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**COMPLAINT FOR A WRIT OF PROHIBITION**

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## NATURE OF THE ACTION

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1. This is an original action for a writ of prohibition. It seeks to prohibit Respondents Stark County Board of Elections and Hon. Jon Husted, the Ohio Secretary of State, from placing current Democratic-County Commissioner, Thomas M. Bernabei, on the November 2015 ballot as an independent candidate for the Office of Mayor of Canton, Ohio. This is due to Bernabei's failure to comply with mandatory Ohio Election law.

2. In particular, Respondents Stark County Board of Elections and Secretary Husted failed to enforce R.C. §§ 3501.01(I) and 3513.257 and Ohio Sec. State Adv. Op. No. 2007-05, which require that independent candidates *actually* be objectively unaffiliated with a political party and that a claim of disaffiliation must be made in good faith. The independent candidacy of a person who, *through* the date of signing and filing the independent nominating petitions, remained a Democratic-elected officeholder, actively campaigned for other Democratic candidates, and remained a member of Democratic clubs, fails to satisfy the objective-disaffiliation requirement. This is particularly true when the strength of the affiliation is confirmed by the candidate's decades of continuing service as a Democratic office holder, service as campaign treasurer for Democratic candidates in the same election he is seeking office as an independent, dozens of appearances on the ballot as a Democratic candidate, and tens of thousands of dollars donated to other Democratic candidates and organizations. When the evidence further confirms that the *sole* reason the candidate is attempting to run as an independent candidate is to gain access to the ballot because the Democratic primary deadline has passed, with the candidate further admitting under oath, "I should have run in the Democratic primary," the candidate's claim of political disaffiliation cannot be found to have been made in "good faith."

3. Further, the Respondents Stark County Board of Elections and Secretary Husted failed to enforce R.C. § 3513.261, which requires candidates for municipal office to establish a permanent, valid voting residence at the address listed on their nominating petition prior to the date of signing. A candidate who fails to establish any “habitation” whatsoever at the address listed on their nominating petitions prior to registering at that address, only moves into the address for less than a week, and then admits that they used the address solely for “temporary” purposes in an effort to qualify for the ballot until their desired permanent address at another address (in another school district and ward) becomes available, fails to satisfy this requirement.

4. Based upon a failure to enforce these requirements, Respondent Secretary Husted broke a tie-vote of Respondent Board that certified Thomas M. Bernabei as independent candidate for Canton Mayor on the November 2015 ballot. Relators, who consist of a majority of the membership of Canton City Council and the Ohio Democratic Party, ask this Court prohibit Respondents from ignoring state law and including the legally defective candidacy on the ballot.

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**THE PARTIES**

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5. Relator Frank Morris is the duly-elected Canton City Councilperson for Ward 9, the Leader of the Majority Democratic Caucus of Canton City Council, and a qualified Canton elector.

6. Relator Chris Smith is the duly-elected Canton City Councilperson for Ward 4, the Assistant Leader of the Majority Democratic Caucus of Canton City Council, and a qualified Canton elector.

7. Relator Thomas E. West is the duly-elected Canton City Councilperson for Ward 2 and a qualified Canton elector.

8. Relator Kevin Fisher is the duly-elected Canton City Councilperson for Ward 5 and a qualified Canton elector.

9. Relator David R. Dougherty is the duly-elected Canton City Councilperson for Ward 6 and a qualified Canton elector.

10. Relator John Mariol II is the duly-elected Canton City Councilperson for Ward 7 and a qualified Canton elector.

11. Relator Edmond J. Mack is the duly-elected Canton City Councilperson for Ward 8 and a qualified Canton elector.

12. Relator Ohio Democratic Party is a state political party organized under R.C. Chapter 3517, recognized by the State of Ohio as an official political party with the right to nominate candidates for election to public office at the primary election and to have its nominees designated by their political party on the general election ballot. Relator Ohio Democratic Party represents hundreds of elected office holders and hundreds of thousands of electors throughout the State of Ohio who are party members and who will be affected by the decision of this Court.

13. Respondent Stark County Board of Elections is the statutory body charged by R.C. Chapter 3501 with administering the election laws within Stark County, Ohio. Samuel J. Ferruccio, Jr. is the Chairman and one of four Members of Respondent Board. The remaining Members of Respondent Board are Frank C. Braden, William S. Cline, and William V. Sherer, II. Finally, Jeffrey Matthews is the Director of Respondent Board.

14. Respondent Secretary Husted is the duly elected Secretary of State of the State of Ohio and is the Chief Election Officer in the State of Ohio pursuant to R.C. § 3501.04.

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## JURISDICTION

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15. Article IV, Section 2(B)(1)(d) of the Ohio Constitution vests this Court with original subject-matter jurisdiction to issue a writ of prohibition to prevent further unauthorized acts of the Respondent Stark County Board of Elections, taken through and by the action of Respondent Secretary Husted.

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## FACTS PERTINENT TO ENTITLEMENT TO RELIEF

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16. The current Democratic Stark County Commissioner, Thomas M. Bernabei, filed a nominating petition and statement of candidacy on May 4, 2015 in an effort to seek election as an independent candidate for the office of Mayor of Canton, Ohio on November 3, 2015.

17. On May 29, 2015, Relators filed a protest against Bernabei's nominating petition and candidacy in accordance with R.C. §§ 3513.262 and 3501.39(A) (the "Protest," attached hereto as **Exhibit A**). The Protest challenged Bernabei's eligibility to run as an independent candidate on the following grounds:

- (1) Bernabei was not actually unaffiliated or disaffiliated from the Democratic Party when he signed and/or submitted his independent candidate nominating petition, and Bernabei's claim of unaffiliation from the Democratic Party was not made in good faith as required by R.C. §§ 3501.01(I) and 3513.257 and Ohio Sec. State Adv. Op. No. 2007-05, and
- (2) Bernabei's "voting residence" stated in his independent candidate nominating petition was not his actual permanent residence when he signed and/or submitted his petition, and

he was therefore not “a qualified elector” at that address nor “an elector qualified to vote for the office” he seeks as required by R.C. § 3513.261.

18. Respondent Stark County Board of Elections conducted a hearing on the Protest July 6, 2015. During the hearing, it was confirmed that Bernabei failed to actually disaffiliate with the Democratic Party prior to signing and submitting his independent nominating petitions for Canton Mayor. This was confirmed most clearly by Bernabei’s current and ongoing service as a Democratic-elected County Commissioner. (Transcript of Stark County Board of Elections Protest Hearing, July 6, 2015 (“Tr.”), attached hereto as **Exhibit B**, pp. 38-39; Protestors’ Hearing Exhibits (“Prts.’ Exhs.”) 16, 110).<sup>1</sup> It is also confirmed by his ongoing membership in Democratic clubs and active campaigning on behalf of Democratic candidates. (Tr., pp. 46-58, 112-21, Prts.’ Exhs. 52, 90, 92, 93, 103, 112, 113). Bernabei’s recent and consistent Democratic voting history, contributions, ballot appearances, and years of service as a Democratic elected official further supported this conclusion. (Tr., pp. 62-63, 76-77, Prts.’ Exhs. 22, 118, 119, 122).

19. While Bernabei presented evidence that his desire to run for Mayor of Canton was motivated by his belief that he could provide valuable service to the city, legal precedent instructs that “good intentions” are not the same as “good faith” for purposes of Ohio’s independent disaffiliation requirement. Indeed, the evidence confirmed that Bernabei did not begin to take any actions to disaffiliate with the Democratic Party until seven days before filing his independent nominating petitions. (Tr., p. 234, Prts.’ Exh.112). He was not motivated by any disagreement or ideological split with the Democratic Party when he did this. (Tr., p. 84). Rather, he simply wanted to run for Mayor as an independent as a result of his own

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<sup>1</sup> While the hearing transcript is submitted herewith, copies of the hearing exhibits will be submitted to the Court upon further direction or otherwise pursuant to the Supreme Court Rules of Practice; citation to the exhibits herein is to aid in the Court’s reference upon their submission.

dissatisfaction with the Democratic candidates that were already in the race. (Tr., pp. 229-233). Bernabei even stated during his testimony, “*I wish I would had run in the Democratic primary.*” (Tr., p. 296).

20. Even if Bernabei did satisfy the independent candidate disaffiliation requirements, the unrefuted evidence adduced at the hearing still confirmed that Bernabei’s candidacy is nevertheless fatally flawed. This is due to Bernabei’s failure to establish a permanent voting residence in the City of Canton prior to signing and filing his nominating petition. In fact, when Bernabei signed his petition, he had failed to establish any habitation at the address in his nominating petition whatsoever. (Tr., pp. 256-58). When Bernabei did begin to establish habitation at this address, he still intended it to be temporary residence only. (Tr., pp. 20-21, Prts.’ Exh. 49, pp. 3-4). This was corroborated by, among other undisputed facts, the fact that (i) since 2004, Bernabei owned another home in an adjacent municipality (Tr., p. 237), (ii) Bernabei had never slept at the address stated in his nominating petition prior to his signing the nominating petition (Tr., p. 259), (iii) the house stated in his nominating petition was vacant and listed for sale by a friend (Tr., p. 97), (iv) he only moved a very small amount of his belongings into the temporary address (Tr., p. 96), (v) his wife did not join him at the temporary residence but stayed at the home Bernabei owned in the adjacent municipality (Tr., pp. 263, 292), and (vii) Bernabei only slept at the address stated in his nominating petition for four nights, whereupon he moved to another Canton address located in a different ward and school district (Tr., pp. 259-60, 292). Indeed, Bernabei further admitted that the reason why he secured this temporary residence was solely to enable him to establish a residence in Canton to enable him to run for Mayor. (Tr., pp. 237-239, 243).

21. When Bernabei signed his nominating petition, he was to required disclose his “voting residence” and to affirm that he is “a qualified elector” at that address and “an elector qualified to vote for the office” of Canton Mayor. R.C. § 3513.261. Ohio Election law is very clear – a valid “voting residence” is “the place in which a person’s habitation is fixed,”<sup>2</sup> and “your voting residence is the location that you consider to be a permanent, not a temporary, residence.”<sup>3</sup> Bernabei’s own testimony confirms that he failed to establish a valid, permanent voting residence in the City of Canton prior to signing and filing his nominating petition as required by Ohio law.<sup>4</sup>

22. A motion was made to uphold the Protest at the conclusion of the hearing and to deny certification of Bernabei’s nominating petition and candidacy. Respondent Board’s Members deadlocked on the motion, two-to-two. (Tr., pp. 366-367). On July 23, 2015, Respondent Board then referred the matter to Respondent Husted, the Ohio Secretary of State, to cast the tie-breaking vote pursuant to R.C. § 3501.11(X). By letter dated July 31, 2015, Respondent Secretary Husted voted to disallow the Protest and to certify Bernabei’s candidacy, as reflected in **Exhibit C**.

23. In light of the overwhelming evidence presented at the hearing, Respondents Secretary Husted and the Stark County Board of Elections’ failure to uphold the Protest was an abuse of discretion and in clear disregard of Ohio Election law.

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<sup>2</sup> R.C. § 3503.02(A).

<sup>3</sup> See, e.g., Ohio Secretary of State, Voter Registration and Information Update Form, SEC4010 (Rev. 6/14), <http://www.sos.state.oh.us/sos/upload/elections/forms/4010.pdf> (last accessed Aug. 1, 2015) (Prts.’ Exh. 8). See also, Ohio Secretary of State, Guide to Voting in Ohio, SOS 0513 (02/2015) (“your residence is a location you consider your permanent dwelling.”) (Prts.’ Exh. 120).

<sup>4</sup> See, *State ex rel. Higgins v. Brown*, 170 Ohio St. 511, 166 N.E.2d 759 (1960).

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**BERNABEI FAILED TO SATISFY THE INDEPENDENT CANDIDATE  
REQUIREMENTS OF R.C. §§ 3501.01(I) AND 3513.257**

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24. Ohio uses a two-part test to determine whether a claimed independent candidate is actually independent as required by R.C. §§ 3501.01(I) and 3513.257:

- (1) The independent candidate must actually be unaffiliated, or disaffiliated from any political party; ***and***
- (2) The required claim of unaffiliation by an independent candidate must be made in good faith.

Ohio Sec. State Adv. Op. No. 2007-05, p. 3 (the “Advisory”) (*citing, Morrison v. Colley*, 467 F.3d 503 (6th Cir.2006) [emphasis added]). If either requirement is not satisfied, the candidate is not qualified to run as an “independent,” and the prospective candidate’s nominating petitions and candidacy are to be invalidated. *Id.* This Court has previously recognized that the Advisory appropriately guides the evaluation of whether a claimed independent candidate is truly “independent.”<sup>5</sup>

25. The first step of the Advisory is determined objectively by examining evidence that demonstrates an actual affiliation with a political party. As recognized in *Jolivette v. Husted*, if the evidence shows that the candidate is “not unaffiliated,” the candidate “cannot run as an independent candidate,” and the analysis ends there. 694 F.3d 760, 767-70 (6th Cir.2012).

26. The second step ensures that, even if a candidate claiming independence is not actually affiliated with a political party, the “claims” of disaffiliation must nevertheless be in “good faith.” In other words, as explained by the lower court in *Jolivette*, a claim of

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<sup>5</sup> *State ex rel. Monroe v. Mahoning Cty. Bd. of Elections*, 137 Ohio St. 3d 62, 2013-Ohio-4490, 997 N.E.2d 524, ¶ 22; *State ex rel. Davis v. Summit Cty. Bd. of Elections*, 137 Ohio St. 3d 222, 2013-Ohio-4616, 223, 998 N.E.2d 1093, ¶ 12.

disaffiliation must be “genuine and legitimate” and not “rooted in intra-party feuding, tactical maneuvering, or political convenience – circumstances that potentially disrupt the integrity of the election process by causing voter confusion or other problems.” 886 F. Supp. 2d 820, 827 (S.D. Ohio 2012). This is determined by examining the circumstantial evidence surrounding the candidate’s conduct.

27. The Advisory explains that there are two objective acts that will automatically disqualify a potential independent candidate, both of which involve some form of participation in the activities of the party. The lower court decision in *Jolivette* recognized the logic of such a rule was that “a rational candidate attempting to disaffiliate from a party out of political convenience would not engage in such conduct, if the candidate understands that taking certain actions would necessarily preclude running as an independent.” 886 F. Supp. 2d at 831. Indeed, the evidence presented at the hearing in this case confirmed that Bernabei was aware of these automatic disqualifiers when he filed his independent nominating petitions. (Tr., pp. 234-35, Prts.’ Exh. 49, pp. 8-10).

28. The Advisory describes the type of evidence that may serve as an indication of party affiliation to support a protest against an independent candidate’s candidacy. This evidence includes:

- Current holding of public office for which the office holder was nominated through a political party’s primary election and elected on a partisan ticket.
- Information submitted on required election-related filings.
- Political advertisements.
- Participation as a political party officer or member.
- Past voting history. While voting history alone may be insufficient to disqualify an independent candidate, the Advisory states, “voting history, together with other facts tending to indicate party affiliation, may be sufficient grounds to disqualify an independent.”

29. The Secretary of State has previously cited other types of evidence, in addition to the above, to uphold a protest against an independent candidate's candidacy:<sup>6</sup>

- Prior political contributions.
- Prior holding of office as for which the office holder was nominated through a political party's primary election and elected on a partisan ticket.
- Previously circulated declarations of candidacy.
- Prior political appointments.
- Information displayed on public websites.

30. The evidence listed above is relevant to both the actual disaffiliation and good faith inquiries. "The strength of the affiliation is necessarily pertinent when evaluating an asserted disaffiliation, as the candidate must demonstrate that the strings attaching him or her to the party are sufficiently severed, or at least that the candidate has engaged in decisive conduct demonstrating an intent to completely sever those strings, within a context not demonstrating a shift to independence as a means of political convenience or opportunism. *Jolivette*, 886 F. Supp. 2d at 829-30.

31. Finally, while Ohio law as it pertains to candidates is often liberally "interpreted in favor of ballot access," "strict compliance is the default for election laws and that standard is lowered only when the statutory provision at issue expressly states that it is."<sup>7</sup> Relators respectfully note that the standards for independent candidates set forth in R.C. §§ 3501.01(I) and 3513.257 do not provide for a "substantial compliance" exception.

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<sup>6</sup> *In re Greg Jolivette*, Ohio Sec. of State Letter (June 26, 2012), attached hereto as **Exhibit D**, *aff'd*, 886 F. Supp. 2d 820, 694 F.3d 760; *In re Edna Boyle*, Ohio Sec. of State Letter (Oct. 5, 2007), attached hereto as **Exhibit E**; *aff'd in dicta*, *State ex rel. Boyle v. Summit Cty. Bd. of Elections*, Ohio Ct. of Cmn. Pleas, Summit Cty. Case No. 2007-10-7107, 2007 WL 4462641 (Oct. 17, 2007).

<sup>7</sup> *State ex rel. Linnabary v. Husted*, 138 Ohio St. 3d 535, 8 N.E.3d 940, 2014-Ohio-1417, ¶¶ 40-42.

**A. Bernabei Was and Is Objectively Affiliated with the Democratic Party.**

32. The record evidence presented at the hearing proved, by clear and convincing evidence, that Bernabei was objectively affiliated, or failed to completely objectively disaffiliate, with the Democratic Party at the time he submitted his independent nominating petitions on May 4, 2015. Both Respondents Stark County Board of Elections and Secretary Husted failed to meaningfully consider and appropriately weigh this evidence. Both abused their discretion and clearly disregard pertinent Ohio Election law by failing to uphold the Protest and certifying Bernabei's independent candidacy in this face of this evidence.

**1. Bernabei Knew he had to Completely Disaffiliate.**

33. Consistent with the above legal authority, Bernabei knew he was required to objectively and completely disaffiliate if he desired to run as an independent candidate for Mayor of Canton. Bernabei testified:

Q. You've recognized and understood in terms of your efforts that you have to establish complete disaffiliation with your Democratic Party before you begin the process of filing; correct?

A. Yes.

\* \* \*

Q. If you are establishing complete disaffiliation before you file, you cannot continue to be affiliated up to, through, and including the election; correct?

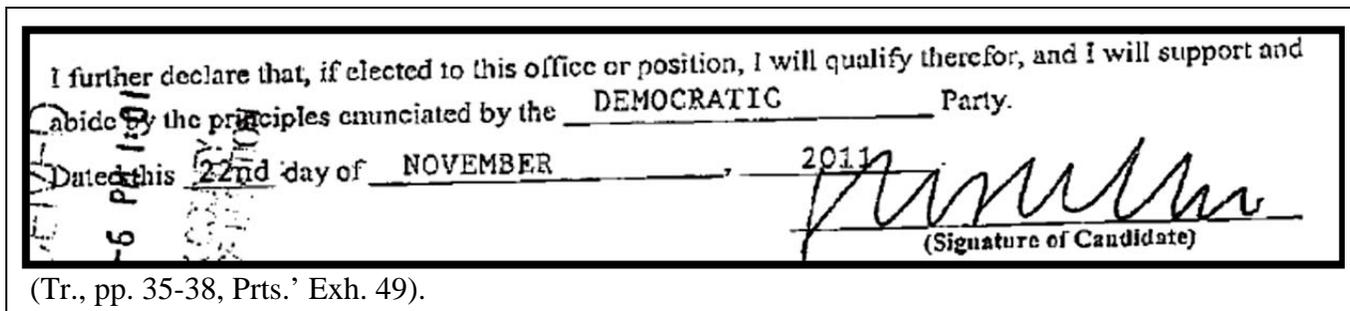
A. Yes.

(Tr., p. 44, 46).

**2. Bernabei's Post-Petition Affiliation is Confirmed by his Current Position as a Democratic-Elected County Commissioner.**

34. Bernabei's affiliation with the Democratic Party is objectively and conclusively established by his current, sitting, status as the elected-Democrat Stark County Commissioner,

which he has been since his election in November of 2010. (Tr., p. 220). When Bernabei circulated his Declaration of Candidacy to run for election to this position in 2010, and again when he ran for re-election in 2012, Bernabei affirmed as follows:



35. Bernabei agreed that this statement of party affiliation is important and something he would expect voters to rely upon:

Q. So it should be taken seriously when you state to the public and to the Board of Elections “I will support and abide by the principles enunciated by the Democratic Party” as you so stated on November 22nd, 2011, for the 2012 general election; correct?

A. Yes.

Q. Okay. When a candidate like you makes a statement on a serious document to the public, you would expect that this statement, this promise is something that you wanted the voters to believe and rely on; correct?

A. Yes.

(Tr., p. 37).

Q. You signed a statement that said you would be true to the principles of the Democratic Party. When you signed those statements, when you signed those pledges, in your heart did you intend to honor them?

A. Yes.

(Tr., p. 275).

Q. Is there an expiration date on that promise?

A. No.

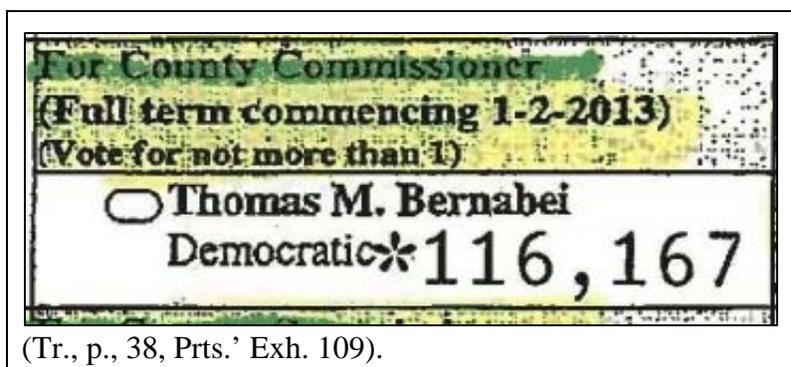
(Tr., p. 280).

Q. You do expect to be bound by people being able to rely upon “you will say what you do and do what you say”; correct?

A. That is an important thing.

(Tr., pp. 299-300).

36. As a result of Democratic Bernabei’s Declarations of Candidacy, Bernabei was elected to the position of Stark County Commissioner as a Democrat in 2010, and re-elected in 2012 upon the following ballot:



37. When Bernabei signed his independent nominating petitions on May 4, 2015, and continuing through today, Bernabei holds the office of Commissioner as an elected Democrat:

Q. So this election in 2012 where you ran as a Democrat, and you represented you would support and abide by the principles of the Democratic Party, you currently are still a sitting Stark County Commissioner; correct?

A. Yes.

(Tr., p. 39. See also, Tr., p. 63).

38. On the date of the Protest hearing, the official records of the Stark County Board of Elections Records continued to list Bernabei as a Democratic office holder. (Tr., p. 86, Prts.’

Exh. 110). Bernabei never requested that these records be altered or adjusted as a result of any disaffiliation with the Democratic Party. (Tr., p. 86). Even through today, these records continue to list him as a Democratic office holder.<sup>8</sup>

39. Bernabei is not only affiliated in fact with Democratic Party through his service as an elected-Democrat Commissioner, as explained above, but he is also affiliated in law. This is because, if Bernabei were to resign from his position of Commissioner (which is his intention if elected Canton Mayor (Prts.' Exh. 50, p. 13)), "the county central committee of the political party with which the last occupant of the office *was affiliated* shall" select Bernabei's successor. R.C. § 305.02(B).<sup>9</sup> To determine the political party with which Bernabei "was affiliated" in this context, the "voting record for the two years preceding" is determinative. *State ex rel. Herman v. Klopfleisch*, 72 Ohio St. 3d 581, 585-86, 651 N.E.2d 995 (1995). Bernabei has only voted as a Democrat within this time period. (Tr., p. 77, Prts.' Exh. 22). The Stark County Democratic Central Committee would therefore appoint Bernabei's successor. As a result, Bernabei is objectively "affiliated" with the Democratic Party by operation of law through his continued holding of office as a Democrat County Commissioner.

40. Bernabei agreed that, if he wanted to objectively and completely disaffiliate with the Democratic Party, he could have resigned as Commissioner:

Q. Your counsel asked the rhetorical question of what more you could have done to disaffiliate yourself. You ran twice and won with the support of the Democratic Party,

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<sup>8</sup> See also, Stark County Board of Elections, *Elected Officials List for 2015*, <http://www.starkcountyohio.gov/board-of-elections/documents/right-panel-documents2/eol13.xls> (last accessed July 31, 2015).

<sup>9</sup> The procedure to replace an "independent" Commissioner is only followed if that Commissioner "*was elected* as an independent candidate," in which case, "the prosecuting attorney and the remaining commissioners" select Bernabei's successor. R.C. § 305.02(C). As Bernabei was "elected" as a Democrat, the procedure for replacing an "independent" Commissioner does not apply.

suggesting and promising that if elected you would support and abide by the principles of the Democratic Party. One of the things you could have done to clarify and make clear your disaffiliation, you could have resigned this position; correct? You could have done that?

A. Yes.

(Tr., p. 39. See also, Tr., p. 63).

41. In *Jolivette*, both the Secretary of the State and the affirming opinions cited the recent affirmation to “support and abide by the principles enunciated by” a political party as grounds to require the disqualification of an independent candidate, even though the affirmation was withdrawn prior to the candidate filing his independent nominating petitions. 886 F. Supp. 2d at 831; 694 F.3d at 768. In this case, the affirmation was not withdrawn. Rather, Bernabei continues to hold elected office based upon his Democratic affirmation through the filing of his independent nominating petition.

42. Under the unique facts of this case, Bernabei’s continued service as a Democrat-elected Commissioner establish that he is not objectively “disaffiliated,” requiring his disqualification as an independent candidate. Respondents abused their discretion in failing to analyze or address the factual and legal significance of this post-petition evidence. While Secretary Respondent Husted stated that Bernabei “appears to have taken every reasonable step he could have taken to disaffiliate from the Democratic Party” (Exhibit C), this conclusion is contradicted by Bernabei’s own testimony. Bernabei admitted that, “to clarify and make clear [his] disaffiliation, [he] could have resigned this position.” (Tr., p. 39).

**3. Bernabei’s Post-Petition Affiliation is Further Confirmed by his Campaigning for Democratic Candidates.**

43. On February 5, 2015, Bernabei agreed to serve as the Campaign Treasurer for Kristen Donahue Guardado, a Democratic Candidate for the Canton Municipal Court. (Tr., p.

46-57, Prts.' Exhs. 21, 116). Guardado's effort to secure the Democratic nomination for election to this position was subject to a primary election on May 5, 2015 against another Democratic candidate. (Tr., p. 209). Bernabei offered his public endorsement in support of Guardado's efforts to secure the Democratic nomination. (Prts.' Exh. 92). As a result, Bernabei's name appeared on Guardado's campaign materials, as both Guardado's treasurer and by his public endorsement, through the date Bernabei filed his independent nomination petitions on May 4, 2015. (Tr., pp. 54, 58).

44. By way of example, once piece of campaign literature published in connection with Guardado's Democratic primary campaign read:

*The People you **Trust** with Your Safety Proudly Endorse*

Presented Standard US Postage PAID Canton, OH Permit # 1005

**Kristen Guardado** Donohue  
For Canton Municipal Court Judge

Proudly Endorsed by **Tom Bernabei, Treasurer,**  
Canton Police Patrolmen's Association

1071 THE UNIVERSITY  
4816 ELLIANDA CIR. NW  
CANTON OH 44709-1426

Paid for by the Kristen Donohue Guardado for Judge, Tom Bernabei, Treasurer, 9432 Spanish Bay Tr. SE, Canton, OH 44708

**Passionate, Experienced and a Dedicated Resident of the City of Canton**

- ★ Kristen was **born and raised** in the City of Canton and a graduate of **McKinley Senior High School**.
- ★ Kristen is the **ONLY candidate** in this race **that lives and works in the City of Canton**.
- ★ Kristen is the **ONLY candidate** in this race that has dedicated her career to **protecting** the City of Canton as a **Canton City Prosecutor for 19 years**.
- ★ Kristen is the **ONLY candidate** in this race that has been **endorsed by the Canton Police Patrolmen's Association**.
- ★ Kristen is the **ONLY candidate** in this race that is the **Senior Trial Counsel** in the court that she is running for Judge in.

**ENDORSEMENTS**

Canton City Law Director  
Joe Martuccio

Canton City Auditor  
R.A. Mallon

**Stark County Commissioner  
Thomas Bernabei**

Union Baptist Church  
Pastor  
Sherman Martin Jr.

(Prts.' Exh. 92 [emphasis added]).

45. Bernabei's also name appeared on Guardado's yard signs and billboards that were publicly displayed in support of her candidacy in the Democratic primary. (Tr., pp. 49-50, Prts.' Exh. 92). These signs and billboards continued to be displayed after the date Bernabei filed his independent nominating petitions on May 4, 2015 and through the primary election on May 5, 2015. Bernabei testified:

Q. [Y]our name continued to be on campaign signs through the day of the election; correct? You would not disagree with that?

A. No. I agree with that.

(Tr., p. 58).

46. Bernabei even recorded a radio commercial on behalf of Guardado's primary campaign on April 29, 2015 – five days before Bernabei filed his independent nominating petitions. (Tr., pp. 106-07, Prts.' Exh. 103). This radio ad stated:

MR. BERNABEI: This is Stark County Commissioner Tom Bernabei. In my former job as Canton Law Director, 19 years ago I hired Kristen Donohue Guardado as a young lawyer. Today, she is an experienced prosecutor and an active community leader in Canton and Stark County.

Kristen Donohue Guardado is running for Canton Municipal Court Judge. She has deservedly earned the endorsements of the Repository and Canton Police Patrolmen's Association.

***Please join me in voting for Kristen Donohue Guardado for Judge.***

Paid for by the Kristen Donohue Guardado for Judge Committee.

(Tr., p. 51, Prts.' Exh. 52 [emphasis added]).

47. Bernabei helped edit this ad prior to its recording and airing. (Tr., pp. 272-73). His request for voters to "join him" in voting for Guardado in the Democratic primary implied that he too was a Democrat that would be voting in this primary, and Bernabei agreed:

Q. The next-to-the-last sentence where you say “Please join me in voting for Kristen Donohue Guardado for judge,” this was a primary, a Democratic primary election that Kristen Donohue Guardado was running in; correct?

A. Yes.

Q. To vote for her in that primary election, you had to be a Democrat; correct?

A. Yes. Or registered as one.

(Tr., pp. 51-52).

48. Bernabei understood, and the evidence established, that this radio ad began publicly airing on April 30, 2015 and continued through and after the date that Bernabei filed his independent nominating petitions, until May 5, 2015:

Q. You will note that your radio ads asking voters to join you in voting for Kristen Guardado, the Democratic candidate, they ran Monday, the 4th, Tuesday, the 5th; correct?

A. Yes.

(Tr., p. 54. See also, Tr., pp. 107-08, 272, Prts.’ Exh. 93).

49. Finally, Bernabei made no effort to terminate any of his active involvement and public support of Guardado’s Democratic primary campaign prior to filing his independent nominating petitions:

Q. [You] made no effort to communicate to Kristen Guardado to stop the radio ads, to take down signs, to correct the representation that you were supporting her in her Democratic campaign? You made no effort to do that?

A. Of course not.

(Tr., p. 57).

50. Bernabei’s involvement in this Democratic primary campaign establishes that he was not objectively “disaffiliated” with the Democratic Party at the time he submitted his

independent nominating petitions on May 4, 2015. This evidence further supports his disqualification as an independent candidate. Respondents Board of Elections and Secretary Husted abused their discretion in failing to address and consider this post-petition evidence.

**4. Bernabei's Post-Petition Affiliation is Confirmed by his Membership in Democratic Clubs.**

51. Through and after the filing of Bernabei's independent petition on May 4, 2015, Bernabei remained a member of two local Democratic Clubs. These clubs are the Alliance Area Democratic Club and the Jefferson-Jackson Democratic Club.

52. Steven Okey, President of the Alliance Area Democratic Club testified:

Q. Can you describe the Alliance Democratic Club briefly?

A. Sure. The Alliance Area Democratic Club is an independent organization of Democrats serving the people in and around Alliance and actually open to membership to any member of the Democratic Party in Stark County.

Q. Is Tom Bernabei a member?

A. Yes, sir,

Q. And does he pay dues? I mean how does one become a member?

A. He pays dues. You sign up on a sheet which Mr. Bernabei did in February of this year. And you're a member.

(Tr., pp. 112-113. See also, Prts.' Exhs. 112, 113).

53. David Kirven, President of the Jefferson-Jackson Democratic Club testified:

Q. Can you briefly tell us what the Jefferson-Jackson Democratic Club is?

A. It's much like the Alliance Club, a democratic club. We just – it's a club made up of just local resident Democrats that are Democrats. We bring in public officials and folks that talk about issues in regards to democratic issues we have.

Q. Is Tom Bernabei a member?

A. Yes.

Q. Do you recall when he renewed his membership?

A. Just the same as everybody else. We send them out January. They come in January, February.

(Tr., pp. 119-20. See also, Prts.' Exh. 90).

54. Bernabei did not resign from either Democratic club prior to filing his independent nominating petitions on May 4, 2015 and remained a member of both through the date of the protest hearing. With respect to the Alliance Area Democratic Club:

Q. And did Mr. Bernabei ever resign from the club?

A. To our knowledge, no.

Q. You never got a resignation letter?

A. No, sir, we never did.

(Tr., p. 113). The Jefferson-Jackson Democratic Club:

Q. Mr. Kirven, did you ever receive a letter from Mr. Bernabei resigning his membership of the Jefferson-Jackson Club?

A. I did not.

Q. Okay. Are you aware if anybody ever received a letter resigning his membership of the Jefferson-Jackson Club?

A. Not to my knowledge.

(Tr., pp. 120-21).

55. Bernabei's efforts to explain his failure to resign from these clubs was unpersuasive, but most importantly, irrelevant. He testified that, on April 30, 2015, he did prepare letters resigning from both of these clubs. One was addressed to Mr. Kirven; the other Ms. Gwendolyn Dunagan, the Treasurer of the Alliance Area Democratic Club. (Respondent's

Hearing Exhibit (“Resp. Exh.”) B). That day, April 30, he provided the original copies of these letters – not to officers of these clubs – but to Jeannette Mullane, Deputy Director of the Stark County Board of Elections. (Tr., pp. 70, 245-49). He then asked that she deliver the letters to Phil Giavasis, the Chairman of the Stark County Democratic Party. (Tr., pp. 70, 245-49). Bernabei further testified that he provided these letters to Mr. Giavasis on a “conditional basis” and that his letters would only be effective if Bernabei made the final decision to run for Canton Mayor. (Tr., pp. 245-254). This final decision was ultimately made by Bernabei on May 2, 2015, and the decision was communicated the following day – which was the day before he filed his independent nominating petitions. (Tr., pp. 233, 255, 305). However, neither Mr. Giavasis nor Ms. Mullane testified that they were instructed by Bernabei to deliver his letters to the respective clubs upon his final decision to run for Canton Mayor.

56. Bernabei never actually mailed or otherwise delivered his “conditional” letters of resignation to the actual Democratic clubs from which he intended to resign. (Tr., pp. 66-67). Similarly, the Presidents of the clubs confirmed that neither Mr. Giavasis nor Ms. Mullane communicated Bernabei’s resignation, conditional or otherwise. (Tr., pp. 115, 121). Mr. Bernabei testified:

Q. You know Mr. David Kirven; don’t you?

A. I do.

Q. So I presume then that you made arrangements and handed that letter to Mr. Kirven?

A. I did not.

Q. You did not. I presume that because of the seriousness of establishing clarity in your disaffiliation you made sure that you personally put that letter in the mail to send it to him; correct?

A. I did not.

\* \* \*

Q. And the same with regard to the Democratic club in Alliance? What's the name of that?

A. Correct.

Q. Okay. You –

A. I did not mail that to them.

Q. Okay. And you did not hand it to any of the officers of that Democratic club?

A. I did not.

(Tr., pp. 66-67). As a consequence, the Presidents of both Democratic clubs testified that Bernabei was still a member through the date of the Protest hearing. (Tr., pp. 112-13, 119-20. See also, Prts.' Exhs. 90, 112, 113).

57. While Bernabei testified that he believed he submitted his conditional resignations from these clubs to the "appropriate persons" (Tr., pp. 65-67), no evidence was produced at the hearing to establish this fact. Neither Mr. Giavasis nor Ms. Mullane testified that they were the "appropriate persons." Nor is such evidence provided by the Constitution and Bylaws of the Stark County Democratic Party. (Prts.' Exh. 107). Rather, the evidence confirmed that, if Mr. Bernabei desired to resign from these clubs, he was required to communicate this resignation directly to the clubs themselves. Mr. Okey, the President of the Alliance Area Democratic Club testified that, "if he didn't want to be a member, he can send us a letter." (Tr., p. 118).

58. In light of this evidence, Bernabei acknowledged that his failure to deliver his "conditional" resignations to these Democratic clubs was an "omission" on his part. (Tr., pp. 72, 296). While Bernabei left for vacation in Florida the day he drafted his conditional letters of

resignation on April 30, 2015, not returning until May 3, 2015 (Tr., pp. 242, 255-56), Bernabei admitted that his Florida vacation did not prevent Bernabei from avoiding this omission:

Q. If you wanted to ensure that delivery was made, you could have flipped them in the mailbox at the airport?

A. Yes.

Q. You could have done that but you choose not to?

A. ...It was not an issue of choice. It was an issue of omission.

Q. An issue of omission?

A. Omission on my part to fail to mail them. Yes, I wish I had mailed them obviously. I wish I had run in the Democratic primary. We wouldn't be here today. Neither of those things happened. I omitted to mail them. I did not intentionally choose not to mail them.

(Tr., p. 296).

59. While Bernabei's "omissions" in failing to disaffiliate with the Alliance Area Democratic Club and the Jefferson-Jackson Democratic Club were perhaps inadvertent, the Sixth Circuit made clear in *Morrison* that this does not matter. 467 F.3d 503. Indeed, applying *Morrison*, the Sixth Circuit rejected this exact type of "accidental oversight" defense in *Jolivette* when it concluded that the "objective facts" indicated that the candidate did not "completely undo" his affiliation with his political party as required by Ohio Election law. 694 F.3d at 767.

60. Bernabei's failure to properly terminate his membership in the Alliance Area Democratic Club and the Jefferson-Jackson Democratic Club by the time he submitted his independent nominating petitions on May 4, 2015 establishes that he was not objectively "disaffiliated" with the Democratic Party. This evidence further supports his disqualification as an independent candidate. Respondents Board of Elections and Secretary Husted abused their

discretion in clear disregard of Ohio Election law by failing to address and appropriately consider this post-petition evidence.

**5. Bernabei's Post-Petition Affiliation is Confirmed by Public Displays of Continued Affiliation with the Democratic Party.**

61. Through and after the filing of Bernabei independent petitions on May 4, 2015, Bernabei's name and image continued to be publicly displayed in a manner conveying affiliation with the Democratic Party. More specifically:

- A. Bernabei continued to be listed as a Democratic elected official and leader on the Stark County Democratic Party's website. (Prts.' Exh. 98).
- B. Bernabei's photograph continued to be displayed on the walls of the Stark County Democratic Headquarters as a Democratic elected official. (Prts.' Exh 94).
- C. Bernabei continued to be listed as Democrat Kristen Donohue Guardado's Campaign Treasurer on Guardado's campaign website. (Prts.' Exh. 95).
- D. Bernabei continued to be listed as Democrat Chryssa Hartnett's Campaign Treasurer on Hartnett's campaign website. (Prts.' Exh. 96).
- E. Bernabei continued to be listed as Democrat Frank Forchione's Campaign Chairman on Forchione's campaign website. (Prts.' Exh. 97).

62. Bernabei never requested that these public displays of Democratic affiliation be removed prior to filing his independent nominating petitions on May 4, 2015. (Tr., pp. 59-60). Nor did Bernabei ask that his name or image be removed after the filing of the Protest. (Tr., pp. 59-60). Indeed, they are still publicly displayed to this day.<sup>10</sup>

63. In *Jolivette*, the Sixth Circuit recognized that ongoing public displays of a claimed independent candidate's political affiliation is evidence that will support the candidate's

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<sup>10</sup> See, e.g., Stark County Democratic Party Website, *Elected Officials*, <http://www.starkdems.com/leadership/elected-officials> (last assessed July 31, 2015); Kristen Donohue Guardado for Jude Website, <http://www.guardadoforjudge.com/> (last accessed July 31, 2015); Chryssa Hartnett for Judge Website, <http://www.hartnettforjudge.com/> (last accessed July 31, 2015).

disqualification due to the candidate’s failure to “completely undo [their] affiliation with [their political party] in advance of filing their petition to run as an independent.” 694 F.3d at 768. The failure to consider this post-petition evidence is an abuse their discretion in clear disregard of Ohio Election law.

**6. The Pre-Petition Evidence Demonstrating Bernabei’s Affiliation with the Democratic Party Further Supports Bernabei’s Disqualification.**

64. Both the Advisory and subsequent case law confirm that evidence of pre-petition affiliation is relevant to the determination of whether an independent candidate is “affiliated” with a political party. *Jolivette*, 694 F.3d at 768; *State ex rel. Davis v. Summit Cty. Bd. of Elections*, 137 Ohio St. 3d 222, 2013-Ohio-4616, 998 N.E.2d 1093, ¶¶ 25-27. In addition to the post-petition evidence above, significant pre-petition evidence was presented at the hearing.

65. Bernabei’s served 17 years in office as an elected Democrat, which continues to the present. (Tr., pp. 62-63, Prts.’ Exh. 119). Bernabei appeared on the ballot as a Democratic candidate 14 times, most recently in May of 2014. (*Id.*). Bernabei was employed by other elected Democrats for 12 years, most recently in 2008. (*Id.*). This evidence was summarized as:

YEARS IN OFFICE AS AN ELECTED DEMOCRAT		
Democrat Canton Law Director	11	(1989 - 2000)
Democrat Canton City Council	2	(2004 – 2005)
<b>Democrat County Commissioner</b>	4 +	<b>(2011 – Present)</b>
<b>TOTAL YEARS AS ELECTED DEMOCRAT:</b>	<b>17 +</b>	<b>(Continuing to Present)</b>

APPEARANCES ON BALLOT AS A DEMOCRAT		
	Primary Election	General Election
Democrat Canton Law Director	1991, 1995, 1999	1989, 1991, 1995, 1999
Democrat Canton City Council	2003	2003
Democrat County Commissioner	2010, 2012	2010, 2012
Democrat Central Committee	2014	
<b>TOTAL BALLOT APPEARANCES AS DEMOCRAT:</b>		<b>14</b>

EMPLOYMENT WHEN HIRED BY OTHER ELECTED DEMOCRATS			
Massillon Law Department	( <i>Thomas V. Ferraro</i> )	2	(1976-1978)
Canton Law Department	( <i>Harry E. Klide / W. Scott Gwin</i> )	9	(1979 – 1988)
Mayor of City of Canton	( <i>William J. Healy II</i> )	1	(2008)
<b>TOTAL YEARS HIRED BY DEMOCRATS:</b>		<b>12</b>	

(Tr., pp. 62-63, Prts.' Exh. 119).

66. It was established by stipulated evidence that, since 1998, Bernabei donated \$30,203.22 to Democratic candidates and organizations. (Tr., p. 76. See also, Prts.' Exhs. 26-42, 87-88, 90-91). Since 2014, Bernabei's Democratic political contributions were as follows:

<b>BERNABEI'S DEMOCRATIC POLITICAL CONTRIBUTIONS SINCE 2014</b>		
<b>Democratic Candidate or Entity</b>	<b>Amount</b>	<b>Date</b>
Jefferson Jackson Democratic Club	\$200.00	4/24/2015
Stark County Democratic Party	\$500.00	4/22/2015
Greg Hawk for Canton Council	\$50.00	4/7/2015
Edmond Mack for Canton Council	\$50.00	3/26/2015
John Mariol for Canton Council	\$50.00	3/26/2015
James Babcock for Canton Council	\$50.00	3/26/2015
Kristen Guardado for Canton Municipal Judge	\$100.00	3/3/2015
Stark County Democratic Party	\$100.00	11/21/2014
George Maier for Sheriff	\$500.00	9/24/2014
Chryssa Hartnett for Common Pleas Judge	\$500.00	7/29/2014
Connie Rubin for Ohio Statehouse	\$50.00	6/11/2014
Stark County Democratic Party	\$100.00	5/19/2014
Jefferson Jackson Democratic Club	\$80.00	3/20/2014
Chryssa Hartnett for Common Pleas Judge	\$100.00	2/18/2014

(Tr., p. 76, Prts.' Exh. 118).

67. With respect to Bernabei's political donations, the evidence reflected that Bernabei's \$500 donation to the Stark County Democratic Party on April 22, 2015 was as a "Bar Sponsor" in connection with a Party fundraiser held on April 30, 2015 – four days before Bernabei submitted his independent nominating petitions. (Tr., p. 83, Prts.' Exh. 91). Bernabei's \$200 donation to Jefferson-Jackson Democratic Club was in sponsorship of a fundraiser for the Club on April 24, 2015 – eleven days before Bernabei submitted his independent petitions. (Tr., pp. 119-20, Prts.' Exh. 90).

68. Pressing further, the evidence confirmed that Bernabei's own campaign Designation of Treasurer on file with the Stark County Board of Elections designated Bernabei as a Democrat. (Tr., p. 80, Prts.' Exh. 18). Bernabei did not change this designation to

“independent” until May 4, 2015, which is the same day he submitted his independent nominating petitions. (Tr., p. 80, Prts.’ Exh. 46).

69. The undisputed evidence showed that Bernabei was the Campaign Treasurer for Democrat candidates Joseph Martuccio, Chryssa Hartnett, and Kristen Donahue Guardado until he resigned on May 4, 2015, the day submitted his independent nominating petitions. (Tr., p. 80, Prts.’ Exhs. 19, 20, 21, 45). Bernabei testified that he did not inform Guardado that he was resigning as her Treasurer or that he was otherwise attempting to disaffiliate with the Democratic Party, until *after* Bernabei filed his independent petitions. (Tr., p. 292).

70. The stipulated evidence established that Bernabei was elected to the Stark County Democratic Central Committee in May of 2014. (Tr., pp. 39-42; Prts.’ Exh. 48). Bernabei submitted his “conditional” resignation from the Central Committee to Party Chairman Phil Giavasis on April 30, 2015, which was only effective if Bernabei made the final decision to run for Canton Mayor as an independent candidate. (Tr., pp. 245-254, Resp. Exh. D). Bernabei made the final decision May 2, 2015, and he filed his resignation from the Central Committee with the Board of Elections on May 4, 2015 – *subsequent* to the filing of his independent petitions. (Tr., p. 233, Prts.’ Exh. 1, Resp. Exh. D).

71. The pre-petition evidence also confirmed that, on February 5, 2015, Bernabei was a guest speaker at the meeting of the Alliance Area Democratic Club. (Tr., p. 78, Prts.’ Exh. 82). On November 18, 2014, Bernabei was a guest speaker at a meeting of the Western Stark County Democratic Club. (Tr., p. 83, Prts.’ Exh. 81). On July 17, 2013, Bernabei was a co-host to Chairman Chris Redfern at a reception to benefit the Ohio Democratic Party. (Prts.’ Exh. 79).

72. The pre-petition evidence showed that, in 1989, Bernabei successfully sought appointment by the Stark County Democratic Party Central Committee to the position of Canton

Law Director. (Prts.’ Exh. 62, 63). Upon Bernabei’s retirement from this position in 2000, he successfully lobbied the Stark County Democratic Party Central Committee to appoint Democrat Joseph Martuccio as Bernabei’s successor. (Tr., p. 75, Prts.’ Exh. 64).

73. With respect to Bernabei’s Democratic-voting history, the stipulated evidence demonstrated:

BERNABEI’S DEMOCRATIC PRIMARY VOTING HISTORY	
2014	2001
2012	2000
2010	1999
2008	1997
2006	1994
2005	1993
2004	1992
2003	1991
2002	

(Tr. p., 77, Prts.’ Exh. 22). With respect to this voting history, Bernabei further testified he has voted “solely” as a Democrat. (Tr., p. 77). He has never voted in a Republican Primary. (Tr., p. 77). The only time Bernabei ever cast a “non-partisan” primary ballot was on May 5, 2015 – the day after he filed his nominating petitions – and in conscious recognition of the “automatic” disqualifiers of independent candidacies established by the Advisory. (Tr., pp. 77, 234-35, Prts.’ Exh. 49, pp. 8-10, Prts.’ Exh. 50, pp. 7-8).

74. During his testimony, Bernabei acknowledged that, until he began his efforts to run as an independent candidate for Canton Mayor in late April 2015, Bernabei has consistently considered himself a Democrat, a self-identification that dates back to the late ‘60s. (Tr., p. 219). The evidence further confirmed that, in March of 2014, Bernabei was quoted in the media as stating, “Yes, I am a dyed-in-the-wool Democrat who serves with two Republicans.” (Tr., p. 58, Prts.’ Exhs. 80, 84). Bernabei testified:

Q. Okay. And two lines – three lines farther down, once again the general understanding that you had described yourself

as a dyed-in-the-wool Democrat. This is now reported by a second newspaper or media outlet. Those are your words? That's how you described yourself; correct?

A. I acknowledge that. Yes.

(Tr., p. 58).

75. With respect to what it means to identify oneself as “dyed-in-the-wool,” Bernabei participated in the following exchange during the Protest hearing:

Q. You make reference repeatedly to yourself as a dyed-in-the-wool Democrat. So that there's no lack of clarity, you wouldn't disagree with the definition from Merriam-Webster in terms of defining dyed-in-the-wool? You would agree that dyed-in-the-wool means having very strong beliefs, opinions, et cetera, that you are not willing to change? That's a fair definition of dyed-in-the-wool, isn't it?

A. Yes. I would agree.

\* \* \*

Q. And just to make sure that Merriam-Webster's dictionary didn't get it wrong, we go to the second page to the Free Dictionary which is a more contemporary dictionary. Dyed-in-the-wool, the first dyed-in-the-wool, it says, [of someone] permanent or extreme.” And then the definition below says, dyed-in-the-wool, “If you describe someone as dyed-in-the-wool, you mean they have very strong opinions and will not change.” So we can agree that at least the Free Dictionary and Merriam-Webster have the same idea of what dyed-in-the-wool means when it's spoken; correct?

A. Yes.

(Tr., pp. 60-62, Prts.' Exh. 126).

76. As recognized by the Advisory and the subsequent decisions that have applied it, the undisputed pre-petition evidence presented in this case is the exact type that may support the disqualification of an independent candidacy. Respondent Secretary Husted's view of this pre-petition evidence as “a recitation of [Bernabei's] past political activity” insufficient to support

Bernabei's disqualification clearly disregarded the standards established by the Advisory itself. While the only three reported Ohio appellate-level decisions to-date have not sustained disqualification of an independent candidate based upon pre-petition evidence alone,<sup>11</sup> this Court has acknowledged that such a conclusion may be appropriate on sufficient evidence. *Davis*, 137 Ohio St. 3d 222 at ¶ 27. Even in the absence of the post-petition evidence presented in this case, Relators respectfully submit that the pre-petition evidence satisfies the quantum of evidence contemplated by this Court in *Davis*. Indeed, it is hard to imagine that a case with more substantial and current pre-petition evidence could ever exist.

**7. Respondents Abused their Discretion in Clear Disregard of Ohio Election law by Failing to Uphold the Protest as a Result of Bernabei's Failure to Completely Disaffiliate with the Democratic Party.**

77. At the hearing in this matter, Bernabei did present evidence to show that, in the days leading up to the filing of his independent nominating petitions, he took some actions to try to disaffiliate with the Democratic Party. However, as recognized in both the Advisory and *Jolivette*, taking *some* action in an effort to disaffiliate with a political party is insufficient if that conduct does not establish a complete and actual disaffiliation. 886 F. Supp. 2d at 830. In other words, the candidate must “completely undo” their affiliation with their political party “in advance of filing [their] petition to run as an independent.” 694 F.3d at 768. Even Bernabei himself agreed that he was required to “establish complete disaffiliation with your Democratic Party before you begin the process of filing.” (Tr., p. 44).

