was factually incorrect, his petition was ruled invalid.

Morrison, supra, and the Secretary of State Advisory apply only to independent candidates. As Judge Gravens' petition does not contain any assertion of this nature, Morrison and the Secretary of State Advisory have no application.

Finally, Ms. Reese attempts to ignore the plain language of O.R.C. §3501.01(J), the nonpartisan candidate definition. This statute is to be read in conformity with O.R.C. §1.42, titled Common and Technical Usage which states:

“Words and phrases shall be read and construed according to the rules of grammar and common usage.”

Nonpartisan candidate means any candidate whose name is required pursuant to §3505.04 of the Code, to be listed on the nonpartisan ballot, including all candidates for judicial office, and candidates of any board of education. The statute then further defines nonpartisan candidates to include municipal or township officials in which primary elections are not held for nominating candidates by political parties. The office of Judge of the Rocky River Municipal Court District is not a municipal or township office but is a statutory office governed by the operation of O.R.C. §1901.07. Again, this statute specifically provides for a **nonpartisan** candidate.

PROCEDURAL OBJECTION

Ms. Reese has submitted newspaper reports concerning other counties and other petitions. This Board is to consider candidate Gravens' petition in accordance with the law. Accordingly, there is an ongoing objection to the “news” articles based on relevancy and hearsay.

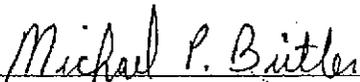
CONCLUSION

The nominating petition of candidate Gravens is valid and in accordance with O.R.C. §1901.07 which specifically provides for a nonpartisan candidate. The Board, in applying this

statute to the facts, is asked to correct its records, properly referencing Maureen Adler Gravens as a nonpartisan candidate.

The protest of Ms. Reese fails in that it is not supported by law or fact.

Respectfully submitted,



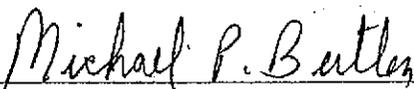
Michael P. Butler (#0022180)
Attorney at Law
55 Public Square, Suite 1260
Cleveland, Ohio 44113
(216) 621-8005
Fax: (216) 621-8378

CERTIFICATE OF SERVICE

A copy of the following was served by ordinary U.S. Mail this 23rd day of July, 2007 upon:

Daniel P. Carter, Esq.
Jeffrey Ruple, Esq.
Buckley King LPA
1400 Fifth Third Center
600 Superior Avenue, East
Cleveland, Ohio 44114-2652

Attorneys for Deborah S. Reese



Michael P. Butler (#0022180)
Attorney at Law

BOARD OF ELECTIONS
CUYAHOGA COUNTY, OHIO

IN RE:)

1) Nonpartisan Petition of)
Maureen Adler Gravens)

2) Correspondence of)
Deborah Reese)

BRIEF OF
MAUREEN ADLER GRAVENS

Now comes Maureen Adler Gravens, nonpartisan candidate for Judge, Rocky River Municipal Court, by and through counsel, Michael P. Butler and hereby submits her brief in support of her petition and in response to the correspondence of Ms. Reese.

STATEMENT OF THE CASE

Maureen Adler Gravens, pursuant to O.R.C. §1901.07, on February 6, 2007 signed a Statement of Candidacy which states the following:

“I, Maureen Adler Gravens, the undersigned, hereby declare under penalty of election falsification that my voting residence address is Rocky River is 21370 Snowflower 44116; And I am a qualified elector. I further declare that I desire to be a candidate for election to the office of Judge in the Rocky River Municipal Court District, for the full term commencing January 1, 2008 at the general election next hereafter to be held.

I hereby declare that, if elected to this office or position. I will qualify therefor.

Dated this 6th day of February, 2007.”

Maureen Adler Gravens

(Print name as it should appear on ballot)

Signed by Maureen Adler Gravens

(Signature of candidate)

Exhibit A is attached hereto.

