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**IN THE SUPREME COURT OF OHIO**

<b>IN RE:</b>	)	<b>CASE NO. 2012-0184</b>
<b>THE CONTEST OF THE ELECTION</b>	)	<b>CONSOLIDATED</b>
<b>HELD ON STARK COUNTY ISSUE 6</b>	)	<b>CASE NO. 2012-0214</b>
<b>(LAKE TOWNSHIP POLICE DISTRICT)</b>	)	
<b>IN THE GENERAL ELECTION</b>	)	<b>On appeal from the Stark</b>
<b>HELD NOVEMBER 8, 2011</b>	)	<b>County Common Pleas Court</b>
	)	<b>Case No. 2011 CV 03947</b>
	)	

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## STATEMENT OF FACTS

In addition to the following, Appellees/Cross-Appellants (“Contestors”) incorporate herein as if fully rewritten their Statement of Facts included in their Brief of Appellees/Cross-Appellants filed on March 16, 2012.

At the initial hearing of this issue on January 6, 2012, the parties entered into stipulations. Both Lake Township and the Citizens Committee stipulated that the Issue 6 ballot language contained an irregularity in that it stated the tax levy was four and one-half (4.50) mills for each one dollar of valuation, which amounts to \$0.45 for each one thousand dollars of valuation, when it should have read four dollars and fifty cents (\$4.50) for each one thousand dollars of valuation. Tr. 1/6/2012, pp. 12-13. The stipulated irregularity amounts to the tax levy being understated by ten times when expressed in dollars and cents. Lake Township and the Citizens Committee also stipulated that the ballot language containing the irregularity was contained in Lake Township’s June 27, 2011 resolution approving the initiative and in the legal notices published in the Hartville News on October 21 and October 28, 2011. Tr. 1/6/2012, pp. 13-14. Despite the Citizens Committee’s statement otherwise, the resolution and legal notice were never published in the Canton Repository. In fact, the record before this Court is void of any stipulation or exhibit demonstrating that the ballot language containing the irregularity was ever published in the Canton Repository. In addition, the Citizens Committee’s attorney specifically informed the trial court that Lake Township’s standard practice for circulating ballot language was publication in the Hartville News. Tr. 1/6/2012, p. 14.

In addition to the stipulation regarding the irregularity, the resolution and the legal notices, the parties stipulated that the campaign materials published by the Citizens

Committee as well as other newspaper articles correctly stated the mills and the cost of the tax levy as an annual or per day cost, but that none of those other materials contained the ballot language including the irregularity. Tr. 1/6/2012, pp. 15-16. After reviewing all of those materials, the trial court found that “. . . none of the campaign materials ever expressed the amount of the ballot issue in dollars and cents per one thousand dollars of valuation as required by R.C. 505.481(B).” Record, Document 36, p. 4.

Finally, at the January 6, 2012, hearing, the court specifically questioned the five voters who verified the petition regarding the issue of laches. Before questioning those voters, the court stated “. . . what I want to know is when they wer -- became aware of this irregularity. And, ah, first became aware of it. And what, if anything, action they took at that time, ah, as a result of understanding there was an irregularity.” Tr. 1/6/2012, p. 28. In addition, the court also indicated to the parties that “and I’m not foreclosing them being recalled.” Tr. 1/6/2012, p. 31. Of the five verifiers who testified at the January 6, 2012 hearing, none of them testified that they learned of the irregularity prior to the election. William McClelland, William Doty, Janet L. Bishop and James Miller all testified that they learned of the irregularity on or after election day. Tr. 1/6/2012, pp. 32-33, 36, 38, 41. The fifth verifier, Cynthia Shaffer, testified that she voted absentee and that after receiving her ballot and the Lake Township newsletter, which did not include the ballot language, she knew that something was different between the two, but never testified what was different or that she knew the ballot language was wrong. Tr. 1/6/2012, pp. 39-41; Record, Lake Township Exhibit 21. After the trial court questioned the five verifiers, none of the parties asked any questions and the verifiers were never recalled as the trial court stated it would allow at the January 23, 2012 conclusion of the hearing.