78. The clear and convincing evidence established that Bernabei failed to take the steps that he knew he was required to take. Bernabei was, and is, a Democratic-elected County Commissioner. Bernabei was actively and publicly engaged in campaigns for Democratic

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<sup>11</sup> *Monroe*, 137 Ohio St. 3d 62; *Davis*, 137 Ohio St. 3d 222; *State ex rel. Livingston v. Miami Cty. Bd. of Elections*, 196 Ohio App. 3d 263, 963 N.E.2d 187, 2011-Ohio-6126.

candidates through the filing of his independent petitions. He even publicly requested voters to “join him” in voting in the Democratic primary in a radio commercial that aired the day after he filed. He failed to resign his membership in two separate Democratic clubs. His image remained displayed publicly on Democratic websites. Bernabei agreed that it was within his power to sever all of these objective Democratic ties and that doing so would “clarify and make clear [his] disaffiliation.” Yet he failed to do so. Respondent Secretary Husted erred by concluding “[t]here is little doubt Mr. Bernabei took calculated efforts to disaffiliate from the Democratic Party” (Exhibit C) without analyzing this evidence in the context of Bernabei’s admitted failure to complete this effort – as Bernabei was required. When consideration is given to the voluminous pre-petition evidence confirming Bernabei’s historic, consistent, and, most importantly, – recent and continuing – actions in furtherance of his Democratic affiliation, any result other than the disqualification of Bernabei’s candidacy is an abuse of discretion and in clear disregard of Ohio Election law.

79. The Secretary of State’s decision in *Boyle*, and the *obiter dicta* affirming opinion of the Summit County Court of Common Pleas, cited the exact type of pre-petition evidence present in this case to disqualify an independent candidate – even without post-petition evidence. 2007 WL 4462641. The hearing in this case revealed far more of this pre-petition evidence. It also presented significant post-petition evidence, which was entirely absent in *Boyle*. This distinguishes this matter from the two cases previously decided by this Court and the decision of Second District Court of Appeals, each of which considered an independent candidate’s disaffiliation in the absence of the Advisory’s automatic disqualifiers.<sup>12</sup> The facts at issue in those cases did not present a failure to “completely undo” objective political affiliation, and, as

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<sup>12</sup> *Monroe*, 137 Ohio St. 3d 62; *Davis*, 137 Ohio St. 3d 222; *Livingston*, 196 Ohio App. 3d 263.

mentioned above, the pre-petition evidence that did exist in each of those cases was far weaker than presented here.

80. *Jolivette*, on the other hand, disqualified an independent candidate premised upon a failure to completely disaffiliate, buttressed by pre-petition evidence. 886 F. Supp. 2d 820, *aff'd*, 694 F.3d 760. *Jolivette* is directly on point, and Relators respectfully submit that it and should be applied by this Court. Relators respectfully submit that any other result would require this Court to conclude the Secretary of State's decision in *Jolivette* and the subsequent affirming federal opinions were an inaccurate statement and application of Ohio Election law. Indeed, the vast majority of the standards set forth in the Advisory itself would be nullified, as those are upon what *Jolivette* was based. Relators submit that the more appropriate course is to re-affirm Ohio's independent disaffiliation requirements, grant Relators' requested writs, and, on the unique facts of this case, find Respondents Board of Elections and Husted abused their discretion in clear disregard of applicable law in the certification of Bernabei's independent candidacy.

**B. Bernabei Failed to Disaffiliate with the Democratic Party in Good Faith.**

81. Even if this Court disregards Bernabei's failure disaffiliate with the Democratic Party prior to filing his independent nominating petitions on May 4, 2015, the record evidence presented at the hearing nevertheless proved, by clear and convincing evidence, this disaffiliation did not occur in good faith. Respondents Board of Elections and Secretary Husted's conclusion to the contrary was an abuse of discretion was an abuse of discretion in clear disregard of Ohio Election law.

82. Bernabei did not testify that his motivation for disaffiliating with the Democratic Party was due to any disagreement with the Democratic Party. Nor did Bernabei testify that his disaffiliation was due to any change in ideology. Relators respectfully submit that Respondent

Secretary Husted's conclusion to the contrary is not supported by the record. (Exhibit C). Rather, Bernabei has consistently described his relationship with the Democratic Party in positive terms. During the hearing, Bernabei described his connection with the Democratic Party as "heartfelt" and acknowledged "the party that had treated me well." (Tr., pp. 221, 225). In an interview two days after filling his independent petitions, Bernabei explained:

MR. BERNABEI: But ya know, again, ya know, no I, I am not leaving the Democratic Party, ah, ya know, on, on bad terms in any way, shape or form. *Ya know, nothing occurred.* And if you read the cases by the way, most of the, most of these cases are about candidates who left their party because they were spurned in some way, shape or form, or, or ya know, there's, there's a whole line of cases like that and so forth. But no, I truly appreciate the relationship that I had with the Democratic Party.

(Prts.' Exh. 49 [emphasis added]).

83. Rather than an ideological split, Bernabei testified that his motivation for disaffiliating from the Democratic Party was for one reason – he wanted access to the ballot as candidate for Mayor, and the only way to the ballot at the time he made this decision to run for Mayor was via the independent route:

- Q. So when did it occur to you at last that you were going to really do this? When did you firmly in your min[d] decide to disaffiliate from the party and seek the mayoral?
- A. I ultimately firmly made the decision in, when I was in his Clearwater Beach on probably Saturday, May 2nd, 2015.

(Tr., p. 233).

84. Bernabei described the reason why he wanted to run for Mayor at length. Bernabei consistently expressed that this reason was he became "disillusioned" and "underwhelmed" with the Democratic candidates who were running against each for Mayor in the Democratic primary at the time, namely, current Canton Mayor Wiliam J. Healy, II and Auditor Kim Perez. (Tr., p. 229. See also, Tr., pp. 205-06). Because there was no Republican

candidate that was running for Mayor, the officeholder would be decided in the Democratic primary between Healy and Perez absent an independent candidate entering the race. (Prts.' Exh. 131).

85. Bernabei testified that his dissatisfaction with the Democratic mayoral candidates was “galvanized” after listening to a debate between the two candidates on April 22, 2015 and after reading an editorial in the local newspaper on April 26, 2015. (Tr., pp. 229-230. See also, Tr., pp. 205-06; Prts.' Exhs. 130, 131). This caused Bernabei to draw the conclusion that he would do a better job as Mayor than the two Democratic candidates that were running. Bernabei explained:

I think that, probably by way of my elected office that I had hold, that I have done many things. I think that other things I have done I've done well. But I believe that I could do more and that I owe the community more.

And it was a combination or convergence of that state of mind with the, again, the debate and the editorial that led me to seriously undertake this decision and to ultimately make it.

(Tr., p. 232).

86. However, because Bernabei arrived at his decision to run for Mayor well after the February 4, 2015 primary filing deadline, the only way Bernabei could run for Mayor was as an independent candidate:

Q. So this is not something you were doing because you missed the deadline for the primary filing?

A. That is correct.

Q. Something you're doing because you came to the decision *afterward* that somebody ought to run as an independent?

A. That is correct.

(Tr., pp. 298-99 [emphasis added]).

87. This is not good faith disaffiliation within the meaning of Ohio Election law. As *Jolivette* recognized, “good faith” is lacking when a candidate disaffiliated from a party solely because the candidate “wanted access to the ballot” as an independent candidate. 886 F. Supp. 2d at 832-33; 694 F.3d at 768-69. It is true this Court recognized that a candidate’s claim of disaffiliation is not automatically “in bad faith” simply because the candidate considered the strategic implications of the disaffiliation decision. *Monroe*, 137 Ohio St. 3d 62 at ¶ 27. However, without more supporting the claim of disaffiliation, such as an expression of “a change in ideology or policy to explain [the] disaffiliation,” good faith cannot be based upon a desire for to access the ballot via the independent route alone. *Jolivette*, 886 F. Supp. 2d at 832-33; 694 F.3d at 768-69. In other words, merely having “good intentions” in seeking to run for office is not the same as disaffiliating from a political party “in good faith.”

88. Respondent Husted appears to be in agreement with this point of law, as his decision acknowledges that “good faith” disaffiliation is lacking if the clear and convincing evidence shows that the candidate “was motivated by something other than a sincere change of ideology.” (Exhibit C). Yet that is exactly what the undisputed evidence in this case reflects. Bernabei wanted to run for Canton Mayor. The only way to do so at such a late stage was via the independent route, and Bernabei knew that path required his disaffiliation from the Democratic Party. But if the aim of Ohio’s disaffiliation requirement is “maintaining the integrity of various routes to the ballot [and] preventing candidacies that are prompted by short-range political goals, ...[t]his type of political maneuvering must not be condoned, lest the integrity of the political process will suffer.” *Jolivette*, 886 F. Supp. 2d at 828, 834. To hold otherwise would essentially render the “good faith” requirement of the Advisory meaningless. If a member of a political party could establish their “good faith” political disaffiliation merely by expressing their sincere

desire to appear on the ballot as an independent, it would automatically be established in every case.

89. Indeed, the undisputed evidence at the hearing overwhelmingly confirmed that, if Bernabei desired to run for Mayor of Canton, he should have simply run in the Democratic primary. Bernabei himself even acknowledged this and testified, “I wish I had run in the Democratic primary.” (Tr., p. 296). As to the reasons why Bernabei failed to do so, Bernabei explained during an interview prior to the Protest hearing:

REPORTER: Why didn’t you run in the primary?

TOM BERNABEI: I didn’t run in the primary because I hadn’t contemplated running for the office of mayor in the primary at that time. That was back in November or December of last year. And we were very busy in the commissioner’s office. .. ummm, you know..., [I] allow[ed] the process in the primaries to take its place. I was hopeful, of course, that there would be a Republican candidate as well as a Democratic candidate to challenge the various offices. And it turned out the way it turned out.”

(Tr., p. 88).<sup>13</sup>

90. Bernabei gave a similar explanation during the Protest hearing:

Q. Why didn’t you run in the primary?

A. That’s a great question. Why didn’t Bernabei run in the primary?

Q. Yes, sir.

A. You know, again hindsight says that Bernabei probably should have chosen to run in the primary.

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<sup>13</sup> See also, Schultze, M.L., *Stark elections board to vote today on Canton mayor candidate*, WKSU, 89.7, <http://www.wksu.org/news/story/43338> (last accessed Aug. 1, 2015); Duer, Benjamin, *#StarkElex Video: No decision on Bernabei, Cicchinelli – yet*, The Massillon Independent, <http://www.indeonline.com/section?template=videodetail&vid=4302608152001&vidtitle=%23StarkElex%20Video%3A%20No%20decision%20on%20Bernabei%2C%20Cicchinelli%20-%20yet> (last accessed Aug. 1, 2015).

The answer is that during the primary season I was not focused on the issue of the mayoral race in the City of Canton. My focus at that time was with regard to county government which was always my primary function or focus, whatever office may be involved.

It was a determination. At the time prior to filing, I did not know who may or who may not file. I did not know that a Republican was not going to file. Those all became issues later on.

(Tr., p. 228).

91. In *Jolivette*, the Secretary of State cited a hindsight admission similar to Bernabei's to support the disqualification of a purported independent candidate. ("Mr. Jolivette indicated that he wished he had brought his [republican candidate] petitions into the Board of Elections earlier so that the error would have been noted and he would have had additional time to circulate another petition.") Applying this principle, Mr. Bernabei's admissions that "I wish I had run in the Democratic primary" and that he "should have chosen to run in the primary" (Tr., pp. 228, 296) require disqualification even more forcefully than it did in *Jolivette*.

92. Bernabei's stated justifications for not running in the Democratic primary, that he was "very busy" at the time and "not focused on the issue of the mayoral race" and that he instead "allow[ed] the process in the primaries to take its place," are certainly insufficient to overcome Bernabei's admissions that he should have, in fact, run in the primary. (Tr., pp. 88, 228). While Bernabei testified that he did not realize the full extent of his dissatisfaction with Healy and Perez until April 26, 2015, the evidence confirmed that neither of these candidates were strangers to Bernabei. Bernabei worked with both Healy and Perez for a number of years, and he "knows them both well." (Tr., pp. 230-31. See also, Tr., pp. 189, 210). Nor did the evidence reflect that anything about the debate between Healy and Perez was "starting or

surprising.” (Tr., p. 211). Rather, the only specific evidence presented on this point was from Bernabei’s own witness and close personal friend, Democratic Chairman Phil Giavasis, who testified:

Q. Okay. Did you see anything in that debate that would cause a, a serious person, serious politician who knew Mr. Healy and Mr. Perez for years or decades to say, “Uh-huh. This has changed my whole opinion on them. I can’t continue them being a mayor,” anything like that happen as you listened to it?

A. No.

(Tr., p. 211). The testimony further confirmed that, had Bernabei been “focused” and paying attention, he would have realized his dissatisfaction with Healy and Perez well before the Democratic primary filing deadline. (Tr., p. 189). As explained by another witness and personal friend called to testify by Bernabei, if Bernabei wanted to run for Mayor of Canton, “the time to step in would have been during the primary.” (Tr., p. 190).

93. Despite his lack of justification for his delay, Bernabei was consistent in testifying that he did not decide to run for Canton Mayor until after his dissatisfaction was “galvanized” as a result of the candidate debate on April 22, 2015 and the editorial on April 26, 2015. (Tr., 229-230. See also, Tr., pp. 205-06; Prts.’ Exhs.130, 131). Bernabei also consistently admitted that his late efforts to disaffiliate from the Democratic Party were driven by – even “conditioned upon” – his final decision to run for Canton Mayor as an independent. (Tr., pp. 233, 245-254). However, Bernabei’s suggestion that he blamed the Democratic Party (or the two party system) for “fail[ing] us in not providing the quality candidates” for Canton Mayor, thereby providing a “good faith ideology shift” explanation for his last minute efforts to try to disaffiliate with the Democratic Party, is directly contradicted by the record evidence. (Tr., p. 228). This is because,

after the “galvanizing” events of April 22 and 26, 2015, it is undisputed that Bernabei continued to engage in conduct reinforcing his affiliation with the Democratic Party.

94. By way of example, the same day as the “galvanizing” debate, on April 22, Bernabei donated \$500 to the Stark County Democratic Party as a sponsor of a Party fundraiser held on April 30. (Tr., p. 83, Prts.’ Exh. 91). Two days after the debate, on April 24, Bernabei donated \$200 to the Jefferson-Jackson Democratic Club as a sponsor for their fundraiser. (Tr., pp. 119-20, Prts.’ Exh. 90). And while the “galvanizing” editorial was published on April 26, Bernabei recorded a radio commercial three days later on April 29 for Democratic Candidate Guardado. (Tr., pp. 106-07, Prts.’ Exh. 103). This radio ad asked voters to “please join” Bernabei in voting for Democrat Guardado in the Democratic primary and aired April 30 through May 5. (Tr., pp. 51, 54, 107-08, 272, Prts.’ Exhs. 52, 93).

95. As recognized in *Jolivette*, a candidate’s claim of good faith is undermined when a candidate continues to affiliate with a political party *after* the event that allegedly triggers the candidates shift toward independence. 886 F. Supp. 2d at 831 (“Plaintiff did not withdraw his candidacy immediately after the party endorsement meeting, which, according to Plaintiff, was essentially the proverbial ‘straw that broke the camel’s back.’ Such an assertion would have weight if Plaintiff had disaffiliated immediately after the meeting. Instead, he continued to press his candidacy as a Republican.”) The exact type of inconsistency that undermined a “good faith” claim of independence in *Jolivette* exists here.

96. The clear and convincing evidence established that Bernabei’s efforts to disaffiliate with the Democratic Party were singularly driven by Bernabei’s desire to gain access to the ballot via the independent route as a consequence of access through the primary process having been foreclosed because his decision to run came too late. *Jolivette* confirms that an

attempt to politically disaffiliate for this singular reason is not in “good faith” as required by the Advisory. Bernabei’s independent candidacy should not proceed. Respondents Board of Elections and Secretary Husted’s conclusion to the contrary was an abuse of discretion in clear disregard of applicable law. The writs requested by Relators should issue.

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**BERNABEI FAILED TO SATISFY THE RESIDENCY  
REQUIREMENTS OF R.C. § 3513.261**

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97. As required by R.C. § 3513.261, when Bernabei signed his independent nominating petitions for Canton Mayor on Sunday, May 3, 2015, Bernabei affirmed:

I, Thomas M. Bernabei, the undersigned, hereby declare under penalty of election falsification that my voting residence address is 2118 University Ave. N.W., Canton, Ohio, 44709; and I am a qualified elector.

\* \* \*

I further declare that I am an elector qualified to vote for the office I seek.

(Prts.’ Exh. 1).

98. This sworn statement necessitated by R.C. § 3513.261 effectively creates a residency requirement for persons desiring to run for municipal office, commencing on the date the candidate *signs* the nominating petition. *State ex rel. Markulin v. Ashtabula Cty. Bd. of Elections*, 65 Ohio St.3d 180, 184, 602 N.E.2d 626 (1992).

99. The evidence established that Bernabei recognized and understood this residency requirement prior to signing his independent petitions on May 3, 2015:

But I myself, ya know, in order to comply with the residency requirements. Again, and the law says that to be mayor, and again to be law director, um ah, auditor or treasurer of a municipality you have to be an elector. That means that as of the date that you take

office you have to be a resident, but in order also to circulate a petition to have those positions, you have to be an elector.

So before the filing of the petitions it was necessary that a, ya know, re-establish, or establish my residence in Stark County. In, in the City of Canton.

(Prts.' Exh. 49, p. 4).

100. The determination as to whether the residency requirement has been satisfied centers upon the address that the candidate lists as his or her “voting residence.” As used in the above sworn statement, “‘voting residence’ means that place of residence of an elector which shall determine the precinct in which the elector may vote.” R.C. § 3501.01(P). A “qualified elector” means “a person having the qualifications provided by law to be entitled to vote,” and that person may only vote in the precinct in which their “voting residence” is located. R.C. §§ 3501.01(N), (P), 3503.01(A).

101. This Court’s precedent recognizes that the sworn statement above requires that the candidate’s “‘voting residence is in’ a specified precinct and that he is a qualified elector in such specified precinct; and that statement relates to the time the declaration of candidacy is signed and sworn to.” *Higgins*, 170 Ohio St. 511, paragraph three of the syllabus.<sup>14</sup>

102. Similarly, “a qualified elector evidently is one who is qualified, at any designated time, to exercise the privilege of voting. He is qualified to vote then and there, not at some future time, or some other place.” *State ex rel. Barrett v. Leonard*, 6 Ohio Supp. 345, 1941 WL 3346 (Ohio Com. Pl., Hamilton Cty., Sept. 27, 1941).

103. If the statement of “voting residence” in a nominating petition is inaccurate, the nominating petition must be rejected. R.C. §§ 3513.262 and 3501.39(A). Similarly, persons

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<sup>14</sup>See also, *State ex rel. Stine v. Brown Cty. Bd. of Elections*, 101 Ohio St. 3d 252, 2004-Ohio-771, 804 N.E.2d 415, ¶ 13; *Markulin*, 65 Ohio St.3d at 184.

who were not legitimate residents in their stated location and precinct “were improperly registered in the first place” and “were therefore ineligible to vote” at that illegitimate residence; consequently, they were not “qualified electors.”<sup>15</sup> Therefore, if an address listed in the nominating petition is not the valid “voting residence” of that candidate at the time the candidate signed the petition, it necessarily follows that the candidate was not a “a qualified elector” at that address nor “an elector qualified to vote for the office [the person] seek[s],” similarly requiring the rejection of the nominating petition.<sup>16</sup>

104. Ohio Election law “does not contemplate multiple residences for election purposes.” *State ex rel. MacPherson v. Trumbull Cty. Bd. of Elections*, 11th Dist. No. 2011–T–0028, 2011-Ohio-1296, ¶ 28. See also, 2002 Ohio Op. Att’y Gen. 2-165 (2002). Therefore, determination of a person’s “voting residence” requires application of the following pertinent rules, which are set forth in R.C. § 3503.02:

All registrars and precinct election officials, in determining the residence of a person offering to register or vote, shall be governed by the following rules:

(A) That place shall be considered the residence of a person in which the person’s habitation is fixed and to which, whenever the person is absent, the person has the intention of returning.

\* \* \*

(D) The place where the family of a married person resides shall be considered to be the person’s place of residence; except that when the spouses have separated and live apart, the place where such a spouse resides the length of time required to entitle a person to vote shall be considered to be the spouse’s place of residence.

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<sup>15</sup> *In re Paul S. Finnegan and Victoria J. Finnegan*, Ohio Sec. of State Letter (July 26, 2002). See also, *Bell v. Marinko*, 235 F. Supp. 2d 772 (N.D. Ohio 2002); *Bell v. Marinko*, 367 F.3d 588, 592 (6th Cir.2004).

<sup>16</sup> *Higgins*, 170 Ohio St. 511, paragraph three of the syllabus; *Stine*, 101 Ohio St. 3d 252 at ¶ 13; *Markulin*, 65 Ohio St.3d at 184; *In re Alicia Wolph Roshong*, Ohio Sec. of State Letter (July 8, 2011).

*Stine*, 101 Ohio St. 3d 252 at ¶ 15.

105. This Court has held that the “voting residence” requirements set forth in this statute “emphasizes the person’s intent to make a place a fixed or permanent place of abode.” *State ex rel. Duncan v. Portage Cty. Bd. of Elections*, 115 Ohio St. 3d 405, 2007-Ohio-5346, 875 N.E.2d 578, ¶ 11.<sup>17</sup> Applying this principle, the Ohio Voter Registration and Information Update Form issued by the Secretary of State reads in part:

**Residency Requirements**

Your voting residence is the location that you consider to be a permanent, not a temporary, residence.<sup>18</sup>

106. The evidence produced at the hearing proved, by clear and convincing evidence, that the “voting residence” Bernabei affirmed in his independent nominating petition was invalid when he signed his petition on May 3, 2015. This is because at the time Bernabei signed his petition the property identified as his “voting residence” was vacant, and Bernabei had yet to occupy or move his belongings into the property. It is also because, even when Bernabei did occupy this property, this residence was only intended by Bernabei to be a temporary, and not a permanent, residence. Bernabei was therefore neither “a qualified elector” at that address nor “an elector qualified to vote for the office” of Canton Mayor when he signed his petition.

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<sup>17</sup> See also, 1922 Op. Att’y Gen. No. 2817 (“Thus it may be said that the ‘residence’ of one seeking to exercise the privileges of suffrage is a fixed or permanent residence or habitation, a domicile or legal residence limited and controlled chiefly by the intention of the elector to fix and determine the particular place or locality, as his permanent residence or abode, and to which, whenever absent, he has the intention of returning.”)

<sup>18</sup> Ohio Secretary of State, Voter Registration and Information Update Form, SEC4010 (Rev. 6/14), <http://www.sos.state.oh.us/sos/upload/elections/forms/4010.pdf> (last accessed Aug. 1, 2015) (Prts.’ Exh. 8). See also, Ohio Secretary of State, Guide to Voting in Ohio, SOS 0513 (02/2015) (“your residence is a location you consider your permanent dwelling.”) (Prts.’ Exh. 120).

Consequently, Bernabei failed to satisfy the residency requirement of R.C. § 3513.261. Respondents Board of Elections and Secretary Husted's conclusion to the contrary was an abuse of discretion in clear disregard of Ohio Election law.

**A. The “Voting Address” Set Forth in Bernabei’s Petition was Invalid When Bernabei Signed the Petition.**

107. The evidence presented at the hearing demonstrated that, on April 27, 2015, when Bernabei began his efforts to run for Mayor of Canton, Bernabei lived with his wife in Jackson Township, a municipality adjoining Canton, at 2745 Dunkeith Drive NW. (Tr., p. 237). Both Bernabei and his wife were registered to vote at 2745 Dunkeith Drive NW at this time. (Prts.’ Exhs. 25, 26).

108. The evidence also confirmed that, in addition to the Jackson Township home, Bernabei owed a home located in Canton at 441 Lakecrest Street NW. (Tr., pp. 237-40). In order to satisfy the residency requirements to enable Bernabei run for Canton Mayor, Bernabei intended to make the property located at 441 Lakecrest Street NW his permanent residence. (Tr., pp. 237-43).

109. At the time Bernabei was preparing to run for Canton Mayor, the home at 441 Lakecrest Street NW was occupied by tenants that were renting from Bernabei. (Tr., pp. 237-40). On April 28, 2015, Bernabei approached the tenants, informed them that he is “considering running for the office in the City of Canton” and asked them if he could “live in the house in the back bedroom” until they moved out. (Tr., pp. 239-40). The tenants declined. (Tr., p. 240).

110. The next day, on April 29, Bernabei contacted a friend that owned an empty house for sale in Canton located at 2118 University Avenue NW. (Tr., p. 240). In an effort to satisfy the residency requirements to run for Canton Mayor, Bernabei then prepared and signed a one month lease for the property at 2118 University Avenue NW, with an effective date of May

1, 2015. (Tr., pp. 240-42). Bernabei signed the lease the following day, on April 30. (Tr., pp. 242).

111. The evidence showed that, the same day of April 30, Bernabei then completed a voter change of address form. (Tr., pp. 251-53. See also, Prts.' Exh. 44). Bernabei utilized the property at 2118 University Avenue NW as his voting residence on this form and forward-dated the document by using a May 3, 2015 date. (Tr., pp. 251-54). Bernabei then "conditionally" provided this form to Jeannette Mullane, Deputy Director of the Stark County Board of Elections. (Tr., pp. 251-254). Bernabei instructed Mullane that she was to file the form with the Board of Elections on May 3, 2015 upon confirmation Bernabei's final decision to run for Canton Mayor. (Tr., pp. 251-254). At the time Bernabei completed this form, he had not taken possession of the property at 2118 University Avenue NW nor moved in any belongings. Bernabei's lease for this property was not effective until the following day, on May 1, 2015. (Tr., pp. 240-42).

112. Later that day, on April 30, 2015, Bernabei left for vacation in Florida. (Tr., pp. 97-98). On May 3, 2015, Bernabei contacted Mullane from Florida, confirmed that he had made the final decision to run for Canton Mayor, and instructed Mullane to file the forward-dated change of voter change of address form that he previously provided to her. (Tr., pp. 287-88, 305). Mullane complied with Bernabei's instructions and filed the form with the Stark County Board of Elections. (Tr., p. 255).

113. After speaking with Ms. Mullane, on May 3, 2015, Bernabei returned from Florida at approximately 1:00 PM. (Tr., p. 256). Bernabei testified that the "first thing that [he] did" upon his return "was to prepare the, petition the nominating petition." (Tr., p. 265). He made 40 copies and then signed each petition affirming 2118 University Avenue NW as his

“voting address.” (Tr., p. 256-57; Prts.’ Exh. 1). Bernabei then began the process of gathering the needed signatures for his independent nominating petition to run for Canton Mayor. (Tr., p. 257).

114. Bernabei testified that his efforts to gather signatures on the afternoon of May 3, 2015 “took a significant amount of time.” (Tr., p. 257). As a consequence, Bernabei did not move any of his belongings into the property at 2118 University Avenue NW until the evening of May 3, 2015. (Tr., pp. 257-58).

115. The evidence confirmed that the night of May 3, 2015 was the first night Bernabei slept at 2118 University Avenue NW. (Tr., pp. 259-60). He stayed there until May 6, 2015. Thereafter, his property at 441 Lakecrest Street NW became available, and he promptly moved. (Tr., pp. 259-60).

**1. Bernabei Did Not Have a Fixed Habitation at the Address Stated in his Nominating Petition on the Date he Signed the Petition.**

116. As mentioned above, a candidate’s affirmation of their “voting residence” “relates to the time the declaration of candidacy is signed and sworn to.” *Higgins*, 170 Ohio St. 511, paragraph three of the syllabus. *See also, Markulin*, 65 Ohio St.3d at 184. Similarly, “a qualified elector” “is qualified to vote then and there, not at some future time, or some other place.” *Barrett*, 6 Ohio Supp. 345.

117. Bernabei’s own testimony confirmed that when Bernabei “signed and sworn to” 2118 University Avenue NW as his “voting residence” on the afternoon of May 3, 2015, he had not moved in any of his belongings, and the property was vacant. (Tr., p. 257-58). This process did not begin until later the evening of May 3, 2015, after Bernabei signed and began to obtain signatures on his nominating petition. (Tr., pp. 257-58). Only then did Bernabei begin to “move in” any of the few belongings that he eventually did. (Tr., pp. 257-58).

118. Ohio Election law establishes “two elements which are determinative of residency – (1) fixed habitation and (2) the intention of returning to that habitation.” *Kyser v. Bd. of Elections of Cuyahoga Cnty.*, 36 Ohio St. 2d 17, 22, 303 N.E.2d 77 (1973). See also, 2002 Ohio Op. Att’y Gen. 2-165 (2002) (“residence for voting purposes requires *both* a fixed habitation and the intention to make that place one’s residence.” [emphasis added]). At the time Bernabei signed his nominating petition, the first element was indisputably lacking – he failed to establish a “fixed habitation” at 2118 University Avenue NW pursuant to R.C. § 3503.02(A). Future intention, without actual habitation, is not enough. *Jolly v. Deeds*, 135 Ohio St. 369, 372, 21 N.E.2d 108 (1939).

119. Bernabei therefore failed to establish a valid “voting residence” at the address stated in his petition at the time it was signed. Bernabei was therefore neither “a qualified elector” at that address nor “an elector qualified to vote for the office [the person] seek[s].” Bernabei therefore failed to comply with R.C. § 3513.261, and it was an abuse of discretion in clear disregard of Ohio Election law to certify Bernabei’s candidacy in the face of this evidence.

120. While a voter’s intent is certainly important in determining a valid “voting residence,” no Ohio case located by Relators has held that a valid voting residence may be established based upon intention alone and in the absence some form of established “fixed habitation.” This Court’s decision in *State ex rel. Husted v. Brunner* certainly does not support such an interpretation of Ohio Election law. 123 Ohio St. 3d 288, 2009-Ohio-5327, 915 N.E.2d 1215. Relators respectfully submit that the only way to uphold Bernabei’s candidacy would be to establish such precedent, with this case, or to overrule this Court’s precedent that establishes a “voting residence” must be valid and accurate at the time the petition is signed. *Higgins*, 170 Ohio St. 511, paragraph three of the syllabus; *Markulin*, 65 Ohio St.3d at 184. Relators submit

that the preferable course is to grant Realtors' requested writs and deem the certification of Bernabei's candidacy an abuse of discretion in clear disregard of Ohio Election law.

**2. Bernabei Intended the Address Stated in his Nominating Petition to be Temporary Only.**

121. As explained above, the "voting residence" requirements set forth in R.C. § 3503.02(A) "emphasizes the person's intent to make a place a *fixed or permanent* place of abode." *Duncan*, 115 Ohio St. 3d 405 at ¶ 11. The Secretary of State has stated in plain terms, "Your voting residence is the location that you consider to be a permanent, not a temporary, residence."<sup>19</sup>

122. Bernabei consistently acknowledged that he intended the property at 2118 University Avenue NW be a temporary residence only and that his permanent residence would be at 441 Lakecrest Street NW when it became available. In an interview on May 6, 2015, Bernabei explained:

MR. BERNABEI: I do own a house then at 441 Lakecrest which has been my permanent home before. Um, that house has been rented. That house has now become vacant. Ah, in fact, as of today [May 6, 2015], I will get the keys back and I will personally be moving back into the house probably immediately, or within the next day or two days. Ah, and subject to putting some additional new carpeting in and a couple of other things that my wife has demanded as condition to continue to live with me ... she will be moving in and that will become our permanent residence.

(Tr., p. 95, Prts.' Exh. 50, p. 11).

123. In another interview, he continued:

MR. OLSON: So you haven't physically relocated yet?

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<sup>19</sup> Ohio Secretary of State, Voter Registration and Information Update Form, SEC4010 (Rev. 6/14), <http://www.sos.state.oh.us/sos/upload/elections/forms/4010.pdf> (last accessed Aug. 1, 2015) (Prts.' Exh. 8). See also, Ohio Secretary of State, Guide to Voting in Ohio, SOS 0513 (02/2015) ("your residence is a location you consider your permanent dwelling.") (Prts.' Exh. 120).

MR. BERNABEI: To that house. My, my permanent house in Canton-

MR. OLSON: Okay.

MR. BERNABEI: -is, is now available.

MR. OLSON: Okay.

MR. BERNABEI: Ya know, and I will be moving back to that house. My wife will then be moving back to that house also.

\* \* \*

Ya know, and maybe do some, ya know, new carpet in a couple of the rooms and then we'll move all of our furniture from our house in Jackson Township in Hills and Dales to, to that house. And we will live there as we used to.

(Tr., pp. 94, 96, Prts.' Exh. 49, pp. 3-4).

124. The evidence produced at the hearing further confirmed Bernabei's description of the temporary nature of his residency at 2118 University Avenue NW.

125. When Bernabei did move in his belongings into 2118 University Avenue NW on the evening of May 3, 2015, the property Bernabei brought consisted of a "relatively minimal kit." (Tr., p. 258). Bernabei previously described it as "a [single] bed, clothes, ... a card table and a computer ... and not much else." (Tr., pp. 96, Prts.' Exh. 50, p. 10). To illustrate, Bernabei testified that he only brought enough clothing to 2118 University Avenue NW to last a few days. (Tr., pp. 258-59). If more were needed, he would have to retrieve it from his property at 2745 Dunkeith Drive NW. (Tr., pp. 258-59).

126. While Bernabei was living at 2118 University Avenue NW, which was owned by a friend, the property was unfurnished, vacant, and listed for sale. (Tr., p. 97). Bernabei was not under contract to purchase it.

127. There was no evidence presented at the hearing that Bernabei placed any utilities in his name, instituted a forwarding mailing address, or even received any mail of any type at 2118 University Avenue NW.

128. As an active licensed attorney, Bernabei never updated his Attorney Registry with the Office of Attorney Services to reflect his residential address at 2118 University Avenue NW. (Tr., p. 103-04, Prts.' Exh. 123). This is true even though Bernabei was required to do so by this Court's rules. See, Gov. Bar R. 6(D) ("Each attorney who is registered for active status shall keep the Office of Attorney Services apprised of the attorney's current residence address ... and shall notify the Office of Attorney Services of any change in the information on the Certificate of Registration").

129. While the 2118 University Avenue NW was subject to a one-month lease, Bernabei only stayed at the property a total of four nights, whereupon he moved to his "permanent" address at 441 Lakecrest Street NW. (Tr., pp. 259-60).

130. Finally, and importantly, Bernabei's wife did not join him at the temporary residence at 2118 University Avenue NW. (Tr., pp. 263, 292). She stayed at their home at 2745 Dunkeith Drive NW. (Tr., pp. 263, 292). And, while Bernabei cast a provisional ballot in the primary election at the Board of Elections while he was taking steps to finalize the filing of his independent nominating petitions on May 4, 2015 (Tr., p. 264), Bernabei's wife cast an in-person ballot on election day at the precinct for their home 2745 Dunkeith Drive NW. (Tr., p. 293, Prts.' Exh. 127). Even as recent as three days before the Protest hearing, Bernabei's wife accepted certified mail service of a subpoenas duces tecum issued to Bernabei and sent to their 2745 Dunkeith Drive NW home. (July 3, 2015 Subpoena Duces Tecum Return, attached hereto as **Exhibit F**).

131. On this point, R.C. § 3503.02(D) reads, “the place where the family of a married person resides shall be considered to be the person’s place of residence.” While this provision does not create an irrebuttable presumption, it is unquestionably relevant to the analysis of the facts of this case. *Bell*, 367 F.3d 588; *State ex rel. Eaton v. Erie Cty. Bd. of Elections*, 6th Dist. No. E-05-065, 2006-Ohio-966. It was not considered or applied by Respondents.

132. When the evidence presented at the hearing is applied to Ohio Election law, namely, that a “voting residence” is “a permanent, not a temporary, residence,” and the requirement that “the place where the family of a married person resides shall be considered to be the person’s place of residence,” Relators respectfully submit that Bernabei’s candidacy requires disqualification. The temporary address 2118 University Avenue NW was not Bernabei’s valid “voting residence” at the time he signed his nominating petitions. The clear and convincing evidence confirms that Bernabei failed to comply with R.C. § 3513.261.

133. Respondents Board Members and Secretary Husted’s conclusion to the contrary appears premised upon two interrelated misinterpretations of Ohio Election law. First, Respondents seem to have found that Bernabei’s four-day stay at 2118 University Avenue NW was sufficient to constitute the use of a “permanent address,” notwithstanding the record evidence and Bernabei’s own testimony to the contrary. Not only does such a conclusion belie any definition of the word “permanency,” but it would automatically transform hotel rooms, campgrounds, and vacation spots into valid “voting residencies.” This is plainly not the law in Ohio. *In re Protest of Brooks*, 3rd Dist. No. 17-03-17, 2003-Ohio-6990, ¶¶ 23-27 (holding “Red Roof Inn where person stayed for five nights” was not a permanent “voting residence” for purposes of Ohio Election law); *In re Protest of Brooks*, 155 Ohio App. 3d 370, 2003-Ohio-6348, 801 N.E.2d 503, ¶¶ 42-49 (3rd Dist.) (accord); 1993 Op. Att’y Gen. No. 93-055 (“If an

individual lives in the resort area for temporary purposes only – vacation, for example – then, pursuant to R.C. § 3503.02(D), such an individual does not gain a residence in the resort area.”)

134. Second, Respondents appear to have found that, because both 2118 University Avenue NW and 441 Lakecrest Street NW are in Canton, it made no difference that Bernabei listed an invalid temporary address on his petition, because he still ultimately ended up residing at a permanent Canton address. In other words, “no harm, no foul.” This conclusion is unsupported by both law and fact. Factually, the residences are very different. The properties are in different precincts (with different precinct committeepersons), in different wards (with different councilpersons), and in different school districts (with different levies). Legally, a sworn declaration of “voting residence” is made under penalty of falsification. R.C. § 3599.36. For that reason, it must be accurate at the time the declaration is made. Indeed, this was the exact holding in *Higgins*, which centered upon a distinction between two precincts even though the candidate was running for an entire congressional district that encompassed both precincts, in which the candidate was nevertheless disqualified. 170 Ohio St. 511. To embrace such a holding would not only undermine *Higgins* and all of the cases that continue to follow it, but it would effectively legalize the crime of election falsification as it pertains to fraudulent voting addresses. There is little doubt that such a construction should not be adopted by this Court, and Respondents abused their discretion in clear disregard of Ohio Election law by concluding otherwise.

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**CONCLUDING ALLEGATIONS**

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135. Based upon the foregoing, through the exercise of quasi-judicial authority, Respondents Board of Elections and Husted failed to perform their clear legal duties in the enforcement of the independent candidacy requirements of R.C. §§ 3501.01(I) and 3513.257 and Ohio Sec. State Adv. Op. No. 2007-05 and the residency requirements of R.C. § 3513.261 as a consequence of Respondents' failure to uphold Relators' Protest and certification of the candidacy of Thomas M. Bernabei, on the November 3, 2015 ballot as an independent candidate for the Office of Mayor of Canton, Ohio, the enforcement of these legal duties to which Relators have a clear legal right.

136. Relators have moved promptly and with all due diligence in the initiation of this Action and in the prosecution of all matters relating thereto.

137. In light of the upcoming November 3, 2015 election, Relators have no adequate remedy in the ordinary course of law and relief cannot otherwise be obtained except through issuance of a writ of prohibition.

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**PRAYER FOR RELIEF**

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WHEREFORE, Relators Frank Morris, Chris Smith, Thomas E. West, Kevin Fisher, David R. Dougherty, John Mariol II, Edmond J. Mack, and the Ohio Democratic Party respectfully request that this Court issue a peremptory writ of prohibition, or in the alternative, an alternate writ against Respondents Stark County Board of Elections and Secretary of State Jon Husted, prohibiting the placement of Thomas M. Bernabei on the November 3, 2015 ballot as an independent candidate for the Office of Mayor of Canton, Ohio.

DATED: August 4, 2015

Respectfully submitted,

**TZANGAS | PLAKAS | MANNOS | LTD**

**THE OHIO DEMOCRATIC PARTY**

/s/ Lee E. Plakas

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/s/ N. Zachary West

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-and-

*Counsel for Relator  
The Ohio Democratic Party*

**CENTER FOR CONSTITUTIONAL  
LITIGATION, P.C.**

/s/ Robert S. Peck

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*Counsel for Relators  
Frank Morris, Chris Smith, Thomas E. West,  
Kevin Fisher, David R. Dougherty, John Mariol  
II, and Edmond J. Mack*

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**AFFIDAVIT**

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STARK COUNTY

SS:

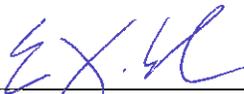
STATE OF OHIO

Pursuant to S.Ct.Prac.R. 12.02, I, EDMOND J. MACK, being duly cautioned and sworn, and competent to testify to the matters set forth in this Affidavit, hereby swears and affirms as follows:

1. I am a Relator in the foregoing Original Action for Prohibition. I testified under oath during the hearing before the Stark County Board of Elections that is the subject of this Action, and was present during all aspects of this hearing.

2. The facts contained in the foregoing Complaint for Writ of Prohibition, which are incorporated by reference as if completely rewritten in this Affidavit, are based upon my personal knowledge, and these facts are true and accurate.

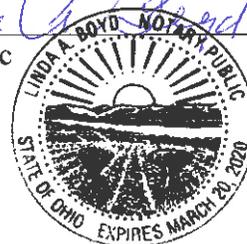
3. All documents appended as exhibits to, or shown in the body of, the foregoing Complaint for Writ of Prohibition, which are incorporated herein by reference, are true and accurate copies of the originals, and were personally gathered by me from the source reflected on the face of each document.

  
\_\_\_\_\_  
EDMOND J. MACK

BEFORE ME, a Notary Public in and for Stark County, Ohio, personally appeared the above-named EDMOND J. MACK, who after being duly sworn, acknowledged that he did sign the foregoing instrument, that the same is his free act and deed.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal at Canton, Ohio this 4th day of August 2015.

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



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**PRAECIPE**

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TO: CLERK OF COURT  
SUPREME COURT OF OHIO:

You are requested to issue a summons and serve the summons and a copy of the foregoing Complaint for Writ of Prohibition by certified mail upon each of the Respondents at the addresses indicated on the cover pages of the foregoing Complaint.

DATED: August 4, 2015

Respectfully submitted,

**TZANGAS | PLAKAS | MANNOS | LTD**

**THE OHIO DEMOCRATIC PARTY**

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-and-

**CENTER FOR CONSTITUTIONAL  
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*Counsel for Relator  
The Ohio Democratic Party*

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Frank Morris, Chris Smith, Thomas E. West,  
Kevin Fisher, David R. Dougherty,  
John Mariol II, and Edmond J. Mack*

# EXHIBIT

A



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JAMES M. MCHUGH

GARY A. CORROTO

DAVID L. DINGWELL

DENISE K. HOUSTON

MEGAN J. FRANTZ OLDHAM

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VIA HAND DELIVERY

May 29, 2015

Stark County Board of Elections  
Jeffrey Matthews, Director  
3525 Regent Avenue NE  
Canton, Ohio 44705

**Re: Protest Against the Nominating Petitions and Candidacy of  
Thomas M. Bernabei as an Independent Candidate for the  
Office of Mayor of the City of Canton, Ohio  
R.C. §§ 3513.262 and 3501.39(A)**

Frank Morris, Majority Leader  
Canton City Council, Ward 9  
1406 19th Street NE  
Canton, Ohio 44714

Thomas E. West  
Canton City Council, Ward 2  
625 12th Street NW  
Canton, Ohio 44703

David R. Dougherty  
Canton City Council, Ward 6  
3126 34th Street NE, Apt. E  
Canton, Ohio 44705

Edmond J. Mack  
Canton City Council, Ward 8  
4816 Ellinda Circle NW  
Canton, Ohio 44709

The Ohio Democratic Party  
David Pepper, Chairman  
340 East Fulton Street  
Columbus, Ohio 43215

Dear Director Matthews:

On behalf of Majority Leader Frank Morris, Canton City Council, Ward 9, Assistant Majority Leader Chris Smith, Canton City Council, Ward 4, Thomas E. West, Canton City Council, Ward 2, Kevin Fisher, Canton City Council, Ward 5, David R. Dougherty, Canton City Council, Ward 6, John Mariol II, Canton City Council, Ward 7, Edmond J. Mack, Canton City Council, Ward 8, the Ohio Democratic Party, and the Stark County Democratic Party (collectively, the "Protestors"), the undersigned hereby submit the following written protest against the nominating petitions and candidacy of Thomas M. Bernabei as an independent candidate for the Office of Mayor of the City of Canton, Ohio, pursuant to R.C. §§ 3513.262 and 3501.39(A), for the reasons described herein.

RECEIVED

2015 MAY 29 PM 1: 26

STARK COUNTY  
BOARD OF ELECTION

Chris Smith, Assistant Majority Leader  
Canton City Council, Ward 4  
458 Waynesburg Road SE  
Canton, Ohio 44707

Kevin Fisher  
Canton City Council, Ward 5  
1641 Alden Avenue SW  
Canton, Ohio 44710

John Mariol II  
Canton City Council, Ward 7  
2117 Myrtle Avenue NW  
Canton, Ohio 44709

The Stark County Democratic Party  
Phil Giavasis, Chairman  
2698 Easton Street NE  
Canton, Ohio 44721

## INTRODUCTION

1. As explained in this protest, this Board must reject Thomas M. Bernabei's "independent" candidacy for the Office of Mayor of Canton because Bernabei is neither a bona fide independent nor was he a permanent Canton resident at the time he signed his nominating petitions. At best, Bernabei's candidacy is nothing more than an attempt to capitalize on a political opportunity through tactical maneuvering in order to achieve short-range political goals. At worst, it is an effort to satisfy a longstanding grudge against current Canton Mayor William J. Healy II. Neither is appropriate under Ohio Election law.
2. Since 2006, Thomas M. Bernabei has lived with his wife in the Village of Hills and Dales. He is a self-described life-long, "dyed-in-the-wool Democrat." Indeed, Bernabei has been household name in Stark County Democrat politics for decades.
3. To this day, Bernabei holds public office as an elected Democrat in his capacity as Stark County Commissioner. When Bernabei circulated his Declarations of Candidacy for his current County Commissioner position, Bernabei affirmed under penalty of election falsification "that, if elected to this office or position ... I will support and abide by the principles enunciated by the DEMOCRATIC Party." He has been a member of the Stark County Democrat Central Committee as recently as April 30, 2015. He continues to be a good standing member of Democrat organizations. He has been appointed to public office by the Democrat Central Committee. He has volunteered on countless campaigns of other Democrat candidates. He has served as the Campaign Treasurer for other Democratic candidates, even in the most recent election cycle. His name has appeared on thousands of pieces of campaign materials on behalf of Democratic candidates. He even recorded a radio commercial on behalf of a Democratic candidate that aired on May 5, 2015. Over the years, Bernabei has donated over \$30,000.00 to Democrat candidates and organizations, and most recently donated to the Stark County Democratic Party on April 22, 2015.
4. In addition to Bernabei's Democratic contributions, volunteerism, and active participation, the extent of Bernabei's deep and ongoing electoral and professional affiliation with the Democratic Party includes:

YEARS IN OFFICE AS AN ELECTED DEMOCRAT		
Democrat Canton Law Director	11	(1989 - 2000)
Democrat Canton City Council	2	(2004 - 2005)
<b>Democrat County Commissioner</b>	<b>4 +</b>	<b>(2011 - Present)</b>
<b>TOTAL YEARS AS ELECTED DEMOCRAT:</b>	<b>17 +</b>	<b>(Continuing to Present)</b>

APPEARANCES ON BALLOT AS A DEMOCRAT		
	Primary Election	General Election
Democrat Canton Law Director	1991, 1995, 1999	1989, 1991, 1995, 1999
Democrat Canton City Council	2003	2003
Democrat County Commissioner	2010, 2012	2010, 2012
Democrat Central Committee	2014	
<b>TOTAL BALLOT APPEARANCES AS DEMOCRAT:</b>		<b>14</b>

EMPLOYMENT WHEN HIRED BY OTHER ELECTED DEMOCRATS			
Massillon Law Department	<i>(Thomas V. Ferraro)</i>	2	(1976-1978)
Canton Law Department	<i>(Harry E. Klide / W. Scott Gwin)</i>	9	(1979 - 1988)
Mayor of City of Canton	<i>(William J. Healy II)</i>	1	(2008)
<b>TOTAL YEARS HIRED BY DEMOCRATS:</b>		<b>12</b>	

5. Canton Mayor Healy fired Bernabei as Canton's Service Director in January 2009 for undisclosed reasons. Bernabei has harbored ill feelings toward Mayor Healy since that time. Mayor Healy faced a challenger in the May 5, 2015 Democratic primary. Bernabei did not file to run against Healy in that primary. Instead, Bernabei decided to file after realizing that Healy would likely defeat his primary challenger. That realization occurred in late-April 2015.

6. On May 4, 2015, Bernabei submitted nominating petitions in an effort to run as an "Independent candidate" for Canton Mayor in the November 3, 2015 general election.<sup>1</sup> To accomplish this, less than a week before Independent nominating petitions were due, Bernabei set into motion a frantic, unprecedented effort to create the misleading impression that he had severed his life-long ties with the Democratic Party. His efforts even included the manufacturing of what Bernabei openly admits was a last minute, temporary residence in a vacant Canton house (which he does not own) to attempt to satisfy the residency requirements established by his Independent nominating petition. Bernabei moved almost nothing into this empty, unfurnished property. In fact, the property was listed for sale at the time, and Bernabei admittedly had no intention of buying it. Bernabei's wife and all of his belongings, aside from a bed, clothes, a card table, and a computer, remained at his home in Hills and Dales.

7. Bernabei's efforts are too little, far too late. The Ohio Secretary of State issued an advisory opinion that sets forth the requirements a candidate must satisfy in order to appear on the ballot as an "Independent" candidate.<sup>2</sup> This opinion requires that, at the time the candidate

<sup>1</sup> Bernabei Independent Candidacy Nominating Petitions (May 3, 2015) (submitted separately and contemporaneously herewith in the accompanying appendix ("Appx.") at Tab 1).

<sup>2</sup> Ohio Sec. State Adv. Op. No. 2007-05 (Appx Tab 2).

signs and submits his or her Independent candidacy nominating petitions, the candidate ***must actually*** “be disaffiliated from any political party,” ***and*** “the claim of unaffiliation ***must*** “be made in good faith.” Bernabei fails on both counts. Not only is Bernabei’s actual affiliation confirmed by his appearing on the ballot as a Democrat candidate over a dozen times, his tens of thousands of dollars in donations to Democrat candidates and organizations, and his direct participation in Democrat campaigns, ***but his 17 years of service as a Democrat-elected official continues to this very day***. This conclusively demonstrates Bernabei’s affiliation with the Democratic Party, both as a matter of fact and law. Bernabei’s claim of disaffiliation similarly could not have been made in good faith, because if his attempted disaffiliation was not motivated by “pique or personal quarrel,” it was certainly motivated by “short-range political goals, tactical maneuvering, or political convenience.” This is exactly what the Ohio Election laws were designed to prevent. Indeed, purportedly “Independent” candidates have been removed from the ballot on far less egregious facts than exist here.<sup>3</sup>

8. Even Bernabei’s efforts to establish a phony Canton residence fall woefully short to satisfy the requirements of Ohio Election law. Bernabei has admitted that his recent make-shift residence was ***temporary*** only, until another property became available. He further admitted that he engaged in this conduct with the sole purpose of creating a Canton “voting residence” to satisfy the requirements of his Independent candidate nominating petition. However, the Ohio Supreme Court has been unequivocal in holding that a candidate’s “voting residence” for purposes of a nominating petition must be a ***permanent residence*** – not a manufactured, temporary “camp out” spot. Indeed, this is even confirmed by the Ohio Voter Registration and Information Update Form issued by the Ohio Secretary of State, which reads, “Your voting residence is the location that you consider to be a permanent, not a temporary, residence.”<sup>4</sup> This conclusion is even more obvious when consideration is given to the fact that Bernabei’s wife did not join Bernabei in alighting to the vacant Canton property.<sup>5</sup> The Ohio Secretary of State has been clear – a temporary address is not a proper “voting residence,” and without a valid permanent voting residence stated on the nominating petition, the nominating petition should be rejected.<sup>6</sup> The Ohio Supreme Court has reached the same conclusion.<sup>7</sup> Such is the case here.