JUL16'07 PM12:27 OIR

In compliance with O.R.C. §1901.07, the nominating petition, containing the requisite number of signatures, was timely filed. O.R.C. §1901.07(B) states in pertinent part:

“... nonpartisan candidates for the office of municipal court judge shall file nominating petitions not later than four p.m. of the day before the day of the primary election in the form prescribed by section 3513.261 of the Revised Code.” (emphasis added).

The Board of Elections, on May 29, 2007, found the Petition to be valid and certified the candidate to the ballot. The Board has somehow mischaracterized Judge Gravens' petition. The Board has mislabeled Judge Gravens as being an independent candidate for Judge despite the clear statement of candidacy referenced herein and the operation of O.R.C. 1901.07. (nonpartisan candidate). Counsel for Judge Gravens requested that the Board's minutes be corrected to accurately reflect the facts (nonpartisan). There is no reference to the term "Independent" nor is there any declaration of candidacy specifying an intent to be an independent candidate within the Petition of Judge Gravens.

On June 19, 2007, Ms. Reese submitted a letter with attachments, to the Board asserting the following:

- 1) Maureen Adler Gravens filed petitions to be an Independent candidate for Judge on May 2, 2007;
- 2) Maureen Adler Gravens voted in the May 8, 2007 Democratic Primary;
- 3) The Board of Elections certified Maureen Adler Gravens as an Independent candidate for Judge.

The attachments submitted by Ms. Reese include an advisory by the Secretary of State referencing Independent Candidate and Party Affiliation and a copy of Morrison, et al. v. Colley, et al., 467 F.3d 503 (2006).

The Reese correspondence failed to include any evidence supporting the contentions that Maureen Adler Gravens filed a petition as an Independent nor did the letter cite any legal authority which specifically prohibits a nonpartisan candidate from voting in a party primary.

The Board now has set the matter for hearing. Candidate Gravens submits this Brief preserving her right to argue that the Reese letter does not give rise to a protest as defined by law.

DUTIES OF BOARD

The Board of Elections, as a statutory body, has only those powers as specified by the Ohio Revised Code. Under O.R.C. 3501.11(K), the Board has a duty to inspect petitions and to determine their validity and legal sufficiency. O.R.C. §3501.38 provides the general rules governing candidate petitions.

O.R.C. 3501.39, titled Unacceptable Petitions, states in pertinent part:

(A) The secretary of state or a board of elections shall accept any petition described in section 3501.38 of the Revised Code unless one of the following occurs:

(1) A written protest against the petition or candidacy, naming specific objections, is filed, a hearing is held, and a determination is made by the election officials with whom the protest is filed that the petition is invalid, in accordance with any section of the Revised Code providing a protest procedure.

(2) A written protest against the petition or candidacy, naming specific objections, is filed, a hearing is held, and a determination

is made by the election officials with whom the protest is filed that the petition violates any requirement established by law.

(3) The candidate's candidacy or the petition violates the requirements of this chapter, Chapter 3513 of the Revised Code, or any other requirements established by law. (emphasis added).

In short, the petition is valid absent a specific violation of Chapter 35 or any other requirements established by law.

LAW and ARGUMENT

A. THE NOMINATING PETITION OF MAUREEN ADLER GRAVENS IS VALID AND SUFFICIENT

Significantly, the Board has previously certified the petition as valid and legally sufficient.

From the beginning, O.R.C. §1901.07, titled Term of Judge – Nomination, Election governs the candidacy in question. This section states in pertinent part:

“A) All municipal court judges shall be elected on the nonpartisan ballot . . .

B) All candidates for municipal judge may be nominated either by nominating petition or by primary election . . .”

“. . . nonpartisan candidates for the office of municipal court judge shall file nominating petitions not later than four p.m. of the day before the day of the primary in the form prescribed by section 3513.261 of the Revised Code.”

An examination of the petition reveals it is in compliance with the statutes referenced on the Board prescribed form, e.g. O.R.C. 1901.07, 3501.38 and 3513.261. §1901.31 while referenced on the petition, applies to the Clerk of Court. As stated earlier, §3501.38 governs general petition requirements while §3513.261 titled Nominating Petition form and Fee sets forth

the specific requirements for a nominating petition. It is undisputed that the petition meets the essential statutory requirements referenced in these sections.