At the conclusion of the hearing conducted on January 6 and January 23, 2012, and considering the stipulations and exhibits admitted into evidence, the court held “. . . that the relief sought by contestors is **GRANTED** and the result of the November 8, 2011, election as to Issue 6 is hereby set aside.” (Emphasis sic.)Record, Document 36, pp. 1, 5. The propositions of law and argument set forth by Lake Township and the Citizens Committee are not supported by the record and must be denied. The trial court’s decision, on the other hand, is supported by all of the evidence contained in the record and should be affirmed.

## ARGUMENT

### Proposition of Law 1

#### FAILURE TO COMPLY WITH MANDATORY PROCEDURES FOR TAX LEVIES IS FATAL TO THE ELECTION RESULTS.

It is well-settled that when tax issues are put to vote, all procedural steps are conditions precedent to the validity of the election. *Beck v. City of Cincinnati*, 162 Ohio St. 473, 475, 124 N.E.2d 120 (1955). In 1938, the Ohio Supreme Court distinguished tax issues from candidate issues when reviewing irregularities in the election process. While deciding a candidate issue, this Court addressed the difference when it stated:

**Where bonds are to be issued or taxes levied, certain steps in the procedure are conditions precedent to taxing property owners. The failure to take such steps is necessarily fatal.** On the other hand, where there is an absence of fraud, a substantial compliance with the statute, and the voters are not misled, the will of the electorate should not be set aside in the selection of the officials of a community. (Emphasis added.)

*Mehling v. Morehead*, 133 Ohio St. 395, 403, 14 N.E.2d 15 (1938). As far back as 1938, this Court has upheld the proposition that failure to follow procedural steps in placing a tax levy on the ballot is fatal to the results.

The Ohio Supreme Court continued this reasoning in *Beck* when it again addressed the differences between irregularities in tax levy issues and candidate issues. The *Beck* Court held that:

Every reasonable intendment should be indulged in favor of the validity of an election and against holding it void. The courts have rather liberally interpreted the laws pertaining to the election of public officials where such election was not attended by fraud or misrepresentation. Trivial nonconformances with the statutes have been overlooked where the purpose of the ballot enabled the voters to clearly reflect their choice of candidates. They will not indulge such liberality of construction

of ballots containing unauthorized statements or misrepresentations where bond issues or tax levies are the subject of the ballot. In the latter instance, **the form of the ballot and all procedural steps are conditions precedent to the validity of the election. The failure to attend the submission of the issue with such procedure is fatal.** (Emphasis added.)

*Beck*, 162 Ohio St. at 475. This Court reaffirmed its holding that errors in the form of a ballot or procedural steps regarding tax levies are fatal to the results in its decision in *Alexander v. The City of Toledo*, 168 Ohio St. 495, 156 N.E.2d 315 (1959).

Here, there is no dispute that R.C. 505.481(B) mandates that the tax levy at issue be stated in dollars and cents per one thousand dollars in taxable valuation. Lake Township and the Citizens Committee have stipulated that the mandate of R.C. 505.481(B) was violated and that Issue 6 did not contain the mandatory language. Contestors have consistently argued that this stipulated irregularity is fatal to the election results when reviewed in light of this Court's holding in *Beck*. Neither Lake Township nor the Citizens Committee has ever produced any subsequent case law indicating that this Court's decisions in *Mehling*, *Beck* or *Alexander* are no longer good law or are in any way limited to the facts of those cases. At best, appellants attempt to limit *Beck* to unauthorized statements included in the description of the issue as was at issue in *Beck*. However, the wording from *Beck* clearly indicates that errors in the form of the ballot or any procedural steps are fatal to the issue. Here, the record is clear that the ballot did not conform to the mandates of R.C. 505.481(B). Based on *Beck*, that error is fatal to the election results and the trial court's decision must be affirmed.