<sup>3</sup> *In re Greg Jolivette*, Ohio Sec. of State Letter (June 26, 2012) (Appx. Tab 3), *aff’d*, *Jolivette v. Husted*, 886 F. Supp. 2d 820, 836 (S.D. Ohio 2012) (Appx. Tab 4), *aff’d*, 694 F.3d 760 (6th Cir. 2012) (Appx. Tab 5); *In re Edna Boyle*, Ohio Sec. of State Letter (Oct. 5, 2007) (Appx. Tab 6); *aff’d*, *State ex rel. Boyle v. Summit Cty. Bd. of Elections*, Ohio Ct. of Cmn. Pleas, Summit Cty. Case No. 2007-10-7107, 2007 WL 4462641 (Oct. 17, 2007) (Appx. Tab 7).

<sup>4</sup> Ohio Secretary of State, Voter Registration and Information Update Form, SEC4010 (Rev. 6/14), <http://www.sos.state.oh.us/sos/upload/elections/forms/4010.pdf> (last accessed May 25, 2015) (Appx. Tab 8).

<sup>5</sup> R.C. § 3503.02(D) (in determining “voting residence,” “the place where the family of a married person resides ***shall*** be considered to be the person’s place of residence.”)

<sup>6</sup> *In re Paul S. Finnegan and Victoria J. Finnegan*, Ohio Sec. of State Letter (July 26, 2002) (Appx. Tab 9), *aff’d*, *Bell v. Marinko*, 235 F. Supp. 2d 772 (N.D. Ohio 2002), *aff’d*, 367 F.3d 588 (6th Cir. 2004); *In re Alicia Wolph Roshong*, Ohio Sec. of State Letter (July 8, 2011) (Appx. Tab 10).

<sup>7</sup> *State ex rel. Stine v. Brown Cty. Bd. of Elections*, 101 Ohio St. 3d 252, 2004-Ohio-771, 804 N.E.2d 415 (Appx Tab 14).

9. Nearly 20 years ago, in a decision upholding the constitutionality of the ballot-access framework established in Ohio Election law, the Ohio Supreme Court described several reasons for the enactment of the statutory provisions that are at issue in this case. These reasons include:

“(1) having orderly, fair, and honest elections instead of chaos,

“(2) maintaining the integrity of the political process by preventing interparty raids and intraparty feuds,

“(3) maintaining the integrity of various routes to the ballot,

“(4) avoiding voter confusion, ballot overcrowding, or frivolous candidacies,

“(5) ensuring that elections are operated equitably and efficiently,

“(6) preventing candidacies that are prompted by short-range political goals, pique, or personal quarrel, and

“(7) preventing parties from fielding an independent candidate to capture and bleed off votes in a general election that might otherwise go to another party.”<sup>8</sup>

10. There has never been a set of facts, at any level, that implicate these considerations as squarely as those presented by the nominating petitions and candidacy that are the subject of this protest. A decision by this Board to allow Bernabei’s purported “Independent” candidacy will directly embrace the evils that Ohio’s ballot-access framework were designed to prevent, to the detriment of all political parties, voters, and Ohio’s electoral system as a whole. This impact will be real, immediate, and long lasting. “Sham candidacies” will be the new norm, and the crucial ability of voters to “band together” as a political party “to select a standard bearer who best represents the party’s ideologies and preferences” will be severely damaged, if not lost altogether.<sup>9</sup> Without this fundamental right, Justice Antonin Scalia warned, “representative democracy in any populous unit of governance is unimaginable.”<sup>10</sup>

11. For these reasons, described more fully below, and pursuant to R.C. §§ 3513.262 and 3501.39(A), the Protestors hereby object to the nominating petitions and candidacy of Thomas M. Bernabei as an independent candidate for the Office of Mayor of the City of Canton, Ohio, on the following grounds:

- (1) In contravention of R.C. §§ 3501.01(I) and 3513.257, and the interpreting administrative and court decisional law, Bernabei’s was not actually unaffiliated or disaffiliated from the

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<sup>8</sup> *State ex rel. Purdy v. Clermont Cty. Bd. of Elections*, 77 Ohio St. 3d 338, 344, 1997-Ohio-278, 673 N.E.2d 1351.

<sup>9</sup> *California Democratic Party v. Jones*, 530 U.S. 567, 574, 120 S. Ct. 2402 (2000).

<sup>10</sup> *Id.*

Democratic Party when he signed and/or submitted his Independent candidate nominating positions, and Bernabei's claim of unaffiliation from the Democratic Party was not made in good faith.

- (2) In contravention of R.C. §§ 3513.261, 3501.01(N) and (P), 3503.01(A), and 3503.02, and the interpreting administrative and court decisional law, Bernabei's "voting residence" was not "2118 University Ave. NW, Canton, Ohio 44709" when he signed and/or submitted his Independent candidate nominating positions, and he was not "a qualified elector" at that address nor "an elector qualified to vote for the office [Bernabei] seek[s]."

The Protestors therefore respectfully request that this Board uphold this protest, and invalidate the nominating petitions and candidacy of Thomas M. Bernabei as an independent candidate for the Office of Mayor of the City of Canton, Ohio, pursuant to R.C. §§ 3513.262 and 3501.39(A).

### **THE PROTESTORS**

12. The Protestors' interests in this matter are identical: to ensure uniform and appropriate application of Ohio Election law as it relates to independent candidates and sworn declarations of voting residency. The Protestors' interests are further united in maintaining the integrity of the various routes to the ballot as established by Ohio Election law, thereby promoting orderly, fair, and honest elections – instead of chaos.

13. Frank Morris is the elected Canton City Councilperson for Ward 9 and the Leader of the Majority Democratic Caucus of Canton City Council. Morris' voting residence is 1406 19th Street NE, Canton, Ohio 44714, and he is a qualified elector eligible to vote for the candidate whose nominating petition and candidacy is subject to this protest.

14. Chris Smith is the elected Canton City Councilperson for Ward 4 and the Assistant Leader of the Majority Democratic Caucus of Canton City Council. Smith's voting residence is 458 Waynesburg Road SE, Canton, Ohio 44707, and she is a qualified elector eligible to vote for the candidate whose nominating petition and candidacy is subject to this protest.

15. Thomas E. West is the elected Canton City Councilperson for Ward 2. West's voting residence is 625 12th Street NW, Canton, Ohio 44703, and he is a qualified elector eligible to vote for the candidate whose nominating petition and candidacy is subject to this protest.

16. Kevin Fisher is the elected Canton City Councilperson for Ward 5. Fisher's voting residence is 1641 Alden Avenue SW, Canton, Ohio 44710 and he is a qualified elector eligible to vote for the candidate whose nominating petition and candidacy is subject to this protest.

17. David R. Dougherty is the elected Canton City Councilperson for Ward 6. Dougherty's voting residence is 2426 16th Street NE, Canton, Ohio 44705, and he is a qualified elector eligible to vote for the candidate whose nominating petition and candidacy is subject to this protest.

18. John Mariol II is the elected Canton City Councilperson for Ward 7. Mariol's voting residence is 2117 Myrtle Avenue NW, Canton, Ohio 44709, and he is a qualified elector eligible to vote for the candidate whose nominating petition and candidacy is subject to this protest.

19. Edmond J. Mack is the elected Canton City Councilperson for Ward 8. Mack's voting residence is 4816 Ellinda Circle NW, Canton, Ohio 44709, and he is a qualified elector eligible to vote for the candidate whose nominating petition and candidacy is subject to this protest.

20. The Stark County Democratic Party is the Central Committee of the Democratic Party of Stark County, Ohio, organized under R.C. Chapter 3517 and recognized by the State of Ohio as an official county political party. The Stark County Democratic Party assists its candidates seeking election to public office at the primary election and supports its nominees designated by their political party on the general election ballot, further having the right and duty to fill public offices vacated by the elected office holders of their political party. The Stark County Democratic Party represents dozens of Stark County elected office holders and tens of thousands of electors throughout Stark County that will be affected by the decision of this Board. Phil Giavasis is the elected Chairman of the Stark County Democratic Party. The Stark County Democratic Party's headquarters are located at 2698 Easton Street NE, Canton, Ohio 44721.

21. The Ohio Democratic Party is a state political party organized under R.C. Chapter 3517, recognized by the State of Ohio as an official political party with the right to nominate candidates for election to public office at the primary election and to have its nominees designated by their political party on the general election ballot. The Ohio Democratic Party represents hundreds of elected office holders and hundreds of thousands of electors throughout the State of Ohio that will be affected by the decision of this Board. David Pepper is the elected Chairman of the Ohio Democratic Party. The Ohio Democratic Party's headquarters are located at 340 East Fulton Street, Columbus, Ohio 43215.

## FACTUAL BACKGROUND

### A. Bernabei's Affiliation with the Democratic Party is Long-Standing, Significant, and Continuing.

22. Bernabei's affiliation with the Democratic Party has been well documented, both by this Board of Elections' records and Bernabei's public actions. Indeed, for over 39 years, Bernabei has been a household name in Democratic politics in Stark County. In his own words, he is truly a "dyed-in-the-wool" Democrat.<sup>11</sup>

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<sup>11</sup> Ujhely, S., *Politics aside, Stark County Commissioner Tom Bernabei takes fight for public seriously*, The Alliance Review (Mar. 17, 2014) (Appx. Tab 80).

23. Bernabei admits, he has “been a Democrat since the late 1960s.”<sup>12</sup> His Democratic affiliation began when Bernabei attended college.<sup>13</sup> This affiliation continues to this day.

24. Bernabei’s first job after graduating law school in 1975 was with the Massillon Law Department, beginning on May 3, 1976.<sup>14</sup> Consistent with his political affiliation, he was hired by a long-time Stark County Democrat, Thomas V. Ferrero, had been elected Massillon City Solicitor the prior November. Ferrero himself was appointed to replace long-time Democrat Virgil L. Musser, who had recently been elected as a Democrat Stark County Commissioner.<sup>15</sup>

25. After only a few short years in Massillon, in approximately 1979, Bernabei was hired by Canton Law Director Harry E. Klide.<sup>16</sup> Klide was a local Democrat icon and Executive Committee Member, and had just unsuccessfully run for Stark County Prosecutor a few years prior to hiring Bernabei.<sup>17</sup> Bernabei was active in Klide’s unsuccessful campaign.

26. When voters elected Democrat-Judge Irene Smart to the Stark County Court of Common Pleas in 1984, the Democratic Central Committee appointed Klide to replace Judge Smart on the Canton Municipal Court in January 1985.<sup>18</sup> Later that spring, the Democratic Central Committee appointed W. Scott Gwin to replace Klide as the Canton City Law Director.<sup>19</sup> Bernabei continued his employment with the Canton Law Department under newly appointed Democrat-Law Director Gwin.<sup>20</sup> In fact, in November of 1986, Bernabei even helped Gwin’s brother, James S. Gwin, mount an unsuccessful challenge to newly appointed Republican Senator Scott Oelslager.<sup>21</sup>

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<sup>12</sup> Matas, A., *Bernabei to challenge Healy in November*, The Canton Repository (May 5, 2015) (Appx. Tab 84).

<sup>13</sup> See, Stark County Commissioners, *Meet the Commissioners*, <http://www.starkcountyohio.gov/commissioners/meet-the-commissioners> (last accessed May 15, 2015) (Appx. Tab 99).

<sup>14</sup> *Id.*; *Council allocates \$98,000 for new storm sewers*, The Evening Independent (May 4, 1976) (Appx. Tab 56).

<sup>15</sup> *Musser running for county office*, The Evening Independent (Feb. 1, 1974) (Appx. Tab 53); *Ferraro in race for solicitor*, The Evening Independent (Feb. 13, 1975) (Appx. Tab 54); *Voters re-elect Ross in Dem sweep of City Hall*, The Evening Independent (Nov. 5, 1975) (Appx. Tab 55).

<sup>16</sup> Renner, A., *Law director announces his retirement*, The Canton Repository (June 2, 2000) (Appx. Tab 63).

<sup>17</sup> *Candidates in Tuesday’s election*, The Evening Independent (Oct. 30, 1976) (Appx. Tab 58); *Sen. Glenn tells of his visit to China at dinner for Klide*, The Evening Independent (Oct. 25, 1976) (Appx. Tab 57).

<sup>18</sup> *Dems tap Klide for judge*, The Canton Repository (Jan. 4, 1985) (Appx. Tab 59).

<sup>19</sup> See, *id.*

<sup>20</sup> Renner, A., *Law director announces his retirement*, The Canton Repository (June 2, 2000) (Appx. Tab 63).

<sup>21</sup> Schultze, M., *Oelslager wins four-year term*, The Canton Repository (Nov. 5, 1986) (Appx. Tab 60).

27. In November of 1988, Gwin defeated Republican Ira Turpin as Judge for the Fifth District Court of Appeals.<sup>22</sup> Democratic Mayor Sam Pursues temporarily appointed Bernabei as Canton Law Director, and the Democratic Central Committee permanently appointed Bernabei to replace Gwin as the Canton Law Director in February of 1989.<sup>23</sup>

28. Running as a Democrat, Bernabei retained the position of Canton Law Director over Republican Richard Kurn in November of 1989.<sup>24</sup> He was successfully re-elected as Canton Law Director in 1991, 1995, and 1999 – each time, running as a Democrat.

29. After 11 years as a Democratic elected official, Bernabei retired as Canton Law Director in 2000.<sup>25</sup> Upon his retirement, Bernabei lobbied the Democratic Central Committee to appoint fellow Democrat Joseph Martuccio as Bernabei's successor.<sup>26</sup> After the Democratic Central Committee appointed Martuccio over former Stark County Democratic Party Chairman Roy Gutierrez in July of 2000, Bernabei was named Treasurer of Martuccio's campaign committee. Bernabei then donated the entire \$13,081.20 remaining in his own campaign fund to Martuccio in early 2001.<sup>27</sup> To the extent this cash-dump was intended to scare off any potential challenger to Martuccio, it was successful. Martuccio was unopposed in his effort to retain the position of Canton Law Director as a Democrat, and with Bernabei as his Treasurer, he has run unopposed since.<sup>28</sup>

30. When Bernabei retired as the Canton Law Director in June of 2000, he was asked whether he would seek elected office again. "I don't think so, no," he said.<sup>29</sup> Yet, less than three years later, in February of 2003, Bernabei submitted petitions to run – as a Democrat – for Canton City Council at-Large. The reason: "Canton has serious problems, and it needs serious people to solve them," Bernabei said at the time. "I thought perhaps I could help. I feel an obligation to try."<sup>30</sup>

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<sup>22</sup> Schultze, M., *Stark voters reject GOP as appeals court shifts*, The Canton Repository (Nov. 9, 1988) (Appx. Tab 61).

<sup>23</sup> Semmler, E., *Kuhn will run for law post*, The Canton Repository (Feb. 9, 1989) (Appx. Tab 62); Renner, A., *Law director announces his retirement*, The Canton Repository (June 2, 2000) (Appx. Tab 63).

<sup>24</sup> Renner, A., *Law director announces his retirement*, The Canton Repository (June 2, 2000) (Appx. Tab 63).

<sup>25</sup> Id.

<sup>26</sup> Renner, A., *Martuccio wins law director position*, The Canton Repository (July 14, 2000) (Appx. Tab 64).

<sup>27</sup> *Candidates gearing up for primary election*, The Canton Repository (Feb. 1, 2001) (Appx. Tab 65).

<sup>28</sup> Renner, A., *Election offers mix of old, new*, The Canton Repository (Feb. 23, 2001) (Appx. Tab 66); *Election results*, The Canton Repository (Nov. 9, 2001) (Appx. Tab 67).

<sup>29</sup> Renner, A., *Law director announces his retirement*, The Canton Repository (June 2, 2000) (Appx. Tab 63).

<sup>30</sup> Renner, A., *Primaries full for Canton City Council*, The Canton Repository (Feb. 21, 2003) (Appx. Tab 68).

31. Bernabei's efforts to run as a Democrat for Canton City Council at-Large were successful. He prevailed in the May 2003 Democratic primary.<sup>31</sup> He also prevailed in the November 2003 general election.<sup>32</sup> However, during his 2003 campaign, Bernabei left open the possibility of returning to work for a Democratic elected official, as he had for 13 years under Democrats Thomas V. Ferrero, Harry E. Klide, and W. Scott Gwin. Specifically, Democrat William Smuckler, who was running for Mayor of the City of Canton against Republican Janet Creighton at the time, publicly announced that he would hire Bernabei as his Safety Director if Smuckler was elected.<sup>33</sup> Bernabei agreed he would take the job.<sup>34</sup> This drew sharp criticism from Republicans. Stark County Republican Party Chairman Curt Braden issued a press release that denounced the potential hiring as a "crass political ploy."<sup>35</sup> This was because the Democratic Central Committee would appoint Bernabei's replacement to Canton City Council after his hiring by Smuckler, effectively taking the selection process for the City Council seat away from Canton's voters.<sup>36</sup> Ultimately, Smuckler was unsuccessful in his bid for Mayor as a Democrat. His promised hiring of fellow-Democrat Bernabei never came to fruition.

32. Bernabei served as an elected-Democrat Canton City Council at-Large Member from January 2003 to December 2005. He did not seek re-election. Thereafter, in early 2006, Bernabei and his wife moved from their home in Canton, which was located on 441 Lakecrest Street NW, to a home they had purchased in 2001 in the Village of Hills and Dales, located on 2745 Dunkeith Drive NW.<sup>37</sup> The Bernabeis then put their former Canton home at 441 Lakecrest Street NW up for rent.<sup>38</sup>

33. Shortly after moving to Hills and Dales in 2006, Bernabei decided to continue employment under another Democrat-elected official, namely, Canton Mayor William J. Healy II. In December 2007, Healy hired Bernabei as Service Director and Chief of Staff for the City of Canton.<sup>39</sup> However, under law, Canton's Service Director is required to be a resident of the City of Canton.<sup>40</sup> As Bernabei was unwilling to relocate back to Canton from his home in Hills

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<sup>31</sup> Balint, E., *Bernabei advances to at-large election with Babcock, Casar*, The Canton Repository (May 7, 2003) (Appx. Tab 69).

<sup>32</sup> Balint, E., *Babcock, Casar win re-election*, The Canton Repository (Nov. 5, 2003) (Appx. Tab 71).

<sup>33</sup> Balint, E., *GOP leader denounces Bernabei*, The Canton Repository (Sept. 18, 2003) (Appx. Tab 70).

<sup>34</sup> Id.

<sup>35</sup> Id.

<sup>36</sup> Id.

<sup>37</sup> Deed for property at 2745 Dunkeith Drive NW (Appx. Tab 100); Bernabei Voter Change of Address (Appx. Tab 25); Bernadette Bernabei Voter Change of Address (Appx. Tab 26).

<sup>38</sup> Transcription of Video Interview Recording, Martin Olson and Thomas M. Bernabei (May 6, 2015) ("Olson Interview Tr."), p. 2 (Appx. Tab 49).

<sup>39</sup> Balint, E., *Healy chooses Bernabei for cabinet post*, The Canton Repository (Dec. 23, 2007) (Appx. Tab 72); Balint, Ed, *Healy heads west for safety chief*, The Canton Repository (Dec. 27, 2007) (Appx. Tab 73).

<sup>40</sup> R.C. § 735.01.

and Dales, Canton City Council was required to pass an ordinance waiving the residency requirement so as to enable Bernabei to serve under fellow Democrat Healy.<sup>41</sup>

34. In January 26, 2009, Mayor Healy fired Bernabei.<sup>42</sup> While Bernabei was reluctant to discuss the reasons for this termination publicly at the time, this termination was the beginning of Bernabei's strong and growing personal dislike of Healy (a fact discussed often by Bernabei in private). Recently, Bernabei has begun to publicly express his personal disdain toward Healy, claiming, among other things, that Healy fails to provide "competent, effective, ethical leadership in the office of Mayor."<sup>43</sup>

35. In February 2010, Bernabei submitted petitions to run for County Commissioner – of course, as a Democrat.<sup>44</sup> When asked why he was running, as with before, Bernabei said, "I'm not running for personal financial gain. The county needs educated, experienced people to deal with some difficult decisions."<sup>45</sup> Later he added the county needs "a leader who will restore the trust and credibility through honest and open dialogue with the public, hard work and high ethical conduct in office."<sup>46</sup>

36. Fellow Democrat, Canton Law Director Joseph Martuccio, served as Bernabei's Campaign Treasurer for Bernabei's Commissioner race.<sup>47</sup> Unopposed in the primary election, Bernabei was elected as a Democrat County Commissioner in November of 2010, defeating Republican James Walters and Independent Steven Todd.<sup>48</sup> Todd's presence in the race was essential to Bernabei's success. Todd championed "Tea Party" limited-government principles during his campaign, and in doing so, bled 12,032 votes from Bernabei's Republican opponent.<sup>49</sup> This enabled Bernabei's narrow victory.

37. With Bernabei's election as a Democrat County Commissioner in November of 2010 at the age of 63, Bernabei had served as an elected Democratic official for 13 years. He was hired by, and worked directly for, other Democratic elected officials for 12 years. This is in addition

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<sup>41</sup> Canton Ord. No. 17-2008 (Appx. Tab 101).

<sup>42</sup> Letter to Bernabei (Jan. 26, 2009) (Appx. Tab 102).

<sup>43</sup> Transcription of Radio Interview Recording, Pam Cook, Gary Rivers, and Thomas M. Bernabei (May 6, 2015) ("Cook and Rivers Interview Tr."), p. 3 (Appx. Tab 51).

<sup>44</sup> Pritchard, E., *Creighton to face Meeks in bid for Bosley's seat*, The Canton Repository (Feb. 18, 2010) (Appx. Tab 74).

<sup>45</sup> *Three vie to complete unexpired term*, The Canton Repository (Sept. 12, 2010) (Appx. Tab 75).

<sup>46</sup> Huffman, L., *Three seek to fill the unexpired term for Stark County commissioner*, The Canton Repository (Oct. 27, 2010) (Appx. Tab 76).

<sup>47</sup> Bernabei Designation of Treasurer (Apr. 21, 2010) (Appx. Tab 18).

<sup>48</sup> *Bernabei leading three-way race for commissioner*, The Canton Repository (Nov. 3, 2010) (Appx. Tab 77).

<sup>49</sup> *Three vie to complete unexpired term*, The Canton Repository (Sept. 12, 2010) (Appx. Tab 75); *Bernabei leading three-way race for commissioner*, The Canton Repository (Nov. 3, 2010) (Appx. Tab 77).

to all the other activities Bernabei engaged in which confirm his affiliation with the Democratic Party, such as lobbying the Democratic Central Committee and directly assisting the campaigns of Democratic Candidates.

**B. Bernabei's Affiliation with the Democratic Party Has Grown Even Stronger in Recent Years.**

38. After his election as a Democrat County Commissioner, Bernabei continued to reinforce and strengthen his affiliation with the Democratic Party. This was manifested most clearly by, among other things, Bernabei's submission of his Declaration of Candidacy on December 6, 2011 to run for re-election as a Democratic County Commissioner.<sup>50</sup>

39. Importantly, on each Declaration of Candidacy submitted, Bernabei affirmed under penalty of election falsification as follows:

**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 DEMOCRATIC Party.**<sup>51</sup>

40. Bernabei was unopposed in the 2012 primary election, and after the Republican challenger withdrew from the race, he was re-elected as a Democratic County Commissioner in the November 2012 general election.<sup>52</sup> *Bernabei continues to hold this office – as a Democrat – today.*

41. As further confirmation of his continuing Democratic affiliation, on February 4, 2014 Bernabei submitted a Declaration of Candidacy to run as a member of the Stark County Democratic Central Committee.<sup>53</sup> Bernabei had not previously served on Democratic Central Committee. *Containing the same Democratic affirmation set forth in his County Commissioner Declaration of Candidacy,*<sup>54</sup> quoted above, and utilizing his voting address of 2745 Dunkeith Drive NW in the Village of Hills and Dales, Bernabei was elected to the Democratic Central Committee on May 6, 2014.<sup>55</sup>

<sup>50</sup> Bernabei County Commissioner Declarations of Candidacy (Nov. 22, 2011) (Appx. Tab 16).

<sup>51</sup> Bernabei County Commissioner Declarations of Candidacy (Nov. 22, 2011) [emphasis added] (Appx. Tab 16).

<sup>52</sup> Huffman, L., *Bernabei to retain seat as Stark commissioner*, The Alliance Review (Oct. 30, 2012) (Appx. Tab 78).

<sup>53</sup> Bernabei Democrat Central Committee Declarations of Candidacy (Jan. 31, 2014) (Appx. Tab 17).

<sup>54</sup> Bernabei Democrat Central Committee Declarations of Candidacy (Jan. 31, 2014) (Appx. Tab 17).

<sup>55</sup> Stark BOE May 6, 2014 Election Results (Appx. Tab 48).

42. While Bernabei served as the Campaign Treasurer for fellow Democrat Law Director Joseph Martuccio since at least 2007 (and was reappointed to this position in January of 2015)<sup>56</sup>, Bernabei also became more active in his services as the Campaign Treasurers for other Democratic candidates. Specifically, in January of 2014, Bernabei agreed to serve as the Campaign Treasurer for Chryssa Hartnett, a Democratic Candidate for the Stark County Court of Common Pleas.<sup>57</sup> *As recently as February 5, 2015*, Bernabei agreed to serve as the Campaign Treasurer for Kristen Guardado, a Democratic Candidate for the Canton Municipal Court.<sup>58</sup> As a result of Bernabei's service as the Campaign Treasurer for these Democratic candidates, Bernabei's name has appeared on tens of thousands of pieces of Democratic campaign material – including yard signs, newspaper ads and radio spots – *even as recently as May 5, 2015*, the day after Bernabei submitted his Independent candidacy, and the day of the most recent Democratic primary.<sup>59</sup>

43. Bernabei was also a regular attendee at Democratic events and functions. On November 18, 2014, Bernabei was a guest speaker at a meeting of the Western Stark County Democratic Club.<sup>60</sup> A few months after that, *on February 5, 2015*, Bernabei was also a guest speaker at the meeting of the Alliance Area Democratic Club.<sup>61</sup>

44. As a result of this steadfast affiliation with the Democratic Party, it comes as no surprise that, in March 2014, Bernabei publicly described himself as *“a dyed-in-the-wool Democrat who serves with two Republicans.”*<sup>62</sup>

45. In sum, after Bernabei's election as a Democratic County Commissioner in November of 2010, his affiliation with the Democratic Party has only grown stronger. In fact, *it continues to this day.*

<sup>56</sup> Martuccio Designations of Treasurer (Mar. 6, 2007 and Jan. 9, 2015) (collectively at **Appx. Tab 19**).

<sup>57</sup> Hartnett Designation of Treasurer (Jan. 17, 2014) (**Appx. Tab 20**).

<sup>58</sup> Guardado Designation of Treasurer (Feb. 5, 2015) (**Appx. Tab 21**).

<sup>59</sup> Matas, A., *Bernabei to challenge Healy in November*, The Canton Repository (May 5, 2015) (**Appx. Tab 84**); Guardado for Judge Campaign Materials (**Appx. Tab 92**); Transcription of Radio Commercial Recording, Thomas M. Bernabei on Behalf of Democrat Kristen Guardado for Judge (Apr. 30, 2015 – May 5, 2015) (**Appx. Tab 52**); Invoice for Radio Commercial Recording, Thomas M. Bernabei on Behalf of Democrat Kristen Guardado for Judge (**Appx. Tab 93**).

<sup>60</sup> *Western Stark Dems to meet*, The Canton Repository (Nov. 18, 2014) (**Appx. Tab 81**).

<sup>61</sup> *Alliance Democrats to meet Thursday*, The Canton Repository (Feb. 1, 2015) (**Appx. Tab 82**). Bernabei was even a co-host to Chairman Chris Redfern at a reception to benefit the Ohio Democratic Party on July 17, 2013. *Redfern, Slesnick to host reception for Democrats*, The Canton Repository (Jan. 13, 2013) (**Appx. Tab 79**).

<sup>62</sup> Ujhely, S., *Politics aside, Stark County Commissioner Tom Bernabei takes fight for public seriously*, The Alliance Review (Mar. 17, 2014) (**Appx. Tab 80**).

### C. Bernabei's Long History of Democratic Political Contributions Underscores His Close Affiliation with the Democratic Party.

46. Bernabei has not only confirmed his dedicated affiliation with the Democratic Party by his lengthy service record as a Democrat elected official, employee, and volunteer, but he has also confirmed his deep affiliation with the Democratic Party with his wallet. *Even as recently as April 24, 2015*, Bernabei has been a staunch donor in support of Democrat candidates and organizations, donating more than \$30,000 dollars over the last several years.<sup>Endnote Table A</sup> A sample of Bernabei's Democrat contributions since 2014 includes:

BERNABEI'S DEMOCRAT POLITICAL CONTRIBUTIONS SINCE 2014		
Democratic Candidate or Entity	Amount	Date
Jefferson Jackson Democratic Club <sup>63</sup>	\$200.00	4/24/2015
Stark County Democratic Party <sup>64</sup>	\$500.00	4/22/2015
Greg Hawk for Canton Council <sup>65</sup>	\$50.00	4/7/2015
Edmond Mack for Canton Council <sup>66</sup>	\$50.00	3/26/2015
John Mariol for Canton Council <sup>67</sup>	\$50.00	3/26/2015
James Babcock for Canton Council <sup>68</sup>	\$50.00	3/26/2015
Kristen Guardado for Canton Municipal Judge <sup>69</sup>	\$100.00	3/3/2015
Stark County Democratic Party <sup>70</sup>	\$100.00	11/21/2014
George Maier for Sheriff <sup>71</sup>	\$500.00	9/24/2014
Chryssa Hartnett for Common Pleas Judge <sup>72</sup>	\$500.00	7/29/2014
Connie Rubin for Ohio Statehouse <sup>73</sup>	\$50.00	6/11/2014
Stark County Democratic Party <sup>74</sup>	\$100.00	5/19/2014
Jefferson Jackson Democratic Club <sup>75</sup>	\$80.00	3/20/2014
Chryssa Hartnett for Common Pleas Judge <sup>76</sup>	\$100.00	2/18/2014

<sup>63</sup> Letter from Jefferson-Jackson Democratic Club (May 26, 2015) (Appx. Tab 90).

<sup>64</sup> Bernabei Fundraiser Sponsorship and Check to Stark Democratic Party (Apr. 22, 2015) (Appx. Tab 91).

<sup>65</sup> Treasurer Designation and Finance Report of Greg Hawk Committee (Appx. Tab 40).

<sup>66</sup> Treasurer Designation and Finance Report of Edmond Mack Committee (Appx. Tab 39).

<sup>67</sup> Treasurer Designation and Finance Report of John Mariol Committee (Appx. Tab 38).

<sup>68</sup> Treasurer Designation and Finance Report of James Babcock Committee (Appx. Tab 37).

<sup>69</sup> Treasurer Designation and Finance Report of Kristen Guardado Committee (Appx. Tab 36).

<sup>70</sup> Stark Democratic Party Finance Report (Appx. Tab 41).

<sup>71</sup> Treasurer Designation and Finance Report of George Maier Committee (Appx. Tab 35).

<sup>72</sup> Treasurer Designation and Finance Report of Chryssa Hartnett Committee (Appx. Tab 34).

<sup>73</sup> Bernabei SOS Contributions (Appx. Tab 88).

<sup>74</sup> Stark Democratic Party Finance Report (Appx. Tab 41).

<sup>75</sup> Jefferson Jackson Democratic Club Finance Report (Appx. Tab 42).

<sup>76</sup> Treasurer Designation and Finance Report of Chryssa Hartnett Committee (Appx. Tab 34).

47. Bernabei's check to the Stark County Democratic Party *on April 22, 2015* was as a publicly-recognized "Bar Sponsor" for the Party's recent Cocktail Party Fundraiser, helping to raise money for the Party's Democratic headquarters.<sup>77</sup> This fundraiser was held *on April 30, 2015*<sup>78</sup> – the same day that Bernabei was preparing his "Independent" candidacy for Canton Mayor, described below.

**D. Bernabei's Voting Record Confirms His "Dyed-in-the-Wool" Affiliation with the Democratic Party.**

48. As this Board knows, Ohio does not allow people to register as a member of a political party when they register to vote. Rather, a person's political affiliation is determined by the partisan primary in which they vote.<sup>79</sup> Unsurprisingly, a cursory review of Bernabei's voting history confirms Bernabei's own self-assessment – he is "a dyed-in-the-wool Democrat." Since 1991, Bernabei has voted as a Democrat in Democratic primaries 20 times – most recently in May 2014.<sup>80</sup> Bernabei historically, regularly, and most importantly – recently – votes in furtherance of his Democrat affiliation.

**E. Bernabei's Electoral and Professional History Demonstrate his Affiliation with the Democratic Party.**

49. While Bernabei's Democrat political contributions, voting history, and volunteerism all serve to conclusively demonstrate Bernabei's Democrat affiliation, this affiliation is best illustrated by Bernabei's Democrat electoral and employment history. In fact, Bernabei continues to serve as a Democrat-elected County Commissioner, to this day. As explained in detail above, this electoral and employment history includes: (a) 17 years in office as an elected Democrat, continuing to this day; (b) 14 appearances on the ballot as a Democratic candidate; and (c) 12 years of employment when hired by and working directly for other Democratic elected officials.

**F. Bernabei's Disingenuous Efforts to Run for Canton Mayor as an Independent Candidate Did Not Sever His Unmistakable Affiliation with the Democratic Party.**

50. Democrat William J. Healy II has been the Mayor of the City of Canton since January 2008. Healy was re-elected in 2012, and he is currently in his second four-year term. Healy's re-election efforts were subject to a Democratic primary on May 5, 2015, and are subject to a

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<sup>77</sup> Bernabei Fundraiser Sponsorship and Check to Stark Democratic Party (Appx. Tab 91).

<sup>78</sup> Bernabei Fundraiser Sponsorship and Check to Stark Democratic Party (Appx. Tab 91).

<sup>79</sup> *State ex rel. Coughlin v. Summit Cty. Bd. of Elections*, 136 Ohio St.3d 371, 2013-Ohio-3867, 995 N.E.2d 1194, ¶ 28, fn. 2.

<sup>80</sup> Bernabei Voting History (Appx. Tab 22). Bernabei's spouse shares a similar Democratic-voting track record. Bernadette Bernabei Voting History (Appx. Tab 23).

general election on November 3, 2015. Bernabei worked for Mayor Healy until Healy fired him in 2009. This firing was undoubtedly a significant factor in Bernabei's sham candidacy.

51. The deadline to submit partisan Declarations of Candidacy for the Office of Mayor of the City of Canton was February 4, 2015.<sup>81</sup> Healy satisfied this deadline, and the Stark County Board of Elections certified Healy as a Democratic candidate. The Board of Elections similarly certified the Declaration of Candidacy of the current Canton City Treasurer, Democrat Kim R. Perez. A Democratic primary was therefore to take place for the Office of Canton Mayor on May 5, 2015 between Healy and Perez. No other Democrat or Republican candidates submitted Declarations of Candidacy – *including Democrat-Commissioner Bernabei*.

52. By late April 2015, the local consensus was that Perez would fall short in his challenge to Healy, and that Healy would prevail in the May 5, 2015 Democrat primary.<sup>82</sup> This is when Democrat-Commissioner Bernabei set into motion a truly bizarre and unprecedented scheme. His objective – to run against Healy for the Office of Mayor in the November 3, 2015 election – as an “Independent” candidate.

53. To run as an Independent candidate for the Office of Canton Mayor, a candidate must submit his or her nominating petition by 4:00 PM on Monday, May 4, 2015.<sup>83</sup> However, for someone such as Bernabei, who is a lifelong Democrat, current Democratic officeholder, and not even a resident of the City of Canton, it is not nearly as simple as submitting signed petitions – indeed, it is not even remotely possible, as explained below.

54. First, on Wednesday, April 29, 2015 – five days before Independent candidate nominating petitions were due – Bernabei tried to address the glaring problem with his non-Canton residency. He signed a temporary, one-month lease for a vacant property in the Canton Ridgewood Neighborhood located at 2118 University Avenue NW.<sup>84</sup> According to Bernabei, the lease had an effective date of Friday, May 1, 2015 – three days before Independent candidate nominating petitions were due.<sup>85</sup>

55. Then, by letter dated Thursday, April 30, 2015 – four days before Independent candidate nominating petitions were due – Bernabei communicated to Stark County Democratic Party Chairman Phil Giavasis his resignation from his position on the Democratic Central Committee as the representative for his precinct in the Village of Hills and Dales.<sup>86</sup> This letter still

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<sup>81</sup> R.C. § 3513.05.

<sup>82</sup> Olson, M., *Simply incredible, no?*, The Stark County Political Report (Apr. 24, 2015), <http://starkpoliticalreport.blogspot.com/2015/04/simply-incredible-no.html> (last accessed May 20, 2015) (“While the SCPR would not count Perez out, the odds are against him defeating incumbent Healy.”)

<sup>83</sup> R.C. § 3513.257.

<sup>84</sup> Olson Interview Tr., p. 4 (Appx. Tab 49).

<sup>85</sup> Olson Interview Tr., p. 4 (Appx. Tab 49).

<sup>86</sup> Bernabei Democratic Central Committee Resignation Letter (Apr. 30, 2015) (Appx. Tab 43).

accurately listed Bernabei's residential address as 2745 Dunkeith Drive NW – his home in Hills and Dales.

56. On the evening of Thursday, April 30, 2015, Bernabei left for Florida.<sup>87</sup> He returned to Ohio on Sunday, May 3, 2015 – the day before Independent candidate nominating petitions were due.<sup>88</sup>

57. When Bernabei returned from Florida on Sunday, May 3, 2015 – again, the day before Independent candidate nominating petitions were due – Bernabei did several things in furtherance of his scheme. He signed a nominating petition, under penalty of election falsification, as an Independent candidate for the Office of Mayor of Canton.<sup>89</sup> He then distributed copies of his Independent candidate nominating petitions to circulators, who began to obtain signatures of Canton voters the same day on Bernabei's behalf.<sup>90</sup> He also circulated his own Independent candidate nominating petition, obtaining several signatures himself.<sup>91</sup> And, at 4:45 PM that day, Bernabei appeared at the Stark County Board of Elections, and changed his registration voting address from his permanent Hills and Dales address at 2745 Dunkeith Drive NW to his temporary address of 2118 University Avenue NW.<sup>92</sup>

58. At the time Bernabei signed his Independent candidate nominating petitions on Sunday, May 3, 2015:

A. Bernabei was still a Democrat office holder in the position of County Commissioner. Bernabei continues to hold this position to this day.

B. Bernabei's Designation of Treasurer on file with the Stark County Board of Elections still designated Bernabei as a Democrat, with Democrat Law Director Joseph Martuccio serving as his Campaign Treasurer.<sup>93</sup>

C. Bernabei was still the Campaign Treasurer for several Democrat candidates, including Martuccio, Judge Chryssa Hartnett, and judicial candidate Kristen Guardado.<sup>94</sup>

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<sup>87</sup> Olson Interview Tr., p. 5 (Appx. Tab 49).

<sup>88</sup> Olson Interview Tr., p. 5 (Appx. Tab 49).

<sup>89</sup> Bernabei Independent Candidacy Nominating Petitions (May 3, 2015) (Appx. Tab 1).

<sup>90</sup> Id.

<sup>91</sup> Id.

<sup>92</sup> Bernabei Voter Registration Form (May 3, 2015) (Appx. Tab 44).

<sup>93</sup> Bernabei Designation of Treasurer (Apr. 21, 2010) (Appx. Tab 18).

<sup>94</sup> Hartnett Designation of Treasurer (Jan. 17, 2014) (Appx. Tab 20); Guardado Designation of Treasurer (Feb. 5, 2015) (Appx. Tab 21).

D. Bernabei's name appeared throughout Canton (and beyond) on numerous different types of campaign materials on behalf of Democrat Kristen Guardado, a judicial candidate for the Canton Municipal Court. Guardado was in the midst of a contested Democratic primary against Democrat Angela Alexander. Bernabei's name was appearing on Guardado's campaign materials in connection with both his public endorsement of Guardado's candidacy and his service as Guardado's Campaign Treasurer.<sup>95</sup> Indeed, Bernabei's name continued to appear on these campaign materials through May 5, 2015.<sup>96</sup> By way of example, on April 29, 2015, Bernabei personally recorded the following radio advertisement on behalf of Guardado,<sup>97</sup> which began to air on April 30, 2015 and continued to air on May 5, 2015:<sup>98</sup>

MR. BERNABEI: This is Stark County Commissioner Tom Bernabei. In my former job as Canton Law Director, 19 years ago I hired Kristen Donohue Guardado as a young lawyer. Today, she is an experienced prosecutor and an active community leader in Canton and Stark County.

Kristen Donohue Guardado is running for Canton Municipal Court Judge. She has deservedly earned the endorsements of the Repository and Canton Police Patrolmen's Association.

Please join me in voting for Kristen Donohue Guardado for Judge.

Paid for by the Kristen Donohue Guardado for Judge Committee.<sup>99</sup>

While judicial candidates are required to appear on a non-partisan ballot, the candidates themselves are indeed members of a political party and partisan candidates for office.<sup>100</sup> As a judicial candidate, Guardado is a partisan Democrat, confirmed by her Designation of Treasurer – that Bernabei himself signed.<sup>101</sup>

<sup>95</sup> Guardado for Judge Campaign Materials (Appx. Tab 92).

<sup>96</sup> Matas, A., *Bernabei to challenge Healy in November*, The Canton Repository (May 5, 2015) (Appx. Tab 84); Guardado for Judge Campaign Materials (Appx. Tab 92); Transcription of Radio Commercial Recording, Thomas M. Bernabei on Behalf of Democrat Kristen Guardado for Judge (Apr. 30, 2015 – May 5, 2015) (Appx. Tab 52), Invoice for Radio Commercial Recording, Thomas M. Bernabei on Behalf of Democrat Kristen Guardado for Judge (Appx. Tab 93).

<sup>97</sup> Email from Mix 94.1 & WHBC 1480, Rebecca Marchino, Account Executive (Appx. Tab 103).

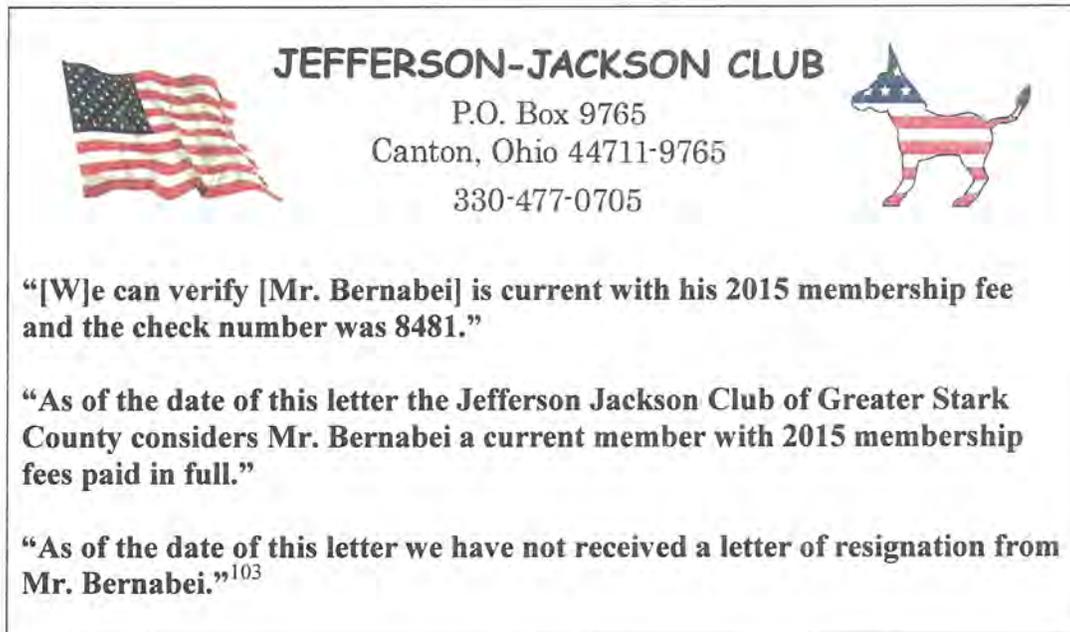
<sup>98</sup> Invoice for Radio Commercial Recording, Thomas M. Bernabei on Behalf of Democrat Kristen Guardado for Judge (Appx. Tab 93).

<sup>99</sup> Transcription of Radio Commercial Recording, Thomas M. Bernabei on Behalf of Democrat Kristen Guardado for Judge (Apr. 30, 2015 – May 5, 2015) (Appx. Tab 52).

<sup>100</sup> *State ex rel. Coughlin v. Summit Cty. Bd. of Elections*, 136 Ohio St.3d 371, 2013-Ohio-3867, 995 N.E.2d 1194, ¶ 28.

<sup>101</sup> Guardado Designation of Treasurer (Feb. 5, 2015) (Appx. Tab 21). In addition, Bernabei's name continued to be publicly displayed in a manner to convey his affiliation with Democrats – even weeks after Bernabei filed as a purported "Independent" candidate for the office of Canton Mayor. For instance, as of May 21, 2015, Bernabei's

E. Bernabei was still a member, in good standing, with the Jefferson-Jackson Democratic Club, and continues to be to this day.<sup>102</sup> By letter dated May 26, 2015, the President of the Jefferson-Jackson Democratic Club wrote:



F. Bernabei had never even spent the night at his temporary voting address of 2118 University Avenue NW, let alone set up a residence there. Indeed, it would have been impossible for Bernabei to have slept at that residence prior to May 3, 2015 because his temporary one-month lease was not effective until May 1, 2015, and Bernabei was in Florida from April 30, 2015 until May 3, 2015, which is the day Bernabei signed his Independent candidate nominating petitions.<sup>104</sup>

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photograph continued to be displayed on the walls of the Stark County Democratic Headquarters as a Democratic elected official. Stark County Democratic Headquarters Photographs (May 21, 2015) (Appx. Tab 94). Further, as of May 22, 2015, Bernabei continued to be listed as Democrat Kristen Guardado’s Campaign Treasurer on Guardado’s campaign website, continued to be listed as Democrat Chryssa Hartnett’s Campaign Treasurer on Hartnett’s campaign website, continued to be listed as Democrat Frank Forchione’s Campaign Chairman on Forchione’s campaign website, and continued to be listed as a Democrat elected official and leader on the Stark County Democratic Party’s website. Kristen Guardado for Judge Website (May 22, 2015) (Appx. Tab 95); Chryssa Hartnett for Judge Website (May 22, 2015) (Appx. Tab 96); Frank Forchione for Judge Website (May 22, 2015) (Appx. Tab 97); Stark County Democratic Party Website (May 22, 2015) (Appx. Tab 98). As of the aforementioned dates, Bernabei never requested that his name or photograph be removed from these public displays of Democratic affiliation.

<sup>102</sup> Letter from Jefferson-Jackson Democratic Club (May 26, 2015) (Appx. Tab 90).

<sup>103</sup> Letter from Jefferson-Jackson Democratic Club (May 26, 2015) (Appx. Tab 90).

<sup>104</sup> Olson Interview Tr., pp. 4-5 (Appx. Tab 49).

59. The following day, on Monday, May 4, 2015, Bernabei again appeared at the Stark County Board of Elections, and finalized his “Independent” candidacy scheme – though it took two separate appearances that day.

60. First, Bernabei cast a provisional “issues only” ballot for the May 5, 2015 primary, using the temporary 2118 University Avenue NW address he registered the previous day.<sup>105</sup> Then, at 2:02 PM, Bernabei filed a letter with the Board of Elections resigning as the Campaign Treasurer for Democrats Kristen Guardado, Chryssa Hartnett, and Joseph Martuccio.<sup>106</sup> Next, also at 2:02 PM, Bernabei filed a new Designation of Treasurer for his own campaign committee, which attempted to change his “party affiliation” to “Independent,” and replace Democrat Joseph Martuccio as his Campaign Treasurer with Michael Hanke.<sup>107</sup> However, this document was unsigned by Michael Hanke, and was rejected by the Board. Bernabei then left the Stark County Board of Elections.

61. Upon his return about an hour later, Bernabei filed the nominating petitions with the Stark County Board of Elections as an Independent candidate for the Office of Mayor of Canton.<sup>108</sup> At 3:26 PM, Bernabei filed his April 30, 2015 letter resigning from the Democratic Central Committee as the representative for his precinct in the Village of Hills and Dales, accompanied by other letters of resignation purportedly sent to various Democratic Clubs.<sup>109</sup> Finally, on 3:29 PM, Bernabei re-filed his new Designation of Treasurer for his own campaign committee, this time containing the signature of his new Campaign Treasurer, Michael Hanke.<sup>110</sup>

#### **G. Bernabei Failed to Establish Canton Residency and Violated Ohio Law in the Process.**

62. Bernabei *never* intended 2118 University Avenue NW to be his permanent address. Rather, he admits that this location was only temporary, and he describes his “permanent home” as being located at 441 Lakecrest Street NW – the home he lived in Canton nearly 10 years ago

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<sup>105</sup> Olson Interview Tr., pp. 10-11 (Appx. Tab 49). See also, Transcription of Radio Interview Recording, Ron Ponder and Thomas M. Bernabei (May 6, 2015) (“Ponder Interview Tr.”), p. 8 (Appx. Tab 50).

<sup>106</sup> Bernabei Treasurer Resignation Letter (May 4, 2015) (Appx. Tab 45).

<sup>107</sup> Bernabei Campaign Committee Designation of Treasurer (May 4, 2015) (Appx. Tab 46).

<sup>108</sup> Bernabei Independent Candidacy Nominating Petitions (May 3, 2015) (Appx. Tab 1).

<sup>109</sup> Bernabei Democratic Central Committee Resignation Letter (Apr. 30, 2015) (Appx. Tab 43).

<sup>110</sup> Bernabei Campaign Committee Designation of Treasurer (May 4, 2015) (Appx. Tab 46). While Bernabei replaced Democrat Joseph Martuccio as his own Campaign Treasurer (presumably in an effort to appear more “independent”), Bernabei simply replaced Martuccio with another Democrat. More specifically, not only is Bernabei’s new Campaign Treasurer, Michael Hanke, a current, registered Democrat, but Hanke also voted in as a Democrat in the primary on May 5, 2015. Hanke Voting History and Absentee Ballot (Appx. Tab 24). Moreover, in the past, Hanke has even donated to the Stark County Democratic Party and Democrat candidates. See, e.g., Stark Democratic Party Finance Report (Appx. Tab 41); Hanke SOS Contributions (Appx. Tab 89).

that he rented out prior to moving to Hills and Dales.<sup>111</sup> When (and if) Bernabei leaves Hills and Dales, Bernabei claims he plans to permanently reside at his 441 Lakecrest Street NW property. In an interview on May 6, 2015:

MR. BERNABEI: I do own a house then at 441 Lakecrest which has been my permanent home before. Um, that house has been rented. That house has now become vacant. Ah, in fact, as of today [May 6, 2015], I will get the keys back and I will personally be moving back into the house probably immediately, or within the next day or two days. Ah, and subject to putting some additional new carpeting in and a couple of other things that my wife has demanded as condition to continue to live with me ... she will be moving in and that will become our permanent residence.<sup>112</sup>

In another interview the same day:

MR. BERNABEI: But I do have a house in Canton ... I bought it 1986. It's a, a home at 441 Lakecrest Street NW. Market and Hills allotment. Um, we lived there from 1986 to probably 19- to 2004, or approximately that date. ... Then I put it into rental status. So it's been rented since. ... [T]hat house has, has been rented to a doctor. He has, ah, purchased a new house in Jackson Township. ... He started moving this weekend and he texted me last night or the night before to tell me. ... And I'm actually meeting him today at 4:30 just to, ya know, walk through the house, give him back his security deposit and ah get my keys back. So my permanent house – my permanent house –

MR. OLSON: So you haven't physically relocated yet?

MR. BERNABEI: To that house. My, my permanent house in Canton –

MR. OLSON: Okay.

MR. BERNABEI: – is, is now available.

MR. OLSON: Okay.

MR. BERNABEI: Ya know, and I will be moving back to that house. My wife will then be moving back to that house also.

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<sup>111</sup> Ponder Interview Tr., p. 11 (Appx. Tab 50).

<sup>112</sup> Ponder Interview Tr., p. 11 (Appx. Tab 50).