- B. THE NONPARTISAN CANDIDATES FOR THE OFFICE OF MUNICIPAL COURT JUDGE SHALL FILE NOMINATING PETITIONS NOT LATER THAN FOUR P.M. OF THE DAY BEFORE THE DAY OF THE PRIMARY IN THE FORM PRESCRIBED BY SECTION 3513.261 OF THE REVISED CODE.

The concept of a **nonpartisan candidate** as referenced in §1901.07 has apparently confused matters. Some believe, without authority, if a petition is filed after the party filing deadline, then the candidate automatically becomes an Independent. On the contrary the law also provides for nonpartisan candidates. Fortunately, O.R.C. 3501.01 titled Election Procedure – Election Officials Definitions provides absolute legal distinctions. As to nonpartisan candidates, this section states in pertinent part:

(J) “Nonpartisan candidate” means any candidate whose name is required, pursuant to section 3505.04 of the Revised Code, to be listed on the nonpartisan ballot, including all candidates for judicial office, for member of any board of education, for municipal or township offices in which primary elections are not held for nominating candidates by political parties, and for offices of municipal corporations having charters that provide for separate ballots for elections for these offices.

The nonpartisan definition begins the statutory trail, beginning with the statement of candidacy and nominating petition and ending with name on the nonpartisan ballot (O.R.C. 3505.04). This section states in pertinent part:

“On the nonpartisan ballot shall be printed the names of all nonpartisan candidates for election to judicial office, office of member of state board of education, office of member of a board of education, . . .”

For Judge Gravens, the specific language of O.R.C. §1901.07 specifically enables a candidate to seek to appear on the ballot as a nonpartisan candidate.

Judge Gravens' statement of candidacy does not assert that she is an independent nor does the printed petition supplied by the Board and authorized by the Secretary of State make any reference to the term independent. The petition form does not prohibit voting in a primary election, nor does it specifically restrict political affiliation. For example, a nonpartisan school board candidate, who files a similar petition, is not restricted from party affiliation or party primary voting.

In summary, Judge Gravens, under the law, has filed a valid nonpartisan petition as authorized by O.R.C. 1901.07 and 3501.01(J). There is no statement in her statement of candidacy which prohibits voting in either party's primary. Judge Gravens, in the attached affidavit asserts the facts as stated herein.

C. MS. REESE'S CORRESPONDENCE IS FACTUALLY AND LEGALLY INCORRECT AND IS INAPPLICABLE

First, as stated above, Judge Gravens' nonpartisan candidacy is specifically authorized by statute. Judge Gravens is not an independent candidate. There is no petition or other evidence supporting this contention.

Ms. Reese has supplied a Secretary of State advisory which references Independent Candidates and Party Affiliation by examining Morrison v. Colley, supra, as attached to the advisory. This case has no legal application in that its holding is limited to finding that O.R.C.

§3513.257, titled Independent Candidates Statement of Candidacy and Nominating Petition was constitutional and as such, the statute was not vague or overbroad.

Factually, Mr. Morrison sought to challenge the statute in Federal Court after the Assistant Secretary of State voted to break a tie of the Franklin County Board of Elections granting a protest and voting against certification of Morrison's petition. Mr. Morrison, in succession, did the following:

- Filed a petition for election as Republican State Committeeman
- Filed a petition for election as Republican County Committeeman
- Advertised/campaigned as a Republican for Committee office
- After affirming Republican affiliation, Morrison filed a petition the day before the May 2006 primary as an **"Independent"** candidate for Congress
- Filed with Federal Election Commission a statement of Republican affiliation
- Voted in Republican Primary

The Congressional candidacy was protested and ultimately the Congressional petition was not certified. The Assistant Secretary of State stated in pertinent part:

“. . . and because R.C. 3501.01(I) provides a standard, the law and facts show that Mr. Morrison was never truly independent at any point relevant to this matter.”