Despite this Court's rulings in *Mehling*, *Beck* and *Alexander*, appellants argue that those decisions should be ignored and the error in this case permitted to stand. If appellants are correct, appellants' argument would permit every taxing authority throughout the state

to understate the value of any tax levy by up to ten times the amount to actually be collected. In other words, any time any township, village, city, county, school board or any other governmental entity sought to put a tax levy on the ballot, it could unknowingly, negligently or even intentionally understate the value of the requested mills in dollars and cents in violation of any statutory requirement without fear of any recourse from the voters. That position directly contradicts this Court's long history of requiring strict compliance with all statutory requirements for tax levies. As such, this Court should reject appellants' position and reaffirm its holdings in *Beck* and *Alexander* and thereby affirm the trial court's decision.

#### Proposition of Law 2

THE TRIAL COURT CORRECTLY FOUND THAT LACHES DID NOT BAR CONTESTORS FROM FILING AND PURSUING THIS ELECTION CONTEST.

The Ohio Supreme Court has "consistently required relators in election cases to act with the utmost diligence." *Blankenship v. Blackwell*, 103 Ohio St.3d 576, 2004-Ohio-5596, 817 N.E.2d 384, ¶ 19. "If relators do not exercise the required diligence, laches may bar the action for extraordinary relief in an election-related matter." *State ex rel. Choices for South-Western City Schools v. Anthony*, 108 Ohio St.3d 1, 2005-Ohio-5362, 840 N.E.2d 582, ¶ 20. The trial court specifically addressed these issues in its January 25, 2012 entry setting aside the Issue 6 election results.

The trial court specifically stated "The threshold issue is whether or not the petition is barred by the doctrine of laches. Laches will bar an action for relief in an election-related matter if the persons seeking this relief failed to act with the requisite due diligence." Record, Document 36, p. 3. In making that statement, the trial court cited to this Court's

decision in *State ex rel. Stoll v. Logan County Bd. of Elections*, 117 Ohio St.3d 76, 2008-Ohio-333, 881 N.E.2d 1214, which quotes the standard set forth above. In its decision, the court then reviewed the evidence before it and determined that:

A review of all the material submitted by Contestees demonstrates that other than the June 27, 2011, meeting minutes, the legal notice and the ballot language, none of the campaign materials ever expressed the amount of the ballot issue in dollars and cents per one thousand dollars in valuation as required by R.C. Section 505.481(B). Instead, the cost of the levy was either expressed in millage, costs per day or in annual cost.

Finally, the court finds that the circulation of the Hartville News, where the legal notice was published, was not adequate to put the contestors on notice of the irregularity so as to estop them from contesting the results.

Record, Document 36, p. 4. Despite the court's analysis of the evidence presented and the testimony presented by the five verifiers, appellants now attempt to find flaws with the court's determination that laches does not bar the election contest.

**A. No Voter Testified That He Or She Knew Of The Irregularity Before The Election.**

Despite the trial court's finding to the contrary, Lake Township argues that two of the verifiers who testified at the January 6, 2012 hearing admitted to knowing of the irregularity prior to the election. A review of the transcript demonstrates that that is simply not true. William Doty testified that he learned of the mistake after he read the ballot and later discussed it with James Miller, another verifier who testified. Tr. 1/6/2012, pp. 35-36. Mr. Doty also testified that his son, who voted absentee, advised him that he should read the ballot language, but that his son never told him that there was an error in the language. Tr. 1/6/2012, pp. 36, 37. Mr. Doty never testified that he was aware of the irregularity before the election and appellants never asked him any questions. The trial court specifically

questioned Mr. Doty and found that he did not have knowledge of the irregularity that would bar this election contest.