Ya know, and maybe do some, ya know, new carpet in a couple of the rooms and then we'll move all of our furniture from our house in Jackson Township in Hills and Dales to, to that house. And we will live there as we used to.<sup>113</sup>

63. Bernabei's intention was to temporarily "camp-out" at 2118 University Avenue NW, and therefore – in his mind only – satisfy the "voter residence" requirements set forth in Ohio law to enable him to run for Mayor. This is confirmed by Bernabei's admission that the only thing he moved into his "voting residence" at 2118 University Avenue NW was "a bed, [his] clothes, ... a card table and a computer ... and not much else."<sup>114</sup> Bernabei's Attorney Registration Address with the Ohio Supreme Court remains as 2745 Dunkeith Drive NW in Hills and Dales.<sup>115</sup> His wife did not even join him in his temporary "camp out" – she remains at their home in Hills and Dales.<sup>116</sup> Not only is the house at 2118 University Avenue NW completely empty, but it was (and still is) listed for sale.<sup>117</sup>

64. Ohio law defines a person's voting residence as "the residence of a person in which the person's habitation *is fixed* and to which, whenever the person is absent, the person has the intention of returning." R.C. § 3503.02(A). As explained in greater detail below, a card table, a bed, and a one-month lease do not constitute a fixed habitation.

#### **H. Bernabei's Claimed Unaffiliation Has been Improperly Motivated by Short-Range Political Goals, Pique, Personal Quarrel, Political Convenience, and Opportunism.**

65. The question then becomes this: what could possibly have motivated Bernabei to launch such a bizarre and ill-advised scheme? Ordinarily, when a person genuinely, legitimately, and in good faith disaffiliates with their political party, it is due to a disagreement with party policy or philosophy. Not Bernabei. *The Canton Repository* reported that, "Bernabei said he doesn't feel any ill will toward the Democratic Party — which has always been good to him, he added."<sup>118</sup> Bernabei elaborated further during in an interview on May 6, 2015:

<sup>113</sup> Olson Interview Tr., pp. 2-4 (Appx. Tab 49).

<sup>114</sup> Ponder Interview Tr., p. 10 (Appx. Tab 50).

<sup>115</sup> Ohio Supreme Court Attorney Registration, Thomas M. Bernabei (May 25, 2015) (Appx. Tab 104).

<sup>116</sup> Ponder Interview Tr., p. 10 (Appx. Tab 50).

<sup>117</sup> Realtor.com Website, 2118 University Avenue NW (May 22, 2015) (Appx. Tab 105). Bernabei does not own the property at 2118 University Avenue NW, and clearly has no intention of buying it. Stark County Auditor's Office, 2118 University Avenue NW Property Card (May 22, 2015) (Appx. Tab 106). It is therefore no surprise that the social magazine for the Village of Hills and Dales prominently featured the Bernabeis in its "Meet Your Neighbors" section – *in the magazine's May 2015 issue*. *Meet your neighbors, Tom and Bebe Bernabei*, Hills Living (May 2015) (Appx. Tab 83).

<sup>118</sup> Matas, A., Bartos, T., *Special Report: Bernabei, Cicchinelli declare their independence in Canton, Massillon mayoral races*, *The Canton Repository* (May 16, 2015) (Appx. Tab 86).

MR. BERNABEI: But ya know, again, ya know, no I, I am not leaving the Democratic Party, ah, ya know, on, on bad terms in any way, shape or form. *Ya know, nothing occurred.* And if you read the cases by the way, most of the, most of these cases are about candidates who left their party because they were spurned in some way, shape or form, or, or ya know, there's, there's a whole line of cases like that and so forth. But no, I truly appreciate the relationship that I had with the Democratic Party.<sup>119</sup>

66. Perhaps it is because Bernabei thinks Canton's current leadership is wholly incompetent, the City is doomed to utter failure without his desperately needed leadership, and that he would do a far superior job than the current Mayor of Canton. Indeed, Bernabei has stated as much when he said, "Canton is in desperate need of leadership."<sup>120</sup> *The Canton Repository* similarly reported, "Stark County Commissioner Tom Bernabei decided to run for Canton's top job, move back into the city and disaffiliate from his political party because he thinks the mayor's office needs a leader."<sup>121</sup>

67. *However*, a partisan candidate's belief that they can do a better job than the current office holder who is a member of their same political party is plainly *not* a good faith reason for disaffiliation with a political party. If it were, what would be the point of primary elections? But pressing further, it is clear there is a much more probable reason for Bernabei's bizarre attempts to disaffiliate with the Democratic party. This is because Bernabei gave the exact same reasons to explain his *Democrat* candidacies for Canton City Council in 2003 ("Canton has serious problems, and it needs serious people to solve them")<sup>122</sup> and County Commissioner in 2010 ("The county needs educated, experienced people to deal with some difficult decisions.")<sup>123</sup>

68. In light of these facts, even Bernabei himself admitted: "I understand that there is a, ya know, risk, ya know, associated with, with, taking this, this fight on"<sup>124</sup> and "I do anticipate a serious challenge to my candidacy at the Board of Elections."<sup>125</sup> So what could have motivated Bernabei to abandon the political party that loyally supported him for decades, that he himself served and personally invested in his entire life, try to disavow the oath he took to uphold the principles of that political party which enabled his current service as an elected official, and abandon his home in Hills and Dales to "camp out" in an empty house apart from his wife?

<sup>119</sup> Olson Interview Tr., pp. 26-27 [emphasis added] (Appx. Tab 49).

<sup>120</sup> Ulhelyi, S., 'Dyed-in-the-wool Democrat' surrenders central committee post for benefit of Stark County and Canton, *The Alliance Review* (May 9, 2015) (Appx. Tab 85).

<sup>121</sup> Matas, A., *Bernabei to challenge Healy in November*, *The Canton Repository* (May 5, 2015) (Appx. Tab 84).

<sup>122</sup> Renner, A.J., *Primaries full for Canton City Council*, *The Canton Repository* (Feb. 21, 2003) (Appx. Tab 68).

<sup>123</sup> *Three vie to complete unexpired term*, *The Canton Repository* (Sept. 12, 2010) (Appx. Tab 75).

<sup>124</sup> Olson Interview Tr., p. 10 (Appx. Tab 49).

<sup>125</sup> Cook and Rivers Interview Tr., p. 7 (Appx. Tab 51).

Why take such an incredible risk? Perhaps it is simply this: “Life being what it is, one dreams of revenge.”

69. Whatever Bernabei’s true motivation, one thing is clear. Ohio does not condone this type of unabashed gamesmanship. In fact, it expressly prohibits it. For the reasons that follow, this Board should uphold this protest, and invalidate the nominating petitions and candidacy of Thomas M. Bernabei as an independent candidate for the Office of Mayor of the City of Canton, Ohio, pursuant to R.C. §§ 3513.262 and 3501.39(A).

### GROUNDS FOR PROTEST

#### **A. Thomas M. Bernabei is Still Objectively Affiliated with the Democratic Party and Any Claim of Disaffiliation has not been in Good Faith.**

70. R.C. §§ 3501.01(I) and 3513.257 require that an aspiring independent candidate must *actually* be independent, rather than merely claim it, and that any claim of independence must be made in good faith.<sup>126</sup> The Ohio Secretary of State has established standards to guide this Board’s application of this requirement.<sup>127</sup> The Ohio Supreme Court recognizes that the Ohio Secretary of State’s standard appropriately guides the evaluation of whether a claimed independent candidate is truly independent.<sup>128</sup>

71. Ohio uses a two-part test to determine whether a claimed independent candidate is actually independent:

- (1) That the independent candidate actually be unaffiliated, or disaffiliated from any political party; *and*
- (2) That the required claim of unaffiliation by an independent candidate must be made in good faith.<sup>129</sup>

If either requirement is not satisfied, the candidate is not qualified to run as an “independent,” and this Board must invalidate the prospective candidate’s nominating petitions and candidacy pursuant to R.C. § 3501.39(A).

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<sup>126</sup> *Morrison v. Colley*, S.D. Ohio No. 2:06cv644, 2006 WL 2619825 (Sept. 12, 2006) (Appx. Tab 11), *aff’d*, 467 F.3d 503 (6th Cir. 2006) (Appx. Tab 12).

<sup>127</sup> Ohio Sec. State Adv. Op. No. 2007-05 (Appx. Tab 2).

<sup>128</sup> *State ex rel. Monroe v. Mahoning Cty. Bd. of Elections*, 137 Ohio St. 3d 62, 2013-Ohio-4490, 997 N.E.2d 524, ¶ 22; *State ex rel. Davis v. Summit Cty. Bd. of Elections*, 137 Ohio St. 3d 222, 2013-Ohio-4616, 223, 998 N.E.2d 1093, ¶ 12.

<sup>129</sup> Ohio Sec. State Adv. Op. No. 2007-05 (Appx. Tab 2).

72. This first step is determined objectively by examining evidence that demonstrates an actual affiliation with a political party.<sup>130</sup> The second step ensures that even if a candidate claiming independence is not actually affiliated with a political party, “claims” of non-affiliation must nevertheless be in “good faith.”<sup>131</sup> In other words, a claim of unaffiliation or disaffiliation must be “genuine and legitimate,” and *not* “rooted in intra-party feuding, tactical maneuvering, or political convenience – circumstances that potentially disrupt the integrity of the election process by causing voter confusion or other problems.”<sup>132</sup> This is determined by examining the circumstantial evidence surrounding the candidate’s conduct.

73. The purpose behind limiting access to the ballot via independence is to protect “against independent candidacies prompted by short-range political goals, pique, or personal quarrel.”<sup>133</sup> This is because “splintered parties and unrestrained factionalism may do significant damage to the fabric of government.”<sup>134</sup> Indeed, “the general election ballot is reserved for major struggles; it is not a forum for continuing intraparty feuds.”<sup>135</sup> For this reason, the standard to be applied by this Board as articulated by the Ohio Secretary of State has been upheld as constitutional – twice.<sup>136</sup>

74. There are two objective acts that will *automatically* disqualify a potential independent candidate: (1) voting in a party primary election *after* filing as an independent and (2) serving on a political party’s central or executive committee *after* filing as an independent.<sup>137</sup> However, upon sufficient evidence, boards of elections do not hesitate to disqualify independent candidates even in the absence of these automatic disqualifiers.<sup>138</sup> On this point, the Federal Court of the Southern District of Ohio observed:

[E]ven if a candidate does not vote in a party primary after filing as an independent, and does not serve on a party’s central or executive committee after

<sup>130</sup> Ohio Sec. State Adv. Op. No. 2007-05 (Appx. Tab 2).

<sup>131</sup> Ohio Sec. State Adv. Op. No. 2007-05 (Appx. Tab 2).

<sup>132</sup> *Jolivette v. Husted*, 886 F. Supp. 2d 820, 827 (S.D. Ohio 2012) (Appx. Tab 4), *aff’d*, 694 F.3d 760 (6th Cir. 2012) (Appx. Tab 5).

<sup>133</sup> *Storer v. Brown*, 415 U.S. 724, 736, 94 S. Ct. 1274 (1974).

<sup>134</sup> *Id.* at 736 (*citing*, The Federalist, No. 10 (Madison)).

<sup>135</sup> *Id.* at 735.

<sup>136</sup> *Morrison v. Colley*, 467 F.3d 503 (6th Cir. 2006) (Appx. Tab 11); *Jolivette v. Husted*, 694 F.3d 760 (6th Cir. 2012) (Appx. Tab 5). *See also*, *Storer v. Brown*, 415 U.S. 724, 94 S. Ct. 1274 (1974).

<sup>137</sup> Ohio Sec. State Adv. Op. No. 2007-05 (Appx. Tab 2).

<sup>138</sup> *In re Greg Jolivette*, Ohio Sec. of State Letter (June 26, 2012) (Appx. Tab 3), *aff’d*, *Jolivette v. Husted*, 886 F. Supp. 2d 820, 836 (S.D. Ohio 2012) (Appx. Tab 4), *aff’d*, 694 F.3d 760 (6th Cir. 2012) (Appx. Tab 5); *In re Edna Boyle*, Ohio Sec. of State Letter (Oct. 5, 2007) (Appx. Tab 6); *aff’d*, *State ex rel. Boyle v. Summit Cty. Bd. of Elections*, Ohio Ct. of Cmn. Pleas, Summit Cty. Case No. 2007-10-7107, 2007 WL 4462641 (Oct. 17, 2007) (Appx. Tab 7).

filing as an independent, these circumstances do not preclude a finding that the candidate is not unaffiliated or disaffiliated in view of other conduct or circumstances, or a finding that the disaffiliation was not made in good faith. ***Indeed, a rational candidate attempting to disaffiliate from a party out of political convenience would not engage in such conduct, if the candidate understands that taking certain actions would necessarily preclude running as an independent.***<sup>139</sup>

75. The Ohio Secretary of State has described the type of evidence that may serve as an indication of party affiliation to support a protest against an independent candidate's candidacy.<sup>140</sup> This evidence includes:

- Current holding of public office for which the office holder was nominated through a political party's primary election and elected on a partisan ticket.
- Information submitted on required election-related filings.
- Political advertisements.
- Participation as a political party officer or member.
- Past voting history. While voting history alone may be insufficient to disqualify an independent candidate, the Ohio Secretary of State has stated, ***"voting history, together with other facts tending to indicate party affiliation, may be sufficient grounds to disqualify an independent."***<sup>141</sup>

In subsequent decisions, the Ohio Secretary of State has also cited other types of evidence, in addition to the above, to uphold a protest against an independent candidate's candidacy:<sup>142</sup>

- Prior political contributions.
- Prior holding of office as for which the office holder was nominated through a political party's primary election and elected on a partisan ticket.
- Previously circulated declarations of candidacy.
- Prior political appointments.
- Information displayed on public websites.

<sup>139</sup> *Jolivette v. Husted*, 886 F. Supp. 2d 820, 831 (S.D. Ohio 2012) (Appx. Tab 4), *aff'd*, 694 F.3d 760 (6th Cir. 2012) (Appx. Tab 5) [emphasis added].

<sup>140</sup> Ohio Sec. State Adv. Op. No. 2007-05 (Appx. Tab 2).

<sup>141</sup> Ohio Sec. State Adv. Op. No. 2007-05 (Appx. Tab 2).

<sup>142</sup> *In re Greg Jolivette*, Ohio Sec. of State Letter (June 26, 2012) (Appx. Tab 3), *aff'd*, *Jolivette v. Husted*, 886 F. Supp. 2d 820, 836 (S.D. Ohio 2012) (Appx. Tab 4), *aff'd*, 694 F.3d 760 (6th Cir. 2012) (Appx. Tab 5); *In re Edna Boyle*, Ohio Sec. of State Letter (Oct. 5, 2007) (Appx. Tab 6); *aff'd*, *State ex rel. Boyle v. Summit Cty. Bd. of Elections*, Ohio Ct. of Cm'n. Pleas, Summit Cty. Case No. 2007-10-7107, 2007 WL 4462641 (Oct. 17, 2007) (Appx. Tab 7).

76. This Board's evaluation of the evidence in this matter is necessarily fact specific. The Southern District of Ohio described the analysis that must be undertaken by this Board as follows:

The standard for determining whether a candidate meets the definition of an "independent candidate" makes it difficult to determine the point of demarcation between a candidate's genuine and legitimate unaffiliation or disaffiliation and a claim of independence that is actually rooted in intra-party feuding, tactical maneuvering, or political convenience – circumstances that potentially disrupt the integrity of the election process by causing voter confusion or other problems.

Consequently, determining whether a candidate is actually unaffiliated or disaffiliated with a political party, and whether the claim of independence is made in good faith, are necessarily fact specific and intensive.

This determination requires a thorough review of the candidate's conduct as it relates to party affiliation.

Furthermore, the strength of the affiliation is necessarily pertinent when evaluating an asserted disaffiliation, as the candidate must demonstrate that the strings attaching him or her to the party are sufficiently severed, or at least that the candidate has engaged in decisive conduct demonstrating an intent to completely sever those strings, within a context *not* demonstrating a shift to independence as a means of political convenience or opportunism.<sup>143</sup>

77. While Ohio law is often liberally "interpreted in favor of ballot access," "***strict compliance is the default for election laws*** and that standard is lowered only when the statutory provision at issue expressly states that it is."<sup>144</sup> The standards for "independent candidates" under Ohio law, R.C. §§ 3501.01(I) and 3513.257, do not include a "substantial compliance" standard. "Therefore, strict compliance is required."<sup>145</sup>

78. To be an independent candidate in the State of Ohio, the candidate must actually "be disaffiliated from any political party"; and "the claim of unaffiliation must "be made in good faith."<sup>146</sup> Bernabei has been, and remains, affiliated with the Democratic Party. Bernabei's claimed disaffiliation from the Democratic Party is not and has not been made in good faith, as it is motivated – purely and exclusively – by "short-range political goals, pique, personal quarrel,"

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<sup>143</sup> *Jolivet v. Husted*, 886 F. Supp. 2d 820, 829-30 (S.D. Ohio 2012) (Appx. Tab 4), *aff'd*, 694 F.3d 760 (6th Cir. 2012) [emphasis added] (Appx. Tab 5).

<sup>144</sup> *State ex rel. Linnabary v. Husted*, 138 Ohio St. 3d 535, 8 N.E.3d 940, 2014-Ohio-1417, ¶¶ 40-42 [emphasis added].

<sup>145</sup> *Id.*

<sup>146</sup> Ohio Sec. State Adv. Op. No. 2007-05 (Appx. Tab 2).

“political convenience, [and] opportunism.” It is a sham. This Board must uphold this protest, and invalidate the nominating petitions and candidacy of Thomas M. Bernabei as an independent candidate for the Office of Mayor of the City of Canton, Ohio, pursuant to R.C. §§ 3513.262 and 3501.39(A).

**1. Bernabei is Still Objectively Affiliated with the Democratic Party.**

79. As previously discussed, the evidence confirming Bernabei’s ongoing affiliation with the Democratic Party includes:

A. ***Holding Office as a Democrat.*** Bernabei has held elected office for 17 years. He has identified as a Democrat for the entirety of his career as an elected official.<sup>147</sup>

B. ***Democrat Employment.*** Bernabei has been hired by three different Democrat elected officials, and worked directly for these Democrats for 12 years.<sup>148</sup>

C. ***Democrat Ballot Appearances.*** Bernabei appeared on the ballot in primary and general elections as a Democrat candidate for public office on 14 separate occasions, most recently in May of 2014.<sup>149</sup>

D. ***Democrat Donations and Fundraising.*** Bernabei donated over \$30,000 in political contributions to Democrat candidates and organizations, including five separate Democrat candidates in the most recent election cycle, even as recently as April 24, 2015. Bernabei even donated as a host committee member for a Democratic Party fundraiser on April 30, 2015, less than a week before he submitted his Independent candidacy petitions.<sup>150</sup>

E. ***Democratic Club Membership.*** Bernabei continues to be a good standing member of the Jefferson-Jackson Democratic club.<sup>151</sup>

F. ***Democrat Central Committee Membership.*** Bernabei served as a member of the Democratic Central Committee until April 30, 2015.<sup>152</sup>

G. ***Democrat Central Committee Appointment.*** Bernabei sought and obtained appointment to public office by the Democratic Central Committee.<sup>153</sup>

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<sup>147</sup> *Supra* at ¶¶ 4, 49.

<sup>148</sup> *Supra* at ¶¶ 4, 49.

<sup>149</sup> *Supra* at ¶¶ 4, 49.

<sup>150</sup> *Supra* at ¶ 46.

<sup>151</sup> *Supra* at ¶ 58.

<sup>152</sup> *Supra* at ¶¶ 41, 55.

<sup>153</sup> *Supra* at ¶ 27.

H. ***Democrat Central Committee Lobbying.*** Bernabei successfully lobbied the Democratic Central Committee to appoint others to public office.<sup>154</sup>

I. ***Democratic Event Attendance.*** Bernabei regularly attended Democrat events and functions, including as a guest speaker for the Alliance Area Democratic Club on February 5, 2015.<sup>155</sup>

J. ***Democrat Designation of Treasurer on File.*** Bernabei's own campaign Designation of Treasurer on file with the Stark County Board of Elections listed Bernabei as Democrat until May 4, 2015, which is the day after Bernabei signed his Independent nominating petition.<sup>156</sup>

K. ***Democrat Candidate Treasurer.*** Bernabei served as the designated Campaign Treasurer for three separate Democratic candidates until May 4, 2015.<sup>157</sup>

L. ***Democrat Candidate Political Materials.*** Bernabei appeared on tens of thousands of pieces of campaign materials for Democrat candidates, and even personally recorded radio commercial on behalf of a Democratic candidate that aired on May 5, 2015, the day after Bernabei filed his Independent nominating petition.<sup>158</sup>

M. ***Democrat Public Statements.*** Bernabei publicly described himself as “a dyed-in-the-wool Democrat” in March of 2014.<sup>159</sup>

N. ***Democrat Voting History.*** Bernabei has consistently voted as a Democrat – specifically, over 20 times since 1991, and as recently as May 2014.<sup>160</sup>

O. ***Democrat Elected Office.*** To this day, Bernabei is still a Democrat office holder in the position of County Commissioner.<sup>161</sup>

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<sup>154</sup> *Supra* at ¶ 29.

<sup>155</sup> *Supra* at ¶ 43.

<sup>156</sup> *Supra* at ¶¶ 36, 60-61.

<sup>157</sup> *Supra* at ¶¶ 42, 60.

<sup>158</sup> *Supra* at ¶¶ 42, 58.

<sup>159</sup> *Supra* at ¶ 44.

<sup>160</sup> *Supra* at ¶ 48.

<sup>161</sup> *Supra* at ¶ 60.

80. Under a plain text reading of Ohio law,<sup>162</sup> this evidence is more than sufficient to prove Bernabei's ongoing affiliation with the Democratic Party. Indeed, a conclusion of partisan affiliation has been reached in other cases based upon significantly less evidence.<sup>163</sup>

**2. Bernabei's Current Holding of Public Office as an Elected Democrat, Standing Alone, Proves that Bernabei is Currently Affiliated with the Democratic Party.**

81. Bernabei's ongoing affiliation with the Democratic Party as illustrated by Bernabei's current service as a Democrat-elected County Commissioner warrants further discussion. The evidence in this case is sufficient to require a finding that Bernabei is actually affiliated with the Democratic Party pursuant Ohio law, even in the absence of Bernabei's ongoing service as a Democrat-County Commissioner.<sup>164</sup> Other decisions have reached this same conclusion on far less evidence.<sup>165</sup> The mere fact that Bernabei continues to serve as a Democratic elected official is sufficient evidence that Bernabei is actually affiliated with the Democratic Party so as to mandate his disqualification, even if no other evidence was present in this case.

82. *First*, Bernabei swore under penalty of perjury that he would remain affiliated with the Democratic Party if he were elected as a Democrat to the office of County Commissioner:

**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 DEMOCRATIC Party.**<sup>166</sup>

The oath given by Bernabei, and relied upon by the persons that signed his Declaration of Candidacy, has no expiration.

<sup>162</sup> Ohio Sec. State Adv. Op. No. 2007-05 (Appx. Tab 2).

<sup>163</sup> *In re Greg Jolivette*, Ohio Sec. of State Letter (June 26, 2012) (Appx. Tab 3), *aff'd*, *Jolivette v. Husted*, 886 F. Supp. 2d 820, 836 (S.D. Ohio 2012) (Appx. Tab 4), *aff'd*, 694 F.3d 760 (6th Cir. 2012) (Appx. Tab 5); *In re Edna Boyle*, Ohio Sec. of State Letter (Oct. 5, 2007) (Appx. Tab 6); *aff'd*, *State ex rel. Boyle v. Summit Cty. Bd. of Elections*, Ohio Ct. of Cmn. Pleas, Summit Cty. Case No. 2007-10-7107, 2007 WL 4462641 (Oct. 17, 2007) (Appx. Tab 7).

<sup>164</sup> Ohio Sec. State Adv. Op. No. 2007-05 (Appx. Tab 2).

<sup>165</sup> *In re Greg Jolivette*, Ohio Sec. of State Letter (June 26, 2012) (Appx. Tab 3), *aff'd*, *Jolivette v. Husted*, 886 F. Supp. 2d 820, 836 (S.D. Ohio 2012) (Appx. Tab 4), *aff'd*, 694 F.3d 760 (6th Cir. 2012) (Appx. Tab 5); *In re Edna Boyle*, Ohio Sec. of State Letter (Oct. 5, 2007) (Appx. Tab 6); *aff'd*, *State ex rel. Boyle v. Summit Cty. Bd. of Elections*, Ohio Ct. of Cmn. Pleas, Summit Cty. Case No. 2007-10-7107, 2007 WL 4462641 (Oct. 17, 2007) (Appx. Tab 7).

<sup>166</sup> Bernabei County Commissioner Declarations of Candidacy (Nov. 22, 2011) [emphasis added] (Appx. Tab 16).

83. *Second*, Bernabei also remains legally affiliated with Democratic Party through his service as an elected Democrat Commissioner. This is because, if Bernabei were to resign from his position of County Commissioner upon his election to the Office of Canton Mayor (which is his stated intention)<sup>167</sup>, “the county central committee of the political party with which the last occupant of the office *was affiliated* shall” select Bernabei’s successor.<sup>168</sup> In contrast, the procedure to replace an “independent” County Commissioner is only followed if that office holder “*was elected* as an independent candidate,” in which case, “the prosecuting attorney and the remaining commissioners” select Bernabei’s successor.<sup>169</sup> As Bernabei was plainly “elected” as a Democrat, the procedure for replacing an “independent” office holder does not apply. Therefore, to determine the political party with which Bernabei “was affiliated,” the Supreme Court of Ohio has held that the office holder’s “voting record for the two years preceding” is determinative.<sup>170</sup> As Bernabei has *never* voted as anything other than a Democrat, and indeed has voted as a Democrat within the preceding two years (May of 2014)<sup>171</sup>, the Democratic Central Committee would appoint Bernabei’s successor. Bernabei is therefore “affiliated” with the Democratic Party by operation of law through his continued service as a Democrat-County Commissioner.

84. *Finally*, it bears noting that Bernabei’s continued affiliation with the Democratic Party through his position as a Democrat-Commissioner, both in fact and in law, is also consistent with the Constitution and Bylaws of the Stark County Democratic Party. This document reads in part:

**ARTICLE VII. PARTY UNITY**

Section 1. Party Unity

All members of the Party, candidates for office, Party officers, Party committees and organizations, *and elected Democratic officials* shall support the principles of the Ohio Democratic Party and the Stark County Democratic Party.<sup>172</sup>

The contents of this provision are echoed by the Constitution and Bylaws of the Ohio Democratic Party.<sup>173</sup> Before Bernabei embarked on his scheme to run as an “Independent

<sup>167</sup> Ponder Interview Tr., p. 13 (Appx. Tab 50).

<sup>168</sup> R.C. § 305.02(B) [emphasis added].

<sup>169</sup> R.C. § 305.02(C) [emphasis added].

<sup>170</sup> *State ex rel. Herman v. Klopfleisch*, 72 Ohio St. 3d 581, 585-86, 651 N.E.2d 995 (1995) (interpreting “affiliation” for purposes of R.C. § 733.08 (vacancy in office of mayor) by applying R.C. §§ 3513.19(A)(3) (political affiliation for purposes of voting in partisan primary election) and R.C. § 3513.05 (procedure to determine political party membership for purposes of signing or circulating a petition of candidacy for party nomination or election)).

<sup>171</sup> *Supra* at ¶ 48.

<sup>172</sup> Stark County Democratic Party Constitution and Bylaws, Title VII, Sec. 1 (Appx. Tab 107).

candidate,” Bernabei was a member of the Stark County Democrat Central Committee, which is the “controlling committee of the Stark County Democratic Party” under the Constitution and Bylaws of the Stark County Democratic Party.<sup>174</sup>

85. As a matter of law and fact, Bernabei remains affiliated with the Democratic Party. Therefore, Bernabei is not “independent” within the meaning of R.C. §§ 3501.01(I), 3513.257 and the dictates of Ohio law.<sup>175</sup> This Board must uphold this protest, and disqualify Bernabei’s nominating petitions and candidacy pursuant to R.C. §§ 3513.262 and 3501.39(A).

**3. Bernabei’s Claim of Unaffiliation Was Not in Good-Faith, as it Was Motivated By Short-Range Political Goals, Pique, Personal Quarrel, Political Convenience, and Opportunism.**

86. In addition to the indisputable evidence demonstrating Bernabei’s ongoing affiliation with the Democratic Party, it is similarly clear that Bernabei’s claim of disaffiliation was not made in good faith as required by Ohio law.<sup>176</sup>

87. As explained above, Bernabei’s claim of disaffiliation with the Democratic Party is *not* premised upon any disagreement with Democratic Party policy or philosophy, which would support “a genuine and legitimate unaffiliation or disaffiliation.”<sup>177</sup> To the contrary, Bernabei “doesn’t feel any ill will toward the Democratic Party,” acknowledges that the Democratic Party “has always been good to him,” and admits that “nothing occurred” between Bernabei and the Democratic Party that would cause him to disaffiliate.<sup>178</sup>

88. At best, Bernabei asserted his claim of disaffiliation simply and solely to allow him to bypass the primary party process and run for the Office of Canton Mayor as an Independent candidate on November 3, 2015.<sup>179</sup> Bernabei claims that he can do a better job than the current Democrat Mayor of Canton. However, this is the *exact* reason why primary elections exist. If Bernabei thought he could do better, Bernabei was required to submit a Declaration of Candidacy by the February 4, 2015 deadline and run against the Democrat Mayor in the May 5, 2015 primary election. Bernabei did not do this.<sup>180</sup> Bernabei may not now shortcut the primary process via the independent route to the ballot. Indeed, it is this type of “short-range political

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<sup>173</sup> Ohio Democratic Party Constitution and Bylaws (2014), Chapter 11, p. 12, <http://ohiodems.org/about/bylaws/> (last accessed May 22, 2015).

<sup>174</sup> Stark County Democratic Party Constitution and Bylaws, Title III, Sec. 1 (Appx. Tab 107).

<sup>175</sup> Ohio Sec. State Adv. Op. No. 2007-05 (Appx. Tab 2).

<sup>176</sup> Ohio Sec. State Adv. Op. No. 2007-05 (Appx. Tab 2).

<sup>177</sup> *Supra* at ¶¶ 65, 72, 76.

<sup>178</sup> *Supra* at ¶¶ 65, 72, 76.

<sup>179</sup> *Supra* at ¶ 66-67.

<sup>180</sup> *Supra* at ¶ 51.

goals,” “tactical maneuvering, political convenience or opportunism – circumstances that potentially disrupt the integrity of the election process by causing voter confusion or other problems” – that the Independent candidate requirements in Ohio Election law are designed to protect against.<sup>181</sup> This conclusion is plainly confirmed by the timing of the efforts undertaken by Bernabei to disaffiliate with the Democratic Party (beginning five days before Bernabei’s Independent candidate nominating petitions were due)<sup>182</sup>, and the bizarre, last-minute steps taken by Bernabei in an attempt to satisfy the Canton “voting residence” requirements.<sup>183</sup>

89. Most likely, Bernabei’s disingenuous claim of disaffiliation is driven by his own personal dislike for the Democrat Mayor of Canton. Through his “Independent candidacy,” Bernabei is extracting revenge from the Democrat Mayor for having previously fired Bernabei as Canton Service Director in 2009.<sup>184</sup> Bernabei’s private sentiments certainly support this notion, as do Bernabei’s public statements that the current-Democrat Mayor fails to provide “ethical leadership.”<sup>185</sup> Nevertheless, independent candidacies prompted by “pique or personal quarrel” are also an intended target of the Independent candidate requirements in Ohio Election law.<sup>186</sup> Indeed, this too is the *exact* reason why primary elections exist. If Bernabei felt the Democrat Mayor of Canton treated him poorly, Bernabei’s remedy was to submit a Declaration of Candidacy by the February 4, 2015 deadline and exact his vengeance in the May 5, 2015 primary election. “The general election ballot is reserved for major struggles; it is not a forum for continuing intraparty feuds.”<sup>187</sup>

90. Consequently, Bernabei’s claimed disaffiliation with the Democratic Party was not made in good faith within the meaning of Ohio law.<sup>188</sup> This Board must uphold this protest, and disqualify Bernabei’s nominating petitions and candidacy pursuant to R.C. §§ 3513.262 and 3501.39(A)

**B. Thomas M. Bernabei’s Voting Residence Never was, and is Not Currently, 2118 University Avenue NW.**

91. In addition to Bernabei’s deep and ongoing affiliation with the Democratic Party, there is an additional, independent ground that warrants this Board’s invalidation of the nominating petitions and candidacy of Thomas M. Bernabei as an independent candidate for the Office of

<sup>181</sup> *Supra* at ¶¶ 9, 72-73, 76.

<sup>182</sup> *Supra* at ¶¶ 50-61.

<sup>183</sup> *Supra* at ¶¶ 62-64.

<sup>184</sup> *Supra* at ¶ 32.

<sup>185</sup> *Supra* at ¶ 32.

<sup>186</sup> *Supra* at ¶ 9, 73.

<sup>187</sup> *Supra* at ¶ 73.

<sup>188</sup> Ohio Sec. State Adv. Op. No. 2007-05 (Appx. Tab 2).

Mayor of the City of Canton, Ohio pursuant to R.C. §§ 3513.262 and 3501.39(A): Contrary to the sworn statement on Bernabei's Independent nominating petitions, Bernabei's "voting residence" was not "2118 University Ave. NW, Canton, Ohio 44709" when he signed and/or submitted his Independent candidate nominating positions, and he was not "a qualified elector" at that address nor "an elector qualified to vote for the office [Bernabei] seek[s]." This is in violation of R.C. §§ 3513.261, 3501.01(N) and (P), 3503.01(A), and 3503.02, and mandates this Board's upholding of this protest.

92. In accordance with R.C. § 3513.261, when Bernabei signed his Independent nominating petitions for the Office of Canton Mayor on Sunday, May 3, 2016, Bernabei affirmed:

I, Thomas M. Bernabei, the undersigned, hereby declare under penalty of election falsification that my voting residence address is 2118 University Ave. N.W., Canton, Ohio, 44709; and I am a qualified elector.

\* \* \*

I further declare that I am an elector qualified to vote for the office I seek.<sup>189</sup>

93. The Ohio Supreme Court has been clear that the sworn statement is *required* "from the candidate that his 'voting residence is in' a specified precinct and that he is a qualified elector in such specified precinct; and that statement relates to the time the declaration of candidacy is signed and sworn to."<sup>190</sup> If the statement of "voting residence" is inaccurate, this Board must reject the nominating petition.<sup>191</sup>

94. "'Voting residence' means that place of residence of an elector which shall determine the precinct in which the elector may vote."<sup>192</sup> Importantly, Ohio Election law "does not contemplate multiple residences for election purposes."<sup>193</sup> To determine a person's "voting residence," the Ohio Supreme Court has held that this Board must apply the following pertinent rules, which are set forth in R.C. § 3503.02:

<sup>189</sup> Bernabei Independent Candidacy Nominating Petitions (May 3, 2015) (Appx. Tab 1).

<sup>190</sup> *State ex rel. Higgins v. Brown*, 170 Ohio St. 511, 166 N.E.2d 759 (1960), paragraph three of the syllabus (Appx Tab 13). See also, *State ex rel. Stine v. Brown Cty. Bd. of Elections*, 101 Ohio St. 3d 252, 2004-Ohio-771, 804 N.E.2d 415, ¶ 13 (accord) (Appx Tab 14); *State ex rel. Markulin v. Ashtabula Cty. Bd. of Elections*, 65 Ohio St.3d 180, 184, 602 N.E.2d 626 (1992) (accord) (Appx. Tab 15).

<sup>191</sup> R.C. §§ 3513.262 and 3501.39(A).

<sup>192</sup> R.C. § 3501.01(P).

<sup>193</sup> *State ex rel. MacPherson v. Trumbull Cty. Bd. of Elections*, 11th Dist. No. 2011-T-0028, 2011-Ohio-1296, ¶ 28.

All registrars and precinct election officials, in determining the residence of a person offering to register or vote, shall be governed by the following rules:

(A) That place shall be considered the residence of a person in which the person's habitation is fixed and to which, whenever the person is absent, the person has the intention of returning.

\* \* \*

(D) The place where the family of a married person resides shall be considered to be the person's place of residence; except that when the spouses have separated and live apart, the place where such a spouse resides the length of time required to entitle a person to vote shall be considered to be the spouse's place of residence.<sup>194</sup>

95. The Supreme Court has further stated that these rules consider "the person's intent of great import, and thus emphasizes the person's intent to make a place *a fixed or permanent* place of abode."<sup>195</sup> Consequently, when listing a candidates "voting residence," that person must use their *permanent* address, and not a temporary address. In simple terms, the Ohio Secretary of State has stated the following on the Ohio Voter Registration and Information Update Form:

**Residency Requirements**

Your voting residence is the location that you consider to be a permanent, not a temporary, residence.<sup>196</sup>

96. Applying these standards, Ohio courts have held that a hotel room does *not* constitute a valid, permanent residence for purposes of Ohio Election law.<sup>197</sup> This conclusion certainly is logical. If a person could establish a "voting residence" by using a temporary hotel address, imagine how many Ohio hotel rooms will be booked in advance of the November 2016 Presidential Election.

<sup>194</sup> *State ex rel. Stine v. Brown Cty. Bd. of Elections*, 101 Ohio St. 3d 252, 2004-Ohio-771, 804 N.E.2d 415, ¶ 15; R.C. § 3503.02 (**Appx. Tab 14**). "Habitation" is defined as a 'dwelling place; house, home, residence.'" *Kyser v. Bd. of Elections of Cuyahoga Cnty.*, 36 Ohio St. 2d 17, 21, 303 N.E.2d 77 (1973).

<sup>195</sup> *State ex rel. Husted v. Brunner*, 123 Ohio St. 3d 288, 295, 915 N.E.2d 1215, 2009-Ohio-5327, ¶ 30 [emphasis added]. See also, *State ex rel. Duncan v. Portage Cty. Bd. of Elections*, 2007-Ohio-5346, 115 Ohio St. 3d 405, 875 N.E.2d 578, ¶ 11; *State ex rel. Stine v. Brown Cty. Bd. of Elections*, 101 Ohio St. 3d 252, 804 N.E.2d 415, 2004-Ohio-771, ¶ 20

<sup>196</sup> Ohio Secretary of State, Voter Registration and Information Update Form, SEC4010 (Rev. 6/14), <http://www.sos.state.oh.us/sos/upload/elections/forms/4010.pdf> (last accessed May 25, 2015) (**Appx. Tab 8**).

<sup>197</sup> See, *In re Protest of Brooks*, 3rd Dist. No. 17-03-17, 2003-Ohio-6990, ¶¶ 23-27 (holding "Red Roof Inn where person stayed for five nights" was not a permanent residence for purposes of Ohio Election law); *In re Protest of Brooks*, 155 Ohio App. 3d 370, 2003-Ohio-6348, 801 N.E.2d 503, ¶¶ 42-49 (3rd Dist.) (accord).

97. At the time Bernabei signed his Independent candidate nominating petitions on May 3, 2015, affirming his “voting residence” as “2118 University Ave. NW,” Bernabei had never once slept at that the address.<sup>198</sup> Even after this date, when Bernabei moved “a bed, [his] clothes, ... a card table and a computer ... and not much else” into the vacant property, Bernabei’s admitted intention from the very beginning was that this was only to be a *temporary residence*.<sup>199</sup> Rather, Bernabei intended his permanent residence to be another home that he owned located at 441 Lakecrest Street NW.<sup>200</sup> This is not a surprise, considering that Bernabei does not own the property located at 2118 University Avenue NW and the property was (and still is) listed for sale.<sup>201</sup> This is the epitome of a *temporary residence*, and cannot, as a matter of Ohio law, serve as a valid “voting residence.” This conclusion is confirmed when consideration is given to the fact that Bernabei’s wife did not join him on his temporary camp-out at 2118 University Avenue N.W. On this point, Ohio Election law reads, “*the place where the family of a married person resides shall be considered to be the person’s place of residence.*”<sup>202</sup> To be sure, when other candidates have played similar games, the Ohio Supreme Court has affirmed their being stricken from the ballot, even on far less egregious facts than those here.<sup>203</sup>

98. In a related vein, as Bernabei’s “voting residence” was not 2118 University Avenue N.W. at the time he signed his Independent candidacy nominating petitions on May 3, 2015, it also follows that he was not “a qualified elector” at that address or “an elector qualified to vote for the office I seek” on May 3, 2015. Under Ohio law, a “qualified elector” means “a person having the qualifications provided by law to be entitled to vote,” and that person may only vote in the precinct in which their “voting residence” is located.<sup>204</sup> In other words, “a qualified elector evidently is one who is qualified, at any designated time, to exercise the privilege of voting. He is qualified to vote then and there, *not at some future time, or some other place.*”<sup>205</sup>

99. The Ohio Secretary of State, the Federal Court of the Northern District of Ohio, and the Sixth Circuit Court of Appeals all held that persons who were not legitimate permanent residents in their stated location and precinct “were improperly registered in the first place” and “were therefore ineligible to vote” at that illegitimate residence; therefore, they were not “qualified

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<sup>198</sup> *Supra* at ¶¶ 58.

<sup>199</sup> *Supra* at ¶¶ 62 – 64.

<sup>200</sup> *Supra* at ¶¶ 62 – 64.

<sup>201</sup> *Supra* at ¶¶ 62 – 64.

<sup>202</sup> R.C. § 3503.02(D)[emphasis added].

<sup>203</sup> *State ex rel. Stine v. Brown Cty. Bd. of Elections*, 101 Ohio St. 3d 252, 2004-Ohio-771, 804 N.E.2d 415 (Appx Tab 14).

<sup>204</sup> R.C. §§ 3501.01(N), (P), 3503.01(A).

<sup>205</sup> *State ex rel. Barrett v. Leonard*, 6 Ohio Supp. 345, 1941 WL 3346 (Ohio Com. Pl., Hamilton Cty., Sept. 27, 1941).

electors” under Ohio Election law.<sup>206</sup> If a Board of Elections determines that the address listed in the nominating petition of a candidate is not the permanent “voting residence” of that candidate at the time the candidate signed the petition, the Board of Elections must also necessarily conclude that the candidate was not a “a qualified elector” at that address or “an elector qualified to vote for the office [the person] seek[s],” and the Board of Elections must reject the nominating petition.<sup>207</sup>

100. As explained above, Bernabei’s permanent “voting address” was not 2118 University Avenue N.W. at the time he signed his Independent candidacy nominating petitions on May 3, 2015. Therefore, Bernabei was also not “a qualified elector” at that address or “an elector qualified to vote for the office” of Mayor of Canton. Again, this Board must therefore reject Bernabei’s nominating petitions pursuant to R.C. §§ 3513.262 and 3501.39(A).

101. While obvious, it will also be noted that Bernabei’s intention to make another Canton residence his permanent home in the future – specifically, the property at 441 Lakecrest Street NW – does not cure the false voting residence stated in Bernabei’s Independent candidacy nominating petitions. When Bernabei signed his nominating petitions on May 3, 2015, Bernabei stated under penalty of perjury that his voting residence was 2118 University Avenue N.W. As explained above, the accuracy of this statement is determined as of the date Bernabei signed his petitions – “then and there, *not at some future time, or some other place.*”<sup>208</sup> Consequently, pursuant to Ohio Election law, the petitions are invalid on their face.

102. In conclusion, because Bernabei’s “voting residence” clearly was not “2118 University Ave. NW, Canton, Ohio 44709” when he signed and/or submitted his Independent candidate nominating positions, Bernabei’s affirmed statement to this effect in his petitions is false and in violation of R.C. § 3513.261. He was also therefore not “a qualified elector” at that address nor “an elector qualified to vote for the office [Bernabei] seek[s],” also in violation of R.C. § 3513.261. This Board must therefore invalidate of the nominating petitions and candidacy of

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<sup>206</sup> *In re Paul S. Finnegan and Victoria J. Finnegan*, Ohio Sec. of State Letter (July 26, 2002) (Appx. Tab 9); *Bell v. Marinko*, 235 F. Supp. 2d 772 (N.D. Ohio 2002); *Bell v. Marinko*, 367 F.3d 588, 592 (6th Cir. 2004).

<sup>207</sup> *In re Alicia Wolph Roshong*, Ohio Sec. of State Letter (July 8, 2011) (Appx. Tab 10); *State ex rel. Higgins v. Brown*, 170 Ohio St. 511, 166 N.E.2d 759 (1960), paragraph three of the syllabus (Appx. Tab 13); *State ex rel. Stine v. Brown Cty. Bd. of Elections*, 101 Ohio St. 3d 252, 2004-Ohio-771, 804 N.E.2d 415, ¶ 13 (Appx. Tab 14); *State ex rel. Markulin v. Ashtabula Cty. Bd. of Elections*, 65 Ohio St.3d 180, 184, 602 N.E.2d 626 (1992) (Appx. Tab 15).

<sup>208</sup> *State ex rel. Barrett v. Leonard*, 6 Ohio Supp. 345, 1941 WL 3346 (Ohio Com. Pl., Hamilton Cty., Sept. 27, 1941). See also, *In re Paul S. Finnegan and Victoria J. Finnegan*, Ohio Sec. of State Letter (July 26, 2002) (Appx. Tab 9); *In re Alicia Wolph Roshong*, Ohio Sec. of State Letter (July 8, 2011) (Appx. Tab 10); *State ex rel. Higgins v. Brown*, 170 Ohio St. 511, 166 N.E.2d 759 (1960), paragraph three of the syllabus (Appx. Tab 13); *State ex rel. Stine v. Brown Cty. Bd. of Elections*, 101 Ohio St. 3d 252, 2004-Ohio-771, 804 N.E.2d 415, ¶ 13 (Appx. Tab 14); *State ex rel. Markulin v. Ashtabula Cty. Bd. of Elections*, 65 Ohio St.3d 180, 184, 602 N.E.2d 626 (1992) (Appx. Tab 15).

Thomas M. Bernabei as an independent candidate for the Office of Mayor of the City of Canton, Ohio pursuant to R.C. §§ 3513.262 and 3501.39(A).

### CONCLUSION

103. Each member of this Board took an oath, solemnly swearing that you “will enforce the election laws ... and perform [your] duties as a Member of the Board of Elections to the best of [your] ability.”<sup>209</sup> Never again in your service on this Board will you see a case that demands enforcement of Ohio Election law such as this. Indeed, there has never been a case in Ohio with facts so flagrant and evidence so one-sided. That is what makes this case dangerous to our entire ballot-access framework. Allowing the candidacy and nominating petitions discussed herein to proceed will have far reaching consequences, and will imperil all political parties, voters, and Ohio’s electoral system as a whole.

104. The evidence in this case is clear, plain, and undisputable. This Board’s conclusion must be as well. Based upon the foregoing, and pursuant to R.C. §§ 3513.262 and 3501.39(A), the Protestors respectfully request that this Board uphold this protest, and invalidate the nominating petitions and candidacy of Thomas M. Bernabei as an independent candidate for the Office of Mayor of the City of Canton, Ohio.

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<sup>209</sup> Oaths of Stark County Board of Elections Members (Appx. Tab 47); R.C. § 3501.08.

DATED: May 29, 2015

Respectfully submitted,

**TZANGAS | PLAKAS | MANNOS | LTD**



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*Counsel for Protestors*  
*Majority Leader Frank Morris, Canton City*  
*Council, Ward 9, Assistant Majority Leader*  
*Chris Smith, Canton City Council, Ward 4,*  
*Thomas E. West, Canton City Council, Ward*  
*2, Kevin Fisher, Canton City Council, Ward*  
*5, David R. Dougherty, Canton City Council,*  
*Ward 6, John Mariol II, Canton City Council,*  
*Ward 7, Edmond J. Mack, Canton City*  
*Council, Ward 8 and The Stark County*  
*Democratic Party*

**THE OHIO DEMOCRATIC PARTY**



N. Zachary West (0087805)  
General Counsel  
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Columbus, Ohio 43215  
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Facsimile: (614) 221-0721  
Email: zwest@ohiodems.org

*Counsel for Protestor*  
*The Ohio Democratic Party*

## ENDNOTE TABLE A

BERNABEI'S DEMOCRAT POLITICAL CONTRIBUTIONS		
Democratic Candidate or Entity	Amount	Date
Jefferson Jackson Democratic Club <sup>210</sup>	\$200.00	4/24/2015
Stark County Democratic Party <sup>211</sup>	\$500.00	4/22/2015
Greg Hawk for Canton Council <sup>212</sup>	\$50.00	4/7/2015
Edmond Mack for Canton Council <sup>213</sup>	\$50.00	3/26/2015
John Mariol for Canton Council <sup>214</sup>	\$50.00	3/26/2015
James Babcock for Canton Council <sup>215</sup>	\$50.00	3/26/2015
Kristen Guardado for Canton Municipal Judge <sup>216</sup>	\$100.00	3/3/2015
Stark County Democratic Party <sup>217</sup>	\$100.00	11/21/2014
George Maier for Sheriff <sup>218</sup>	\$500.00	9/24/2014
Chryssa Hartnett for Common Pleas Judge <sup>219</sup>	\$500.00	7/29/2014
Connie Rubin for Ohio Statehouse <sup>220</sup>	\$50.00	6/11/2014
Stark County Democratic Party <sup>221</sup>	\$100.00	5/19/2014
Jefferson Jackson Democratic Club <sup>222</sup>	\$80.00	3/20/2014
Chryssa Hartnett for Common Pleas Judge <sup>223</sup>	\$100.00	2/18/2014
Stark County Democratic Party <sup>224</sup>	\$100.00	10/23/2013
Stephen Slesnick for Ohio Statehouse <sup>225</sup>	\$100.00	8/22/2013
Michael McDonald for Sheriff <sup>226</sup>	\$30.00	9/29/2011
Kathy Catazaro Perry for Massillon Mayor <sup>227</sup>	\$40.00	3/08/2011

<sup>210</sup> Letter from Jefferson-Jackson Democratic Club (May 26, 2015) (Appx. Tab 90).

<sup>211</sup> Bernabei Fundraiser Sponsorship and Check to Stark Democratic Party (Apr. 22, 2015) (Appx. Tab 91).

<sup>212</sup> Treasurer Designation and Finance Report of Greg Hawk Committee (Appx. Tab 40).

<sup>213</sup> Treasurer Designation and Finance Report of Edmond Mack Committee (Appx. Tab 39).

<sup>214</sup> Treasurer Designation and Finance Report of John Mariol Committee (Appx. Tab 38).

<sup>215</sup> Treasurer Designation and Finance Report of James Babcock Committee (Appx. Tab 37).

<sup>216</sup> Treasurer Designation and Finance Report of Kristen Guardado Committee (Appx. Tab 36).

<sup>217</sup> Stark Democratic Party Finance Report (Appx. Tab 41).

<sup>218</sup> Treasurer Designation and Finance Report of George Maier Committee (Appx. Tab 35).

<sup>219</sup> Treasurer Designation and Finance Report of Chryssa Hartnett Committee (Appx. Tab 34).

<sup>220</sup> Bernabei SOS Contributions (Appx. Tab 88).

<sup>221</sup> Stark Democratic Party Finance Report (Appx. Tab 41).

<sup>222</sup> Jefferson Jackson Democratic Club Finance Report (Appx. Tab 42).

<sup>223</sup> Treasurer Designation and Finance Report of Chryssa Hartnett Committee (Appx. Tab 34).

<sup>224</sup> Stark Democratic Party Finance Report (Appx. Tab 41).

<sup>225</sup> Bernabei SOS Contributions (Appx. Tab 88).

<sup>226</sup> Treasurer Designation and Finance Report of Michael McDonald Committee (Appx. Tab 33).

<sup>227</sup> Treasurer Designation and Finance Report of Kathy Catazaro Perry Committee (Appx. Tab 32).