For background, O.R.C. §3501.01(I) states the following:

(I) “Independent candidate” means any candidate who claims not to be affiliated with a political party, and whose name has been certified on the office-type ballot at a general or special election through the filing of a statement of candidacy and nominating petition, as prescribed in section 3513.257 [3513.25.7] of the Revised Code. (Emphasis added)

In short, Morrison could not have it both ways as the specific statutory limitation of §3501.01(I) which governs Independent candidates controlled.

Ms. Reese's reliance on this case and the Secretary of State's advisory is totally inapplicable based on the facts and law of this case.

In Morrison, the Secretary of State, in breaking the tie vote, applied the clear language of 3501.01(I) which defines an independent as one who claims not to be affiliated with a political party against a candidate who claimed not to be affiliated (independent petition) while declaring his party affiliation repeatedly!

In contrast, 3501.01(J), has no limiting language, in that a nonpartisan candidate means any candidate whose name is required pursuant to section 3505.04 to be listed on the nonpartisan ballot. A nonpartisan candidate's petition makes no claims of status (independent or not) or any claims to affiliation. Judge Gravens' nonpartisan petition contains only the statement of candidacy which asserts the following: The name, address, assertion of qualification as an elector, a desire to be Judge of the specific office at the general election and finally declares, if elected, that Judge Gravens is qualified for the office. The Morrison "declaration of independent," and the Secretary of State's advisory concerning independent candidate petitions has no legal or factual application to Judge Gravens' petition.

CONCLUSION

This is a petition case. It is a well settled principal of Ohio election law that decisions concerning possible invalidation of a petition are determined in light of public policy favoring free, competitive elections. See Stern v. Board of Elections, (1968) 14 Ohio St.2d 175, 184; Beck

v. Casey, (1990) 51 Ohio St.3d 79 at Page 80. A Board of Elections, as a statutory body, examines the four corners of the petition to determine its validity.

This Board has previously determined that Judge Gravens' petition is valid. The petition is nonpartisan as specifically authorized by O.R.C. 1901.07. The petition does not assert that Judge Gravens is an Independent nor does the printed form supplied by the Board make any reference to the term Independent. There is no specific prohibition or reference to party affiliation. Instead, the Petition, being a nonpartisan nominating petition recites the mandatory statutory elements needed to qualify as a candidate for Judge.

It is respectfully requested that the Board amend its record to properly certify Judge Gravens' petition as nonpartisan. Also, as the petition has been previously certified as valid, the Board is requested to deny the relief sought by Ms. Reese and direct that Maureen Adler Gravens appear on the General Elections ballot as a nonpartisan candidate for Rocky River Municipal Court Judge.

Respectfully submitted,

Michael P. Butler

Michael P. Butler (#0022180)

Attorney at Law

55 Public Square, Suite 1260

Cleveland, Ohio 44113

(216) 621-8005

Fax: (216) 621-8378

CERTIFICATE OF SERVICE

A copy of the following was served by ordinary U.S. Mail this 16th day of July, 2007 upon:

Daniel P. Carter, Esq.
Jeffrey Ruple, Esq.
Buckley King LPA
1400 Fifth Third Center
600 Superior Avenue, East
Cleveland, Ohio 44114-2652

Attorneys for Deborah S. Reese

Michael P. Butler

Michael P. Butler (#0022180)

Attorney at Law

STATE OF OHIO)
) SS
COUNTY OF CUYAHOGA)

AFFIDAVIT

Now comes Maureen Adler Gravens, after being duly sworn, deposes and states the following:

1. I am Maureen Adler Gravens. I am presently serving as Judge of the Rocky River Municipal Court. This is my third term.

2. On February 6, 2007, I signed a Statement of Candidacy which is demonstrated on a part petition marked as Exhibit A, attached hereto. The completed nominating petition with signatures of nominating electors was filed with the Board of Elections. It is my understanding, that the petition has previously been certified as valid by the Board of Elections..

3. In the past, I have filed nonpartisan nominating petitions and have also voted in party primaries, all in accordance with the law.