Lake Township next attacks the testimony of Cynthia Shaffer, who also testified at the January 6, 2012, hearing. Mrs. Shaffer testified that she voted absentee and, as such, received her ballot in October. After receiving the ballot, but before casting her vote, she also received the Lake Township newsletter, which is contained in the record as Lake Township's Exhibit 21. After reviewing both, she knew that something was different between the ballot language and the township newsletter, which did not include the ballot language. Tr. 1/6/2012, pp. 39-40. The fact of the matter is that after reviewing both the ballot and the newsletter, Mrs. Shaffer knew that something was different, but did not know what was wrong. Appellants never asked Mrs. Shaffer any questions to further develop her testimony, even though specifically told by the court that they could. Again, after questioning Mrs. Shaffer, the court concluded that she did not possess any knowledge that required her to file a pre-election protest and would bar her from pursuing this election contest.

Appellants' attack on Mr. Doty and Mrs. Shaffer is interesting in light of the fact that Lake Township admits that it was aware of the irregularity prior to the legal notices being published. See Merit Brief of Appellant and Cross-Appellee Board of Trustees of Lake Township, Stark County, Ohio, p. 3. While it may not be directly relevant to whether or not laches bars Contestors' election contest, it makes one wonder how Lake Township can attack the testimony of two of its residents when it readily admits that it was aware of the irregularity on October 12, 2011, and that on October 21 and October 28, 2011, it knowingly published a legal notice containing the irregularity. Even more egregious, they sat by and

allowed their residents to cast votes on an issue they knew contained the irregularity.

While the trial court chose to question the five voters who verified the petition regarding their knowledge of the irregularity, appellants were free to call any other witness they chose or to recall any of the five verifiers to further explore the laches issue. However, as is clear from the record, neither Lake Township nor the Citizens Committee chose to either recall any of the verifiers or call any additional witness regarding when that witness knew of the irregularity and what action was taken to correct it before the election.

**B. The Circulation Of The Hartville News Was Insufficient To Put Voters On Notice Of The Irregularity.**

Appellants next argue that the court erred when it considered the circulation of the Hartville News and determined that it was insufficient to put Contestors on notice of the irregularity. Lake Township specifically states that the sufficiency of the circulation of the Hartville News was stipulated. To the contrary, the only stipulation regarding the Hartville News is that that is where the legal notice was published. Tr. 1/6/2012, p. 14. There was never any discussion or a stipulation regarding the sufficiency of the circulation. After hearing testimony from two witnesses on January 6, 2012, that do not receive the Hartville News, the trial court inquired about its circulation on its own. Tr. 1/6/2012, pp. 35, 42. The fact that the trial court looked into the circulation of the Hartville News proves that the trial court did not consider the sufficiency of its circulation to be part of any stipulation.

In addition, the Citizens Committee submitted an affidavit from the co-owner, president and editor of the Hartville News verifying its paid circulation. Record, Document 33. Had the parties stipulated that the circulation of the Hartville News was sufficient, the affidavit would have been unnecessary. Further, a review of the affidavit supports the conclusion that circulation is insufficient as the Hartville News has only 794 paid subscribers

in the unincorporated areas of Lake Township. Compared to the fact that over 10,000 people cast votes for or against Issue 6, the trial court was correct to conclude that the circulation of the Hartville News was inadequate to put Contestors on notice of the irregularity.

**C. The Irregularity Was Not Plain On Its Face So As To Put Voters On Notice.**

Finally, appellants argue that the irregularity was plain on its face and therefore bars this election contest. In other words, the voters should have recognized and understood the error of Lake Township and the Board of Elections and taken action to correct it prior to the election. In support of this proposition, appellants rely on *In re Contested Election of November 2, 1993*, 72 Ohio St.3d 411, 1995-Ohio-16, 650 N.E.2d 859. However, appellants do not accurately cite the complete standard for applying equitable estoppel in an election contest. Appellants simply state that irregularities plain on the face of the ballot are enough to bar an election contest. However, the court actually stated that “in cases in which we have found equitable estoppel in an election contest, irregularities were plain on the face of the ballot, **and the contestors were aware of the alleged defects prior to the election.**” (Emphasis added.) *In re Contested Election of November 2, 1993*, 72 Ohio St.3d at 413. Here, the irregularity was not clear from the face of the ballot. Mrs. Shaffer’s testimony demonstrates that the irregularity was not clear. After reviewing the ballot and the newsletter, she was aware that something was different, but could not identify what, if anything, was wrong with the ballot. In addition, if the irregularity was clear, appellants would have noticed and corrected it well before the election. In addition, there is no evidence in the record that the Contestors were aware of the alleged defect prior to the election.