<b>BERNABEI'S DEMOCRAT POLITICAL CONTRIBUTIONS</b>		
<b>Democratic Candidate or Entity</b>	<b>Amount</b>	<b>Date</b>
Ohio Democratic Party <sup>228</sup>	\$3,783.85	10/27/2010
Steven Meeks for County Commissioner <sup>229</sup>	\$40.00	10/21/2010
Ohio Democratic Party <sup>230</sup>	\$4,602.98	10/15/2010
Ohio Democratic Party <sup>231</sup>	\$10,000.00	10/07/2010
Ohio Democratic Party <sup>232</sup>	\$2,414.90	10/07/2010
Ohio Democratic Party <sup>233</sup>	\$2,551.49	10/04/2010
John Bocchieri for Congress <sup>234</sup>	\$250.00	8/26/2010
Steven Meeks for County Commissioner <sup>235</sup>	\$35.00	5/12/2010
Peter Ferguson for County Commissioner <sup>236</sup>	\$150.00	9/19/2008
John Bocchieri for Congress <sup>237</sup>	\$250.00	9/06/2008
Nancy Reinbold for County Clerk of Courts <sup>238</sup>	\$100.00	8/21/2008
Frank Forchione for Common Pleas Judge <sup>239</sup>	\$250.00	7/10/2008
Peter Ferguson for County Commissioner <sup>240</sup>	\$75.00	2/27/2008
Nancy Reinbold for County Clerk of Courts <sup>241</sup>	\$100.00	1/30/2008
John Edwards for President <sup>242</sup>	\$2,300.00	2/07/2007
Kim Perez for County Auditor <sup>243</sup>	\$100.00	10/09/2006
Kim Perez for County Auditor <sup>244</sup>	\$200.00	10/02/2006
Mary Boyle for U.S. Senate <sup>245</sup>	\$300.00	10/23/1998
<b>TOTAL:</b>	<b>\$30,203.22</b>	

<sup>228</sup> Bernabei SOS Contributions (Appx. Tab 88).

<sup>229</sup> Treasurer Designation and Finance Report of Steven Meeks Committee (Appx. Tab 31).

<sup>230</sup> Bernabei SOS Contributions (Appx. Tab 88).

<sup>231</sup> Bernabei SOS Contributions (Appx. Tab 88).

<sup>232</sup> Bernabei SOS Contributions (Appx. Tab 88).

<sup>233</sup> Bernabei SOS Contributions (Appx. Tab 88).

<sup>234</sup> Bernabei FEC Contributions (Appx. Tab 87).

<sup>235</sup> Treasurer Designation and Finance Report of Steven Meeks Committee (Appx. Tab 31).

<sup>236</sup> Treasurer Designation and Finance Report of Peter Ferguson Committee (Appx. Tab 29).

<sup>237</sup> Bernabei FEC Contributions (Appx. Tab 87).

<sup>238</sup> Treasurer Designation and Finance Report of Nancy Reinbold Committee (Appx. Tab 28).

<sup>239</sup> Treasurer Designation and Finance Report of Frank Forchione Committee (Appx. Tab 30).

<sup>240</sup> Treasurer Designation and Finance Report of Peter Ferguson Committee (Appx. Tab 29).

<sup>241</sup> Treasurer Designation and Finance Report of Nancy Reinbold Committee (Appx. Tab 28).

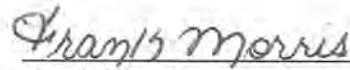
<sup>242</sup> Bernabei FEC Contributions (Appx. Tab 87).

<sup>243</sup> Treasurer Designation and Finance Report of Kim Perez Committee (Appx. Tab 27).

<sup>244</sup> Treasurer Designation and Finance Report of Kim Perez Committee (Appx. Tab 27).

<sup>245</sup> Bernabei FEC Contributions (Appx. Tab 87).

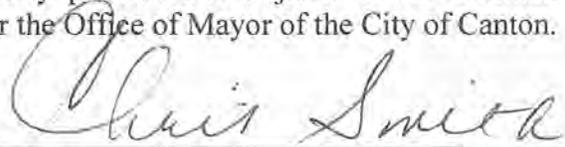
By and through counsel, for those reasons articulated, and pursuant to R.C. Chapter 3513 and all other applicable Ohio Law, the undersigned hereby protests and objects to the nominating petitions and candidacy of Thomas M. Bernabei for the Office of Mayor of the City of Canton.



\_\_\_\_\_  
Frank Morris  
Majority Leader  
Canton City Council, Ward 9  
1406 19th Street NE  
Canton, Ohio 44714

[Signature Page]

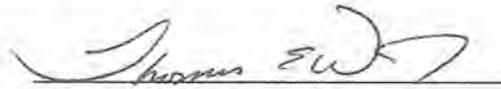
By and through counsel, for those reasons articulated, and pursuant to R.C. Chapter 3513 and all other applicable Ohio Law, the undersigned hereby protests and objects to the nominating petitions and candidacy of Thomas M. Bernabei for the Office of Mayor of the City of Canton.



Chris Smith  
Chris Smith  
Assistant Majority Leader  
Canton City Council, Ward 4  
458 Waynesburg Road SE  
Canton, Ohio 44707

[Signature Page]

By and through counsel, for those reasons articulated, and pursuant to R.C. Chapter 3513 and all other applicable Ohio Law, the undersigned hereby protests and objects to the nominating petitions and candidacy of Thomas M. Bernabei for the Office of Mayor of the City of Canton.



Thomas E. West  
Canton City Council, Ward 2  
625 12th Street NW  
Canton, Ohio 44703

[Signature Page]

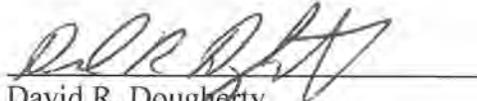
By and through counsel, for those reasons articulated, and pursuant to R.C. Chapter 3513 and all other applicable Ohio Law, the undersigned hereby protests and objects to the nominating petitions and candidacy of Thomas M. Bernabei for the Office of Mayor of the City of Canton.



Kevin Fisher  
Canton City Council, Ward 5  
1641 Alden Avenue SW  
Canton, Ohio 44710

*[Signature Page]*

By and through counsel, for those reasons articulated, and pursuant to R.C. Chapter 3513 and all other applicable Ohio Law, the undersigned hereby protests and objects to the nominating petitions and candidacy of Thomas M. Bernabei for the Office of Mayor of the City of Canton.



David R. Dougherty  
Canton City Council, Ward 6  
3126 34th Street NE, Apt. E  
Canton, Ohio 44705

[Signature Page]

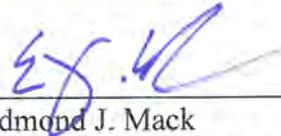
By and through counsel, for those reasons articulated, and pursuant to R.C. Chapter 3513 and all other applicable Ohio Law, the undersigned hereby protests and objects to the nominating petitions and candidacy of Thomas M. Bernabei for the Office of Mayor of the City of Canton.



John Mariol II  
Canton City Council, Ward 7  
2117 Myrtle Avenue NW  
Canton, Ohio 44709

[Signature Page]

By and through counsel, for those reasons articulated, and pursuant to R.C. Chapter 3513 and all other applicable Ohio Law, the undersigned hereby protests and objects to the nominating petitions and candidacy of Thomas M. Bernabei for the Office of Mayor of the City of Canton.



---

Edmond J. Mack  
Canton City Council, Ward 8  
4816 Ellinda Cir. NW  
Canton, Ohio 44709

*[Signature Page]*

By and through counsel, for those reasons articulated, and pursuant to R.C. Chapter 3513 and all other applicable Ohio Law, the undersigned hereby protests and objects to the nominating petitions and candidacy of Thomas M. Bernabei for the Office of Mayor of the City of Canton.



---

The Stark County Democratic Party  
Phil Giavasis, Chairman  
2698 Easton Street NE  
Canton, Ohio 44721

*[Signature Page]*

# EXHIBIT

B

STARK COUNTY BOARD OF ELECTIONS

9:00 A.M., MONDAY, JULY 6, 2015

SPECIAL BOARD MEETING

IN RE: HEARING ON THE PROTEST OF THE INDEPENDENT  
CANDIDACY OF THOMAS M. BERNABEI

- - - - -

Held at Stark County Board of Elections  
3525 Regent Avenue, N.E., Canton, Ohio 44705

Board members:

Samuel J. Ferruccio, Jr., Chairman  
Frank C. Braden  
William S. Cline  
William V. Sherer West

Counsel for Protesters:

Lee E. Plakas, Attorney  
Tzangas Plakas Mannos Ltd.  
220 Market Avenue, South, Eighth Floor  
Canton, Ohio 44702

Zach West, Operations Director  
Ohio Democratic Party  
340 East Fulton Street  
Columbus, Ohio 43215

Counsel for Thomas M. Bernabei:

Raymond V. Vasvari, Jr.  
1302 East Ninth Street, Suite 1100  
Cleveland, Ohio 44114

Present:

Jeffrey A. Matthews, Director  
Jeanette Mullane, Deputy Director  
Jocelyn S. Harhay, RPR, court reporter

1		I N D E X	
2	EXAMINATION OF:		PAGE
3	Mr. Bernabei		35
4	Ms. Marchino		105
5	Mr. Okey		112
6	Mr. Kirven		119
7	Mr. Brooks		130
8	Mr. Klarnar		136
9	Mr. Mack		139
10	Ms. Smith		173
11	Mr. West		178
12	Mr. Gonzalez		186
13	Mr. Giavasis		202
14	Mr. Bernabei		219
15	Ms. Mullane		302
16	Mr. Forchione		308
17	Ms. Creighton		314
18	Mr. Hanke		322
19	Mr. Reinbold		328
20		E X H I B I T S	
21	For the Protesters:	1 through 135	
22	For Thomas M. Bernabei:	A through G	
23			
24			
25			

1 On July 2nd, a motion to withdrawal the  
2 Stark County Democratic Party was received by our  
3 Board's office. And they are no longer a party  
4 protester.  
5 First matter of business will be a response  
6 to the motion to recuse myself and member Sherer. I  
7 would indicate that the local Stark County  
8 Democratic Party has withdrawn its protest as a  
9 party to this action. Therefore, that portion of  
10 the recusal motion is moot. However, in effort to  
11 clarify the record with respect to a response to the  
12 candidate's recusal motion, I would note the  
13 following for the Record: Myself and Board member  
14 Sherer were not at the Stark County Democratic  
15 Executive meeting wherein it was determined that the  
16 local Democratic Party would support the protest to  
17 the candidacy of Thomas Bernabei. Therefore, we  
18 were not privy to the discussion and did not vote on  
19 any motion by the local Democratic Party. This was  
20 by design, as we did not want -- we wanted to avoid  
21 any appearance of impropriety.  
22 Now that the local party has withdrawn as a  
23 party protester, that cures any argument that Mr.  
24 Sherer and I are sitting in judgment of a party to  
25 which we are a member. They are no longer a party.

1 P R O C E E D I N G S  
2 MR. FERRUCCIO: We'll call to order the  
3 Special Board Meeting for Monday, July 6th, 2015.  
4 Mr. Matthews, will you call the roll call.  
5 MR. MATTHEWS: Chairman Ferruccio.  
6 MR. FERRUCCIO: Here.  
7 MR. MATTHEWS: Member Braden.  
8 MR. BRADEN: Here.  
9 MR. MATTHEWS: Member Cline.  
10 MR. CLINE: Here.  
11 MR. MATTHEWS: Member Sherer.  
12 MR. SHERER: Here.  
13 MR. FERRUCCIO: If we could have  
14 everybody's attention, we're here on the matter of  
15 the protest of the independent candidacy of Thomas  
16 Bernabei. There's been a protest against the  
17 nominating petitions in the candidacy for Thomas  
18 Bernabei as an independent candidate for the office  
19 of mayor of the City of Canton pursuant to 3513.262  
20 and 3501.39(A).  
21 This petition -- this protest was filed by  
22 a number of individuals: Frank Morris, Thomas West,  
23 David Dougherty, Edmond Mack, Ohio Democratic Party,  
24 Chris Smith, Kevin Fisher, John Mariol, and the  
25 Stark County Democratic Party.

1 The lawyer for the candidate now opines that since we are  
2 Democrats and belong to the local Democratic Party that  
3 we must recuse ourselves. The nature of the Board of  
4 Elections in all 88 counties in this State of Ohio is to  
5 sit in judgment of matters that affect people, with Mr.  
6 Sherer and I as the Democratic Party and member Cline and  
7 member Braden as the Republican party the majority of the  
8 time. In this particular protest, we sit as a quasi  
9 judicial authority and to be cognizant of due process for  
10 all involved.  
11 To say member Sherer and myself should  
12 recuse ourselves under the facts of this case is  
13 tantamount to saying all Ohio Boards of Election  
14 should only impart -- should only appoint nonparty  
15 people.  
16 In order for a recusal motion to be  
17 sustained, there has to be some showing of prejudice  
18 or bias. Member Sherer can speak for himself on  
19 this issue. But I have no interest in the outcome  
20 of this protest. I've taken an oath to enforce the  
21 election laws to the best of my ability. And that  
22 is my goal here today. I harbor no prejudice or  
23 bias in this matter.  
24 The candidate's lawyer has not provided any  
25 specific allegation of bias or prejudice as to

1 myself hearing this case other than party politics.  
2 With that in mind, I find the candidate's motion to  
3 recuse myself not well taken.

4 I'll now have member Sherer speak on his  
5 behalf.

6 MR. SHERER: I agree with Chairman Ferruccio  
7 that the recusal motion is moot at this time. I do  
8 agree with Chairman Ferruccio that neither of us were  
9 at the Democratic Executive Committee meeting, and  
10 the local party has withdrawn at this time. I  
11 believe that there is no bias or prejudice.  
12 Therefore, I am not recusing at this time.

13 MR. FERRUCCIO: With that in mind, the --

14 MR. VASVARI: Mr. Chairman, I would like to  
15 speak to the motion, just clarify our position on  
16 the Record for purposes of any subsequent review or  
17 mandamus action that might take place and to take  
18 exception to two remarks that were made during the  
19 course of your remarks just now so that the Record  
20 is absolutely clear as to what we have argued and  
21 what we've not.

22 MR. FERRUCCIO: Proceed.

23 MR. VASVARI: Thank you. With all due  
24 respect, I don't believe that you two gentleman  
25 harbor any bias or animus in your heart, but I do

1 believe that you are conflicted parties. And I  
2 don't think the fact that the Democratic Party of  
3 Stark County has left this action means anything.  
4 You may not have attended the meeting but you could  
5 have. You had the power to weigh in or not to weigh  
6 in. You exercised that power in your capacity as  
7 officers of an entity that was a party to this  
8 matter, that made common cause with the other eight  
9 parties to this matter, that through its law, in  
10 with their arguments, they are gone. But the taint  
11 of the stain of their having been a party when the  
12 members of this Board, comprising two of their  
13 leaders, remains.

14 Now I'll not personally accuse you of bias.  
15 But I do want to say this. We take exception, for  
16 purpose of any subsequent proceedings, to the  
17 argument that the characterization -- and I must say  
18 respectfully, sir, the mischaracterization of our  
19 argument -- that we are contending that every Board  
20 in the state is biased by virtue of there being two  
21 Democrats and two Republicans. We expressly in our  
22 Brief said that we are not arguing that the flaw is  
23 that you are Democrats sitting in judgment of an  
24 interested Democratic matter. We specifically  
25 rejected that argument and said that the flaw was

1 that you were members of the party quae, a party to  
2 the action, in other words, you were executives of a  
3 protester that was one of the nine parties to this  
4 action. The record reflects that.

5 The Brief that we time stamped and filed  
6 rejects that. And I think that any reviewing  
7 tribunal will see that was, in fact, the case. So  
8 we take exception to that characterization.

9 Maybe a bad foot on which to begin. But I  
10 want to get our ducks in a row, make sure we're all  
11 on the same page. We were careful about what we  
12 argued. And we didn't argue that.

13 MR. FERRUCCIO: Thank you. For the Record,  
14 so noted.

15 The procedure today is that we will first  
16 hear from the protesters first as their case in  
17 chief, Cross by the candidate's lawyer, questions  
18 from Board members. After that, the candidate's  
19 case in chief.

20 There are two issues as I see it, Counsel.  
21 And basically, basically I'll state what's in the  
22 protester's Brief is in contravention to RC  
23 3501.01(I) and 3513.257. In interpreting  
24 administrative court decisional law, Bernabei was  
25 not actually unaffiliated or disaffiliated from the

1 Democratic Party when he signed or submitted his  
2 independent candidate nominating petitions for  
3 positions. And Bernabei's claim of unaffiliation  
4 from the Democratic Party was not made in good  
5 faith. That's one issue.

6 The second issue is in contravention of RC  
7 3513.261, 3501.01(N) and (P) and 3503.01(A) and  
8 3503.02. In interpreting administrative court  
9 decisional law regarding Bernabei's voting  
10 residence, it was not at 2118 University Avenue,  
11 Northwest, Canton, Ohio, 44709, when he signed  
12 and/or submitted his independent candidate  
13 nominating position and he was not a qualified  
14 elector at that address nor as the elector qualified  
15 to vote for the office of Mr. Bernabei's seats.  
16 Those are the two issues that I see.

17 Counsel, want to weigh in?

18 Mr. Plakas.

19 MR. PLAKAS: I believe the Chair has  
20 covered the issues, Your Honor.

21 MR. VASVARI: A perfect restatement of the  
22 issues, Mr. Chairman.

23 MR. FERRUCCIO: Thank you. At this point,  
24 both sides should know as Chairman I have authority  
25 to exercise reasonable control over the examination

1 of witnesses and can prevent counsel from  
2 questioning which is not relevant to the issues this  
3 Board is to consider as cumulative or repetitive  
4 argumentative or considered harassment of a witness.  
5 The protesters have to prove their case by clear and  
6 convincing evidence and, therefore, have the burden.

7 For the Record, this Board will incorporate  
8 by reference all evidence for and against the  
9 protest for each of the party protesters, if that's  
10 fine with counsel.

11 At this point, I entertain a short Opening  
12 from the protester.

13 MR. PLAKAS: Thank you. Mr. Chairman and  
14 the Board, if it please, at this time, we would like  
15 to give a brief overview of what we will be  
16 presenting today. And to start, let it be said that  
17 this is the only time in Ohio legal history in a  
18 case that's reported or recorded that a sitting  
19 public office holder who ran as a member of one  
20 party in the middle of his term without resigning  
21 has abandoned the party and decided to run as an  
22 independent while still holding the position for  
23 which he was elected with the support of one of the  
24 political parties. The precedent that the potential  
25 or punitive candidate is seeking for you to bless

1 would turn Ohio elections law upside down and would  
2 turn the activities of the Board of Elections  
3 throughout this state upside down.

4 Respectfully, I believe that this comes  
5 down to the rule of law versus the rule of  
6 personality. When our country founded this great  
7 nation, one of the founders, John Adams, said he was  
8 "seeking to establish a government of laws, not of  
9 men." And that was in 1780. Teddy Roosevelt then  
10 later on said "No man is above the law and no man is  
11 below the law." So what we're asking this Board to  
12 do is to require all candidates to play by the  
13 rules, the rules that are fair and clearly  
14 sustained, rather than attempting to skirt the rules  
15 or make their own rules.

16 Now, we have identified exactly what  
17 Chairman Ferruccio said, that the, that the  
18 determination on the issues will be reached in this  
19 case include affiliation and also residency.

20 With regard to affiliation, the candidate  
21 must actually be unaffiliated or disaffiliated from  
22 any political party. And the claim of unaffiliation  
23 by an independent candidate must be made in good  
24 faith. In terms of residency, it's clear, it's  
25 practical, it's fair. Candidates for mayor must be

1 a resident of the city in which they're running with  
2 a valid voting residence. And a permanent, not  
3 temporary residence in the city must be established  
4 prior to filing to run for office, a permanent  
5 address, not a temporary address. We believe that  
6 it's clear and will not be disputed that 2118  
7 University Avenue was not intended nor established  
8 as a permanent residence for voting eligibility. We  
9 believe that because of the precedential impact,  
10 because no candidate, at least in recorded cases,  
11 has ever in the history of Ohio elections law tried  
12 this, this is a monumental case, a serious case.

13 And because of that, I think all parties  
14 are prepared to engage in a higher-level discussion  
15 in terms of recognizing the consequences,  
16 recognizing the intended consequences of what  
17 punitive candidate Bernabei is seeking. We believe  
18 that this decision which further and supports Ohio  
19 election law should be a decision based upon the  
20 facts and the law rather than a personality.

21 We have, in light of what we recognize, and  
22 all parties recognize, to be a higher-level  
23 discussion, we have not sought to raise the issue of  
24 disqualification of any of the members. And because  
25 of that, we recognize that all of the members have

1 taken an oath to uphold the election laws and that  
2 all of them recognize the severity. Because in any  
3 Board of Elections issue, there are always  
4 relationships. For example, in this case, on one  
5 party, Republican side, three of the circulators for  
6 punitive candidate Bernabei are members of either  
7 the Republican Central or Executive Committee which,  
8 of course, is the committee that some of the Board  
9 of Elections members are also part of. In fact, in  
10 this same case, counsel for the Board of Elections  
11 in the past has been the circulator of petitions for  
12 Mr. Bernabei. So we haven't raised those issues  
13 because, as we've committed to you, we believe this  
14 discussion, because of its precedential impact, is  
15 so important that all of you will recognize it and  
16 political issues and short-term political gains or  
17 strategies will be disregarded in terms of upholding  
18 the oath of the Ohio election laws.

19 It's been said in the punitive candidate's  
20 Brief that our concerns about the precedential  
21 impact are overblown, that this won't turn Ohio  
22 election law and the activities of Board of  
23 Elections not only here but in other counties upside  
24 down. We believe that they're intentionally  
25 ignoring precedential impact. We believe that if

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1 you review the purpose and the effect of election  
2 laws you will see how important this case is.  
3 For that purpose, and to keep this at a  
4 higher forward-looking global perspective, we have  
5 gone to the extent of retaining two experts in their  
6 field, in political science; and they're going to be  
7 here in person to discuss what the ramifications and  
8 unintended consequences of what Mr. Bernabei is  
9 asking you to do and will be based upon their  
10 expertise and studies in their career.  
11 The expert witnesses that we have, so that  
12 the Court can -- excuse me -- the Board can inquire,  
13 include Doctor Stephen Brooks. And the first page  
14 of his C.V. is up there. And everyone recognizes  
15 the institution that Mr. Brooks has been a part of  
16 for decades. And that's the Ray Bliss Institute of  
17 Applied Politics. They're quoted throughout Ohio,  
18 throughout the country. And he's here and he will  
19 be giving you his expert opinion in terms of the  
20 issues that we're here about today.  
21 Also we have Doctor Carl Klarner who also  
22 has made a career of studying politics and effects  
23 of elections and the effect of certain election laws  
24 and requirements. So in terms of what we're going  
25 to show, as to the first grounds, the grounds for

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1 the protest, once again, the candidate must be  
2 actually unaffiliated, disaffiliated, and the claim  
3 must be made in good faith.  
4 So let's start in terms of the credibility  
5 and the good faith nature of the candidate's claim  
6 of independence. And we will throughout this, so  
7 that there will be no dispute as to the facts,  
8 because this is a, this case will not have a dispute  
9 as to the facts, the only dispute will be as will  
10 this Board apply the facts and the law and enforce  
11 the election laws. So using throughout this  
12 proceeding both in testimony and in the summaries,  
13 we're going to use much of what Mr. Bernabei's own  
14 undisputed conduct has been.  
15 So, for example, we start, this claim of  
16 his abandonment, his unaffiliation, whether it  
17 actually was made in good faith and whether he  
18 actually is unaffiliated. So we have heard, and  
19 everyone has either heard Mr. Bernabei, or seen  
20 quotes from him. And we start with Mr. Bernabei  
21 admitting "Yes, I am a dyed-in-the-wool Democrat who  
22 serves with two Republicans." "I am not a closet  
23 Republican." And he goes on to say he will confirm  
24 today he has been a "dyed in the wool Democrat for  
25 40 years."

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1 So as being a dyed-in-the-wool Democrat  
2 when he ran for the office of commissioner twice,  
3 what does he represent to the electorate, to his  
4 supporters, to his public? He says, and said on  
5 numerous filings, "I further declare that if elected  
6 to this office for a position, I will qualify  
7 thereof and I will support and abide by the  
8 principles enunciated by the Democratic Party."  
9 This one is dated November 2011 for the 2012 race  
10 for commissioner.  
11 When he ran in 2014 for the office of the  
12 Democratic Central Committee, he, once again,  
13 declared to any supporter, to the public, to the  
14 community "I further declare that if elected to this  
15 office I will qualify thereof and I will support and  
16 abide by the principles enunciated in the Democratic  
17 Party."  
18 So the question becomes, in terms of  
19 election law and the procedures and the regulations,  
20 should voters and should the public be able to take  
21 government officials at their word. And we're going  
22 to have discussions about that and the effect of the  
23 election laws and what this candidate, punitive  
24 candidate is trying to do.  
25 So in addition to remaining, again, an

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1 unheard of proposition in the State of Ohio,  
2 unreported case, in addition to remaining a sitting  
3 Democratic commissioner, even at the present time,  
4 up to and through the election, Mr. Bernabei was  
5 front and center in various Democratic Party  
6 Election Committee activities and election  
7 campaigns.  
8 So one of them that jumps out -- and we'll  
9 talk more about it in the body of this presentation  
10 during the day -- is that Mr. Bernabei was the  
11 treasurer of the Democratic primary judicial  
12 candidate Kristen Guardado. And it's very clear  
13 that her party affiliation is Democrat, very clear  
14 that Mr. Bernabei is her treasurer as required by  
15 law, and it's very clear that he signs on February  
16 5th, 2015, a confirmation that he's her treasurer.  
17 So what happens next? As her treasurer and  
18 as a significant public figure who's recognized as  
19 affiliated with the Democratic Party for decades,  
20 what does Mr. Bernabei do? On every piece of public  
21 campaign literature which was circulated in the  
22 weeks and months prior to the election and even up  
23 to and including and through the election date Mr.  
24 Bernabei is properly identified as treasurer.  
25 These are authentic copies of Kristen

1 Guardado's election campaign materials. Throughout,  
 2 as required by law to the public, there's a  
 3 representation that Mr. Bernabei is part of this  
 4 campaign. Not only letters and leaflets, but  
 5 there's billboards where it's very clear that Mr.  
 6 Bernabei to the public is representing himself as  
 7 affiliated with a high-profile Democratic primary  
 8 campaign. There is more. And he lends even his  
 9 picture. And in each of these, there are many of  
 10 these you'll see that he makes a representation that  
 11 he is the Stark County Commissioner. So I said that  
 12 these campaign materials, whether they are yard  
 13 signs, leaflets, or billboards, were circulated and  
 14 continue to be circulated up to and through the  
 15 election.

16 But even on election day, Mr. Bernabei  
 17 continued on the radio and was asking Democrats to  
 18 join him in voting in the Democratic primary. The  
 19 only way you can join Mr. Bernabei to vote is if  
 20 he's a Democrat and you're a Democrat. And, again,  
 21 using his own words, so that there won't be any  
 22 dispute or lack of clarity as to the facts, I give  
 23 you Mr. Bernabei's own words as heard on WHBC and  
 24 other stations on the day of the election after he  
 25 had made his application claiming he was an

1 Independent.  
 2 (Video transcript, Appendix Tab 52.)  
 3 MR. PLAKAS: So, again, the point is that  
 4 the only way you can join Mr. Bernabei in voting for  
 5 Kristen Guardado on the primary election held on May  
 6 5th is if you're a Democrat and joining Mr. Bernabei  
 7 who claims he's going to be voting for that, in that  
 8 same campaign as a Democrat. Because that's the  
 9 only way you can vote for Kristen Guardado is in the  
 10 primary campaign as a Democrat.  
 11 So we will leave now the rules of the  
 12 affiliation and jump quickly to the residency  
 13 requirements. And, once again, to my right  
 14 (indicating), must be a resident of the city, has to  
 15 be a permanent, not a temporary resident. And it  
 16 will be undisputed that 2118 University Avenue was  
 17 not intended nor established as a permanent  
 18 residence. This idea of permanent residency, this  
 19 isn't a strange or foreign or unfair or unheard of  
 20 concept. In fact, in the blank forms that this  
 21 Board of Elections and every Board of Elections pass  
 22 out, it's very clear and it says "Your voting  
 23 residence is the location that you consider to be a  
 24 permanent, not a temporary, residence. Your voting  
 25 residence is the place in which your habitation is

1 fixed and to which, whenever you are absent, you  
 2 intend to return." So that those are the forms that  
 3 your Board passes out and everyone is aware of when  
 4 they seek to establish voting for when they seek to  
 5 run for office. This isn't unusual. This isn't a  
 6 statement. This is confirmed by both Ohio State  
 7 case law and Ohio State regulations.

8 And the website of the Ohio Secretary of  
 9 State repeats this. And it says -- and this is on  
 10 the Internet available to anyone in the public and  
 11 passed out in hard copy -- and it says that "Your  
 12 residence is a location you consider to be your  
 13 permanent dwelling." It's not a house where you can  
 14 dwell in the basement permanently -- I mean,  
 15 temporarily and say "Well, can I crash here for a  
 16 couple days." It's not a hotel or a motel. It's a  
 17 permanent dwelling.

18 So with regard to the issue by his own  
 19 words, did Mr. Bernabei intend this to be a  
 20 permanent dwelling. Let's hear from him again.  
 21 (Video transcript, Appendix Tab 49, Page 4,  
 22 Lines 11 through 21.)

23 MR. PLAKAS: So the Ohio elections law  
 24 doesn't encourage or seek to have voters who are  
 25 roving voters, wandering voters, nomadic voters,

1 transient voters. They want voters that have  
 2 established a permanent residence. Mr. Bernabei by  
 3 his own words confirms that it was never intended to  
 4 be a permanent residence; and he further clarifies  
 5 this and, once again, establishes it.

6 (Video transcript, Appendix Tab 49, Page 3,  
 7 Lines 3 through 20.)

8 MR. PLAKAS: So Mr. Bernabei by his own  
 9 words recognizes that Ohio elections law to  
 10 establish an O.D. residency requires a permanent  
 11 residence. He uses those terms of art by saying "my  
 12 permanent house is now available." He's not in  
 13 there yet. This is after the elections. This is  
 14 days after the election. He still is in a temporary  
 15 dwelling and telling the interviewer that he is  
 16 seeking and waiting to move into what's intended to  
 17 be a permanent house. University Avenue, Northwest,  
 18 was never intended nor established to be a permanent  
 19 house. And, therefore, the application for  
 20 candidacy is flawed and should not be granted.

21 So finally then, we've already said this  
 22 has never happened in Ohio history before. What set  
 23 of facts, not only in terms of disaffiliation but  
 24 even in residency with the punitive candidate even  
 25 admitting that this was never intended to be a

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1 permanent residence, what set of facts could be  
 2 clearer, a clearer violation of both the letter and  
 3 the spirit of the election laws? If, in fact, this  
 4 punitive candidate is allowed to circumvent both the  
 5 letter and the spirit of the laws, then what this  
 6 Board has done and will do by granting him candidacy  
 7 is they will establish a new set of laws. It will  
 8 be an open season, and everyone on both sides will  
 9 soon start to acclimate and start to play fast and  
 10 loose with whatever semblance is left of the rules.  
 11 So we will provide more detail as we go  
 12 along. But thank you for your patience and  
 13 attention in giving us the opportunity to present  
 14 our protest today. Thank you.  
 15 MR. FERRUCCIO: Thank you, Mr. Plakas.  
 16 Mr. Vasvari.  
 17 MR. VASVARI: Make no mistake. This Board  
 18 seeks and receives its guidance from the Office of  
 19 the Secretary of State, from the Courts, from the  
 20 Supreme Court of the United States, and Supreme  
 21 Court of the State of Ohio. Those are the policy  
 22 making bodies. The lay down the rules for this  
 23 Board and the other 87 Boards of Elections  
 24 throughout Ohio's counties. Don't for a minute be  
 25 hoodwinked. Don't let the "dyed in the wool" be

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1 pulled over your eyes, that you are somehow setting  
 2 a precedence that will shake the foundations of Ohio  
 3 election law. You're not for three reasons. First,  
 4 those precedences are set by the Courts and by the  
 5 Supreme Court. And they have already been set, as  
 6 we will argue and we will present throughout this  
 7 case, by the Ohio Supreme Court. Each of these  
 8 cases is decided on a case-by case and  
 9 facts-specific basis.  
 10 Yes, this case presents unusual facts. In  
 11 the law, we might even call them sui generis:  
 12 Things onto themselves. Mr. Plakas has told you so  
 13 which means that you're not laying down a broad rule  
 14 for all the cases that follow. You're deciding a  
 15 specific case on highly unusual, by the protester's  
 16 own admissions, and highly specific facts, a case  
 17 which might well be limited to its facts. And in  
 18 any event, it falls to this Board not to set  
 19 precedence with respect to the public policy  
 20 determination that govern the way in which this case  
 21 is decided. You get that from upstairs, the Ohio  
 22 Supreme Court and the General Assembly. It merely  
 23 falls to the Board to apply and to interpret the  
 24 public policy determinations of those entities as  
 25 they have been spelled out.

Page 24

1 Now, we're told that Ohio has an interest  
 2 in preventing disharmony, chaos in elections, that  
 3 Ohio has an interest, we're told in the Brief, in  
 4 the protest, in preserving the system so that there  
 5 could be an orderly presentation by the two major  
 6 political parties of their respective candidates and  
 7 so the people can break off and so that the party  
 8 fights don't spill into the streets, confuse the  
 9 voters, and leave us with yard signs where Tom  
 10 Bernabei shows up as the treasurer. When's the last  
 11 time, by the way, any of you stopped in front of a  
 12 yard sign in somebody's yard, pulled the car over,  
 13 walked up and looked at the ten-point type that said  
 14 that who was the treasurer. How many people do you  
 15 think are honestly going to be confused by that? My  
 16 suspicion is as a practical matter. The answer is  
 17 very few.  
 18 There's another argument that's, that's at  
 19 the heart of all of this. And we'll get there in a  
 20 second. But I want to step back first to the  
 21 notion, false notion that this Board is making some  
 22 precedent that will undermine the stability of  
 23 election law. All of the concerns that have been  
 24 raised in the Opening Statement of the protesters  
 25 have been considered in constitutional First and

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1 Fourteenth Amendment challenges to the system by  
 2 which Independent candidates have and may  
 3 disaffiliate themselves from major political parties  
 4 and run for office as Independents. The sore losers  
 5 statute which is dealt with in our Brief and the  
 6 very statute that's in front of us now, .257, which  
 7 determines how one goes about declaring one's  
 8 disaffiliation and affiliate -- or, running as an  
 9 unaffiliated Independent aren't accidents. And they  
 10 aren't things that haven't been contested before the  
 11 Courts. In fact, they've been contested as high as  
 12 the United States Supreme Court, Anderson versus  
 13 Celebrezze. And there the Court determined first  
 14 the level of scrutiny to apply to the various  
 15 interests that Ohio asserted in setting up a  
 16 mechanism by people could declare their independence  
 17 and whether or not there was a legitimate State  
 18 interest that justified the pursuit of those by  
 19 writing a limited statute. What were the interests?  
 20 The avoidance of confusion, the avoidance of  
 21 interested party fights spilling onto the general  
 22 election ticket, unordered primary process. All the  
 23 things you just heard articulated, the Supreme Court  
 24 found they were legitimate. Great. What did Ohio  
 25 do as a public policy matter to ensure that those

1 needs were met? It adopted the very statute that  
 2 was later interpreted in the Morrison case by the  
 3 Sixth Circuit that formed the basis of Secretary  
 4 State Opinion 2705 when Secretary of State Brunner,  
 5 taking her guidance the Sixth Circuit, found that  
 6 all that is necessary for a candidate to run as an  
 7 Independent is for them to declare at least by 4  
 8 p.m. on the day prior to the primary their  
 9 independence as a candidate in the general election.  
 10 All the problems that were articulated, all of those  
 11 needs which the Supreme Court in Anderson versus  
 12 Celebrezze found to be legitimate State interests,  
 13 the answer to those that Ohio adopted was the  
 14 mechanism that Tom Bernabei obeyed to the letter.  
 15 They had the problem; they prescribed the fix. And  
 16 they, the General Assembly, not this Board  
 17 respectfully, but the General Assembly are the ones  
 18 empowered with enacting those statutes.

19 It isn't a matter of guesswork. If you  
 20 look at the disaffiliation statute, its preamble  
 21 recites precisely the problems that Mr. Plakas  
 22 refers to and states the solution: A clear  
 23 disaffiliation and a clear statement of independence  
 24 to be made by 4 p.m. the day before the primary  
 25 election. And that's what Tom Bernabei did. The

1 state saw this problem. The state solved this  
 2 problem. The state prescribed a rule. And that  
 3 rule has been followed.

4 Everything else is fluff. Everything else  
 5 is inviting you to alter the mechanism that has  
 6 already been prescribed by the General Assembly and  
 7 approved by the Ohio State Supreme Court, the Sixth  
 8 Circuit, and, prior to the statutes being adopted,  
 9 prescribed in theory by the United States Supreme  
 10 Court.

11 That is the intricate clockwork that you  
 12 are being invited today to open up so that Tom  
 13 Bernabei can't run for mayor of Canton. I suggest  
 14 that you not -- I suggest that as a matter of law  
 15 you can't revisit those decisions. That's not the  
 16 prerogative of the Board; it's merely to apply them.

17 Estoppel, that's what this is really about.  
 18 This is an argument from estoppel. Lawyers will  
 19 recognize this term that says somebody who engages  
 20 in a course of conduct for such and so and for so  
 21 long a time is by virtue of that accumulated conduct  
 22 incapable at a point of backing out. He recorded a  
 23 radio advertisement for a judicial candidate and  
 24 said "join me in voting for her." Way back before,  
 25 by the way, he recorded that, he took his decision

1 to run as an Independent. But it was on tape. And  
 2 they ran it the next day. And so they say he's  
 3 bound to stay out of the race. He's bound to be a  
 4 Democrat. He's given all this money to the party.  
 5 He's spoken at our events. He belongs to the  
 6 Jefferson-Jackson Club. He's held offices as a  
 7 Democrat. Run for office as a Democrat. He's  
 8 enjoying our largesse. We own him. There's no  
 9 getting out now, Tom. You've been in for 40 years.  
 10 Just when he tries to get out, they try to drag him  
 11 back in. Except estoppel doesn't work because the  
 12 Supreme Court has recognized the inalienable right  
 13 of a person to affiliate and disaffiliate with a  
 14 political party of their choice at will, and  
 15 Secretary Brunner wrote that into Ohio law in  
 16 Opinion 2007-05 when she says that the wholesome  
 17 total of what people did in the past cannot count as  
 18 the basis against disaffiliation because an Ohioian  
 19 maintains the right at all times to disaffiliate  
 20 from their party at will.

21 Everything that they tell you about what  
 22 this man did in the past has to be weighed against  
 23 that statement: The right to disaffiliate from his  
 24 party at any time at will. They bear the burden by  
 25 clear and convincing evidence of demonstrating two

1 things, that he didn't take the necessary step --  
 2 and there's only one necessary step which is  
 3 registering as a candidate, filing those petitions  
 4 as an Independent, and stating that he disaffiliated  
 5 by 4 p.m. on May 3rd -- which he did; there's no  
 6 doubt about that -- and that that statement wasn't  
 7 in good faith.

8 Well, how can they show it wasn't in good  
 9 faith? The essence of their argument is that 40  
 10 years of affiliation means he's got to be telling  
 11 something other than the truth. That doesn't count  
 12 for a hill of beans. Because he has the right to  
 13 disaffiliate from his party for any reason and at  
 14 any time.

15 So the sky won't fall, the sky won't fall  
 16 if this Board on the specific facts of this case  
 17 finds that Tom Bernabei did -- and we will show you  
 18 based upon the testimony and not only of this man  
 19 but of esteemed political leaders in this  
 20 community -- that his actions were in good faith and  
 21 he did every single thing he could have done to take  
 22 practical action to disaffiliate himself from the  
 23 party. He changed his voting address. He moved his  
 24 house. He burned 40 years of bridges. He resigned  
 25 as the treasurer of three committees. He resigned

1 from the Democratic clubs and the committees to  
2 which he belonged. He resigned his office in the  
3 Stark County Democratic Party.

4 We asked you in our Brief and we ask you  
5 here again -- and I intend to ask every one of their  
6 witnesses -- what more could he have done. Should  
7 he have thrown a Molotov cocktail through the window  
8 of party headquarters? Would that have convinced  
9 them that he wanted out? He did everything he could  
10 practically do. And you know what? It's not our  
11 burden to prove that. Our burden is only to  
12 demonstrate that he said he was disaffiliated. They  
13 bear the burden of showing that that disaffiliation  
14 was in bad faith. They can't carry that burden.

15 We'll pick at the pieces throughout the  
16 day; I promise you. But we'll do more than that.  
17 We're going to shoulder the burden the law doesn't  
18 put on us and that can't be put on us. But we're  
19 going to do it voluntarily. We're going to  
20 demonstrate that he was in good faith and earnest  
21 based on his character and based on his political  
22 convictions. We're going to demonstrate that the  
23 only moral choice for him, given the conclusions to  
24 which he could come about the party and its  
25 operation and its failure to provide a candidate for

1 the City of Canton that he could live with, the only  
2 moral choice for him was to resign.

3 We'll hear a lot about loyalty. But I'm  
4 going to suggest to you today that Tom Bernabei did  
5 what he did and he's doing what he's doing in  
6 obedience to a higher loyalty which is his duty to  
7 the people and his duty to the electors and not his  
8 duty to his party which is subordinate. And it is  
9 his duty to the party, not the process, not to  
10 fairness, not to anything more than political  
11 advantage that brings these protesters here today,  
12 to engage in a cheap partisan hit job on the  
13 character of a man who has served this community for  
14 four decades with distinction and honor.

15 Now, about the house. They urge on you a  
16 hypertechnical reading of Ohio law. We Briefed  
17 this. They suggest that Mr. Bernabei was lying when  
18 he said that his permanent place of residence on his  
19 ballot, the change of address was the University  
20 Avenue address, because he moved into that address  
21 knowing full well that he would be moving out. They  
22 neglect the second part, that he'd be moving out to  
23 another house that he already owned in Canton, that  
24 on University Avenue he took a lease -- not as a  
25 transient in a hotel -- but over a thousand dollars

1 on a month-to-month lease. There's no one else in  
2 this city who because they rented an apartment or  
3 rented a house at substantial personal expense on a  
4 month-to-month lease, you or they or anyone else,  
5 would say it wasn't a permanent resident by virtue  
6 of that leasehold. He rented on a month-to-month.  
7 He was obligated to be there for at least a month.  
8 He paid to be there for at least a month. He had no  
9 right to be there for at least a month. And for all  
10 he knew, he would be there for at least a month  
11 because the Lakecrest house, which was his, was  
12 rented to a family with two children and one on the  
13 way who were closing on another house; and he didn't  
14 exactly want to kick them to the street for his own  
15 political convenience. And so he waited.

16 When the Noyes family would leave Lakecrest  
17 was not in Tom Bernabei's control. It was not  
18 something that he knew. It wasn't something that he  
19 could predict. So he took a house and waited. One  
20 house in Canton versus another house in Canton. We  
21 have cited Supreme Court decisions from the 1950s  
22 forward that demonstrate that that sort of intention  
23 to make one's permanent residence in a community is  
24 what really matters. But you know what? They want  
25 to be hypertechnical about it. So let's be

1 hypertechnical about it. Ask yourself not what the  
2 form promulgated by this Board says, not a quick  
3 summary of what the law is, not a paraphrase of what  
4 the law is on both the Secretary of State's website  
5 and the materials passed out by the Board, because  
6 quick summaries and paraphrases don't govern. What  
7 governs is the Ohio Revised Code. And the Ohio  
8 Revised Code in Section 3503.02(A) says that a  
9 permanent residence is the place to which when you  
10 are absent you intend on to return. So ask  
11 yourself, after you hear that the last time Tom  
12 slept in Jackson Township was in April, where did he  
13 intend to return on the 3rd when his change of  
14 address was filed? Where did he sleep that night?  
15 Where did he intend to return on the 4th when his  
16 petitions were filed? Where did he intend to return  
17 the next number of days until the Noyse family left  
18 the Lakecrest house. The answer to that question,  
19 the answer to the hypertechnical question that these  
20 people pose is that he intended to return to  
21 University Avenue every one of those days and for a  
22 number of days going forward and an indeterminate  
23 number of days, because he didn't know when the new  
24 address would be available.

25 Yeah, Tom Bernabei didn't have a house in

1 Canton when he filed his petitions; he had two. And  
2 as a result of that, because he intended to move  
3 from one to the other when the next became  
4 available, they hypertechnically say "temporary  
5 residence." Temporary residence. Permanent  
6 residence. Those words, "temporary" and  
7 "permanent," they're grafting onto the statute. The  
8 statute provides the language, the place to which he  
9 intended to return. And as you hear, and as the  
10 evidence will bear out, he intended to return to  
11 University Avenue on the 3rd when his change of  
12 address was filed and on the 4th when his petitions  
13 were filed. The heavens are not going to fall.  
14 This case is sui generis.

15 I'm very curious to hear what the experts  
16 on politics have to say. But I'm more interested in  
17 what justice has to say. Because even, even if the  
18 heavens were to fall, we go back a lot farther than  
19 the law of 1800 to come up with fiat justitia ruat  
20 coelum: Let justice be done though the heavens may  
21 fall. That's your job.

22 MR. FERRUCCIO: Thank you.

23 Mr. Plakas.

24 MR. PLAKAS: We'd like to call as our first  
25 witness, Mr. Bernabei, as upon Cross.

1 MR. BERNABEI: Can I take a note pad with  
2 me?

3 MR. FERRUCCIO: Sure.  
4 (Thomas M. Bernabei was duly sworn by  
5 Notary Public Jocelyn S. Harhay.)

6 CROSS-EXAMINATION

7 BY MR. PLAKAS:

8 **Q. Good morning, Mr. Bernabei?**

9 A. Good morning.

10 **Q. Will you pull up -- you have a book in front of  
11 you --**

12 A. Uhm-huhm.

13 **Q. -- with the appendix, both the big -- both books.  
14 The small book is a supplement appendix exhibits.  
15 The Board has it. But to be more effective in this  
16 matter, whenever we refer to an exhibit, we will put  
17 it on the screen so you don't have to leaf through  
18 it and the Board, if they prefer not to, don't have  
19 to leaf through the exhibit ledgers.**

20 MR. PLAKAS: All right. Let's pull up  
21 Exhibit 16, please.

22 And with regard to Exhibit 16, let the  
23 Record show that that's the Declaration of Candidacy  
24 Party Primary Election.

25 **Q. It's signed by you. Well, in the middle, it says "I**

1 **hereby declare that I desire to be a candidate for  
2 the nomination of the office of Stark County  
3 Commissioner as a member of the Democratic Party."  
4 And I'm going down right above your signature. It  
5 says "I further declare that if elected to this  
6 office or position I will qualify thereof and I will  
7 support and abide by the principles enunciated by  
8 the Democratic Party." And I have become familiar  
9 with your scribble signature. That is, indeed, your  
10 scribble signature?**

11 A. I wouldn't call it a scribble. But that is my  
12 signature.

13 **Q. I wouldn't call it a work of art either. So you  
14 understand -- and actually this form indicates that  
15 statements made on election documents are made under  
16 the penalty of election falsification. And that's a  
17 felony of the fifth degree; correct?**

18 A. Yes.

19 **Q. Okay. So with that said, when you make the  
20 representation to the State of Ohio, to the county,  
21 to the Board of Elections, that's a serious  
22 statement, isn't it?**

23 A. I agree. It's a serious statement. I'm not sure,  
24 by the way, that, that disobedience to that last  
25 portion would or would not be a felony. But it is a

1 serious statement and should be taken seriously.

2 **Q. So it should be taken seriously when you state to  
3 the public and to the Board of Elections "I will  
4 support and abide by the principles enunciated by  
5 the Democratic Party" as you so stated on November  
6 22nd, 2011, for the 2012 general election; correct?**

7 A. Yes.

8 **Q. Okay. When a candidate like you makes a statement  
9 on a serious document to the public, you would  
10 expect that this statement, this promise is  
11 something that you wanted the voters to believe and  
12 rely on; correct?**

13 A. Yes.

14 **Q. Everything you said in there you desired and  
15 intended that the voters believe and rely on; right?**

16 A. To the extent voters read nominated petitions. But,  
17 yes.

18 **Q. And then as you went through your candidacy, which  
19 started with this declaration --**

20 MR. PLAKAS: Exhibit 108.

21 **Q. -- you were on the primary ballot for county  
22 commissioner on March 6th, 2012; correct?**

23 A. If you say so. I'm not certain of the date. But I  
24 ran for commissioner this last term.

25 **Q. Okay.**

1 MR. PLAKAS: And if we can pop it out,  
2 Beth, so Mr. Bernabei can easier look at that.

3 **Q. So Exhibit 108 reflects that on March 6th, 2012, the**  
4 **primary election, you were actually unopposed in the**  
5 **primary for county commissioner; and you received**  
6 **13,139 votes? Agreed?**

7 A. If that's what the document says, yes.

8 **Q. Then we go to Exhibit No. 109, moving to the general**  
9 **election. And the general election was on November**  
10 **6th, 2012. And, once again, in this general**  
11 **election it indicates Tom Bernabei. And just like**  
12 **it did in the primary where it indicated that you**  
13 **were a Democrat in the general election --**

14 MR. PLAKAS: If you could pop it out.

15 **Q. -- it says "Thomas Bernabei, Democrat;" and you**  
16 **received 116,167 votes? Correct?**

17 A. Yes.

18 **Q. And this procedure -- and we won't take up the**  
19 **time -- you actually had gone through a similar**  
20 **procedure when you ran in the 2010 election?**

21 A. Yes.

22 **Q. And you, you signed the same kind of form where you**  
23 **stated that if elected you would support and abide**  
24 **by the principles of the Democratic Party?**

25 A. Yes.

1 **Q. You ran and you won that election; right?**

2 A. Yes.

3 **Q. Okay. And actually three parties were in that**  
4 **election, involving a Conservative, Independent,**  
5 **that took off, bled off some of the votes; correct?**

6 A. Yes.

7 **Q. So this election in 2012 where you ran as a**  
8 **Democrat, and you represented you would support and**  
9 **abide by the principles of the Democratic Party, you**  
10 **currently are still a sitting Stark County**  
11 **Commissioner; correct?**

12 A. Yes.

13 **Q. Your counsel asked the rhetorical question of what**  
14 **more you could have done to disaffiliate yourself.**

15 **You ran twice and won with the support of the**  
16 **Democratic Party, suggesting and promising that if**  
17 **elected you would support and abide by the**  
18 **principles of the Democratic Party. One of the**  
19 **things you could have done to clarify and make clear**  
20 **your disaffiliation, you could have resigned this**  
21 **position; correct? You could have done that?**

22 A. Yes.

23 **Q. Okay. Let's go to Exhibit 17, please. Exhibit 17**  
24 **is the Declaration of Candidacy of the Party Primary**  
25 **Election. And it's for the primary election of May**

1 **6th, 2014. And it's as a member of the Democratic**  
2 **County Central Committee. And if you look --**

3 MR. PLAKAS: Beth, could you highlight the  
4 heading so that everyone can see that.

5 **Q. This is a declaration, the very top of the page,**  
6 **"For member of the County Central Committee." Okay.**

7 **And then if you go about one-third of the way down,**  
8 **it identifies as a member of the Democratic Party.**

9 **Right there. Okay. And, thereafter, if you go**  
10 **about three-fourths of the way down, it makes again**  
11 **the statement that you signed on January 31st, 2014.**

12 **And it states "I further declare that if elected to**  
13 **this office I will qualify thereof and I will**  
14 **support and abide by the principles enunciated by**  
15 **the Democratic Party." And, once again, we find**  
16 **your signature which neither one of us need to**  
17 **further characterize? Is that correct?**

18 A. Yes.

19 **Q. Okay. So in an effort to clarify your**  
20 **disaffiliation, you at least attempted to resign and**  
21 **submitted a letter of resignation to the Stark**  
22 **County Democratic Central Committee; correct?**

23 A. I think I, I did, in fact, do so, yes.

24 **Q. Okay. And before you did so, and on Exhibit No. 48,**  
25 **on the third page, this position that you ran for --**

1 **once again, you were representing your commitment to**  
2 **abide by the principles of the Democratic Party --**

3 **you actually, once again, won that election; didn't**  
4 **you?**

5 A. Yes.

6 **Q. All right. So making a representation that you're**  
7 **going to abide by the principles, running for the**  
8 **Democratic Central Committee, you win the election,**  
9 **when you made that representation in your filing**  
10 **that you were going to abide by the principles, you,**  
11 **once again, were promising to the voters that you**  
12 **would abide by the principles; and you expected the**  
13 **voters to rely upon that promise and commitment?**  
14 **Correct?**

15 A. I signed the form as stated.

16 **Q. Well --**

17 A. Again, my --

18 **Q. You signed a serious form under penalties --**

19 A. Yes.

20 **Q. -- of the election law?**

21 A. I signed the form as stated. Again --

22 **Q. That's what the --**

23 A. -- the same issue. As I said before, I don't know  
24 that the voters themselves, you know, read that form  
25 or are privy to that form.