4. I am a nonpartisan candidate as is authorized by operation of Ohio Revised Code §1901.07.

5. It is my understanding that there is no Ohio statute that specifically prohibits a nonpartisan candidate for any office from voting in a party primary. Accordingly, I exercised my right to vote in the May Democratic Primary held in Rocky River.

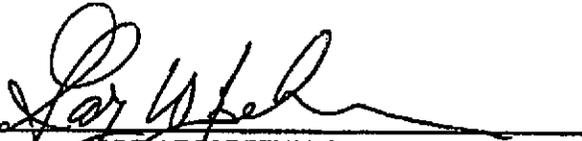
6. My nomination petition does not make any claim or assertion that I am an Independent candidate nor does it make any claim that I am not affiliated with a political party. Instead, my statement of candidacy clearly asserts the statutory qualifications mandated by Ohio Election law.

FURTHER AFFLIANT SAYETH NAUGHT.



MAUREEN ADLER GRAVENS

SWORN TO BEFORE ME, and subscribed in my presence this 15th day of July,
2007.



NOTARY PUBLIC

GARY W. JOHNSON, Attorney at Law
Notary Public, State of Ohio
My commission has no expiration date.
Section 147.03 O.R.C.

Prepared By:
MICHAEL P. BUTLER
Attorney at Law (#0022180)
55 Public Square, Suite 1260
Cleveland, Ohio 44113
(216) 621-8005

AFFIDAVIT

STATE OF OHIO)
)
COUNTY OF CUYAHOGA) SS:

Now comes Gary F. Barna being of sound mind, of the age of majority, and having first been duly sworn according to law and states as follows:

A. I am Executive Assistant to the Director/Deputy at the Cuyahoga County, Ohio Board of Elections.

B. I have personal knowledge that the documents attached hereto are true and accurate copies of the records filed with or originated from the Cuyahoga County Board of Elections regarding Deborah Reese's Protest to the filing of Judge Maureen Adler Gravens as an Independent candidate for Judge of Rocky River Municipal Court for the November 6, 2007 General Election.

C. The copies are complete and accurate and were prepared under proper supervision from the records which were made and maintained in the course of business by persons authorized by the Cuyahoga County Board of Elections.

D. The records attached are as follows:

- 1. General Letter from Brent Lawler, dated February 1, 2007 regarding scheduling of the partisan primary for both Judge and Clerk of Courts in the Rocky River Municipal Court District, attached thereto correspondence sent from Robert Frost to Director of the Cuyahoga County Board of Elections, dated January 18, 2007, regarding concerns with the draft of the 2007 Election Calendar.

FURTHER AFFIANT SAYETH NAUGHT.

Gary F. Barna
Gary F. Barna

SWORN TO before me and signed in my presence this 23rd day of August, 2007.

Jennifer L. Schulz
Notary Public
JENNIFER L. SCHULZ
NOTARY PUBLIC, STATE OF OHIO
Recorded in Cuyahoga County
My Comm. Expires Apr. 2, 2010



CUYAHOGA COUNTY
BOARD OF ELECTIONS

Robert T. Bennett
Chairman

Edward C. Coaxum, Jr.

Sally D. Florkiewicz

Loree K. Soggs

L. Michael Vu
Director

Gwendolyn Dillingham
Deputy Director

February 1, 2007

via regular and certified mail

Dear

As we discussed, please be advised that legal counsel for the Cuyahoga County Board of Elections has advised that a partisan primary is to be scheduled for both Judge and Clerk of Courts in the Rocky River Municipal Court District.

As a result of this opinion a partisan filing deadline of February 22, 2007 – 4:00 pm has been established. The independent filing deadline remains on May 7, 2007 at 4:00 pm.

Please find enclosed the amended 2007 calendar page that reflects the change noted above for the Rocky River Municipal Court District. Also enclosed are Secretary of State generic partisan petitions if you choose to run as a partisan candidate. The petition given to you earlier for an independent candidate remain valid for the Rocky River Municipal Court races.

Please notify me via mail or email as to your intentions on how you wish to be listed on the candidate list (party candidate – indicate Democrat, Republican or Independent).

Thank you for your understanding and patience. Please contact me if you have any questions or I can assist you in any way.