**D. Pursuant To *Beck*, Laches Has No Application In This Election Contest.**

In addition to all of the foregoing, appellants claim that laches bars this election contest is without merit based on this court's decision in *Beck*. Citing to the trial court's entry, the *Beck* court summarized the city's argument as follows:

The city in this instance advances the proposition that the contestors herein, having failed to challenge the ballot prior to the election, are deemed, as a matter of law, to be estopped from filing this contest. In other words, it is claimed that the action comes belatedly and therefore should not be entertained by the court.

*Beck*, 162 Ohio St. at 476. The *Beck* court went on to state: "With this, we do not agree. The court concludes the violative procedure in this instance is of such substantial nature as to void the results of the election." *Id.* Here, the irregularity, as stipulated by both Lake Township and the Citizens Committee, understated the amount of taxes to be collected by ten times the actual amount. In other words, the issue presented to and passed by the voters on November 8, 2011, was ten times less than the amount billed and collected in February 2012. This understatement is substantial. In fact, the trial court found that "contrary to the assertions of the contestees, this error is more than a 'clerical error' and the degree of this error is substantial enough to mislead the voters." Record, Document 36, p. 4. As such, pursuant to *Beck*, the irregularity is fatal to the election results regardless of laches.

The trial court thoroughly addressed the laches issue and determined that nothing in the record barred Contestors from bringing this election contest. Based on the record and the foregoing, the trial court's decision must be affirmed.

Proposition of Law 3

THE TRIAL COURT APPLIED THE CORRECT LEGAL STANDARD WHEN IT DETERMINED THAT THE RESULT OF THE ELECTION WAS UNCERTAIN DUE TO THE IRREGULARITY CONTAINED IN THE BALLOT LANGUAGE.

Ohio law is well-settled that a contestor's burden in an election contest requires the contestor to prove by clear and convincing evidence two facts: (1) that one or more election irregularities occurred, and (2) that the irregularity or irregularities affected enough votes to change or **make uncertain** the result of the election. (Emphasis added.) *In re Election of November 6, 1990, for Office of Attorney General of Ohio*, 58 Ohio St.3d 103, 105; 569 N.E.2d 447 (1991). After considering all stipulations, exhibits admitted into evidence and testimony provided at the January 6 and January 23, 2012 hearings, the court specifically applied the above standard as it stated "Under Ohio law, a contestor to an election must establish by clear and convincing evidence that (1) one or more election irregularities occurred, and (2) the irregularity or irregularities affected enough votes to change or make uncertain the result of the election." Record, Document 36, p. 2. There is no doubt that the trial court applied the correct standard.

**A. Contestors Proved By Clear And Convincing Evidence That The Irregularity Made The Election Results Uncertain.**

Despite the trial court's clear and direct explanation of the standard it applied to the facts of this case, appellants continue to argue that the court applied the wrong standard and repeatedly refer to the fact that the court found the results of the election to be uncertain. While Contestors acknowledge the standard in Ohio is that the irregularity affected enough votes to change or **make uncertain** the result of the election, they refuse to accept that the

standard provides two alternatives: that the election result would change, or that the result is uncertain. Instead of acknowledging or accepting that uncertainty is the standard, appellants continue to argue that Contestors did not meet their burden as they did not bring in 246 voters to testify that they voted yes but would have voted no but for the irregularity. (Issue 6 passed by 490 votes. As such, it would require 296 votes to change the result.) That standard is simply not required for Contestors to be successful in their election contest.