1 **Q. But the fabric of election law requires and presumes**  
 2 **that punitive candidates do read the forms, do**  
 3 **understand their seriousness, and agree to abide by**  
 4 **the election laws; correct?**  
 5 A. I already answered that. Yes.  
 6 **Q. Okay. And part of your abiding by the election laws**  
 7 **is, you represented as required on this form and on**  
 8 **other forms, that if elected to the office -- and**  
 9 **this one the Party Central committee -- that you**  
 10 **would support and abide by the principles enunciated**  
 11 **by the Democratic Party; correct?**  
 12 A. I've already answered that. Yes.  
 13 **Q. And you won this election based upon that**  
 14 **representation and promise in May of 2014; correct?**  
 15 MR. VASVARI: Objection.  
 16 A. I already answered that question. Yes.  
 17 **Q. You making that same representation so there**  
 18 **wouldn't be any lack of clarity of your**  
 19 **disaffiliation, you actually resigned from the**  
 20 **Democratic Central Committee; didn't you?**  
 21 A. Yes.  
 22 **Q. Although you made the exact same representation**  
 23 **throughout the process when you ran for the office**  
 24 **of county commissioner, you didn't resign from that?**  
 25 **You're still drawing a salary? You're still drawing**

1 **benefits; correct?**  
 2 A. Yes.  
 3 **Q. You could have resigned from that and you could have**  
 4 **given up your county salary; correct?**  
 5 A. Could have.  
 6 **Q. And you're already receiving a, a retirement benefit**  
 7 **for your years of public service, aren't you?**  
 8 A. Yes.  
 9 **Q. So, in fact, you're what we call a double dipper?**  
 10 MR. VASVARI: Objection.  
 11 A. (Inaudible), by the way, the meaning of that --  
 12 MR. FERRUCCIO: Sustained.  
 13 A. -- but, yes.  
 14 MR. FERRUCCIO: Stay to the issue, Mr.  
 15 Plakas.  
 16 MR. PLAKAS: Thank you.  
 17 BY MR. PLAKAS:  
 18 **Q. Would you agree that the language that I read you,**  
 19 **both in your application, your declaration for**  
 20 **commissioner, and also for Party Central Committee,**  
 21 **were identical in terms of your commitment to**  
 22 **support and abide by the principles; correct?**  
 23 A. I didn't look at it close enough to agree it's  
 24 identical, but very similar. It may have been  
 25 identical.

1 **Q. You would agree that in playing by the rules --**  
 2 **And you want to play by the rules; don't**  
 3 **you?**  
 4 A. Absolutely.  
 5 **Q. You think elected officials should play by the**  
 6 **rules, shouldn't they?**  
 7 A. Absolutely.  
 8 **Q. They shouldn't attempt to skirt them?**  
 9 A. Absolutely.  
 10 **Q. They should comply both with the letter and the**  
 11 **spirit of the law; correct?**  
 12 A. Yes.  
 13 **Q. They should be examples?**  
 14 A. Yes.  
 15 **Q. They should support the integrity of the election**  
 16 **system?**  
 17 A. Yes.  
 18 **Q. Our country, our community depends on that; doesn't**  
 19 **it?**  
 20 A. Absolutely.  
 21 **Q. You've recognized and understood in terms of your**  
 22 **efforts that you have to establish complete**  
 23 **disaffiliation with your Democratic Party before you**  
 24 **begin the process of filing; correct?**  
 25 A. Yes.

1 **Q. And you so stated to the general public in various**  
 2 **things, Exhibit 49, Page 9, Line 15 through 21.**  
 3 **(Video played.)**  
 4 **Q. So by your own words, you recognize that properly**  
 5 **playing by the rules, meeting the election laws is**  
 6 **you have to establish disaffiliation before you**  
 7 **file; correct?**  
 8 A. I didn't --  
 9 **Q. That's what --**  
 10 A. I didn't quite all, understand all the words spoken  
 11 there. But that is my general comment and general  
 12 intent, yes.  
 13 **Q. Those words were your words, not mine.**  
 14 A. Yes.  
 15 **Q. Okay. And in your words, you said, you know,**  
 16 **"general standards out there." "There are some**  
 17 **general standards. One is establish, you know,**  
 18 **disaffiliation before you file." You understood**  
 19 **that that was the rule?**  
 20 A. Yes.  
 21 **Q. Okay. And, No. 2, you have to do that in good**  
 22 **faith?**  
 23 A. Yes.  
 24 **Q. And, No. 3, if you are establishing complete**  
 25 **disaffiliation before you file, you cannot continue**

1 to be affiliated up to, through, and including the  
 2 election; correct?  
 3 A. Yes.  
 4 **Q. Let's go to the Democratic primary election of May**  
 5 **5th, 2015. Go to Exhibit 116, please.**  
 6 A. I'm sorry. What exhibit?  
 7 **Q. 116. I believe it's in your supplemental book. And**  
 8 **it's on the screen.**  
 9 MR. VASVARI: I'm sorry. I don't have a  
 10 supplemental book. Will someone give me a  
 11 supplemental book? Thank you.  
 12 MR. FERRUCCIO: You don't have a basic book  
 13 either?  
 14 MR. VASVARI: No. But I have their book in  
 15 digital.  
 16 MR. PLAKAS: For the Record, the basic  
 17 exhibit book has been filed for six or seven weeks  
 18 now?  
 19 MR. VASVARI: I have the basic exhibits. I  
 20 just have it on my iPad.  
 21 MR. PLAKAS: Exhibit No. 116, let's pop out  
 22 the title here, Declaration of Candidacy Party  
 23 Primary Election for Judge or Clerk of the Municipal  
 24 Court.  
 25

1 BY MR. PLAKAS:  
 2 **Q. Let's go about a third of the way down where it says**  
 3 **"I further declare that I desire to be a candidate**  
 4 **for the nomination to the office of judge of the**  
 5 **Canton Municipal Court as a member of the Democratic**  
 6 **Party." So you're familiar with the Democratic**  
 7 **primary election campaign of Kristen Guardado;**  
 8 **correct?**  
 9 A. Yes.  
 10 **Q. Okay. And let's go to Exhibit No. 21. And Exhibit**  
 11 **No. 121 says Designation of Treasurer at the top.**  
 12 **That's to confirm who's it for?**  
 13 A. I'm sorry. 21 or 121?  
 14 **Q. 21, please.**  
 15 A. 21.  
 16 **Q. Okay. And then it shows that you are designated as**  
 17 **the treasurer; correct?**  
 18 A. Yes.  
 19 **Q. Okay. And under Ohio election law, a candidate**  
 20 **creating a campaign committee has to designate**  
 21 **publicly who the treasurer is; correct?**  
 22 A. Yes.  
 23 **Q. Okay. And go down to little bit farther where it**  
 24 **talks about the Candidate's Campaign Committee. And**  
 25 **the party affiliation for that campaign committee is**

1 a Democrat; correct?  
 2 A. Yes.  
 3 **Q. And go down to the now, now so famous signature.**  
 4 **That is apparently your mark we'll call it?**  
 5 MR. FERRUCCIO: Mr. Plakas, you must not  
 6 like Picasso? I mean that's a great signature.  
 7 MR. BERNABEI: Thank you.  
 8 MR. PLAKAS: I love Picasso.  
 9 BY MR. PLAKAS:  
 10 **Q. That is your signature?**  
 11 A. Yes.  
 12 **Q. And it's dated February 5th, 2015; correct?**  
 13 A. Yes.  
 14 **Q. Under Ohio election law, the treasurer is to be**  
 15 **identified on campaign materials; correct?**  
 16 A. Yes.  
 17 **Q. Okay. So let's --**  
 18 A. I believe the treasurer or chairperson. I'm not  
 19 sure if there is a requirement that it only be the  
 20 treasurer. I'm not sure.  
 21 **Q. That is correct.**  
 22 A. I'm --  
 23 **Q. That's correct. You made that strategic decision**  
 24 **along with candidate Guardado that, because you have**  
 25 **had some degree of public notoriety that your name,**

1 **rather than the campaign chairman, would be on these**  
 2 **campaign materials; correct?**  
 3 A. That is incorrect.  
 4 **Q. At any rate, your name is on the campaign materials?**  
 5 A. At any rate, it is. But that is incorrect that I  
 6 made the strategic decision.  
 7 **Q. It could have had another name. But your name**  
 8 **appears on that campaign materials?**  
 9 A. It was a decision I did not make. It was a decision  
 10 that the candidate made.  
 11 **Q. Did you object to that decision?**  
 12 A. I'm not even sure if I was involved in that  
 13 decision. I probably was not.  
 14 **Q. Well, you have lived and breathed the air in the**  
 15 **cites of Stark County the first half of 2015,**  
 16 **haven't you?**  
 17 A. Absolutely.  
 18 **Q. You have seen dozens of different types of campaign**  
 19 **materials for Kristen Guardado, haven't you?**  
 20 A. I've seen them. I don't know whether I have ever  
 21 bothered to look at the bottom line of them.  
 22 **Q. Okay. Well, let's look at the bottom line. Exhibit**  
 23 **92, please.**  
 24 A. I mean, by the way, to save time here, I'm not  
 25 disputing that my name was on them. I'm just

1 indicating to you that you stated that I made the  
2 strategic decision. I'm saying that was a decision  
3 made by the candidate and not by myself.

4 **Q. But you never --**

5 A. As you can see, as you can see, the address of Tom  
6 Bernabei, treasurer, is not my address.

7 **Q. Okay.**

8 A. So, again, it was something that I did not  
9 participate in. Otherwise, the address would have  
10 been present.

11 **Q. Sure. But you did not object to it either, did you?**

12 A. No.

13 **Q. Okay. And you knew it was being utilized; correct?**

14 A. To some extent, yes.

15 **Q. Okay. You knew not only in yard signs -- you knew  
16 it was utilized in yard signs; correct.**

17 A. I don't know that. I never looked at one. But I  
18 have no objection to it.

19 **Q. In mailers; correct?**

20 A. Again, the same. But I have no objection to it.

21 **Q. Billboards?**

22 A. The same.

23 **Q. Okay. And in radio spots; correct?**

24 A. Right.

25 **Q. And, in fact, you, as close to the election as April**

1 **be a Democrat; correct?**

2 A. Yes. Or registered as one.

3 **Q. Or registered.**

4 A. I think you could be a nonpartisan and take a  
5 nonpartisan ballot.

6 **Q. Register as a Democrat. So when you stated "Please  
7 join me in voting for Guardado," that was a  
8 representation that you were going to vote for her;  
9 correct?**

10 A. Well, I hope they didn't join me because, in fact, I  
11 did not vote for Guardado. Because I didn't. I  
12 voted in the Democratic primary.

13 **Q. Well, that, that's confusing to me. Because the  
14 records will reflect that on April 29th you recorded  
15 this. The records will reflect that this ran  
16 throughout the county on April 30th, May 1st, May  
17 2nd, May 3rd, 4, and even May 5th. And it confuses  
18 me. Because you're representing to the county that  
19 "Please join me in voting for Kristen Donohue  
20 Guardado for judge." So is that a false statement  
21 that you were making?**

22 A. I think that you misunderstood my previous comment.  
23 That statement stands on its own. I said to you I  
24 hope that they, in fact, did not ultimately join me  
25 because I did not ultimately vote for her.

1 **29th, the last day that you were in Stark County  
2 before you left for Florida, you actually recorded a  
3 series of radio spots that played for the next  
4 several days? Because I think your counsel may have  
5 had those dates wrong. But actually you were  
6 recording new radio spots as of April 29th, weren't  
7 you?**

8 A. I, No. 1, I believe I only recorded one spot. And  
9 that was WHBC. And, secondly, I believe that I on  
10 April 27, rather than on April 29th, I recorded a  
11 spot. I don't think I did so. But I can't tell you  
12 for certain.

13 **Q. We'll get to that. Because we have documentation --**

14 A. Okay.

15 **Q. -- as to actually. So we know what we're talking  
16 about...**

17 MR. PLAKAS: ...can you please play 52.  
18 (Video transcript, Appendix Tab 52.)

19 **Q. The next-to-the-last sentence where you say "Please  
20 join me in voting for Kristen Donohue Guardado for  
21 judge," this was a primary, a Democratic primary  
22 election that Kristen Donohue Guardado was running  
23 in; correct?**

24 A. Yes.

25 **Q. To vote for her in that primary election, you had to**

1 **Q. Well, the message is that you were going to vote for  
2 her; right?**

3 A. I anticipated voting for her. Yes.

4 **Q. Okay. And that was on April 29th; correct?**

5 A. I would, again, like to see evidence as to what date  
6 that was or was not.

7 **Q. Okay. Well, fortunately we do have the evidence.  
8 Let's go to Exhibit 93. With Exhibit 93, there's an  
9 invoice from WHBC. Now, you indicated that you  
10 didn't think it ran on WHBC but it did.**

11 A. Excuse me. I never said that. I said I made one  
12 and only one commercial. You suggested I made  
13 multiple commercials. And I made it at WHBC, is  
14 what I said.

15 **Q. Okay.**

16 A. And I don't know what radio stations it ran on  
17 because I am not involved in that aspect of her  
18 campaign. But I would assume that it definitely ran  
19 on WHBC.

20 **Q. Good. Then we agree that you made a radio  
21 commercial that was to run on at least -- was  
22 recorded at WHBC and was intended to run on the  
23 radio stations; correct?**

24 A. Yes.

25 **Q. Okay. And on the first page of Exhibit No. 93, it**

1 shows run dates, starting the day after you recorded  
2 it, on April 30th through May 5th. And this was  
3 News-Talk 1480 WHBC. So that's the series of run  
4 dates and the charges. You will note that your  
5 radio ads asking voters to join you in voting for  
6 Kristen Guardado, the Democratic candidate, they ran  
7 Monday, the 4th, Tuesday, the 5th; correct?

8 A. Yes.

9 Q. And if you go to the next page, which shows at the  
10 top Mix 94.1, so here's another, by its call  
11 numbers, at least another radio show or station.  
12 And, once again, it shows the, the ads running from  
13 April 30th to and through May 5th; correct?

14 A. Yes.

15 Q. Now, let's go to Exhibit No. 103, please. And  
16 Exhibit No. 103 for the record is communications  
17 from Rebecca Marchino at WHBC. And this confirms  
18 that she e-mailed us the audio file that you just  
19 listened to and confirmed the record run dates. Now  
20 if there's any serious disagreement or claim that  
21 Miss Marchino is, is incorrect, we have subpoenaed  
22 her; she's standing by to testify, if necessary. I  
23 believe and I suspect that that won't be necessary.

24 But if the Board wants us to actually --  
25 she's standing by at WHBC. And she can travel here

1 to confirm that this is, in fact, her e-mail that  
2 the run dates are, are those that are indicated in  
3 the correspondence that she created and that the  
4 radio spot is, in fact, the spot that, that we ran,  
5 if there's no objection. And we can call her at the  
6 next break and release her.

7 Q. I presume that you would agree, now that you've seen  
8 the documentation, that you have no concrete reason  
9 to dispute that either that was your voice, No. 1,  
10 No. 2, that you recorded it as a communication as  
11 indicated on April 29th, and, No. 3, that it ran on  
12 those dates indicated in her communications? May we  
13 have a stipulation as to that?

14 A. It was my voice.

15 Q. Yes.

16 A. I presume that it ran on those dates. I can't know  
17 otherwise. But I presume that, that is accurate.  
18 The question and the reason you started showing me  
19 this exhibit is because I said I was uncertain as to  
20 whether or not I recorded it on April 27th or April  
21 29th.

22 Q. And if you look at 103 --

23 A. And I'm looking, by the way, at the first exhibit  
24 you provided me which is 93 which apparently you  
25 indicated is evidence of in some way, shape, or form

1 I did this on the 29th.

2 I look at top of that (indicating) and I  
3 see that the invoice -- or, that has an invoice date  
4 April -- May 28th. I don't know what date I --  
5 again, I tell you --

6 Q. That's what, Mr. Bernabei, we have Exhibit No. 103  
7 for. So let's go to 103. First page of 103.

8 A. I've seen 103.

9 Q. And it says "Bernabei came in on April 29th at 9:30  
10 a.m. to record." Do you have any legitimate reason  
11 to dispute the accuracy of this, recognizing that  
12 this was what she gave us?

13 A. I have no reason to dispute the accuracy of what she  
14 put on that particular document. I'm telling you  
15 that from my own recollection I'm not sure whether  
16 it was the 27th or the 29th. And that does not in  
17 and of itself convince me that it was still the 29th  
18 without my reviewing my own records.

19 Q. So it sounds like we don't have a stipulation on the  
20 29th.

21 MR. PLAKAS: So, Beth, at the next break,  
22 call Miss Marchino.

23 A. I didn't know it was my job to provide a  
24 stipulation. But I would ask my counsel to do  
25 so....

1 THE WITNESS: ...if you so desire.

2 MR. VASVARI: I don't.

3 A. I don't know what difference it makes, whether it  
4 was the 27th or 29th. I'm just telling you that I  
5 don't know that it was the 29th.

6 Q. I think it does make a difference.

7 A. Okay.

8 Q. Would you agree that prior to you leaving for  
9 Florida -- and you came back on the afternoon of  
10 Sunday, May 3rd -- you prior to that time made no  
11 effort to communicate to Kristen Guardado to stop  
12 representation that you were supporting her in her  
13 Democratic campaign? You made no effort to do that?

14 A. Of course not.

15 Q. Okay. In terms of, again, the rhetorical question  
16 that your attorney said, "What else could Mr.  
17 Bernabei have done," you at a minimum could have at  
18 least called her and told her that you were going to  
19 abandon the Democratic principals an disaffiliate?  
20 You could have done that; correct?

21 MR. VASVARI: Objection.

22 MR. FERRUCCIO: Sustained.

23 BY MR. PLAKAS:

24 Q. You could have communicated with her; correct?

25 MR. FERRUCCIO: I sustained his objection.

1 MR. PLAKAS: Okay.  
 2 BY MR. PLAKAS:  
 3 **Q. Let's go to Exhibit No. 84. Under the section**  
 4 **"party affiliation," as it was generally -- the**  
 5 **third sentence -- as was generally viewed, your name**  
 6 **continued to be on campaign signs through the day of**  
 7 **the election; correct? You would not disagree with**  
 8 **that?**  
 9 A. No. I agree with that.  
 10 **Q. Okay. And two lines -- three lines farther down,**  
 11 **once again the general understanding that you had**  
 12 **described yourself as a dyed-in-the-wool Democrat.**  
 13 **This is now reported by a second newspaper or media**  
 14 **outlet. Those are your words? That's how you**  
 15 **described yourself; correct?**  
 16 A. I acknowledge that. Yes.  
 17 **Q. Okay. Exhibit No. 94.**  
 18 A. At least, by the way on that, on Exhibit 84, at  
 19 least the Repository finally put a good picture here  
 20 of me on that one. Thank you.  
 21 **Q. A high school senior picture.**  
 22 A. I forget what exhibit number.  
 23 **Q. Exhibit 94. During the term of your voting office**  
 24 **as a public officeholder, your picture has been on**  
 25 **the walls of the Democratic Party headquarters as**

1 **one of the Democratic officeholders; correct?**  
 2 A. I don't know that. But I see it, I see it up there.  
 3 **Q. You've never been in the Democratic Party**  
 4 **headquarters?**  
 5 A. Very, very infrequently.  
 6 **Q. That's not a surprise to you that they -- that your**  
 7 **picture is on the wall of the Democratic Party**  
 8 **headquarters, is it?**  
 9 A. No.  
 10 **Q. Okay. You've never asked them to remove it, have**  
 11 **you?**  
 12 A. No.  
 13 **Q. Okay. You could have; correct?**  
 14 A. I wouldn't because it's not my obligation. I didn't  
 15 ask them to put it up and I wouldn't ask them to  
 16 take it down. It's not my, it's not my business.  
 17 It's not my building.  
 18 **Q. On Exhibit --**  
 19 A. It's the party chairman's business.  
 20 **Q. Okay. On Exhibit No. 98 --**  
 21 A. I also like that picture, by the way for the Record.  
 22 **Q. 94 you like. Let's go to 98. See how you like**  
 23 **this.**  
 24 A. Okay.  
 25 **Q. This is the website of the Stark County Democratic**

1 **Party. And your picture appears there also. Do you**  
 2 **like that picture?**  
 3 A. That's the same picture I believe.  
 4 **Q. And for the Record, you've never asked your picture**  
 5 **identifying you as Democratic Party officeholder to**  
 6 **be removed, have you?**  
 7 A. No. Again, I didn't ask it to be posted. I didn't  
 8 ask it to be removed. And it's not my business. I  
 9 don't believe I ever looked at the Stark County  
 10 Democratic website.  
 11 **Q. Let's go to Exhibit 80, please.**  
 12 A. I'm sorry.  
 13 **Q. Exhibit 80. On the second page at the bottom of**  
 14 **Exhibit 80, this is the quote that we've all heard**  
 15 **from various sources attributable to you. One of**  
 16 **the first times or one of the recent times it**  
 17 **appeared was in an Alliance Review article, March**  
 18 **17, 2014. And those are your words: "Yes, I'm a**  
 19 **dyed-in-the-wool Democrat who serves with two**  
 20 **Republicans"; correct? You use this language well;**  
 21 **don't you? You try to use the English language**  
 22 **well, don't you?**  
 23 A. I try to.  
 24 **Q. Okay. Let's go to Exhibit No. 126.**  
 25 A. As your transcript of my interview with Mr. Olson

1 would indicate, I sometimes stutter and so forth a  
 2 lot.  
 3 **Q. Okay. Thank you for that --**  
 4 A. Thank you.  
 5 **Q. -- qualification. You make reference repeatedly to**  
 6 **yourself as a dyed-in-the-wool Democrat. So that**  
 7 **there's no lack of clarity, you wouldn't disagree**  
 8 **with the definition from Merriam-Webster in terms of**  
 9 **defining dyed-in-the-wool? You would agree that**  
 10 **dyed-in-the-wool means having very strong beliefs,**  
 11 **opinions, et cetera, that you are not willing to**  
 12 **change? That's a fair definition of**  
 13 **dyed-in-the-wool, isn't it?**  
 14 A. Yes. I would agree. By the way, I think earlier I  
 15 said that I acknowledge that that is my statement.  
 16 That statement, by the way, was made in response to  
 17 a question from the reporter that initiated that  
 18 comment. And I merely repeated that comment. That  
 19 is not a, that is not a term of art that I would  
 20 normally use. Or I don't know that I have ever used  
 21 it. But I live with it, given the fact that I did,  
 22 in fact, acknowledge it in response to a question  
 23 from her.  
 24 **Q. And just to make sure that Merriam-Webster's**  
 25 **dictionary didn't get it wrong, we go to the second**

1 page to the Free Dictionary which is a more  
2 contemporary dictionary. Dyed-in-the-wool, the  
3 first dyed-in-the-wool, it says, [of someone]  
4 permanent or extreme." And then the definition  
5 below says, dyed-in-the-wool, "If you describe  
6 someone as dyed-in-the-wool, you mean they have very  
7 strong opinions and will not change." So we can  
8 agree that at least the Free Dictionary and  
9 Merriam-Webster have the same idea of what  
10 dyed-in-the-wool means when it's spoken; correct?

11 A. Yes.

12 Q. We've talked about your affiliations. And I believe  
13 it was stated that you recognize that you have to,  
14 prior to your attempt to become a candidate, make a  
15 clear disaffiliation, cut off the ties, cut the  
16 umbilical cord. So let's take a look at the  
17 affiliations and history of affiliations and what  
18 has happened since then.

19 So let's go to Exhibit 119. You  
20 probably -- we will go through these rather quickly.  
21 And you can scan that. But would you basically  
22 agree that Exhibit 119 accurately reflects that you  
23 were the Canton law director for 11 years, a  
24 Democrat on city council for two years, a Democrat  
25 county commissioner from 2011 to the present, a

1 Democratic Canton law director for the -- excuse me.  
2 The next section is the appearance on the ballot.  
3 And as the law director, you appeared on the primary  
4 election ballot in '91, '95, '99; general, '91, '95,  
5 '99. Democratic city council, you got 2003,  
6 Democratic commissioner, 2010, 2012. Democratic  
7 Central Committee 2014. And then employment for  
8 other Democratic public officeholders, Massillon Law  
9 Department, Canton Law Department, and then employed  
10 by the mayor of the City of Canton. Is that a fair  
11 summary of your positions as elected Democrat?

12 A. Yes.

13 Q. Okay. And, in fact, I guess.... We can go now to  
14 Exhibit 117. We've identified that you were elected  
15 to the office of Democrat. And although you could  
16 have resigned, you still hold that office; correct?

17 A. I'm sorry. You're speaking of as commissioner?

18 Q. Yes.

19 A. Yes, I still hold that office.

20 Q. And, in fact, you've held that office as Democrat  
21 since 2010; correct?

22 A. Yes.

23 Q. And, in fact, when you ran in 2010, you made the  
24 same representations about abidance and supporting  
25 the Democratic Party as you did in your election in

1 2012 for the commissioner and your election in 2014  
2 for the Central Committee --

3 A. Yes.

4 Q. -- correct?

5 And when you ran in 2010, you actually  
6 solicited financial support and campaign  
7 contributions from Democrats; didn't you?

8 A. I'm sorry. Could you repeat that?

9 Q. In 2010, you solicited financial support and  
10 campaign contributions from Democrats; correct?

11 A. From Democrats as well as any other citizen.

12 Q. You were soliciting those contributions for a  
13 campaign in which you pledged to abide by and  
14 support the Democratic principles if you were  
15 elected; correct?

16 A. Yes. But I don't solicit merely from Democrats, is  
17 what I'm saying.

18 Q. I understand. But your campaign confirmed that that  
19 was how you were running, as a Democrat who would  
20 abide by and support Democratic principles?

21 MR. VASVARI: Objection. Asked and  
22 answered.

23 MR. FERRUCCIO: I think he had answered  
24 that quite a few times.

25 MR. PLAKAS: Thank you.

1 BY MR. PLAKAS:

2 Q. So on Exhibit 117 -- and that's in your supplemental  
3 book --

4 This just merely for the Record. I believe  
5 can you go through 119, read everything.

6 -- but it identifies that currently you're,  
7 for the Record, an officeholder elected as a  
8 Democrat. Now, there's some lack of clarity with  
9 regard to the Jefferson-Jackson club. You still are  
10 indicated on the rolls of the Jefferson-Jackson Club  
11 as a member in good standing and fully paid through  
12 the end of the year. You recognize that; don't you?

13 A. I think that they need to update their records. I  
14 submitted a resignation letter.

15 Q. Okay. And --

16 A. Rather, signed a resignation letter.

17 Q. You signed it?

18 A. And submitted it to who I thought was the  
19 appropriate persons.

20 Q. As an intelligent officeholder, when you want to  
21 resign from a club, I would expect that you would  
22 identify the appropriate person as the president or  
23 other appropriate current official of that club;  
24 right?

25 A. I drafted a letter, if that is your question, either

1 dated April 29th or April 30th --

2 **Q. Sure.**

3 A. -- that was directed to Mr. David Kirven who is the

4 president of that club.

5 **Q. You know Mr. David Kirven; don't you?**

6 A. I do.

7 **Q. So I presume then that you made arrangements and**

8 **handed that letter to Mr. Kirven?**

9 A. I did not.

10 **Q. You did not. I presume that because of the**

11 **seriousness of establishing clarity in your**

12 **disaffiliation you made sure that you personally put**

13 **that letter in the mail to send it to him; correct?**

14 A. I did not.

15 **Q. The truth is, of course, you did not give it to Mr.**

16 **Kirven. You did not take the time to put it in the**

17 **mail to send it to him. You did not in any way make**

18 **sure that the letter that you drafted but you**

19 **decided wasn't necessary to send, you have no way of**

20 **knowing whether they ever got any sort of letter**

21 **like that; do you?**

22 A. I do not know whether Mr. Kirven received that

23 letter or not.

24 **Q. Well, we know that you didn't put in motion anything**

25 **to transmit that letter in the U.S. mail to him;**

1 **right?**

2 A. I did -- again, I already answered that. I did not.

3 **Q. And the same with regard to the Democratic club in**

4 **Alliance? What's the name of that?**

5 A. Correct.

6 **Q. Okay. You --**

7 A. I did not mail that to them.

8 **Q. Okay. And you did not hand it to any of the**

9 **officers of that Democratic club?**

10 A. I did not.

11 **Q. With regard to the rest of 117, this is a summary of**

12 **what we've already covered. So unless you or your**

13 **counsel thinks that any of the statements in there**

14 **are incorrect, we will submit that for the Record.**

15 **Q. Exhibit No. --**

16 MR. VASVARI: Objection. Is he saying that

17 we're stipulating to the truth of the contents in

18 this by virtue of the fact that in the two seconds

19 between his statement and his moving on we didn't

20 say anything? Because that ain't true. The --

21 MR. PLAKAS: Let's talk about this for a

22 second.

23 MR. VASVARI: I --

24 MR. PLAKAS: This has been part of the

25 public record for a number of weeks.

1 MR. FERRUCCIO: Wait.

2 MR. PLAKAS: This morning you told me you

3 were stipulating to our exhibits.

4 MR. VASVARI: Excuse me.

5 MR. PLAKAS: Are you recanting that

6 stipulation?

7 MR. VASVARI: No, sir. I'm stipulating to

8 the authenticity of your exhibits. I'm not

9 stipulating as to the truth of what's contained in

10 them. And I'm not stipulating to an exhibit which

11 you prepared on Power Point which purports to state

12 all of the relevant facts of the case that you then

13 put in front of my client saying "This is true;

14 right? You don't object"; well, let's move on, as

15 if it then proves your case by virtue of the fact

16 that he didn't sit down, taking the time to read the

17 document.

18 I'll advise the witness to read the

19 document and to take exception to any of these

20 conclusory and self-serving statements that you or

21 your law clerk's made, and then we can move on. But

22 if you want to have the document put in his mouth,

23 why don't you wait for him to have the opportunity

24 before you move on.

25 MR. PLAKAS: If you're yearning to go

1 through the documents --

2 MR. VASVARI: I sure do. Nothing would

3 suit me better. Make my day.

4 MR. PLAKAS: Let's satisfy the yearning and

5 make your day.

6 BY MR. PLAKAS:

7 **Q. No. 1, is that a true statement?**

8 A. I was, No. 1, I was elected as a Democrat county

9 commissioner. To this date, I hold that office. I

10 don't know, given all the circumstances that have

11 occurred, as to whether or not I hold it as a

12 Democrat or as a, or as an Independent or something

13 else.

14 **Q. Good. No. 2, would you agree to the truth of that**

15 **statement?**

16 A. No. No. Again, everything that I've discussed

17 previously is that I resigned. I posted a letter.

18 I did not mail it to Mr. Kirven. I don't think I'm

19 a member in good standing because I have resigned

20 from them.

21 **Q. So just so we understand how the world generally**

22 **understands the procedure in resignation, if you**

23 **resign from a job, normally then you go to the**

24 **employer and say "I resign" or you make sure your**

25 **employer gets the resignation letter? Isn't that**

1 **how you resign from a job?**  
 2 A. Well, that's not all the way the normal world works.  
 3 But go ahead. I may give it to the employer. I may  
 4 gave it to the human relations director. I may give  
 5 it to somebody else associated with the employer.  
 6 **Q. Okay. Someone else that works for the employer?**  
 7 A. Would you agree with that?  
 8 **Q. I would agree that if you're going to resign from a**  
 9 **job you got to give it to your boss or you give it**  
 10 **to someone that works for your boss, for example,**  
 11 **human relations.**  
 12 **You didn't do that either with the Alliance**  
 13 **Area Democratic Club or the Jefferson-Jackson**  
 14 **Democratic Club, did you?**  
 15 A. Those letters were delivered, I think as you are  
 16 aware, on April the 30th to Jeanette Mullane,  
 17 director of the Board of Elections who, in turn, to  
 18 my knowledge and information, delivered them to Phil  
 19 Giavasis, the Chairman of the Democratic Party.  
 20 **Q. Does she have the responsibility to do your bidding**  
 21 **and to do your resignation when you're not able to**  
 22 **do it face to face?**  
 23 MR. VASVARI: Objection.  
 24 Mischaracterization --  
 25 MR. FERRUCCIO: Sustained.

1 MR. VASVARI: -- of his testimony.  
 2 MR. FERRUCCIO: Sustained.  
 3 BY MR. PLAKAS:  
 4 **Q. So you could have -- you have heard of the U.S. Post**  
 5 **Office?**  
 6 MR. VASVARI: Objection. Badgering.  
 7 MR. FERRUCCIO: Lee, let's not beat  
 8 this.... Ask him whether or not he sent it. And if  
 9 so, how. And if he doesn't recall, he doesn't  
 10 recall. Somebody else might have that letter. If  
 11 they don't, I mean there's nothing we can about it.  
 12 However he chose to communicate is how he chose to  
 13 communicate that resignation.  
 14 MR. PLAKAS: Thank you.  
 15 BY MR. PLAKAS:  
 16 **Q. For the Record then, you didn't choose to avail**  
 17 **yourself of the U.S. Postal Service and send letters**  
 18 **of resignation to either the Jefferson-Jackson or**  
 19 **Alliance Democratic Clubs; correct?**  
 20 A. Actually your statement is also incorrect. I did  
 21 not choose to do so. I did what I told you that I  
 22 did. They were not sent in the actual mail to the  
 23 people because of the crush of the extraordinary  
 24 number of events that was occurring on April 30th  
 25 and on every day that happened thereafter. They

1 were, in fact, not mailed by omission; although,  
 2 they were knowingly delivered to people who I deemed  
 3 to be appropriate.  
 4 **Q. Your statement is they were not mailed by omission?**  
 5 **That's your omission?**  
 6 A. Yes.  
 7 **Q. You could have found a post office box and deposited**  
 8 **the letters in the post office box; correct?**  
 9 A. By the crush of events that were occurring, I did  
 10 not do so.  
 11 **Q. Who created the crush of events? You?**  
 12 MR. FERRUCCIO: Mr. Plakas, I think we  
 13 understand the point.  
 14 MR. PLAKAS: Okay.  
 15 BY MR. PLAKAS:  
 16 **Q. Item No. 3, would you agree with that?**  
 17 A. Are we talking about all Democrat candidates or just  
 18 Kristen Guardado with regard to this?  
 19 **Q. Kristen Guardado.**  
 20 A. This is just with Kristen Guardado?  
 21 **Q. Yes. You agree with that?**  
 22 A. To the extent I don't know whether there were tens  
 23 of thousands, I do not know how many there were.  
 24 **Q. All right. No. 4, holding office as a Democrat, you**  
 25 **would agree with that?**

1 A. Yes.  
 2 **Q. No. 5, Democrat employment, you agree with that?**  
 3 A. Yes.  
 4 **Q. No. 6, Democrat ballot appearances, would you agree**  
 5 **with that?**  
 6 A. Generally, again, without doing an account of 14,  
 7 but, yes.  
 8 **Q. Okay. No. 7, would you agree with that, Democrat**  
 9 **donations and fundraising?**  
 10 A. Again, the only clarification I would provide for  
 11 this, you know, is the, is the dollar amount of  
 12 \$30,000. I do want to clarify that. I think a  
 13 large portion of that -- and, again, I've not  
 14 analyzed those contributions -- were made to the  
 15 Ohio Democratic Party I believe. But those  
 16 contributions to the Ohio Democratic Party, as  
 17 anyone who runs for office understands, when you use  
 18 their mailer, you send them a check. You send a  
 19 check to pay for your postage payable to the Ohio  
 20 Democratic Party.  
 21 **Q. Okay.**  
 22 A. I don't know that I knowingly or ever actually made  
 23 a contribution, for example, to the Ohio Democratic  
 24 Party other than related to political mailers.  
 25 **Q. I'm just looking at the campaign reports that you**

1 **have filed by Ohio law under penalty of election law**  
 2 **falsification. So at least the reports that you**  
 3 **have filed -- and I believe actually you swore an**  
 4 **oath to when you filed those campaign reports --**  
 5 **that's what they reflect; correct?**  
 6 A. Yes.  
 7 MR. FERRUCCIO: Mr. Plakas, those are going  
 8 to speak for themselves.  
 9 MR. PLAKAS: Okay.  
 10 BY MR. PLAKAS:  
 11 **Q. And Item No. 8, Democratic Central Committee**  
 12 **membership, you agree with that statement?**  
 13 A. Yes.  
 14 **Q. And No. 9, Democratic Central Committee appointment?**  
 15 A. Again No. 8, by the way, doesn't indicate the start  
 16 date. I think I only served of a period of one year  
 17 or 18 months. Because I was only elected for one  
 18 term. And this is the middle of that one two-year  
 19 term. So it's not like I have been on it 40 years  
 20 or anything.  
 21 **Q. No. I didn't say that.**  
 22 A. Well, it's ambiguous otherwise. But go ahead.  
 23 **Q. Item No. 10, do you agree with that statement?**  
 24 A. What are we speaking of here I guess? What election  
 25 are we talking about or generally?

1 **Q. For example, Mr. Martuccio, you lobbied for him?**  
 2 A. Oh, this is in reference.... No, not myself but to  
 3 Mr. Martuccio.  
 4 **Q. To others.**  
 5 A. Again, I guess this is why we have the need to go  
 6 through this --  
 7 **Q. Okay.**  
 8 A. -- for clarification. Yes, I did lobby for Mr.  
 9 Martuccio. But the Democratic chairperson in that  
 10 particular election actually was lobbying for  
 11 another candidate in opposition to Mr. Martuccio.  
 12 **Q. And Mr. Martuccio, until recent weeks, has been your**  
 13 **campaign treasurer; correct?**  
 14 A. He was.  
 15 **Q. Okay. And No. 11, Democratic event attendance, you**  
 16 **have in the last year or two appeared as a speaker,**  
 17 **as an advertised speaker for various Democratic**  
 18 **organizations and functions; correct?**  
 19 A. Again, it's inaccurately stated, inaccurately  
 20 worded. Regularly attended Democratic events and  
 21 function. Not very much. I'm not a regular  
 22 attendee to, to events. I do so on occasion. I was  
 23 a guest speaker for the Alliance Area Democratic  
 24 Club. I don't know the date. But that's  
 25 approximately correct. Actually Mr. Mack's

1 fundraiser, whatever date that may have been. I  
 2 think I attended one also for either Mr. Babcock or  
 3 somebody. I'm not sure. I think, you know, I mean  
 4 generally. But again....  
 5 **Q. You agree you were a speaker at the Alliance --**  
 6 A. Yes.  
 7 **Q. -- Area Democratic Club on February 15th, 2015;**  
 8 **correct?**  
 9 A. I generally don't regularly attended Democratic  
 10 events. The rule, the rule is that I miss, miss  
 11 most of them rather than regularly attend them.  
 12 **Q. I understand. Let's then quickly go to Exhibit 118.**  
 13 **You had asked about -- these are contributions, the**  
 14 **records that we were able to pull from recent years**  
 15 **from your own filings.**  
 16 MR. PLAKAS: And that's the total that we  
 17 came up with, is \$30,203.22 for Mr. Bernabei's  
 18 Democratic political contributions.  
 19 A. Yes, again, I don't dispute that number or the line  
 20 items. I think the Ohio Democratic Party, as I  
 21 indicated, when you see 10,000, 4,000, 2,000, the  
 22 explanation is that they were not contributions to  
 23 the party as such but actually in payment of  
 24 postage.  
 25 **Q. Okay. And No. 22, voting history?**

1 A. I'm sorry. 122 or 22?  
 2 **Q. 22.**  
 3 A. 22.  
 4 **Q. This is a certified record from the Board of**  
 5 **Elections. And this reflects that you have in any**  
 6 **partisan elections always voted as a Democrat.**  
 7 **Nonpartisan election, of course, there's no**  
 8 **designation. But you would agree that this, going**  
 9 **back to at least 1991, the record that was**  
 10 **available, shows that you have voted solely as a**  
 11 **Democrat; is that correct?**  
 12 A. Yes. And other than the -- again, not looking at  
 13 this closely, the election on May the -- or, the  
 14 date that I -- May 4th, 2015, I did not vote as a  
 15 Democrat. I voted a nonpartisan ticket.  
 16 **Q. As a provisional --**  
 17 A. Prior to that --  
 18 **Q. -- provisional ballot?**  
 19 A. Yes. But prior to that, I believe that I voted as a  
 20 Democrat and....  
 21 **Q. Okay. Let's go to Exhibit 112, please. You joined**  
 22 **and were a member and are a member, depending upon**  
 23 **your letter, of the Alliance Area Democratic Club.**  
 24 **It shows at least your joining the club?**  
 25 A. Yes.

1 **Q. And it says right at the top third... that**  
 2 **"membership is open to Democrats from Stark County."**  
 3 **And then below that, it says "Yes, I would like to**  
 4 **be a supporter of the Alliance Area Democratic**  
 5 **Club"; and you applied for membership on February**  
 6 **6th, 2015? Is that correct?**  
 7 A. I completed this on whatever date is the date. That  
 8 was probably given to them.  
 9 **Q. And then on Exhibit No. 82, the Repository reported**  
 10 **on February 1, 2015, a meeting of the Alliance Area**  
 11 **Democratic Club. And it said dinner will be**  
 12 **starting at 6, followed by the meeting at 7. The**  
 13 **guest speaker will be Stark County Commissioner Tom**  
 14 **Bernabei. So you were part of that event, weren't**  
 15 **you?**  
 16 A. Yes. I think we already discussed that.  
 17 MR. FERRUCCIO: I think he answered that.  
 18 Mr. Plakas, I think we're going to take a short  
 19 recess.  
 20 MR. PLAKAS: Okay.  
 21 MR. FERRUCCIO: And be back here at 11 or  
 22 11:05, something like that.  
 23 MR. PLAKAS: Thank you.  
 24 (A recess was taken.)  
 25 MR. FERRUCCIO: Everybody, we're back on

1 the Record. And I would indicate that we're going  
 2 to break at noon for lunch. So to let you know....  
 3 Mr. Plakas, how much longer do you think  
 4 you'll be with Mr. Bernabei?  
 5 Everybody, if we could have some quiet.  
 6 How much longer do you think you'll be  
 7 questioning Mr. Bernabei?  
 8 MR. PLAKAS: Depends on the answers. But I  
 9 would think about 20 or 25 minutes.  
 10 MR. FERRUCCIO: Okay. All right. You  
 11 know, just for the Record, I mean there are a number  
 12 of exhibits that we've reviewed. And, you know, the  
 13 issues are limited to voting residence and the  
 14 unaffiliation, so if we could just sort of make sure  
 15 our questions are directed to those issues  
 16 factually.  
 17 And but we'll break at noon if that's all  
 18 right with everybody, just to give you some idea of  
 19 time.  
 20 MR. VASVARI: Mr. Chairman, is there any  
 21 possibility we'll go into tomorrow morning? Because  
 22 if it would, we would have a conflict.  
 23 MR. FERRUCCIO: We don't anticipate that  
 24 that I know of. That's up to the two of you.  
 25 But, however, we do need to not be

1 duplicitous and deal with the facts. And we plan on  
 2 being done today. I hope you do too.  
 3 MR. VASVARI: That's my hope.  
 4 BY MR. PLAKAS:  
 5 **Q. Exhibit 117 had a third page. And just to very**  
 6 **quickly finalize that, Item No. 12, it was the**  
 7 **confirmation for the treasurer designation of your**  
 8 **campaign committee, and it lists you as a Democrat**  
 9 **until May 4th, 2015. You'd agree with that?**  
 10 A. Yeah, I believe so. I know that there's a place on  
 11 the form.  
 12 **Q. Okay. And you'd agree that until May 4th you were**  
 13 **the treasurer for three other Democratic candidates?**  
 14 A. Yes.  
 15 **Q. Okay. And that would be Guardado, Hartnett, and**  
 16 **Martuccio?**  
 17 A. Yes.  
 18 **Q. Okay. And speaking of the Democratic candidates,**  
 19 **you're familiar with the process in terms of if**  
 20 **there's a vacancy in a county commissioner's office**  
 21 **how the appointment is made? You've been through**  
 22 **that process I think?**  
 23 A. As a Democrat, I've seen how the process is made. I  
 24 don't know how the process occurs as an Independent.  
 25 **Q. So what is your understanding that in the event**

1 **that, hypothetically, that you are permitted on the**  
 2 **ballot in the hypothetical event that you would**  
 3 **create a, your election results would create a**  
 4 **vacancy in the commissioner's office, what is your**  
 5 **understanding of how that vacancy would be then**  
 6 **filled?**  
 7 A. You know, I do not have an understanding as to that.  
 8 **Q. Okay. Thank you. And if we would go then to**  
 9 **Exhibit No. 81 very quickly, I believe that Exhibit**  
 10 **81 confirms that there was a function --**  
 11 A. By the way, I don't know. Again, were we  
 12 stipulating to what was on there? Was that the  
 13 conclusion of --  
 14 MR. VASVARI: We hadn't stipulated in as  
 15 much as you wanted to go through --  
 16 BY MR. PLAKAS:  
 17 **Q. We went through each one of those.**  
 18 A. What was the last one? I don't know if we ever got  
 19 to that or not.  
 20 MR. VASVARI: I don't think we reached the  
 21 end.  
 22 MR. PLAKAS: Go back to 117, please.  
 23 A. I'm sorry. No. 14, again, you know, I, I  
 24 acknowledge that this term had been utilized in that  
 25 article, but then that is not a term of my own

1 choosing or making.

2 **Q. I'm sorry.**

3 A. I was asked the question. It's not a term --

4 because you told me that I'm specific in my

5 terminology.

6 **Q. Sure.**

7 A. It's not a term that I have probably ever used or at

8 least until these events and so forth. The question

9 was posed to me. And under the circumstances of the

10 answer, I answered and acknowledged that, yes, I

11 was.

12 **Q. So just so we understand, that was an accurate**

13 **quote? You were quoted saying say you're a**

14 **dyed-in-the-wool Democrat? Those were your words**

15 **coming out of your mouth; correct?**

16 A. I did not describe himself. I acknowledged myself

17 to be so. It was not a description that I, that I

18 gave myself.

19 **Q. Yeah. My only question is, were those your words**

20 **coming out of your mouth?**

21 MR. FERRUCCIO: Lee, he's answered that.

22 A. I was asked.

23 MR. FERRUCCIO: He answered that.

24

25

1 BY MR. PLAKAS:

2 **Q. Then the last item you are questioned about is**

3 **voting history.**

4 A. Yes.

5 **Q. You've already been through that --**

6 A. Yes.

7 **Q. -- so then let's go to, quickly to Exhibit No. 81.**

8 **And this reflects, from the Repository, that on**

9 **November 18th, 2014, Western Stark Dems had a**

10 **meeting and you were the speaker.**

11 A. Yes.

12 **Q. That occurred; correct?**

13 A. Yes.

14 **Q. Then let's go to Exhibit No. 91, please.**

15 A. 91 or 90?

16 **Q. 91. And the second page of 91 is a notice for the**

17 **2015 Democratic cocktail party. And to become a bar**

18 **sponsor, if you paid \$500, you're acknowledged as a**

19 **bar sponsor. And the scheduled date for that was**

20 **April 30th, 2015. And if we go to the first page,**

21 **we see a check written from you on April 22nd, 2015,**

22 **for \$500 to become a bar sponsor for the annual 2015**

23 **Democratic cocktail party held on April 30th, 2015.**

24 **That's your check and your signature; correct?**

25 A. Yes.

1 **Q. Okay. And on the right-hand margin toward the**

2 **bottom, it says "going out of state, have. Fun."**

3 **And that's your writing; correct?**

4 A. Yes.

5 **Q. Okay.**

6 A. Just, just for a clarification, again, I did not

7 give them \$500 on that occasion to be a bar sponsor.

8 I gave them \$500 as a contribution to the party with

9 no springs attached. I did not ask for five

10 tickets. I did not ask to sign any ad. It was just

11 a contribution that was made to the Democratic

12 Party.

13 **Q. Well, you received the second page on Paragraph 9**

14 **on Exhibit No. 91 which gave notice of the event and**

15 **said for \$500 you can be a bar sponsor. You sent a**

16 **check on April 22nd in the amount of \$500. We can**

17 **agree on that, can't we?**

18 A. I already agreed to that. Yes.

19 **Q. I believe you also then have been recorded, in terms**

20 **of terminating your relationship or ending the**

21 **Democratic Party, you've been quoted in the media as**

22 **leaving on good terms with no problems; correct?**

23 A. Yes.

24 **Q. Okay. And with regard to the primary mayoral**

25 **election, the parties involved were Kim Perez and**

1 **Mayor Healy; correct?**

2 A. I'm sorry. Could you restate that, please?

3 **Q. The last primary election, Democratic primary**

4 **election for the mayor and candidates were Kim Perez**

5 **and Mayor Healey; correct?**

6 A. Yes.

7 **Q. You've known and worked with Kim Perez for years,**

8 **haven't you?**

9 A. Yes. Off and on.

10 **Q. Okay. You know him personally?**

11 A. Yes.

12 **Q. You obviously worked and got to know Mayor Healy;**

13 **correct?**

14 A. Yes.

15 **Q. You were terminated on January 26, 2009; correct?**

16 A. If that is the correct date, yes.

17 **Q. Okay.**

18 MR. PLAKAS: Pull up Exhibit 102, please.

19 **Q. This is Exhibit 102. It's dated January 26 at the**

20 **top, 2009.**

21 MR. PLAKAS: Can you highlight that, Beth.

22 **Q. So that's the date that letter was presented to you?**

23 A. Okay. Yes.

24 **Q. So to terminate that relationship, that letter was**

25 **presented directly to you, wasn't it?**

1 A. Yes.

2 **Q. Okay. You actually were escorted by the police out**

3 **of the building?**

4 A. Yes.

5 MR. VASVARI: Objection.

6 A. As he laughed on the way. Yes.

7 **Q. Excuse me.**

8 A. As he laughed on the way. Yes.

9 **Q. Let's identify Exhibit 110, Page 2. This is the**

10 **Stark County Board of Elections website listing the**

11 **public officials. And under county commissioner, it**

12 **identified Thomas Bernabei with your current address**

13 **and has you designated as D. Have you asked to have**

14 **that changed?**

15 A. I'm trying to identify this document.

16 **Q. Page 2, Exhibit 110.**

17 A. This is the --

18 **Q. Stark County website available to the public.**

19 A. No. I did not ask that to change. And I have not

20 looked at that and I was not even aware that that

21 existed.

22 **Q. You were quoted in the -- by the way, you were here**

23 **for a Board of Elections meeting on June 17th, 2015?**

24 A. Yes.

25 **Q. You saw the agenda?**

1 A. I don't know if I received a copy or picked up a

2 copy of the agenda. But I sat in this room for that

3 meeting to ascertain what may or may not become of

4 the candidacies.

5 **Q. Let's go to Exhibit No. 115, please, Page 2.**

6 A. Page 2?

7 **Q. Yes, Page 2. And next to your name -- have you seen**

8 **that before?**

9 A. I do not think so.

10 **Q. Okay. Let's go to the next discussion. You were**

11 **asked by the media why you didn't want -- why you**

12 **didn't make an effort or declare earlier your intent**

13 **to run for mayor. Do you recall that interview with**

14 **the Massillon Independent?**

15 A. I'm not sure about that conversation with the

16 Massillon Independent. What reporter were you

17 talking about?

18 **Q. Okay. I'm interested in your response as to why.**

19 MR. PLAKAS: If you would play that for us.

20 (Video played.)

21 (Transcript of a July 6, 2015, interview:

22 "REPORTER: Why didn't you run in the

23 primary? TOM BERNABEI: I didn't run in

24 the primary because I hadn't contemplated

25 running for the office of mayor in the

1 primary at that time. That was back in

2 November or December of last year. And we

3 were very busy in the commissioner's

4 office... ummm, you know..., allow the

5 process in the primaries to take its

6 place. I was hopeful, of course, that

7 there would be a Republican candidate as

8 well as a Democratic candidate to

9 challenge the various offices. And it

10 turned out the way it turned out.")