Sincerely,

Brent E. Lawler, Assistant Manager
Campaign Finance & Petitions

Office phone: 216.443.6509

Office fax: 216.443.3299

Office email: bebel@cuyahogacounty.us





Republican Party of Cuyahoga County

Robert S. Frost, Chairman

Robert S. Frost
Chairman

Sally D Florkiewicz
Central Committee
Chairwoman

Grace L. Drake
Executive Committee
Chairwoman

January 18, 2007

To: Brent
Lawler

From: Jane
Platten

Michael Vu, Director
Cuyahoga County Board of Elections
2925 Euclid Avenue
Cleveland, Ohio 44115

Dear Director Vu,

I have recently reviewed the draft 2007 Election Calendar being produced by the Cuyahoga County Board of Elections and have a concern of some immediacy.

Regarding the Offices of Judge of the Rocky River Municipal Court, FTC 1/1/08, and Clerk of the Rocky River Municipal Court, FTC 1/1/08, the draft 2007 Election Calendar indicates there is no primary, and lists the last filing date as "May 7, 2007 - 4:00 P.M. (day-before-May-primary)." However, Ohio-Rev. Code Sections 1901.07 and 1901.31 seem to dictate a different schedule.

Section 1901.07 (B) states in relevant part as follows:

If the jurisdiction of a municipal court extends beyond the corporate limits of the municipal corporation in which it is located ..., all candidates for party nomination to the office of municipal court judge shall file a declaration of candidacy and petition not later than four p.m. of the seventy-fifth day before the day of the primary election, ...

If no valid declaration of candidacy is filed for nomination as a candidate of a political party for election to the office of municipal court judge, or if the number of persons filing the declarations of candidacy for nominations as candidates of one political party for election to the office does not exceed the number of candidates that that party is entitled to nominate as its candidates for election to the office, no primary election shall be held for the purpose of nominating candidates of that party for election to the

- I sent
this on
to
Reno.

JAN 19 '07 PM 12:29 DIR

Michael Vu, Director
Cuyahoga County Board of Elections
January 16, 2007
Page 2

office, and the candidates shall be issued certificates of nomination in the manner set forth in section 3513.02 of the Revised Code....

If the jurisdiction of a municipal court extends beyond the corporate limits of the municipal corporation in which it is located or if the jurisdiction of the court does not extend beyond the corporate limits of the municipal corporation in which it is located and no charter provisions apply, nonpartisan candidates for the office of municipal court judge shall file nominating petitions not later than four p.m. of the day before the day of the primary election in the form prescribed by section 3513.26.1 of the Revised Code.

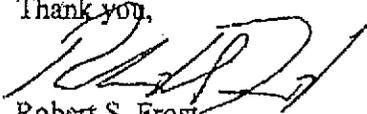
It is clear from a reading of ORC Section 1901.07 that candidates for the office of Judge of the Rocky River Municipal Court may be nominated by primary election, or if the candidate is nonpartisan, by nominating petition. It is further clear from a reading of ORC Section 1901.31 that the same nominating procedure applies to candidates for the office of Clerk of the Rocky River Municipal Court, as the population of the Court District as of the 2000 Census is 120,226.

It is my understanding that such primary election would take place on May 8, 2007, and that the filing deadline for party candidates would be February 22, 2007, that is, 75 days prior. In such case, it would be only for nonpartisan candidates that the last filing date would be May 7, 2007.

Please confirm in writing as soon as possible as to whether or not my reading of ORC Section 1901.07 and 1901.31 is correct, and if so, please provide me with a copy of the declaration of candidacy and petition which should be used by Republican candidate(s) to said offices. If there is any question remaining regarding this matter, I ask that you submit the question to your legal counsel, the Cuyahoga County Prosecuting Attorney, as soon as possible for an opinion.

Should you require any additional information, please contact me at (216) 621-0077.

Thank you,


Robert S. Frost

Copy: Robert T. Bennet, Chairman, Cuyahoga County Board of Elections
William D. Mason, Cuyahoga County Prosecuting Attorney