A simple example demonstrates the absurdity of appellants' argument. In the March 6, 2012, Republican primary election for president, Mitt Romney received 456,205 votes while Rick Santorum received 445,697 votes, a difference of 10,508 or 0.87%. See [http://vote.sos.state.oh.us/pls/enrpublic/f?p=130:18:0:PRDSW:NO::P18\\_SELECTED:1](http://vote.sos.state.oh.us/pls/enrpublic/f?p=130:18:0:PRDSW:NO::P18_SELECTED:1). Had an irregularity occurred in that contest, appellants' standard would require the contestor to produce 5,255 voters to testify that they voted one way but for the irregularity would have voted differently. In a statewide election with a difference of less than one percent, applying appellants' standard would create an impossibility. However, Contestors would be able to prove that the irregularity made the election results uncertain as was done in this case.

Despite appellants' repeated arguments that Contestors did not meet their burden, Contestors were required to prove that the irregularity made the election results uncertain. Correctly applying that standard, the trial court stated "the court is convinced that the result of the election was uncertain due to the irregularity contained in the ballot language."

**B. The Trial Court Acted Within Its Discretion Provided By R.C. 3515.11.**

Appellants next attack the trial court's order arguing that the trial court exceeded its authority and/or violated the rules of evidence. The hearing of an election contest is governed by R.C. 3515.11 which states, in pertinent part, that "the proceedings at the trial

of the contest of an election shall be similar to those in judicial proceedings, **insofar as practicable**, and shall be under the control and direction of the court which shall hear and determine the matter without a jury, . . . The hearing shall proceed expeditiously . . .” (Emphasis added.) Appellants’ argument that the court exceeded its authority or somehow changed or minimized Contestors’ burden is simply without merit.

In enacting R.C. 3515.11, the Legislature specifically acknowledged that a hearing on an election contest is a special circumstance. As such, it specifically provided the court with discretion to conduct the hearing as other judicial proceedings would be conducted, insofar as practicable. The qualification “insofar as practicable” grants the trial court discretion in conducting the hearing. As such, the court is not bound by the Rules of Evidence. Therefore, when the court admitted ten affidavits over the objection of appellants, it was within its authority pursuant to R.C. 3515.11.

**C. Appellants Were Never Denied the Opportunity To Present Witnesses.**

Finally, appellants argue that the trial court denied them the opportunity to present their own witnesses. This argument has no foundation in the record. At the January 6, 2012, hearing, the trial court questioned the five voters who verified the petition. At that time, the court specifically stated: “And I am not foreclosing them being recalled.” Tr. 1/6/2012, p. 31. In addition, after Contestors rested at the hearing on January 23, 2012, the court specifically told appellants “I want to proceed to hear whatever witnesses you have or evidence.” Tr. 1/23/2012, p. 78. Neither transcript ever indicates that either of the appellants attempted to call witnesses but were denied that opportunity by the trial court. The Citizens Committee’s contention in this regard is simply not true.

The trial court correctly cited and applied the well-settled standard in election contests. The parties stipulated that an irregularity existed in the Issue 6 ballot language. After reviewing all stipulations, evidence and testimony, the trial court found, by clear and convincing evidence, that Contestors had met their burden and that “. . . the result of the election was uncertain due to the irregularity contained in the ballot language.” Record, Document 36, p. 5. Any deviation from the rules of evidence was permissible under R.C. 3515.11 which states that the hearing of an election contest shall be similar to those in judicial proceedings, insofar as practicable, and shall proceed expeditiously.

**D. Pursuant To *Beck*, The Irregularity Is Fatal To The Result.**

In addition to all of the foregoing which support the trial court’s correct application of the standard in election contests, Contestors submit that based on the longstanding history of *Beck*, the application of this standard was not necessary. There is no dispute that Lake Township and the Board of Elections failed to comply with R.C. 505.481(B) when it misstated the amount of the tax levy in dollars and cents. Applying this Court’s holding in *Beck*, that error is fatal to the election results without ever requiring Contestors to prove that the election results are uncertain due to the irregularity.