11 MR. PLAKAS: Can you make that clear? I'm

12 not sure if that was decipherable or not. Just play

13 it again. Turn it up.

14 (The video was replayed.)

15 **Q. I believe we heard you say that, in effect, you**

16 **didn't run because you were busy with your duties as**

17 **a commissioner. And then you went on to say that**

18 **you decided to allow the primary process to take its**

19 **place, take it to proceed. Is that what you**

20 **understood you just said?**

21 A. I was actually unable to understand that. I give

22 lousy interviews. And my wife tells me that I

23 mumble all the time. And I guess that that's

24 evidence of the same.

25 **Q. Okay. We'll see what we can do to further clarify**

1 **it. Would you dispute that you had the intention of**

2 **just kind of sitting back and waiting to see how the**

3 **primary election would turn out?**

4 A. Absolutely not. I dispute that.

5 **Q. All right. So we'll try to clarify your statement.**

6 **You weren't under any disability when you gave that**

7 **interview, were you?**

8 A. Just my normal state of mind.

9 **Q. Let's go to Exhibit 8, please. And let's turn our**

10 **attention to the residency issue. And this will be**

11 **much quicker. You're familiar as a public official**

12 **with the general form?**

13 A. I'm sorry. Let me get to -- did you say No. 8?

14 **Q. Yes. Exhibit 8. And look in the top third, on the**

15 **right-hand column under "residency requirements."**

16 MR. PLAKAS: If we can pop out that first

17 sentence, the first two sentences.

18 A. I'm not sure where you are. Tell me again where you

19 are.

20 **Q. On the right-hand side about the third of the way**

21 **down. It says in bold "residency requirements."**

22 A. Yes.

23 **Q. And it says "Your voting residence is a location**

24 **that you consider to be a permanent, not a**

25 **temporary, residence. Your voting residence is the**

1 place in which your habitation is fixed and to which  
2 whenever you are absent you intend to return";  
3 correct?

4 A. Yes.

5 Q. You've seen this form before because you actually  
6 signed these kind of forms to declare your  
7 candidacy; correct?

8 A. Yes. Of course, it's a change of address form. Or  
9 is this a --

10 Q. Well, the first form --

11 A. Yes.

12 Q. -- is Exhibit 8. And that's entitled a Voter  
13 Registration and Information Update Form.

14 A. Yes.

15 Q. Okay.

16 A. Or change of address form. Yes.

17 Q. So when you were embarking on this journey, did you  
18 recognize that, at least according to the Secretary  
19 of State and the local Board of Elections, the  
20 documentation indicated that your voting residence  
21 is the location that you consider to be a permanent,  
22 not a temporary, residence. Was that in your mind  
23 at all?

24 A. Yes.

25 Q. And --

1 A. A general, a general understanding of those terms,  
2 yes.

3 Q. Okay. Because you signed actually forms like this,  
4 didn't you?

5 A. I believe that is a change of address form. Yes. I  
6 think that is a change address form.

7 MR. PLAKAS: And Exhibit No. 1, please.

8 Q. And that's the Nominating Petition and Statement of  
9 Candidacy that you made; correct?

10 A. Yes.

11 Q. Okay. You signed that May 3rd, 2015; correct?

12 A. Yes.

13 Q. And you said that "I, the undersigned, declare under  
14 penalty of election falsification that my voting  
15 residence is 2118 University Avenue, Northwest";  
16 correct?

17 A. Yes.

18 Q. Okay. Going back to the prior exhibit, Exhibit No.  
19 8, you would agree that 2118 University Avenue was  
20 never intended nor established to be your permanent  
21 residence; correct. You would agree with that?

22 A. As of May 3, that was my permanent address. That  
23 was the only address that I had. I anticipated,  
24 with a month-to-month lease, that I would be leaving  
25 that premises to move to my other address in Stark

1 -- in Canton, Ohio. But as of May 3, that was my  
2 permanent address.

3 Q. Actually -- we can play the clips again. But  
4 actually in your mind that was never -- and you so  
5 said -- that was never intended to be your permanent  
6 address; correct?

7 A. In the common sense of the word, knowing that the  
8 residence at 441 Lakecrest would likely become  
9 vacant sometime soon within the month of May -- and,  
10 in fact, it became vacant on May 6th -- I was  
11 committed to staying at 2118 University as long as I  
12 needed to stay there. It is no different than me  
13 knowing whether or not my next residence will be  
14 someplace -- if I were to retire, I may move to  
15 South Carolina. It doesn't mean that I don't  
16 consider my present residence to be my permanent  
17 residence.

18 Q. I understand the argument. But back to the facts.

19 MR. VASVARI: Objection.

20 BY MR. PLAKAS:

21 Q. The facts are that when you signed that temporary  
22 lease for University Avenue you knew in your mind  
23 and you knew that you never intended that that would  
24 become your permanent address; correct?

25 A. I knew that that would not be my permanent address,

1 correct. But as of May 3, it was my permanent  
2 address for purposes of voting and residency under  
3 the election laws.

4 Q. Why don't you --

5 A. From a common sense perspective, as we would discuss  
6 where one lives and where one doesn't live, I, of  
7 course, understood that I would not be living  
8 forever in a rented house at 2118 University Avenue.

9 Q. And there was absolutely no intention that your wife  
10 moved into University Avenue; correct?

11 A. Had I stayed longer, I presume that she very well  
12 may have. But the opportunity never presented  
13 itself because of the fact that the other house, in  
14 fact, became vacant on May 6th. And I took  
15 possession on that date.

16 Q. And you spoke with Mrs. Bernabei and you revealed to  
17 her that you were going to move into a vacant house  
18 that was for sale? And you brought in a cot and a  
19 nightstand? You told her that that would not be  
20 your permanent address and that you were hoping to  
21 ultimately move into Lakecrest; correct?

22 MR. VASVARI: Objection. Assumes facts not  
23 in evidence.

24 BY MR. PLAKAS:

25 Q. Isn't that correct?

1 MR. FERRUCCIO: I'll sustain that  
 2 objection.  
 3 **Q. In addition to reviewing the materials that you just**  
 4 **discussed from the Stark County Board of Elections,**  
 5 **your analysis of whether or not you could actually**  
 6 **become a candidate, did you also get on the website**  
 7 **of the Secretary of State?**  
 8 A. I may have looked at the website of the Secretary of  
 9 State. I cannot tell you for certain. I may have  
 10 look at materials printed from it. I'm not sure.  
 11 **Q. In regard to this issue, I guess we're having a bit**  
 12 **of a disconnect. With regard to what you at the**  
 13 **time actually were considering your permanent**  
 14 **address, let's go to Exhibit No. 49, Page 3, Lines**  
 15 **10 to 20.**  
 16 MR. PLAKAS: If you could play that  
 17 interview, please.  
 18 (Video played. Video transcript, Appendix  
 19 Tab 49.)  
 20 **Q. So in that interview with Mr. Olson on May 6th, you**  
 21 **indicated that your permanent house is now**  
 22 **available. So at least at that point you were not**  
 23 **considering University the day after the date of**  
 24 **election as your permanent house?**  
 25 A. But at that point, I believe I had followed election

1 laws. I had two permanent houses.  
 2 **Q. Okay. And let's go to Exhibit No. 50, Page 11,**  
 3 **Lines 12 to 22.**  
 4 (Video played. Video transcript, Appendix  
 5 Tab 50.)  
 6 A. I'm sorry. What page of the transcript was that?  
 7 **Q. That was Page 11. So, once again, in that interview**  
 8 **with I believe Mr. Ponder, you indicated that**  
 9 **Lakecrest would become your permanent address;**  
 10 **correct?**  
 11 A. Yes. Again, with the same --  
 12 **Q. Residence.**  
 13 A. -- again, with the same response as I provided in  
 14 the last response without repeating it.  
 15 **Q. In regards to the issue in terms of a temporary**  
 16 **nature versus permanent, when you moved in to or**  
 17 **signed the lease for University, you expected that**  
 18 **you were going to stay there a week or less;**  
 19 **correct?**  
 20 A. At the time, I did not have any certainty. I wish I  
 21 had had certainty. At the time that I signed the  
 22 lease, the only information that I had with regard  
 23 to Lakecrest was that the current tenants, who had  
 24 been tenants for approximately 18 months, as had  
 25 been discussed, had two small children and a wife

1 who was pregnant, were anticipating to -- were  
 2 purchasing a house. The house had not closed. And  
 3 they did not know for sure when it was going to  
 4 chose or when they would be vacating. There was  
 5 uncertainty associated with it. That led me to make  
 6 the choice to lease the property at 2118 University.  
 7 **Q. Let me remind you of the comments, Exhibit 49, Page**  
 8 **4, Lines 5 to 21.**  
 9 A. I'm sorry. Page what?  
 10 **Q. Exhibit 49, Page 4, Lines 5 through 21.**  
 11 (Video played. Video transcript, Appendix  
 12 Tab 49.)  
 13 **Q. With regard to the University house, you did nothing**  
 14 **more than move in a single bed, not a double or a**  
 15 **queen or king bed; correct? A single bed for you to**  
 16 **fit on; isn't that right?**  
 17 A. I moved in a single bed. Yes. Mattress, bed  
 18 shaped. Yes.  
 19 **Q. Card table, laptop, some clothes, and not much else;**  
 20 **correct?**  
 21 A. I have a list of the items that I moved in, if you  
 22 would like to see it.  
 23 **Q. I presume we'll see those during your Direct. You**  
 24 **then with this Board, in Exhibit 114, as of May**  
 25 **15th, 2015, identified your new address at**

1 **Lakecrest; you would agree with that?**  
 2 A. And I do want to clarify. With regard to the  
 3 comments that were made in that interview, that the  
 4 lease, in fact, was rented for one month with an  
 5 extension with a month, with provision for a  
 6 month-to-month extension, not knowing, again, how  
 7 long Lakecrest would or would not be available.  
 8 **Q. Because your vision was always that your permanent**  
 9 **house would be Lakecrest; correct?**  
 10 A. My vision being that 2118 University was my  
 11 permanent house for immediate and current voting  
 12 matters and that at some point in time I would be  
 13 moving to Lakecrest.  
 14 **Q. Just so the Record --**  
 15 A. It's the same as I now currently live in Lakecrest.  
 16 But I anticipate that if I were to retire and/or my  
 17 wife desire to do so, that I may move to, you know,  
 18 another house.  
 19 **Q. Just so, just so the Record is clear, the University**  
 20 **Avenue house was a vacant house that was listed for**  
 21 **sale and owned by one of your friends?**  
 22 A. Yes.  
 23 **Q. You would agree that you left for Florida on**  
 24 **Thursday afternoon or evening of April 30th;**  
 25 **correct?**

1 A. Mid afternoon. I don't know the exact time that I  
 2 left for the airport but probably approximately 1 to  
 3 2:00 p.m.  
 4 **Q. And you didn't return back to the Canton area until**  
 5 **Sunday, May 3rd, sometime in the afternoon; correct?**  
 6 A. Yes. Sometime, again, probably 1 to 2:00 p.m.  
 7 **Q. Okay. And you would agree that you signed the lease**  
 8 **on April 29th with an effective date of May 1st, as**  
 9 **I think we just heard you say?**  
 10 A. Yes.  
 11 **Q. Okay. And currently you still own the home in Hills**  
 12 **& Dales?**  
 13 A. Yes.  
 14 **Q. And you were recently --**  
 15 MR. PLAKAS: Exhibit 83, please.  
 16 **Q. -- the subject of the Hills & Dales neighborhood**  
 17 **magazine talking about you as a neighbor?**  
 18 A. Yes.  
 19 **Q. And Page 2 makes reference to some of the things you**  
 20 **said. So you were aware that -- and that was the**  
 21 **May 19, 2015, edition of the Hills & Dales magazine;**  
 22 **correct?**  
 23 A. Yes. But that interview occurred probably at least  
 24 one month or more earlier than that.  
 25 **Q. And as we said, the Hills & Dales house is not**

1 **currently listed for sale, is it?**  
 2 A. It is not currently listed for sale. I have  
 3 discussed with the realtor, I've talked to the  
 4 realtor on several occasions. The realtor has  
 5 toured the house with my wife. The house will be  
 6 listed for sale, 90 percent. We are moving from a  
 7 larger house to a smaller house, that we're not  
 8 taking all the furniture. So there was minor  
 9 amounts of items left in it.  
 10 But the big troubling point for the sale of  
 11 that house and preparation for the sale is that that  
 12 house has a full basement of approximately, you  
 13 know, probably 15 hundred square feet I would think  
 14 that is jammed packed with tools, files, many many  
 15 items from, from renovation, Christmas items, and so  
 16 forth, to include a full attic. And I have no place  
 17 for those items. And those items have to be removed  
 18 from that house, and the basement has to be painted.  
 19 And there just hasn't been an opportunity to get  
 20 everything done; although, we are absolutely moved  
 21 from that house. And, again, there will be  
 22 photographs to show you which I will be glad to show  
 23 you right now if you question the issue.  
 24 **Q. Thank you for the inventory. As a matter of fact,**  
 25 **you publicly stated that you intend to delay the**

1 **sale of that Hills & Dales house to November 2015;**  
 2 **correct?**  
 3 A. I don't know where you get that. But I can tell you  
 4 absolutely -- and I am --  
 5 **Q. (Inaudible utterance).**  
 6 MR. VASVARI: He's answering the question.  
 7 A. I am under oath today and I'm answering your  
 8 question, that I contemplate selling that house as  
 9 soon as possible and that I will list it as soon as  
 10 possible. And I've not been able to do so. My wife  
 11 is also under the same understanding. We want to  
 12 sell that house and we love living at 441 Lakecrest  
 13 Street.  
 14 **Q. And you told your neighborhood at Hills & Dales that**  
 15 **you loved living there also; correct?**  
 16 A. Actually I don't know if I have had that  
 17 conversation with my neighbors.  
 18 **Q. Isn't that the impression that you gave based on the**  
 19 **quotes to your article, that you love living at**  
 20 **Hills & Dales?**  
 21 MR. VASVARI: Objection. Relevance.  
 22 MR. FERRUCCIO: Yeah. Sustained.  
 23 BY MR. PLAKAS:  
 24 **Q. You read the article in the Hills & Dales magazine?**  
 25 MR. VASVARI: Again, objection.

1 BY MR. PLAKAS:  
 2 **Q. We will read it together if you want to take the**  
 3 **time.**  
 4 MR. FERRUCCIO: I think that, you know --  
 5 BY MR. PLAKAS:  
 6 **Q. Why don't you refer to the paragraph you're**  
 7 **referring to, if you want to take the time.**  
 8 MR. VASVARI: Objection.  
 9 MR. FERRUCCIO: Objection sustained.  
 10 MR. VASVARI: Thank you.  
 11 MR. FERRUCCIO: So let's move on.  
 12 **Q. Let's go to Exhibit No. 84, please. Do you have 84**  
 13 **there in your book?. So 84 is an interview with the**  
 14 **Canton Repository, Alison Matas, on May 5th, 2015.**  
 15 **Do you recall that?**  
 16 A. Yes.  
 17 **Q. And do you recall telling her anything about your**  
 18 **putting your Dunkeith house on the market?**  
 19 A. I do not have any specific recollection. But I read  
 20 the sentence "He's going to put his Dunkeith house  
 21 on the market prior to November's election, he  
 22 said," which I think is consistent with what I just  
 23 told you.  
 24 **Q. And have you told anybody else that you're going to**  
 25 **wait until November's election?**

1 MR. VASVARI: Objection.  
 2 MR. FERRUCCIO: Sustained.  
 3 A. Not only that but I don't believe so.  
 4 MR. FERRUCCIO: It's sustained. And I  
 5 think that the question is where did you live on May  
 6 3rd, where did you live on May 4th. Where did your  
 7 wife live on May 3rd and May 4th. And we know the  
 8 rest of the answer. So I mean I think it's --  
 9 MR. PLAKAS: Okay.  
 10 MR. FERRUCCIO: -- pretty clear.  
 11 BY MR. PLAKAS:  
 12 **Q. And you're a licensed attorney in the State of Ohio?**  
 13 A. By the way, would you like to buy my mouse? I'll  
 14 give you the offering price. Just to let you know  
 15 that it's for sale.  
 16 **Q. Based, sometimes based upon the residence of the**  
 17 **prior residents of the house, there's a discount.**  
 18 **So do I get a discount?**  
 19 A. I will absolutely give you a discount.  
 20 **Q. Well, then we can talk.**  
 21 A. I'll knock off the realtor's commission for you and  
 22 work with the numbers she gave me.  
 23 **Q. I think working with you THE realtor should get a**  
 24 **bonus actually.**  
 25 VASVARI: Objection.

1 MR. FERRUCCIO: So noted.  
 2 BY MR. PLAKAS:  
 3 **Q. Let's go to 123, please. You're an attorney**  
 4 **licensed in the State of Ohio?**  
 5 A. I am.  
 6 **Q. And as attorneys, we're required to keep our**  
 7 **registration and our address current?**  
 8 A. Yes.  
 9 **Q. Okay. And I will represent to you that this is a --**  
 10 A. By the way, I'm not, I was not aware of that  
 11 requirement. But I accept it.  
 12 **Q. You're not aware that attorneys in the State of Ohio**  
 13 **have to register?**  
 14 A. Well, of course we have register. I'm not aware of  
 15 when there is a change of address that one would,  
 16 would file a change of address with them.  
 17 MR. VASVARI: Which exhibit is this?  
 18 THE WITNESS: 123.  
 19 MR. PLAKAS: This is 123.  
 20 MR. VASVARI: Thank you.  
 21 BY MR. PLAKAS:  
 22 **Q. Okay. So that reflects your Dunkeith address.**  
 23 **That's Hills & Dales; correct?**  
 24 A. That does, yes.  
 25 **Q. Okay. And you haven't made any effort to update or**

1 **correct that?**  
 2 A. Actually I have updated it for 441 Lakecrest Street,  
 3 Northwest.  
 4 **Q. On the Ohio Supreme Court website?**  
 5 A. Yes.  
 6 **Q. And when did you do that?**  
 7 A. Yesterday. Which is the first date I became aware  
 8 of the obligation to do so.  
 9 **Q. And the only way you became aware of that was by**  
 10 **reading our Brief that we previously filed?**  
 11 A. No. Actually believe it or not, you know, I did not  
 12 read your Brief. But my attorney advised me that  
 13 that was an obligation.  
 14 **Q. He read our Brief. And your, your registration was**  
 15 **actually in our original Brief over six or seven**  
 16 **weeks ago; correct?**  
 17 A. Yes.  
 18 **Q. Okay. I have nothing further. Thank you.**  
 19 MR. FERRUCCIO: Thank you, Mr. Plakas.  
 20 MR. PLAKAS: I would have a very quick  
 21 witness, the lady from WHBC coming now. And I'm  
 22 sure she will be done in five minutes.  
 23 MS. MARCHINO: I'm here.  
 24 MR. VASVARI: What about Redirect?  
 25 MR. PLAKAS: Well, I called him on Cross.

1 MR. FERRUCCIO: You called him as if on  
 2 Cross.  
 3 MR. VASVARI: So I'll just..., when I  
 4 Direct him. That's fine. There's no need to do it  
 5 twice. Sure.  
 6 MR. FERRUCCIO: Yeah.  
 7 (Thomas M. Bernabei was dismissed.)  
 8 MR. PLAKAS: Rebecca.  
 9 (Rebecca Marchino was duly sworn by Notary  
 10 Public Jocelyn S. Harhay.)  
 11 MR. FERRUCCIO: You may be seated.  
 12 DIRECT EXAMINATION  
 13 BY MR. PLAKAS:  
 14 **Q. Welcome.**  
 15 A. Thank you.  
 16 **Q. Have you ever done this before?**  
 17 A. No.  
 18 **Q. All right. We're going to try to make this quick**  
 19 **and painless. Please identify yourself to the**  
 20 **panel, your name, your address, and your occupation.**  
 21 A. Rebecca Marchino, 67 Ontario Trail, Malvern, Ohio,  
 22 44644. WHBC Radio, sales executive.  
 23 **Q. Okay. Did someone from our office contact you to**  
 24 **determine whether radio ads were running for Kristen**  
 25 **Guardado leading up to and including the date of**

1 election?  
 2 A. Yes.  
 3 **Q. Did someone from our office ask you for a copy of**  
 4 **the actual radio ad?**  
 5 A. Yes.  
 6 **Q. And did you provide that?**  
 7 A. Yes, I did.  
 8 **Q. And did someone from our office ask you to put in**  
 9 **writing the dates that the radio ad ran and to**  
 10 **confirm when that was recorded by Mr. Bernabei?**  
 11 A. Yes, you did.  
 12 **Q. Okay. Then let's go to Page No. -- you got a big**  
 13 **book in front of you. And that's Exhibit 103, if**  
 14 **you go to Tab 103. And is on the first page under**  
 15 **Tab 103 at the top, does it have your name and the**  
 16 **date of May 28th?**  
 17 A. Yes, it does.  
 18 **Q. Okay. And in the text of the, the text of the**  
 19 **e-mail, did you respond to our request to check**  
 20 **WHBC's records and determine when Mr. Bernabei came**  
 21 **in to record the radio ad that you provided to us?**  
 22 A. Yes.  
 23 **Q. Okay. And what did your records reveal?**  
 24 A. That he was in on April 29th at 9:30 to record a  
 25 commercial for Kristen Guardado.

1 **Q. And those records, those are records that the radio**  
 2 **station keeps in the ordinary course of its**  
 3 **business?**  
 4 A. Yes.  
 5 **Q. Okay. So in addition to Mr. Bernabei coming in on**  
 6 **April 29th at 9:30 to record the, the ad -- and were**  
 7 **you present when, when he did this or not?**  
 8 A. When he recorded the ad? I was in the building. I  
 9 was not there.  
 10 **Q. Did you talk to him at all?**  
 11 A. I said good morning to him.  
 12 **Q. Okay. Because you knew him?**  
 13 A. No. I never met him before.  
 14 **Q. Okay. All right. In addition to confirming when**  
 15 **Mr. Bernabei recorded the ad, did we ask you, then**  
 16 **if you look at Tab No. 93, to confirm when Mr.**  
 17 **Bernabei's ad played over the airways?**  
 18 A. It wasn't his ad. It was an add for Kristen  
 19 Guardado.  
 20 **Q. That's true. Thank you.**  
 21 A. Yes. Those are the invoices stating the times that  
 22 those....  
 23 **Q. So for the Record, just because we have to do it**  
 24 **formally, the first invoice looks like it says**  
 25 **Invoice No. IN-115056210?**

1 A. Yes.  
 2 **Q. And that shows when the ad played on WHBC Radio?**  
 3 A. Correct.  
 4 **Q. And does it show that the ad played on Tuesday, May**  
 5 **5th, 2015?**  
 6 A. Yes. It does.  
 7 **Q. And then if we go to the next invoice, do you see an**  
 8 **invoice from Mix 94.1?**  
 9 A. Yes, I do.  
 10 **Q. And the invoice number, for the Record, is IN**  
 11 **115056211?**  
 12 A. Correct.  
 13 **Q. And does that show that the ad played on dates from**  
 14 **April 30th, 2015, to May 5th, 2015?**  
 15 A. Correct.  
 16 **Q. And does it actually show at that ad was playing on**  
 17 **Mix 94.1 on Tuesday, May 5th, 2015?**  
 18 A. Yes, it does.  
 19 **Q. And are these records an accurate depiction of when**  
 20 **that radio ad recorded by Mr. Bernabei for Kristen**  
 21 **Guardado played?**  
 22 A. Yes.  
 23 **Q. Thank you. I have nothing further.**  
 24 A. Thank you.  
 25 MR. VASVARI: Very few.

1 CROSS-EXAMINATION  
 2 BY MR. VASVARI:  
 3 **Q. Miss Marchino, my name Raymond Vasvari. I'm Tom**  
 4 **Bernabei's lawyer. I just have a few follow-up**  
 5 **questions. First of all, when you, when you look at**  
 6 **Exhibit 103 -- and you said that you had consulted**  
 7 **some records -- that e-mail, you're telling Mr.**  
 8 **Edmond Mack, right, that you, that you had looked at**  
 9 **some records and that Mr. Bernabei had come in on**  
 10 **the 9th of April at 9:30. What records did you**  
 11 **consult?**  
 12 A. What records to show that he came in to record that  
 13 day?  
 14 **Q. Yes.**  
 15 A. We have a recording board with dates and times on  
 16 it. And those were scheduled.  
 17 **Q. And who scheduled those?**  
 18 A. Kristen Guardado scheduled that time.  
 19 **Q. Okay. When someone like Kristen Guardado or anybody**  
 20 **schedules the recording of a political ad, who makes**  
 21 **the arrangements for, for paying for the ad to be**  
 22 **recorded?**  
 23 A. Paying for the ad?  
 24 **Q. Yes.**  
 25 A. It was Kristen Guardado.

1 **Q. Who makes the arrangements as to what will happen**  
 2 **with the ad after it's recorded?**  
 3 A. Kristen Guardado.  
 4 **Q. And who owns the advertisement after it's recorded?**  
 5 A. Kristen Guardado.  
 6 **Q. Okay. Okay. So if somebody were to call you up and**  
 7 **say "Stop the press; you can't run that ad anymore,"**  
 8 **that would be up to...?**  
 9 A. Kristen Guardado.  
 10 **Q. Okay. You mentioned two radio stations, one Mix and**  
 11 **one with the W. Is there a relationship between**  
 12 **those two stations or are they the same?**  
 13 A. One is AM, one is FM. They are both owned by the  
 14 same company.  
 15 **Q. And you serve in the capacity as the sales executive**  
 16 **for both of them?**  
 17 A. Correct.  
 18 **Q. Okay. And did you check the boards any farther back**  
 19 **to see if the advertisement could have been recorded**  
 20 **earlier than the 29th? How far back did you go?**  
 21 A. It was only recorded on the 29th. He only scheduled  
 22 one recording with us.  
 23 **Q. In that e-mail, it was responsive to yours. In**  
 24 **Exhibit 103, there's an e-mail from emack@lawlion.**  
 25 **Do you see that?**

1 A. Yes.  
 2 **Q. And who is that emack@lawlion?**  
 3 A. Edmond, Edmond Mack.  
 4 **Q. And he says "perfect" in response to you with an**  
 5 **exclamation point or with not. That's not in front**  
 6 **of me.**  
 7 A. That e-mail does not state that.  
 8 **Q. Not your response.**  
 9 A. His response, "This is perfect. Can you also e-mail  
 10 me the audio file of the commercial and confirm what  
 11 day it was that Bernabei came in to record it.  
 12 Thank you...."  
 13 **Q. Okay. Any sense of why he said that was perfect?**  
 14 A. Because that's what he asked for and that what's I  
 15 gave him.  
 16 **Q. Perfect. And you just did the same for me. Thank**  
 17 **you very much.**  
 18 A. Okay.  
 19 (Rebecca Marchino was dismissed.)  
 20 MR. FERRUCCIO: I think we'll now take a  
 21 recess and be back here at 1:00.  
 22 (A lunch recess was taken.)  
 23 MR. FERRUCCIO: We are back on the Record.  
 24 It is 1:00.  
 25 Mr. Plakas.

1 MR. PLAKAS: Thank you. Mr. West will  
 2 follow me.  
 3 MR. FERRUCCIO: Okay.  
 4 MR. WEST: We'd like to call Steve Okey.  
 5 MR. FERRUCCIO: Okay.  
 6 (Steve Okey was duly sworn by Notary Public  
 7 Jocelyn S. Harhay.)  
 8 DIRECT EXAMINATION  
 9 BY MR. WEST:  
 10 **Q. Can you please state your name and address for the**  
 11 **Record?**  
 12 A. My name is Steve Okey. My address is 2700 Fairway  
 13 Lane, Alliance, Ohio.  
 14 **Q. And are you president of the Alliance Democratic**  
 15 **Club?**  
 16 A. Yes, sir.  
 17 **Q. And can you talk about that a bit?**  
 18 A. I beg your pardon.  
 19 **Q. Can you describe the Alliance Democratic Club**  
 20 **briefly?**  
 21 A. Sure. The Alliance Area Democratic Club is an  
 22 independent organization of Democrats serving the  
 23 people in and around Alliance and actually open to  
 24 membership to any member of the Democratic Party in  
 25 Stark County.

1 **Q. Is Tom Bernabei a member?**  
 2 A. Yes, sir,  
 3 **Q. And does he pay dues? I mean how does one become a**  
 4 **member?**  
 5 A. He pays dues. You sign up on a sheet which Mr.  
 6 Bernabei did in February of this year. And you're a  
 7 member.  
 8 MR. WEST: Pull up Exhibit 112, please.  
 9 **Q. And you have that in your book as well.**  
 10 A. Is that in the original appendix or supplemental?  
 11 MR. MACK: Supplemental.  
 12 A. Okay. I have that.  
 13 **Q. I'm sorry.**  
 14 A. I have that. Okay.  
 15 **Q. You recognize this form?**  
 16 A. Yes, sir, I do.  
 17 **Q. Okay. Can you describe it?**  
 18 A. This is a membership/volunteer form for 2015 for  
 19 Alliance Area Democratic Club member Mr. Thomas M.  
 20 Bernabei.  
 21 **Q. And did Mr. Bernabei ever resign from the club?**  
 22 A. To our knowledge, no.  
 23 **Q. You never got a resignation letter?**  
 24 A. No, sir, we never did.  
 25 **Q. All right. Can you go through Exhibit 113, please.**

1 **And do you recognize this document?**  
 2 A. Yes, sir, I do.  
 3 **Q. Can you describe it?**  
 4 A. This is a letter I wrote dated June 17th, 2015, as  
 5 president of Alliance Area Democratic Club  
 6 indicating, as the Board of Elections can see here,  
 7 where Mr. Bernabei paid his 2015 membership dues;  
 8 second, that the club had not received any letter  
 9 from Mr. Bernabei indicating that he had resigned;  
 10 and that Mr. Bernabei remained a member in good  
 11 standing with the club.  
 12 **Q. Thank you.**  
 13 MR. WEST: I have nothing further.  
 14 MR. FERRUCCIO: Okay. Thank you.  
 15 Any Cross?  
 16 MR. VASVARI: Sure.  
 17 CROSS-EXAMINATION  
 18 BY MR. VASVARI:  
 19 **Q. Mr. Okey, my name is Raymond Vasvari. I'm Tom**  
 20 **Bernabei's lawyer. How are you today?**  
 21 A. Well, sir. Good afternoon.  
 22 **Q. Does the Alliance Democratic Club have a set of**  
 23 **rules and bylaws?**  
 24 A. Yes, sir, we do.  
 25 **Q. Are there procedures in there or mechanism for**

1 **resignation?**  
 2 A. Off the top of my head, I do not know.  
 3 **Q. Okay.**  
 4 A. There may be. There may not be. I've not reviewed  
 5 them in relation to that, sir.  
 6 **Q. Have you ever had the opportunity in the months of**  
 7 **May or June -- I'm sorry -- April or May of this**  
 8 **year to discuss with Phil Giavasis --**  
 9 **Is that pronounced correctly?**  
 10 A. Giavasis.  
 11 **Q. Giavasis. I'm sorry. Thank you. Mr. Giavasis,**  
 12 **he's head of the Democratic Party for Stark County;**  
 13 **right?**  
 14 A. That's correct.  
 15 **Q. Have you ever discussed with him the question of Mr.**  
 16 **Bernabei's membership in your club?**  
 17 A. No, sir.  
 18 **Q. Okay. Were you aware that Mr. Bernabei at some**  
 19 **point penned a letter indicating his intent to**  
 20 **resign from the club?**  
 21 A. I became aware of that recently. But --  
 22 **Q. How recently?**  
 23 A. Around the time that I wrote my letter of June 17th,  
 24 2015. Because I referenced a letter dated April  
 25 30th.

1 **Q. All right. Well, that's pretty interesting.**  
 2 **Because in Paragraph 3 of your letter, which is**  
 3 **Exhibit 113, dated June 17, 2015, you say according**  
 4 **to your records Mr. Bernabei is a member in good**  
 5 **standing; right?**  
 6 A. Yes, sir.  
 7 **Q. Right. But over here in Paragraph 2, just ahead of**  
 8 **that, you said that you're aware of a letter dated**  
 9 **April 30th by which he resigned.**  
 10 A. No. What I state in Paragraph 2 is that we had not  
 11 received any letter --  
 12 **Q. Right.**  
 13 A. -- indicating his resignation.  
 14 **Q. Let me read this into the Record just so we're all**  
 15 **clear. That says "To date, the Alliance Area**  
 16 **Democratic Club has not received any letter,**  
 17 **including the letter dated April 30, 2015...." What**  
 18 **letter would that be, letter you didn't receive?**  
 19 A. A letter that someone showed me that purportedly was  
 20 over Mr. Bernabei's signature indicating  
 21 resignation.  
 22 **Q. Did you have any reason to doubt that it was**  
 23 **genuinely over Mr. Bernabei's signature?**  
 24 A. I have no reason to know one way or the other, sir.  
 25 **Q. Okay. If you had received that letter in the mail,**

1 **would you have assumed that it was over Mr.**  
 2 **Bernabei's signature?**  
 3 A. If that came from Mr. Bernabei, I would probably so  
 4 assume.  
 5 **Q. How would you know that?**  
 6 A. I may call and confirm it with him. But that's --  
 7 since that never happened, I never had an  
 8 opportunity to make any assessment of whether it was  
 9 genuine.  
 10 **Q. What can we make of this disconnect, of the fact**  
 11 **that in Paragraph 2 you were obviously aware that**  
 12 **there had existed a letter written by Mr. Bernabei**  
 13 **on April 30th resigning and yet in Paragraph 3**  
 14 **you're saying he's still part of club? Were you not**  
 15 **honoring his resignation?**  
 16 A. Sir, there is no disconnect unless you would like to  
 17 believe one in your own mind. There's -- the only  
 18 thing I stated in my letter is that we had not  
 19 received any letter of resignation.  
 20 **Q. "Including."**  
 21 A. I'm not making any statement above and beyond that.  
 22 **Q. Except that you do in Exhibit 113 "including the**  
 23 **letter dated April 30th." So for you to refer to a**  
 24 **letter which such specificity, it's fair to assume**  
 25 **that you were aware of its existence?**

1 A. Yeah. I became aware of it obviously. I referred  
 2 to it when I became of aware of it because it was  
 3 shown to me.  
 4 **Q. Okay. And yet as of the date of this letter, which**  
 5 **is about six weeks later, you still consider Mr.**  
 6 **Bernabei a member of the club?**  
 7 A. According to our records, he remains a member in  
 8 good standing.  
 9 **Q. Okay. And that is despite your current awareness of**  
 10 **his resignation letter. Why won't you let him go?**  
 11 A. I'm not trying to keep him, sir. If he didn't want,  
 12 if he didn't want to be a member, he can send us a  
 13 letter.  
 14 **Q. Well, Mr. Okey, you have it on my good faith he**  
 15 **quits.**  
 16 MR. VASVARI: We're all done. Thanks.  
 17 MR. FERRUCCIO: Any questions from the  
 18 Board?  
 19 MR. CLINE: No questions.  
 20 MR. BRADEN: No questions.  
 21 (Steve Okey was dismissed.)  
 22 MR. WEST: We'd like to call Dave Kirven.  
 23 (Dave Kirven was duly sworn by Notary  
 24 Public Jocelyn S. Harhay.)  
 25

1 DIRECT EXAMINATION  
 2 BY MR. WEST:  
 3 **Q. Can you state your name and address for the Record,**  
 4 **please?**  
 5 A. Dave Kirven, 926 Wise Avenue, Southwest, North  
 6 Canton, Ohio, 44720.  
 7 **Q. And are you president of the Jefferson-Jackson**  
 8 **Democratic Club?**  
 9 A. Yes.  
 10 **Q. Can you briefly tell us what the Jefferson-Jackson**  
 11 **Democratic Club is?**  
 12 A. It's much like the Alliance Club, a democratic club.  
 13 We just -- it's a club made up of just local  
 14 resident Democrats that are Democrats. We bring in  
 15 public officials and folks that talk about issues in  
 16 regards to democratic issues we have.  
 17 **Q. Is Tom Bernabei a member?**  
 18 A. Yes.  
 19 **Q. Do you recall when he renewed his membership?**  
 20 A. Just the same as everybody else. We send them out  
 21 January. They come in January, February.  
 22 **Q. Do you remember if Mr. Bernabei has given any**  
 23 **contribution above and beyond his membership dues?**  
 24 A. He did do a sponsorship for -- we had a fundraiser  
 25 on April 24th of this year. And he was a \$200

1 sponsor I believe.  
 2 MR. WEST: Can we pull up Exhibit 90,  
 3 please.  
 4 **Q. Do you recognize this document?**  
 5 A. Yes.  
 6 **Q. Can you describe -- you also have a copy in your**  
 7 **appendix if you don't want to try and read this.**  
 8 A. What number.  
 9 **Q. It's 90. I think it's in the big book.**  
 10 A. All right. Yes. It's a letter that, that was sent  
 11 to me. Lee Plakas' office contacted us and wanted  
 12 us -- had questions for us about Mr. Bernabei's  
 13 membership and his contributions.  
 14 **Q. Go to Page 2. And do you recognize this document?**  
 15 A. Yes.  
 16 **Q. Is that the check he gave for the April 24th**  
 17 **fundraiser?**  
 18 A. That sure looks like his signature. Yeah, that's  
 19 it.  
 20 MR. WEST: Nothing further. Thank you.  
 21 CROSS-EXAMINATION  
 22 BY MR. VASVARI:  
 23 **Q. Mr. Kirven, did you ever receive a letter from Mr.**  
 24 **Bernabei resigning his membership of the**  
 25 **Jefferson-Jackson Club?**

1 A. I did not.  
 2 **Q. Okay. Are you aware if anybody ever received a**  
 3 **letter resigning his membership of the**  
 4 **Jefferson-Jackson Club?**  
 5 A. Not to my knowledge.  
 6 **Q. Okay. If I would tell you that such a letter was**  
 7 **taken in hand by an employee of this Board and given**  
 8 **to Mr. Giavasis, would that come as news to you?**  
 9 A. Well, I heard it earlier today in, in the remarks.  
 10 **Q. Okay. Have you ever discussed his resignation with**  
 11 **Mr. Giavasis?**  
 12 A. No.  
 13 **Q. Have you ever discussed Mr. Bernabei's Independent**  
 14 **candidacy with Mr. Giavasis?**  
 15 A. No.  
 16 **Q. How frequently do you confer with Mr. Giavasis?**  
 17 A. Maybe once a month. I mean I'm on the Executive  
 18 Board. We get notifications from that sometimes.  
 19 He calls us for contributions for Democrat -- I mean  
 20 maybe once a month at the most.  
 21 **Q. Do you now accept that, in fact, Mr. Bernabei on the**  
 22 **30th of April wrote a letter resigning from the**  
 23 **Jefferson-Jackson Club?**  
 24 MR. PLAKAS: Objection.  
 25 MR. FERRUCCIO: What's the question? I'm

1 sorry.

2 BY MR. VASVARI:

3 **Q. Do you now accept that on the 30th of April --**

4 A. I'd have to see the letter I guess. I mean I don't

5 know if it's -- you know, I've never seen it. How

6 can I say if it exists?

7 **Q. You've never seen such a letter. Let me ask you.**

8 **Let's assume for a moment -- and this is not the**

9 **case -- but let's assume that he hadn't resigned**

10 **from the club just yet. How would the club be**

11 **prejudiced by his continued membership?**

12 A. I don't know. This is, this is -- we're treading

13 new water here. It's not too often we get somebody

14 resign from our club really.

15 **Q. So you just sort of considered --**

16 A. I actually I think he's the first.

17 **Q. There is a first for everything. Would any harm**

18 **come to the club if he continued as a member?**

19 A. Well, I, I guess it would be a matter of opinion.

20 **Q. Would he, would he be welcome as an Independent? Or**

21 **does that not count?**

22 A. Well, it's a democratic club. So I mean if you're

23 -- usually Democrats join a democratic club. I

24 guess he has to join the independent arm of

25 Jefferson-Jackson if they have one.

1 **Q. Maybe. The hyphen in between maybe.**

2 A. Something in there.

3 MR. VASVARI: I have no more questions.

4 MR. FERRUCCIO: Thank you.

5 (Dave Kirven was dismissed.)

6 MR. PLAKAS: Thank you. If it please the

7 Panel, at this time we would like to call Doctor

8 Stephen C. Brooks from the Institute of Applied

9 Politics in Akron.

10 MR. CLINE: I would like to address the

11 Chair.

12 Mr. Chairman, I know we don't follow the

13 rules of evidence in these matters. However, as I

14 understand the rule of an expert, an expert is

15 someone who is supposed to present testimony of, has

16 knowledge beyond that of the finder of fact in order

17 to assist the finder of fact in determining a

18 question of fact for the tribunal, whatever, to

19 decide. So I'd like to hear what question of fact

20 this witness is going to assist this Board in

21 determining in order to see whether he meets that

22 particular requirement of rules of evidence.

23 MR. FERRUCCIO: Mr. Plakas, yeah. I would

24 inquire.

25 MR. PLAKAS: Doctor Brooks is a

1 nationally-regarded expert in election laws and the

2 consequences. In terms of the question of fact, the

3 question of fact here is does this kind of conduct

4 violate the spirit and/or the letter of the election

5 laws and does this type of conduct do, does it do

6 harm to the fabric of election laws, the State of

7 Ohio, the Board of Elections.

8 Because you've heard in the Opening remarks

9 by the punitive candidate's attorney that this is no

10 big deal, that these -- this will happen and the

11 system will go on; there's no prejudice or jeopardy

12 to the system; it's not a violation; you should be

13 able to shed your skin at any time you want or

14 change the color of your clothing at any time you

15 want; and it really doesn't matter.

16 And Doctor Brooks has made a lifetime of

17 evaluating the election laws, how behavior does

18 matter and how certain behavior does, in fact,

19 compromise or affect the integrity of the election

20 laws and our whole system of democratic government.

21 MR. FERRUCCIO: Well --

22 MR. CLINE: If I may, because I started

23 this. I believe that the response by Mr. Bernabei's

24 counsel was in Opening remarks. But both you and he

25 agreed with the issues of fact which were framed for

1 this Board at the beginning of this hearing. And

2 none of which you've just described as being the

3 substance of that gentleman's testimony addresses

4 either. So I don't see the point in using our time

5 to listen to this distinguished gentleman -- I'm

6 sure he knows what he is talking -- about address

7 issues that are not before this Board and on things

8 that we're not going to decide. Because we're not a

9 policy-making Board. We have two issues --

10 And you agreed to them, Mr. Plakas.

11 -- neither one of which he's going to

12 address.

13 MR. PLAKAS: And if I may, Mr. Cline.

14 MR. CLINE: You may.

15 MR. PLAKAS: Out of respect for the Board,

16 and Doctor Brooks, maybe Doctor Brooks is, in a very

17 simple statement, is able to relate to you the

18 relevancy of his expertise and his testimony on

19 those two issues that you have just identified.

20 MR. CLINE: With all due respect, that's

21 not is decision as to what's relevant and up to this

22 Board.

23 MR. PLAKAS: You asked me. And because I'm

24 not an expert in the field obviously, I would defer

25 to him. And he I believe can probably articulate

1 better than I the relevancy. And maybe, maybe, as,  
2 you know, you're very experienced in, in litigation,  
3 maybe the appropriate thing to do is to just conduct  
4 a very brief tantamount of a three-minute,  
5 five-minute voir dire, asking him the question. If  
6 you don't think any of his testimony is going to be  
7 relevant, then we invested no more than five  
8 minutes.

9 MR. CLINE: I would suggest that the  
10 appropriate thing to do would be to proffer his  
11 testimony.

12 I'm going to object to the witness's  
13 testimony, Mr. Chairman. As a member of the Board,  
14 I realize it's your call. You're ruling the  
15 hearing. But I don't --

16 MR. FERRUCCIO: I think --  
17 Do you want to weigh in?

18 MR. VASVARI: I do want to weigh in. I  
19 have the same concerns. It seems to me that there  
20 are two factual issues before the Board. The first  
21 is whether Mr. Bernabei did what he did in good  
22 faith. And the second is whether or not he was a  
23 bona fide resident on the date his petitions were  
24 filed.

25 As to the second, I cannot imagine an

1 MR. FERRUCCIO: Thank you.

2 MR. PLAKAS: I would respectfully further  
3 submit that, as the Panel has already noted, we are  
4 not bound precisely by the rules of evidence. And  
5 what we, what this Panel, what the charge is is to  
6 uphold, specifically to uphold the election laws in  
7 the State of Ohio but I think more generally to do  
8 what's right and appropriate for the fabric of our  
9 community and the fabric of democracy here and  
10 throughout the state. And if arguments are being  
11 made that it's okay to shed your skin and, and  
12 change your colors and it's no big deal, then I  
13 think that it can't hurt. And at least I would  
14 suggest a, a very brief voir dire. And if, if you  
15 aren't persuaded that he can help you in reaching  
16 the decision-making process, then, again, we've  
17 invested no more than three minutes.

18 MR. FERRUCCIO: Well, I mean I do have a  
19 concern with the expert testifying at this point  
20 with respect to policy. I mean an expert would --  
21 the only time an expert would be helpful is to deal  
22 with any factual legal, not even legal, but factual  
23 dispute that he could chime in on. But I don't  
24 think there's anything here that, that he can help  
25 us with as a, as a quasi judicial tribunal in trying

1 expert in political science having anything do say  
2 that's relevant. As to the first, all of the public  
3 policy considerations undergirding the state of law  
4 as it is, as the Sixth District pointed out in the  
5 Morrison case, have been embodied into Ohio laws.  
6 And the General Assembly has come up with the set of  
7 rules that poses the question that the Board is here  
8 to answer today, whether this was done in good  
9 faith. That is the result of the entire  
10 sausage-making process in Columbus. That's what  
11 public policy is here in the state. There are only  
12 two possibilities. I'm sure the doctor is a  
13 knowledgeable political scientist. But if he's here  
14 to testify as what the ramifications could or should  
15 be, he's here to testify to public policy; and this  
16 Board is not a policy-making body. If he's here to  
17 testify as to what the legal significance is, we  
18 don't allow expert testimony on legal significance.  
19 That is for the finders of fact and for the  
20 tribunal. That's for the judge. It's not for an  
21 expert witness. We don't in litigation under Rule  
22 702 invite witnesses in to lecture the Court on what  
23 the state of law is. That's your determination.  
24 And you don't require his help. It's for the  
25 lawyers to argue.

1 to determine good faith and residency.

2 I mean I think that we all understand the  
3 ramifications of a decision one way or another. But  
4 our job is really one to look at the facts of this  
5 particular case and make a decision. And if  
6 somebody down the line doesn't like that and they  
7 want to appeal it, then that's for that court and on  
8 our legislature to make changes to the statutes.

9 So at this point, I would ask that, that  
10 his testimony be proffered. And you could put into  
11 the Record what you think he would testify to. But  
12 I don't believe we would allow his testimony at this  
13 point unless something would change with the case in  
14 chief of the candidate. So we're not going to allow  
15 his testimony. But a proffer would be welcomed.

16 MR. PLAKAS: And to specifically, for the  
17 Record, identify the proffer, what we do have is a  
18 report from Doctor Brooks. And I would ask then,  
19 for it to make the Record, to at least have him  
20 sworn in to at least identify his report which we  
21 will proffer.

22 MR. FERRUCCIO: Okay.

23 MR. VASVARI: I am just going to object  
24 before that happens with respect to a report being  
25 offered on the day of trial I've never seen.

1 MR. FERRUCCIO: Understood. I mean your  
2 objection is noted. But for purposes of, of our  
3 decision making here, your objection will be noted.  
4 But we'll allow him to be sworn in to at least  
5 verify his report. And we'll give it whatever  
6 weight we think we should, if at all.

7 So proffer it at this point.

8 (Doctor Stephen C. Brooks was duly sworn by  
9 Notary Public Jocelyn S. Harhay.)

10 DIRECT EXAMINATION

11 BY MR. PLAKAS:

12 **Q. Mr. Brooks, this will be the briefest testimony that**  
13 **I've ever conducted. But would you please, for the**  
14 **Record, introduce yourself to the Panel and identify**  
15 **your occupation and your experience. And then we'll**  
16 **ask you to identify the report.**

17 A. I'm Stephen C. Brooks. I live at 36 North Highland  
18 Avenue, Akron, Ohio, 44303. I am associate  
19 professor of political science and associate  
20 director of the Ray C. Bliss Institute of Applied  
21 Politics at the University of Akron. My major  
22 research and teaching areas deal with local  
23 elections, campaigns, and voting behavior.

24 **Q. Okay. And, Doctor, in regard to the issues in this**  
25 **case, in addition to receiving the, the records and**

1 **the exhibits and receiving information about this**  
2 **situation, have you also had the opportunity to sit**  
3 **in and observe the proceedings here this morning**  
4 **that provide you with additional factual**  
5 **information?**

6 A. Yes. I've been here since 9:00 this morning.

7 **Q. Okay. And, Doctor, based upon your, your training,**  
8 **your experience, your expertise, the information**  
9 **that you've received previous to today in terms of**  
10 **the exhibits and any and all other information and**  
11 **in addition the information that you've been able to**  
12 **observe and receive this morning, have you formed**  
13 **certain opinions with regard to the conduct of this**  
14 **case, in this case as described and the relevancy of**  
15 **that conduct to election laws and the -- your**  
16 **expertise in political science and elections in this**  
17 **country? I know it's a long sentence.**

18 A. My main understanding and, and expertise would be in  
19 terms of the foundations of these laws and the, not  
20 just the formation but the enforcement of them.

21 **Q. Okay. So the formation and enforcement. And in**  
22 **regard to this subject, have you created prior to**  
23 **today a, a report that you've reduced to writing**  
24 **which is, at least the report, based upon the**  
25 **information that you received prior to this hearing**

1 **today?**

2 A. Yes.

3 **Q. Okay.**

4 MR. PLAKAS: And if I may approach the  
5 witness?

6 MR. FERRUCCIO: Sure.

7 **Q. Is this a copy of your report?**

8 A. Yes, it is.

9 **Q. Okay.**

10 MR. PLAKAS: And with permission of the  
11 Board, I'd like to then identify this as Exhibit  
12 134.

13 (A nine-page report by Doctor Stephen C.  
14 Brooks was marked Protester's Exhibit No.  
15 134.)

16 **Q. And, for the Record, Exhibit 134, which is entitled**  
17 **"A Political Science Examination of Candidate**  
18 **Qualifications and Ballot Access," have you, based**  
19 **upon your training and experience, created that**  
20 **report?**

21 A. Yes.

22 **Q. And does that report contain opinions that are**  
23 **relevant to this hearing?**

24 A. It contains information about the behavior of  
25 politics and, and how the formation and enforcement

1 of laws react within the political system.

2 **Q. I understand. And that's Exhibit 134?**

3 A. Yes.

4 **Q. Okay.**

5 MR. FERRUCCIO: We will note the proffer of  
6 Exhibit 134.

7 MR. PLAKAS: Thank you.

8 MR. FERRUCCIO: And you will make copies.  
9 Thank you.

10 MR. PLAKAS: Thank you, Doctor Brooks.

11 THE WITNESS: Thank you.

12 MR. VASVARI: Do I get to...? Or is it not  
13 necessary?

14 MR. FERRUCCIO: I mean it's proffered.

15 MR. CLINE: It's a proffer.

16 MR. VASVARI: I'd like three or four  
17 questions if I could.

18 MR. FERRUCCIO: Well --

19 MR. VASVARI: It's just a proffer.

20 MR. PLAKAS: I guess it's like being half  
21 pregnant. If I get to -- if he gets to  
22 cross-examine on a proffer, that will be the, once  
23 again, the first time in Ohio history that a proffer  
24 has been cross-examined.