Proposition of Law 4

VOTERS MUST BE ABLE TO TRUST IN THE INTEGRITY  
OF THE ELECTION PROCESS WHICH REQUIRES THAT  
THEY TRUST IN THEIR GOVERNMENT.

Contestors do not dispute that this Court has held that “in sum, the message of the established law of Ohio is clear: Our citizens must be confident that their vote, cast for a candidate or an issue, will not be disturbed except under extreme circumstances that clearly

affect the integrity of the election.” Here, the trial court took that analysis one step further, including that the electorate must also be confident in its government and as an extension the integrity of the election process. Record, Document 36, pp. 3, 5. However, every argument asserted by appellants results in the conclusion that voters should not trust anything put forth by their government in regards to an election. If appellants’ arguments are adopted no township, village, city, county or other taxing authority or board of elections will bear any responsibility to ensure that election laws are correctly administered.

If appellants are correct, a township or a board of elections which is responsible for preparing and drafting resolutions, legal notices and ballot language bears no responsibility to correctly state the issue or correct an error which occurs in any of those documents. Instead, it is the voters’ obligation to catch and correct such errors. Appellants’ position in this regard is clearly demonstrated in Lake Township’s statement of facts where they readily admit that they knew the ballot language was wrong as of October 12, 2011. Having acquired that knowledge, they proceeded to knowingly publish the ballot language in a legal notice that understated the tax to be levied by ten times the actual amount. While the public officials responsible for the ballot language take no responsibility for the error, and knowingly published it, they now attack and chastise their residents for not bringing a pre-election protest under the premise that they should have recognized the error in the ballot language. This position, if adopted, does nothing but call into question not only the integrity of the election process but also the motives of the governmental entity bringing the issue to ballot.

Similarly, appellants attempt to distance themselves from any responsibility in this matter by pointing to brochures and other campaign literature put out by a political action

committee advocating for one side of the issue. Both appellants make the argument that in this case the campaign literature should trump the legal notice and the ballot language itself. In other words, if a voter recognizes a difference between the cost of the tax levy as expressed in dollars and cents on the ballot and as a per day cost or an annual cost in campaign literature, that voter should trust the calculation included in the campaign literature and disregard the dollar amount expressed in the ballot. Again, this argument removes any responsibility from any taxing authority across this State to ensure that the election process is followed and that the amount of the tax levy is accurately presented to the voters.

If voters cannot trust their government to accurately state the cost of a tax levy as mandated by statute, those voters cannot be confident in their vote cast in any election. In this case, and in every other ballot issue across the state, the government cannot be permitted to make a mistake, learn of the mistake, let the election proceed knowing that the mistake had been made, and then argue that the voters did not do enough to catch and correct the mistake prior to the election. Such position advocated by appellants directly attacks the integrity of the election process and destroys citizens' confidence in their vote.

## CONCLUSION

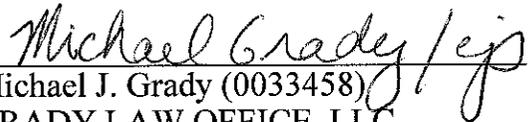
Each and every argument put forth by appellants lacks merit and is not supported by the record. Appellants stipulated that the Issue 6 ballot language contained an irregularity. That irregularity understated the amount of the tax to be levied against voters in dollars and cents by ten times the amount now being collected. After considering all stipulations, exhibits and testimony, the trial court concluded that the irregularity was substantial and that the results of the election were uncertain. Nothing presented by appellants demonstrates that the trial court abused its discretion or committed any error. As such, the trial court's decision must be affirmed and the results for Issue 6 from the November 8, 2011 election must be rejected.

Respectfully Submitted,



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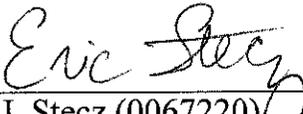
**CERTIFICATE OF SERVICE**

23 I certify that copies of this Response Brief were sent by ordinary U.S. mail this day of March, 2012, to counsel of record as follows:

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