25 MR. FERRUCCIO: Right.

1 MR. VASVARI: Breaking all the rules today.  
2 So I'll withdraw the question.

3 MR. PLAKAS: And I agree with that. They  
4 are breaking all the rules today.

5 MR. VASVARI: I was simply joking.

6 MR. FERRUCCIO: Next witness.  
7 (Doctor Stephen C. Brooks was dismissed.)

8 MR. PLAKAS: We have a similar witness.

9 MR. VASVARI: We have a similar objection.

10 MR. PLAKAS: Doctor Brooks, thank you for  
11 coming in and evaluating the situation.

12 Our next witness is Carl E. Klarner, Doctor  
13 Carl E. Klarner from Boston, Massachusetts.

14 MR. CLINE: Same issue, Counsel.

15 MR. PLAKAS: Yes. We'll go through the I  
16 presume -- well, I guess for the Record --

17 MR. CLINE: This will be --

18 MR. PLAKAS: I'm asking for you to allow  
19 him to testify.

20 MR. FERRUCCIO: Which we will not allow him  
21 to testify, only for the purposes of identifying his  
22 report. I'm assuming that you want to introduce  
23 that as a proffer?

24 MR. PLAKAS: Yeah. And what I would just  
25 add as the proffer, and just as a predicate to the

1 proffer and to see if it makes a difference in the  
2 Board's mind, is that Doctor Klarner has  
3 specifically evaluated elections here in Stark  
4 County. That's part of his expertise, to make a  
5 detailed analysis of elections including the  
6 elections involving potential candidate Bernabei.  
7 And his opinions are also preliminarily noted in a  
8 report that's dated Monday, July 6th. And it's --  
9 the title of report is "In re: Bernabei Candidacy A  
10 Political Science Perspective."

11 So I would first, as a matter of formality,  
12 then ask that Doctor Klarner be permitted to  
13 testify. And I would ask also that if there's any  
14 question about his ability to testify that we would  
15 be able to conduct a voir dire examination so that  
16 he can explain for the Record the relevancy of his  
17 testimony. And barring that, then I would ask to at  
18 least have him sworn in to be able to formally  
19 proffer the report. So I have a three-part request.

20 MR. FERRUCCIO: Assuming the same --

21 MR. VASVARI: The same objections as to  
22 what the previous witness.... We know, I think, a  
23 little bit less about what's contained in this  
24 report than we did about the last. But unless I  
25 hear otherwise, I'm suggesting that it's rather safe

1 to assume that it contains the same sort of  
2 political science analysis that doesn't bear upon  
3 the two factual and legal questions before the  
4 Board.

5 MR. FERRUCCIO: Right. We would not permit  
6 him to testify with respect -- as a witness. But if  
7 he wants to validate his report for purposes of a  
8 proffer, we'll entertain that.

9 MR. PLAKAS: Okay. Doctor, unless you have  
10 something that I've omitted, first thing I'm going  
11 to do is have you sworn in.

12 (Doctor Carl E. Klarner was duly sworn by  
13 Notary Public Jocelyn S. Harhay.)

14 DIRECT EXAMINATION

15 BY MR. PLAKAS:

16 **Q. Doctor, for the Record, would you please introduce**  
17 **yourself to the Board. Tell them what your**  
18 **occupation is and what your professional experience**  
19 **and history is.**

20 A. My name is Doctor Carl Klarner. I'm a political  
21 consultant. I'm a former academic. I was professor  
22 for 12 years. And I did election forecasting. And  
23 I'm an expert in election reform and elections  
24 generally. What did I leave out? Something.

25 **Q. And have you, I guess as part of that, have you in**

1 **your studies evaluated and studied the effect of**  
2 **laws similar to the disparition law here and/or**  
3 **the residency law that we are talking here about**  
4 **today?**

5 A. Yes. I did an analysis of all state legislative  
6 elections from 1968 to present in all states that  
7 resulted in some statistics that are relevant to  
8 this situation and would give insight into the kind  
9 of consequences that weakening a disaffiliation  
10 requirement would have.

11 MR. PLAKAS: Does that persuade the --

12 MR. FERRUCCIO: And it does not.

13 MR. PLAKAS: Let me approach.

14 MR. FERRUCCIO: Sure.

15 **Q. Doctor, I'm handing you a document that's been**  
16 **described as "In Re: Bernabei Candidacy A Political**  
17 **Science Perspective" by Doctor Carl Klarner. Is**  
18 **that, based upon your experience and training and**  
19 **expertise, a report that would at least generally**  
20 **outline some of the testimony that you would be --**  
21 **you believe is relevant to the issues presented to**  
22 **this Board?**

23 A. Yes. That's correct.

24 **Q. Okay.**

25 MR. PLAKAS: And we will mark this as 135 I

1 presume.  
 2 MR. FERRUCCIO: That's correct.  
 3 (A report by Doctor Carl E. Klarner was  
 4 marked Protester's Exhibit No. 135.)  
 5 **Q. And, indeed, does Exhibit 135 outline some of the**  
 6 **testimony that you believe would be relevant and**  
 7 **material to the issue before the Board today?**  
 8 A. Yes.  
 9 **Q. Okay.**  
 10 MR. PLAKAS: Nothing else.  
 11 MR. FERRUCCIO: That's it.  
 12 DR. KLARNER: Thank you.  
 13 MR. PLAKAS: Thank you.  
 14 (Doctor Carl E. Klarner was dismissed.)  
 15 MR. PLAKAS: Have a great trip back to  
 16 Boston.  
 17 MR. FERRUCCIO: Again, for the Record, 135  
 18 will be proffered.  
 19 MR. PLAKAS: Thank you. And the Record  
 20 will also reflect that I've already proffered 134?  
 21 MR. FERRUCCIO: Yes. Mr. West or Mr.  
 22 Plakas, anything further?  
 23 MR. PLAKAS: Sure. At this time, subject  
 24 to the introduction of all of our exhibits, both  
 25 that were presented here and also that were

1 presented in our binders, I believe the  
 2 authenticities of those documents have been  
 3 stipulated to. And we won't have to go through each  
 4 of the documents.  
 5 MR. VASVARI: The admissibility has been  
 6 stipulated to.  
 7 MR. FERRUCCIO: Right.  
 8 MR. CLINE: (Mr. Cline nodded).  
 9 MR. PLAKAS: Admissibility has been. And  
 10 so subject to them being admitted into evidence, we  
 11 will rest our case at this time. And thank you for  
 12 your time and attention.  
 13 MR. FERRUCCIO: Thank you. Those documents  
 14 will be admitted into evidence.  
 15 Okay. Mr. Vasvari.  
 16 MR. VASVARI: We call Mr. Edmond Mack.  
 17 MR. FERRUCCIO: Mr. Mack.  
 18 (Edmond J. Mack was duly sworn by Notary  
 19 Public Jocelyn S. Harhay.)  
 20 CROSS-EXAMINATION  
 21 BY MR. VASVARI:  
 22 **Q. Sir, would you state your name for the Record?**  
 23 A. Edmond Mack.  
 24 **Q. You are a protester --**  
 25 A. I am a protester.

1 **Q. -- in this matter?**  
 2 A. That is true.  
 3 **Q. Okay. Are you familiar with the Brief that filed on**  
 4 **behalf of the protesters and submitted to the Board?**  
 5 A. I am.  
 6 **Q. And when did you first become familiar with that**  
 7 **Brief?**  
 8 A. When the drafting process began.  
 9 **Q. Did you draft the protest?**  
 10 A. I helped with the drafting. I sure did.  
 11 **Q. Who else drafted it?**  
 12 A. The attorneys in the firm that were involved.  
 13 **Q. Which firm is that?**  
 14 A. Tzangas, Plakas, Mannos.  
 15 **Q. Is that the firm by which you've employed, by the**  
 16 **way?**  
 17 A. It is.  
 18 **Q. And did you draft the motion and the protest in**  
 19 **connection with your employment with that firm?**  
 20 A. My firm drafted the protest and researched the  
 21 protest in conjunction with the attorneys in my firm  
 22 and with the Ohio Democratic Party.  
 23 **Q. Okay. So let me ask. Are you an associate or**  
 24 **partner with the firm?**  
 25 A. I'm an associate there.

1 **Q. How long have you been so associated?**  
 2 A. I have been there for ten years, thereabout.  
 3 **Q. Do you bill your time?**  
 4 A. I do.  
 5 **Q. Do you bill hourly?**  
 6 A. Hourly.  
 7 **Q. Do you keep contemporaneous hourly records of your**  
 8 **time?**  
 9 A. I do.  
 10 **Q. Did you bill the work for drafting the Brief?**  
 11 A. I did.  
 12 **Q. Do you expect to be paid for the business your firm**  
 13 **would be charging for that?**  
 14 A. I expect that there will be a bill that will be  
 15 submitted, if it hasn't been already.  
 16 **Q. When was the decision taken for you to participate**  
 17 **in this matter as a protester?**  
 18 A. That would have been, that would have been when  
 19 David Pepper came to Canton and talked to us about  
 20 the protest.  
 21 **Q. And when was that; do you recall?**  
 22 A. That would have been I believe the week after Mr.  
 23 Bernabei filed his Independent nominating position.  
 24 **Q. So in the second week of May 2015?**  
 25 A. I think that's about right. It could have been the

1 same week. But I think that's about right.

2 **Q. Had you been assigned the drafting task at that**

3 **time?**

4 A. No.

5 **Q. Okay. So after you decided to become a protester,**

6 **you were assigned the task of drafting the Brief?**

7 A. I wouldn't say assigned. I was a part of the team

8 of attorneys at the firm that worked on the protest,

9 because I'm obviously intimately involved in Canton

10 City politics. Probably a natural fit that I would

11 participate in that process.

12 **Q. Okay. So after you had elected to become a**

13 **protester, you began the process of working on the**

14 **Brief as an attorney?**

15 A. That's true.

16 **Q. Okay. Did it occur to you that as a protester you**

17 **were signing a declaration under the Brief saying**

18 **that you were advancing the protest based upon the**

19 **allegations contained in the document itself?**

20 A. Yeah.

21 **Q. All right. Did it occur to you that there's a**

22 **disciplinary prohibition in Ohio between entering**

23 **into a matter as counsel wherein one might be called**

24 **as a witness?**

25 A. That's not accurate.

1 **Q. What part is inaccurate?**

2 A. You would only be prohibited from testifying if the

3 interest were adverse. My interests are clearly not

4 adverse to the protesters.

5 **Q. You are a witness in this matter?**

6 A. Sure am.

7 **Q. Did you willingly write the Brief knowing that you**

8 **might be called as a witness in the matter?**

9 A. Yes.

10 **Q. Okay. So as protester and as author, did you**

11 **discuss your legal strategy with the other members**

12 **of your firm?**

13 A. Yes.

14 **Q. Which?**

15 A. All of them.

16 **Q. Both?**

17 A. Wait. Attorneys in my firm?

18 **Q. Yes.**

19 A. Well, there's 15 attorneys. We would have discussed

20 it.

21 **Q. Any of them?**

22 A. Yes. It would have been discussed with the

23 attorneys in the law firm.

24 **Q. Okay. In your capacity as protester?**

25 A. In my capacity as Edmond Mack.

1 **Q. Okay. How many hats does Edmond Mack wear?**

2 A. I'm a protester. I'm a Canton City councilperson.

3 And I'm an attorney at the firm that's prosecuting

4 this proceeding.

5 **Q. What personal knowledge do you have that Mr.**

6 **Bernabei did not subjectively in good faith attempt**

7 **to disaffiliate himself from the Democratic Party?**

8 A. I can't crawl into Mr. Bernabei's head. Right? The

9 only thing we can evaluate is what we have in the

10 objective record. And if we're applying the

11 standard in the advisory opinion, he's not

12 disaffiliated from the Democratic Party. And there

13 is certainly suggestion in the record, in the

14 evidence that the timing and history of Mr.

15 Bernabei's relationship with the mayor suggest that

16 it was --

17 (An interruption occurred.)

18 A. It suggests that his disaffiliation was not in good

19 faith at least as how that's defined by the Ohio

20 Secretary of State.

21 **Q. I'll go back to that in a moment. Can you point to**

22 **any post disaffiliation action on behalf of Mr.**

23 **Bernabei that supports this conclusion?**

24 A. Post disaffiliation? So you're asking what he did

25 to disaffiliate or what he failed to do to

1 disaffiliate since he filed?

2 **Q. Post petition.**

3 A. Post petition. What he failed to do?

4 **Q. Right.**

5 A. Clearly failed to resign as a Democrat county

6 commissioner. And if you look at your own Board's

7 records right now, it shows him as a Democrat county

8 commissioner, even though his address has since been

9 updated to reflect another address.

10 **Q. Okay. Let's run with that for a moment. Where in**

11 **the law does it say he is required to resign as a**

12 **county commissioner in order to disaffiliate himself**

13 **from the party?**

14 A. Well, the advisory opinion says that that's

15 something this Board clearly would look at. And I

16 think that the Board's agenda, that Mr. Mack has

17 looked at, you know, recognized that; that when you

18 look at the factors that show an ongoing

19 relationship, that's a big one. And then you look

20 at other factors: Voting history, contributions,

21 memberships in the democratic clubs, showing up on

22 campaign literature, recording a commercial. I mean

23 I -- you want me to keep going?

24 **Q. No, I don't want you to keep going. What I want you**

25 **to do is answer my question --**

1 A. I'm sorry.

2 **Q. -- which was where in the case law can we find any**

3 **requirement that someone in order to disaffiliate**

4 **himself from a party must resign an office that he**

5 **was elected to during a previous association with**

6 **that party.**

7 A. This is going to be that case. This has never

8 happened before.

9 **Q. So the answer is there, is there no case law. Is**

10 **that the answer?**

11 A. The advisory opinion says that's a factor you look

12 at. But there is not a case where this has

13 happened.

14 **Q. So rather than your telling the Board what they're**

15 **going to do, why don't you tell me that there is no**

16 **case law.**

17 A. There's not.

18 **Q. That's an accurate statement?**

19 A. That's an accurate statement.

20 **Q. Okay. There's no statutory requirement either, is**

21 **there?**

22 A. I mean to the extent he can't be affiliated, there

23 would be. But I mean if you're saying there's

24 something beyond that, there is not.

25 **Q. General Assembly makes laws with respect to running**

1 **for office; correct?**

2 A. True.

3 **Q. General Assembly makes laws with respect to**

4 **retaining one's membership or retaining one's**

5 **incumbency in an office once elected; correct?**

6 A. They've -- the General Assembly said you had to --

7 **Q. That was a simple question.**

8 A. Then the answer would be --

9 MR. VASVARI: Mr. Chairman.

10 A. -- would be no.

11 MR. FERRUCCIO: Just answer the question.

12 Do you want to restate it.

13 THE WITNESS: I'm sorry.

14 **Q. The General Assembly has within its power the**

15 **ability to prescribe when an incumbent might**

16 **resign --**

17 A. Yes.

18 **Q. -- based on a circumstance?**

19 A. That is 100 percent accurate. Yes.

20 **Q. The General Assembly has in some cases prescribed,**

21 **for instance, that a resignation is necessary under**

22 **certain circumstances from public office?**

23 A. That's true.

24 **Q. They have never prescribed that an incumbent must**

25 **resign upon disaffiliating himself from a party?**

1 A. That is not in the statute, that language. You're

2 correct.

3 **Q. They have never done that?**

4 A. That's...

5 **Q. So what you have is that it is one factor among many**

6 **factors that the Board may consider?**

7 A. That's what I said.

8 **Q. Very good. Then we agree. For once, we agree on**

9 **something. You in the Brief and in your testimony**

10 **have made repeated reference to Mr. Bernabei serving**

11 **as the democratic county commissioner. Where in the**

12 **Revised Code would I find the phrase "democratic**

13 **county commissioner"?**

14 A. You will not.

15 **Q. Why won't I find that phrase?**

16 A. Because the fact that he's a democratic public

17 officeholder is based upon the nominating petitions

18 that he circulated which form the basis of his

19 election and the fact that the Democratic Central

20 Committee will appoint his successor should he

21 resign.

22 **Q. In order for Mr. Bernabei to disaffiliate himself**

23 **from the party, are you of the mind that he must**

24 **have a complete ideological break with all its**

25 **tenets?**

1 A. What -- I don't understand the question. What do

2 you mean by that?

3 **Q. Can Mr. Bernabei quit the Democratic Party and still**

4 **hold some fidelity to some of the principles of the**

5 **Democratic Party?**

6 A. Yes. Yes. I think that's fair.

7 **Q. And that wouldn't make his disaffiliation any less**

8 **genuine?**

9 A. I, I think that's right. But that's not what we

10 have here.

11 **Q. That wasn't my question. The answer ended at**

12 **"right." Let me ask you another question. In the**

13 **Brief, it says that not one night did Tom Bernabei**

14 **sleep in University Avenue.**

15 A. That's not what the Brief says.

16 **Q. Brief says that as of the 3rd he had never slept in**

17 **University Avenue?**

18 A. That's what the Brief says.

19 **Q. Okay. Why is that relevant?**

20 A. Because when he signed his nominating petition that

21 day, he's making a representation under penalty of

22 perjury that was the voting address. And another

23 secondary reason as to why it's relevant, we have

24 learned since writing our Brief that he actually

25 signed his change of voting address on April 30th;

1 and that document was forward dated. So the fact  
2 that he is not sleeping at that University, that  
3 University address May 3rd, I think it's pretty  
4 relevant.

5 **Q. Do you know when he formed the intention to begin  
6 staying at University Avenue?**

7 A. I am not. Mr. Bernabei, you would have to ask him.

8 **Q. We will ask him. Is it safe to infer that someone  
9 doesn't typically spend a thousand dollars to enter  
10 a month-to-month lease to rent a residence of which  
11 he doesn't intend to stay?**

12 A. I mean people rent hotel rooms all the time. And  
13 I'm sure that was, you know, about the same cost.  
14 Who knows what's in his mind. You will have to ask  
15 him.

16 **Q. You rent thousand dollars hotel rooms? You must be  
17 doing pretty well at the firm. Is there a formal  
18 mechanism for resigning one's membership from the  
19 Democratic Party?**

20 A. There is not.

21 **Q. Are you aware of who is funding this litigation on  
22 behalf of the Democratic Party?**

23 A. I am.

24 **Q. Who is?**

25 MR. PLAKAS: Objection. We've talked about

1 an internal law firm's finances, et cetera, et  
2 cetera. This Board has already indicated that we're  
3 to stay with the specific issues already raised.  
4 I'd let that go. But that is one fishing  
5 expedition, and we're going to go through a number  
6 of fishing expeditions.

7 MR. FERRUCCIO: Objection sustained.

8 MR. VASVARI: I'll move on.

9 BY MR. VASVARI:

10 **Q. Were you aware when you wrote the protest to the  
11 extent Mr. Bernabei did not intend to remain in  
12 University Avenue; it was always his intention to  
13 move to another address, the home in Canton?**

14 A. That's what he said.

15 **Q. Were you aware when you wrote the protest that that  
16 was the case?**

17 A. Clearly. Because he's saying his address at  
18 University is temporary. If he's intending to move  
19 somewhere else, that's what makes the address at  
20 University temporary.

21 **Q. And the last part of that question was, were you  
22 aware that that someplace else was another residence  
23 within the same jurisdiction that would equally have  
24 qualified the formality?**

25 A. Should have moved there.

1 **Q. I didn't ask that. I asked were you aware.**

2 A. I am aware.

3 **Q. What is the answer? Yes or no?**

4 A. The answer is he intended to make his permanent  
5 address the Lakecrest property.

6 **Q. You will agree with me that there are colloquial  
7 uses of the word "permanent" and that there are  
8 legal uses for the word "permanent" and that they  
9 sometimes diverge?**

10 A. I don't agree with that.

11 **Q. You don't agree?**

12 A. No.

13 **Q. So one can talk about a permanent address and one  
14 has only one definition of a permanent address. Is  
15 Mr. Bernabei now permanently residing at Lakecrest  
16 to your, to your knowledge?**

17 A. To my knowledge.

18 **Q. Yeah. So what if two years from now he decides to  
19 move? Would that retroactively invalidate the  
20 permanency of his present residence?**

21 A. I don't -- no. I don't think that -- I think that  
22 the issue in the case is whether living in a house  
23 for three days is permanent. If that's the case,  
24 then the word "permanent" has no meaning. Staying  
25 in hotel for a night is permanent under that theory

1 of what you're articulating. So to answer your  
2 question directly, I don't agree that there are two  
3 definitions of the word "permanent," a colloquial  
4 definition and a legal definition. Permanent is  
5 permanent. And the residence at University was not.

6 **Q. But you will agree that the word "permanent" is  
7 defined specifically in the statute as the place to  
8 which one intends to return when absent therefrom  
9 and that the statutory definition, not your  
10 characterization of permanent, is governing?**

11 A. No. No, I don't agree with that. The statute says  
12 the place of fixed habitation is what determines  
13 where you live. Secretary of State, who we have to  
14 rely on, says that means it cannot be a temporary  
15 residence; it has to be a permanent residence.

16 **Q. The statute does or not, does not define a fixed  
17 abode as the place to which one intends to return  
18 when absent? Which is it?**

19 A. In summary we're talking that's about -- yes. But  
20 that wasn't your original question. But I think  
21 that's what the statute says in sum or substance.

22 **Q. Okay. And the statute governs what constitutes  
23 one's residence for purpose of --**

24 A. No.

25 **Q. -- of voting in an electoral status?**

1 A. No.

2 **Q. The statute doesn't govern?**

3 A. No. No. No. The General Assembly said the

4 Secretary of State's opinions have to guide the

5 Board's determination. The Secretary of State's

6 interpretation is what the Board should be looking

7 at. I believe the statute -- the General Assembly

8 said the Secretary of State is what should be

9 guiding the Board's determination.

10 **Q. So you are saying that the General Assembly has**

11 **delegated its authority in a regulatory capacity to**

12 **the Secretary of State to make regulations that**

13 **supersede or interpret its own statutes?**

14 A. I'm saying the Secretary of State's charged

15 statutorily with interpreting the election laws.

16 **Q. This Board relies on --**

17 A. The Board relies on the Secretary of State's

18 opinions every day. This not a foreign concept to

19 this Board.

20 **Q. The Board should probably rely on Secretary of State**

21 **Brunner's decision in Opinion No. 2075 where she**

22 **says that Ohio retains -- or, Ohioians retain the**

23 **right to disaffiliate themselves and alter their**

24 **political affiliations at any time. They should**

25 **rely on that too, shouldn't they?**

1 A. They should rely on the entirety of the opinion.

2 **Q. Okay.**

3 MR. VASVARI: We're done. Thank you.

4 Wait. There is one more question.

5 **Q. I have, in all my excitement, forgotten to ask you**

6 **something. It seems to be a very large portion of**

7 **your Brief is given over to the theory that Mr.**

8 **Bernabei is motivated to run for mayor of Canton**

9 **because he harbors some need, some deep-seeded need**

10 **for revenge against Mr. Healey. You remember that;**

11 **don't you?**

12 A. I do.

13 **Q. Okay. You wrote that; didn't you?**

14 A. I did.

15 **Q. Is that your theory?**

16 A. I believe it's, it's supported. I believe it's

17 beyond the theory. I believe --

18 **Q. Beyond theory.**

19 A. -- it's factual.

20 **Q. It's a fact. Okay.**

21 A. At least a portion of his motivation I think is

22 undeniably attributed to his ill will towards the

23 mayor.

24 **Q. I see. And how do you know of this so well?**

25 A. He had told me personally at lunch while sitting at

1 Bender's probably about a year ago.

2 **Q. Tom Bernabei told you that he was going to run for**

3 **mayor because --**

4 A. No. No. No.

5 **Q. What has he told you?**

6 A. He's told me that he very much dislikes the mayor of

7 our city and that -- well, he's used choice words

8 but I won't go into detail. And I think the fact

9 that -- you know, we heard today in Mr. Bernabei's

10 testimony that the determination of being called --

11 hauled out by the cops while he was laughing, I mean

12 human conditions, there's going to be some ill will

13 there. There's only certain things that can explain

14 this bizarre course of conduct leading up to the

15 filing deadline. You know, whether it's ultimately

16 hatred for the mayor, a feeling that only he can

17 save the City of Canton, I can't get in his head;

18 but when you apply the advisory opinion to the facts

19 of this case, I think the conclusion speaks for

20 itself.

21 **Q. You can't get into his head. But you didn't**

22 **hesitate for page after page after page in the Brief**

23 **trying to get into his head in speculating about**

24 **vengeance is the motive. You did speculate about**

25 **vengeance is the motive?**

1 A. Right. I don't know that.

2 **Q. Right. You're not a psychologist, are you?**

3 A. I'm not a psychologist.

4 **Q. You're not a psychiatrist, are you?**

5 A. I'm not a psychiatrist.

6 **Q. You're not a mental health professional?**

7 A. I'm not.

8 **Q. You haven't had the opportunity to discuss with Mr.**

9 **Bernabei his motivations for the present run, have**

10 **you?**

11 A. I have not.

12 **Q. Okay. In fact, how long have you been in politics?**

13 A. Four years.

14 **Q. Oh. How old are you?**

15 A. Thirty-three.

16 **Q. All right. So you've been in politics for four**

17 **years next to Mr. Bernabei's 40. How much history**

18 **do you have with Mr. Healy?**

19 A. I guess it would be four years; right?

20 **Q. How much history does Mr. Bernabei have with Mr.**

21 **Healy?**

22 A. I know of at least one where they worked together.

23 **Q. Right. What do you know about that?**

24 A. I know that Mr. Bernabei said that it was a marriage

25 that wasn't going to last.

1 **Q. I see. When was Mr. Bernabei terminated by Mr.**  
 2 **Healy?**  
 3 A. January 2009.  
 4 **Q. Okay. And are you aware that your own Brief, the**  
 5 **one you drafted and for which you assembled the**  
 6 **tables, demonstrates that he's given \$26,000 to the**  
 7 **Stark County Democratic Party since that**  
 8 **termination?**  
 9 A. Okay.  
 10 **Q. Does that seem to you to be a man who is harboring**  
 11 **bitter revenge towards his party?**  
 12 A. No. I think you're conflating the two concepts.  
 13 It's not -- Mayor Healy is not the Democratic Party.  
 14 **Q. Forgive me.**  
 15 A. The ill will towards Mayor Healy and his donations  
 16 to the Democratic Party as recently as April 26th I  
 17 think, you know, doesn't make sense, to say the  
 18 least.  
 19 **Q. I'm not sure I understood your answer. But I'm not**  
 20 **sure that I need to. Have you ever had the**  
 21 **opportunity to be present during his six years as**  
 22 **commissioner when Mr. Healy and the mayor -- I'm**  
 23 **sorry -- when Mr. Bernabei and Mayor Healy worked**  
 24 **together on the sorts of issues that urban mayors**  
 25 **and county commissioners work on?**

1 A. I think those issues are few.  
 2 **Q. You think those issues are few?**  
 3 A. I know those issues are few.  
 4 **Q. How many meetings have you attended?**  
 5 A. Commissioners meetings?  
 6 **Q. No. How many meetings have you attended wherein Mr.**  
 7 **Bernabei or commissioner Bernabei and Mayor Healy**  
 8 **met on city/county business?**  
 9 A. I have not attended any of those meetings --  
 10 **Q. Okay.**  
 11 A. -- if there's been.  
 12 **Q. How many, how many interactions between Mr. Bernabei**  
 13 **and Mayor Healy have you had the opportunity to**  
 14 **witness since 2009?**  
 15 A. I've never seen them interact.  
 16 **Q. Okay.**  
 17 A. I've never seen Mr. Bernabei come to our council.  
 18 I've never seen Mr. Bernabei at Canton City Hall.  
 19 **Q. Has Mayor Healy ever expressed to you a feeling that**  
 20 **Mr. Bernabei was gunning for him politically?**  
 21 A. Like with his candidacy?  
 22 **Q. In any way.**  
 23 A. No. No. I don't think -- I think certainly he's  
 24 filed a petition running for mayor; I think he's  
 25 gunning politically. But prior to that, no, I don't

1 think so.  
 2 **Q. You opine in the Brief that Mr. Bernabei has some**  
 3 **sort of messianic complex, that he alone can solve**  
 4 **the problems of Canton, and seemed to be suggesting**  
 5 **there a certain degree of arrogance. Is that a fair**  
 6 **characterization?**  
 7 A. I'm not characterizing anything Mr. Bernabei has  
 8 said.  
 9 **Q. Okay. Except in the Brief that runs on for about**  
 10 **12,000 words?**  
 11 A. I'm sorry you didn't appreciate it.  
 12 **Q. I didn't appreciate it. But I made it through.**  
 13 **Now, in that Brief, you speculate as to his**  
 14 **motivations.**  
 15 A. (Mr. Mack nodded).  
 16 **Q. And in that Brief you speculate as to his, his lack**  
 17 **of political candor. Do you have any personal**  
 18 **knowledge to demonstrate that Mr. Bernabei is a man**  
 19 **who undertakes political decisions lightly?**  
 20 A. I don't have any knowledge one way or the other.  
 21 **Q. Do you have any knowledge to indicate that Mr.**  
 22 **Bernabei is a man who doesn't take seriously the**  
 23 **ramifications of his actions?**  
 24 A. I've no knowledge one way or the other.  
 25 **Q. Do you have any knowledge to indicate that Mr.**

1 **Bernabei uses petty grievances as the basis for the**  
 2 **motivation for his public actions. Do you or don't**  
 3 **you?**  
 4 A. I have a lot of respect for Mr. Bernabei.  
 5 **Q. Good.**  
 6 A. I think this whole -- I think this is out of  
 7 character.  
 8 **Q. I see. So you formed an opinion as to his**  
 9 **character?**  
 10 A. Yes.  
 11 **Q. And what is that opinion?**  
 12 A. I think he has a good character. And I know he has  
 13 a general reputation in the community for good  
 14 character. And I think that this issue doesn't  
 15 match up.  
 16 MR. VASVARI: I have no more questions.  
 17 MR. FERRUCCIO: Thank you.  
 18 REDIRECT EXAMINATION  
 19 BY MR. PLAKAS:  
 20 **Q. Mr. Mack, I'd like to follow up on some of the**  
 21 **questions that you were asked in the subject matter**  
 22 **that we've gone into and you weren't permitted to**  
 23 **totally answer. The last question, you were asked**  
 24 **to talk about Mr. Bernabei's character. And you**  
 25 **stated that his conduct in this situation doesn't**

1 **match up. Tell us why.**  
 2 A. The reputation that I know of Mr. Bernabei is detail  
 3 orientated and studies the law and does things the  
 4 correct way. This was clearly not done correctly,  
 5 whether failing to send, for instance, the letters  
 6 to different democratic clubs. Whether by design or  
 7 by mistake, that's not a type of mistake that  
 8 someone who's going to do this, make such a serious  
 9 decision, would make. When there's the issues of  
 10 failing to resign from his county commissioner's  
 11 seat, that is something that's fairly obvious to do  
 12 in order to satisfy the independent candidate. I am  
 13 surprised that Mr. Bernabei would be acting  
 14 inconsistent with his character as I understand it  
 15 and would have done that.

16 **Q. You just mentioned that it would be appropriate, and**  
 17 **surprises you he hasn't resigned, in terms of**  
 18 **meeting the qualifications. And you've already been**  
 19 **questioned. Is there any statute that says "thou**  
 20 **shall resign"?**

21 A. No.

22 **Q. How do you respond then? Why is it so important in**  
 23 **your analysis, as you were questioned by Mr.**  
 24 **Bernabei's counsel, that a democratic officeholder**  
 25 **must resign to, to clearly disassociate himself from**

1 **the Democratic Party?**

2 A. Well, like I said earlier in my remarks, the  
 3 advisory opinion clearly will guide this Board's  
 4 decision. And that situation is discussed  
 5 specifically within the advisory opinion itself.  
 6 And if we have democratic officeholders or  
 7 republican officeholders -- I'm not limiting it to  
 8 one party or another -- allow them to hold elected  
 9 office, be affiliated with a political party to  
 10 where that political party's Executive Committee is  
 11 going to run the -- make the an appointment and then  
 12 permit them to run as an independent, affiliation  
 13 requirement has no meaning; it would make no sense.  
 14 There cannot be a -- I've tried to imagine a set of  
 15 facts that demonstrate affiliation as much as this  
 16 case does. And I really can't. With the evidence  
 17 that's here of the current sitting officeholder, the  
 18 fact of the timing of resignation and when the  
 19 petitions were filed, this has never happened in  
 20 Ohio before.

21 **Q. You were asked about or referred to a 2007 opinion**  
 22 **from Jennifer Brunner. And you weren't permitted to**  
 23 **explain the entirety of the opinion. With regard to**  
 24 **that series of questions that was asked of you,**  
 25 **would you please explain the relevancy of the**

1 **entirety of not only that opinion but any other**  
 2 **guidelines that have been issued that you think are**  
 3 **relevant by both the Secretary of State's office and**  
 4 **the court system?**

5 MR. VASVARI: Objection. I don't think my  
 6 question opened the door to a second closing  
 7 argument.

8 MR. PLAKAS: He asked. He brought up cases  
 9 and statutes.

10 MR. FERRUCCIO: I think you can proceed.

11 MR. PLAKAS: Thank you.

12 A. The analysis starts with the Morrison decision. And  
 13 that's from the Sixth Circuit. And that's when the  
 14 Sixth Circuit first applied the independent  
 15 requirement, this affiliation requirement in Ohio  
 16 law. It was enacted in the '80s. Jennifer Brunner  
 17 then issued an advisory opinion to determine how you  
 18 apply Ohio's disaffiliation requirement -- and  
 19 Ohio's not unique -- to have a disaffil -- a  
 20 requirement that an independent has to be  
 21 disaffiliated. Colorado, Oklahoma, California, a  
 22 lot of states do that. Because the policy is -- I  
 23 don't want to go into the policy; but the Board  
 24 knows the policy -- to protect the voter ballots.  
 25 The advisory opinion then analyzed its application

1 of the Morrison decision. And the Morrison decision  
 2 said in order to fulfill the statutes, two things  
 3 have to happen: Have to be disaffiliated, fully  
 4 disaffiliated. And then No. 2, the disaffiliation  
 5 has to be done in good faith.

6 So the advisory opinion establishes  
 7 different factors that this Board may weigh to  
 8 assist it in its evaluation. There's two automatic  
 9 disqualifiers as this Board is well aware. And a  
 10 disqualified candidate is based on the automatic  
 11 disqualifiers: Voting in a partisan primary after  
 12 you filed your petition or serving on the Executive  
 13 Committee after you've filed your petitions.

14 If the auto disqualifiers aren't present  
 15 then there are numerous factors that this Board will  
 16 examine and weigh to determine affiliation: Voting  
 17 history. But voting history alone has to be more  
 18 than just voting history by itself. Office as a  
 19 current elected official. Political donations.  
 20 Membership in organizations. Anything that would  
 21 demonstrate a continuing affiliation with the  
 22 political party is something that this Board would  
 23 look at. Since the advisory opinion, it's been  
 24 applied by the Ohio Supreme Court, by the Court of  
 25 Appeals, by a lot of Boards of Elections throughout

1 the state.  
2 The cases that is closest to this -- well,  
3 let me take a step back. In the Supreme Court  
4 cases --

5 MR. FERRUCCIO: I sort of lost track of the  
6 question. And so I don't know that we need to be  
7 lectured on --

8 THE WITNESS: I'm sorry.

9 MR. FERRUCCIO: -- advisory....

10 THE WITNESS: Sorry. Sorry.

11 MR. FERRUCCIO: We understand that. But  
12 maybe go back to a particular question.

13 MR. PLAKAS: Sure.

14 BY MR. PLAKAS:

15 **Q. Going back to the suggestion made that you weren't**  
16 **permitted to answer, the suggestion was made that**  
17 **there's nothing that prohibits in the advisory**  
18 **opinions or the statutes or the case law, there's**  
19 **nothing that prohibits what Mr. Bernabei has -- is**  
20 **attempting to do. And you weren't permitted to give**  
21 **a full answer to that. What is your answer to that?**

22 A. The advisory opinion itself absolutely prohibits  
23 what he's trying to do.

24 **Q. There was also a line of questioning that you were**  
25 **asked regarding the address and the timing and the**

1 **date upon which, which he signed certain**  
2 **declarations or applications. And you made a point**  
3 **with regard to discovering some statement made in**  
4 **the Brief that was con -- that was made in Mr.**  
5 **Bernabei's Brief that was contrary to the documents**  
6 **or set of facts that appeared before that. What did**  
7 **you mean by that? Please explain.**

8 A. Mr. Bernabei changed -- filed, caused to be filed at  
9 the Board of Elections on May 3rd a change of voting  
10 address form to change his address to the University  
11 property. We did not know that that document was  
12 actually signed by Mr. Bernabei and provided to the  
13 deputy director on April 30th. So when that  
14 document was signed, you know, under penalty of  
15 election falsification, his lease wasn't even  
16 effective for the property.

17 **Q. And, and that reference to that April 30th, that is**  
18 **contained at, in a matter of law in this case in Mr.**  
19 **Bernabei's Brief, that was filed late Thursday or**  
20 **Friday?**

21 A. That's right.

22 **Q. Okay. You were also asked about the nuances between**  
23 **a temporary address and permanent address. And the**  
24 **suggestion was made that there's really no**  
25 **difference colloquially in terms of those terms.**

1 **And you responded and were not permitted to fully**  
2 **respond. But, for example, in the case law or in**  
3 **the advisory opinions, do they consider the**  
4 **difference between temporary and permanent**  
5 **meaningless? Is there a colloquial acceptance: Oh,**  
6 **yeah, this is permanent or temporary and it means**  
7 **the same thing?**

8 A. No. No. They, they clearly do not mean the same  
9 thing.

10 **Q. And following up on that question, with regard to**  
11 **temporary residences, et cetera, does the case law,**  
12 **for example, allow or the advisory opinions allow**  
13 **potential perspective voters or candidates to move**  
14 **into an area and, and take a hotel room for a period**  
15 **of three days or week or a on a month-to-month and**  
16 **then be qualified or eligible to be voters or**  
17 **candidates?**

18 A. No. In the Brooks case that we cited in our actual  
19 Brief, the Third District was very clear a hotel  
20 room cannot be a valid voting residence. That was  
21 in reference to the Red Roof Inn in that case. And  
22 then in our supplemental Bench Brief that we filed  
23 today, there's an Ohio Supreme Court citation where  
24 they looked at a situation, not as dramatic as this  
25 one, but where a candidate moved into a residence

1 with the sole purpose of running for office with the  
2 wife and the dog staying at the other house. The  
3 Supreme Court said that's not a permanent voting  
4 residence.

5 **Q. You were further questioned, and there's a line of**  
6 **questioning that made reference, to certain dates**  
7 **and even Mr. Bernabei's wife. And you weren't**  
8 **permitted to fully respond to that question. And**  
9 **the issue in that question was is there any**  
10 **relevance, and what's the big deal if, in fact, your**  
11 **wife doesn't move when you move. And what was your**  
12 **response that you weren't permitted to give in that**  
13 **question?**

14 A. No, that's highly relevant. If, for instance, if  
15 you look at Exhibit 127 in our supplemental  
16 appendix, Mr. Bernabei's wife actually on May 5th  
17 voted in person at the Hills & Dales address. In  
18 the statute, when you determine someone's residence,  
19 it says the residence of the spouse shall be the  
20 place of residence.

21 Now, when we have -- when you take into  
22 consideration the permanency and temporary  
23 components of this case and combine them with the  
24 statutory requirement, the location of the person's  
25 spouse shall be the determinant place of residence.

1 That's very relevant.

2 **Q. And then at least upon the documentation, there's a**

3 **line of questioning with regard to whether or not**

4 **Mr. Bernabei was actually, had actually been**

5 **sleeping at the premises at the time that he**

6 **actually filed some of the -- or, the petition and**

7 **the declaration. And you weren't permitted to**

8 **answer that. Have you done an analysis and have you**

9 **created, so to speak, any sort of timeline that the**

10 **Board can review to confirm whether or not Mr.**

11 **Bernabei had actually slept there before he**

12 **submitted his petitions on March -- excuse me -- May**

13 **3rd?**

14 A. Yes. At Exhibit 122 in the supplemental appendix,

15 we created a timeline that details when the forms

16 were signed, when the democratic contributions were

17 made in relation to the relevant trigger dates. And

18 the second page of that is the citation in the

19 record to every document that supports every entry.

20 **Q. And with regard to the question and the subject**

21 **matter that was asked of you by Mr. Bernabei's**

22 **attorney, what is the relevancy then of the**

23 **timeline? And what does the timeline show on**

24 **Exhibit 122?**

25 A. Well, it documents everything that would demonstrate

1 a continued affiliation, both after the petitions

2 were signed, after the petitions were filed, and the

3 evidence leading up to these events.

4 **Q. And with regard to the timeline, the questions being**

5 **asked about Mr. Bernabei's sleeping, what is the**

6 **relevancy that you weren't permitted to respond to**

7 **in regard to if someone claims they've established a**

8 **residence? What is the relevancy of whether they**

9 **have slept there at the time they're claiming**

10 **residency and/or whether their wife's with, there**

11 **with him?**

12 A. That goes to both issues. Permanency of the

13 residence in the statutory language indicating that

14 where a person's spouse lives determines residency.

15 When both the -- certainly when the change of voter

16 registration form was signed on April 30th, he

17 didn't have a valid lease for the residence. And

18 when his petitions were signed on May 3rd, he had

19 never slept there until that night.

20 **Q. And why does your -- why did you say and why does**

21 **the timeline confirm that when the petitions were**

22 **signed on May 3rd he had not yet slept there? What**

23 **is the basis and the evidence for that?**

24 A. The statements that Mr. Bernabei made in the Martin

25 Olson interview provide the foundation for that

1 timeline.

2 **Q. And what specific statements are you referring to?**

3 A. When he came back from Florida and contrasted with

4 the dates of the different documents being signed.

5 **Q. Well, specifically, last question, how do you mean**

6 **that? So what date did he come back from Florida?**

7 **How does that compare to the filing of his petition?**

8 **And how does that compare to him for the first time**

9 **sleeping there May 3rd when he came back from**

10 **Florida --**

11 A. Right.

12 **Q. -- in the afternoon of May 3rd?**

13 A. That's it. He came back from Florida on the

14 afternoon of May 3rd. That would have been the

15 first night that he would have been sleeping at 2118

16 University. And that is the date that he signed his

17 petition and he signed his change of voter

18 registration using this as a voting residence four

19 days prior.

20 MR. PLAKAS: I have nothing further. Thank

21 you.

22 MR. FERRUCCIO: Thank you.

23 MR. VASVARI: Nothing.

24 MR. FERRUCCIO: Okay. Thank you.

25 THE WITNESS: Thank you very much.

1 (Edmond J. Mack was dismissed.)

2 MR. CLINE: Don't pass those around. Those

3 are proffered. Just leave them there.

4 MR. PLAKAS: May I have a copy for my files

5 since I gave you...?

6 MR. FERRUCCIO: They're all yours.

7 MR. VASVARI: Are we good?

8 MR. FERRUCCIO: Yes.

9 MR. PLAKAS: They got a copy too. Did you

10 want that to happen too?

11 MR. FERRUCCIO: Yeah.

12 MR. PLAKAS: Thank you. We'll pass these

13 out on the sidewalk to someone.

14 MR. FERRUCCIO: Not at University. I

15 should say only at University.

16 MR. VASVARI: I call Chris Smith.

17 (Chris Smith was duly sworn by Notary

18 Jocelyn S. Harhay.)

19 DIRECT EXAMINATION

20 BY MR. VASVARI:

21 **Q. Miss Smith, good afternoon. I'm Raymond Vasvari,**

22 **Mr. Bernabei's lawyer. I have just a few questions**

23 **for you. The first is that you are one of the**

24 **protesters in this case; correct?**

25 A. Yes, I am.

1 **Q. Did you review the document before signing the**  
 2 **attestation?**  
 3 A. Yes, I did.  
 4 **Q. Okay. And do you have any personal knowledge that**  
 5 **Mr. Bernabei was not acting in good faith when he**  
 6 **claimed to be disaffiliated from the Democratic**  
 7 **Party?**  
 8 A. Could you repeat that again, please?  
 9 **Q. Sure. Do you have any personal knowledge that would**  
 10 **support your allegation that Mr. Bernabei wasn't**  
 11 **speaking in good faith when he announced his**  
 12 **disaffiliation from the Democratic Party?**  
 13 A. Well, I don't feel that he was speaking in dis -- I  
 14 just felt that I couldn't understand how he was  
 15 signing up for an Independent when I just knew that  
 16 he was a Democrat. I had questions about that in  
 17 the beginning.  
 18 **Q. Okay. Based on what?**  
 19 A. Based on the fact that I knew he was a Democrat.  
 20 **Q. So had he been a Democrat for a very long time?**  
 21 A. Yes.  
 22 **Q. And based on that, you doubted the fact that he**  
 23 **could change his mind?**  
 24 A. Yes. And I questioned as to why and how could that  
 25 be.

1 **Q. Did you ever ask him?**  
 2 A. No, I didn't.  
 3 **Q. Okay. But you filed a protest trying to prevent him**  
 4 **from running for mayor?**  
 5 A. I did.  
 6 **Q. Okay. If you wanted that answer, wouldn't it just**  
 7 **have been easier to ask him?**  
 8 A. Well, no. But I sort of asked the people around how  
 9 can that happen.  
 10 **Q. Who did you ask?**  
 11 A. Well, I asked Edmond, being that he was an attorney.  
 12 **Q. I see.**  
 13 A. And I think I called the Board of Elections to see  
 14 how could that be.  
 15 **Q. Okay. Did they explain to you that somebody could**  
 16 **disaffiliate themselves from the party and in a**  
 17 **proper time and manner?**  
 18 A. Yes.  
 19 **Q. Okay. And you weren't satisfied that Mr. Bernabei**  
 20 **had done that?**  
 21 A. No, I wasn't.  
 22 **Q. Okay. What about the way in which things happened**  
 23 **didn't satisfy you?**  
 24 A. Well, the fact that I didn't feel that he signed up  
 25 for an Independent in a timely manner.

1 **Q. Okay. Do you know what the statute requires for**  
 2 **declaration of disaffiliation?**  
 3 A. Well, I know that it should be done in a timely  
 4 manner.  
 5 **Q. Okay. And if I told you that the time that the**  
 6 **statute provides is by 4 p.m. the day before the**  
 7 **primary election proceeding the general election**  
 8 **which the candidate hopes to stand for office, would**  
 9 **that be an accurate statement?**  
 10 A. Well, if you tell me that and if I had seen it, I  
 11 probably would have understood it better.  
 12 **Q. Okay. You know he did that; right?**  
 13 A. Yes.  
 14 **Q. Okay. So does that clear everything up for you?**  
 15 A. Well, not really. Because I didn't even know that  
 16 he had even did it and in a timely manner. I really  
 17 didn't know until it had hit the papers that he was  
 18 even running for mayor as an Independent. And  
 19 that's when I questioned the fact that how could  
 20 that be done when, you know, he was a Democrat.  
 21 **Q. But now you know he met the guideline; don't you?**  
 22 A. Yeah, now that I see that, you know, they're saying  
 23 that he did.  
 24 **Q. And do you have any question about his having been a**  
 25 **resident at the University Avenue house? Any reason**

1 **to believe he wasn't on the 3rd of May?**  
 2 A. Well, the only reason that I believe it is because  
 3 of what I've been hearing, that he wasn't. I didn't  
 4 know personally, no.  
 5 **Q. Okay. So you have no personal knowledge about that**  
 6 **one way or the other?**  
 7 A. No.  
 8 **Q. Okay. Do you know Mr. Bernabei by the way?**  
 9 A. Yes, I do.  
 10 **Q. You think he's a man of high integrity?**  
 11 A. Always been.  
 12 **Q. Think he's man of his word?**  
 13 A. Yes.  
 14 **Q. Man you trust?**  
 15 A. Yes. Trust him.  
 16 **Q. Thank you.**  
 17 A. Uhm-huhm.  
 18 MR. FERRUCCIO: Lee, do you have any?  
 19 MR. PLAKAS: I only have like two or three  
 20 hours of questions for you.  
 21 THE WITNESS: Okay.  
 22 MR. PLAKAS: No questions.  
 23 MR. FERRUCCIO: Okay. Thank you.  
 24 (Chris Smith was dismissed.)  
 25 MR. VASVARI: David Dougherty.

1 MR. FERRUCCIO: David Dougherty.  
 2 MS. MULLANE: David Dougherty was not able  
 3 to be served.  
 4 MR. VASVARI: Oh.  
 5 MS. MULLANE: The process server was unable  
 6 to serve.  
 7 MR. VASVARI: He probably got our subpoena  
 8 and ran off to Mexico, Wayne County, some place.  
 9 MS. MULLANE: For the Record, we were  
 10 unable to serve Kristen Guardado. And we were  
 11 unable to serve Mr. Fisher. They were out of the  
 12 state.  
 13 MR. VASVARI: Is Mr. West here?  
 14 MR. WEST: I am.  
 15 MR. VASVARI: We'll talk to you then sir,  
 16 We'll call Thomas West.  
 17 (Thomas E. West was duly sworn by Notary  
 18 Public Jocelyn S. Harhay.)  
 19 DIRECT EXAMINATION  
 20 BY MR. VASVARI:  
 21 **Q. Sir, would you state your name for the Record?**  
 22 A. Thomas West.  
 23 **Q. And are you employed?**  
 24 A. I'm sorry.  
 25 **Q. Are you employed?**

1 A. I am.  
 2 **Q. How are you employed?**  
 3 A. I work for Arc of Ohio. And I'm also an elected  
 4 official.  
 5 **Q. And what elected office do you hold?**  
 6 A. City councilman.  
 7 **Q. You are a protester in the matter before the Board  
 8 today; correct?**  
 9 A. I am.  
 10 **Q. And have you reviewed the protest?**  
 11 A. I have.  
 12 **Q. And did you review it before you signed the  
 13 attestation that came with it?**  
 14 A. Attestation, what is that?  
 15 **Q. Well, there is a document at the end that joins your  
 16 name to the list of protesters and says that you're  
 17 advancing all the arguments in the Brief in front of  
 18 the Board in your own name as well. Did you read  
 19 the Brief before you signed that?**  
 20 A. I signed the day of when David Pepper came down.  
 21 And I read that document. Now, if that's the same  
 22 document you're referring to, then, yes, I did that.  
 23 **Q. Oh, I see. So the document, the document that you  
 24 signed was the day that David Pepper came down. And  
 25 we have established that was the 3rd or 4th of May?**

1 A. I couldn't tell you the exact date.  
 2 **Q. It was the week after. Okay. Very good. Do you  
 3 have any personal knowledge that would cause you to  
 4 believe that Mr. Bernabei wasn't speaking or acting  
 5 in good faith when he said that he didn't want to be  
 6 affiliated with the Democratic Party anymore?**  
 7 A. No. I can't speak to what he believed.  
 8 **Q. Okay. So you have no personal knowledge that would  
 9 support the claim that he was acting in bad faith?**  
 10 A. No.  
 11 **Q. Okay. And have you dealt with Mr. Bernabei in the  
 12 past?**  
 13 A. Yes. We served together in Canton City Council. I  
 14 respect him.  
 15 **Q. Would you describe him as a serious man?**  
 16 A. Very much so.  
 17 **Q. Circumspect man?**  
 18 A. Circumspect man?  
 19 **Q. Circumspect, thinks carefully through his decisions.**  
 20 A. Yeah, I believe so, carefully.  
 21 **Q. An honest man?**  
 22 A. Yeah, I believe so.  
 23 **Q. Okay. You don't think he's given to trickery?**  
 24 A. Couldn't speak to that.  
 25 **Q. Is he given to fraud?**

1 A. Couldn't speak to that.  
 2 **Q. The man takes his obligations seriously?**  
 3 A. Yeah, I believe so.  
 4 **Q. Have you formed an opinion as to honesty?**  
 5 A. Yeah. I believe so.  
 6 **Q. Is he an honest man?**  
 7 A. From what I know, yeah.  
 8 **Q. Do you have any reason to believe that he wasn't  
 9 residing in a house at University Avenue on the 3rd,  
 10 4th, 5th, 6th, and 7th of May?**  
 11 A. I couldn't speak to that because I didn't see that.  
 12 But based on the knowledge that was presented,  
 13 that's the only knowledge I have.  
 14 **Q. So you have nothing to add to what was, was said?**  
 15 A. Only thing that really hit me was the fact that I  
 16 lived in my residence for 13 years.  
 17 **Q. Okay.**  
 18 A. And I was questioned by this Board of Elections  
 19 after proving, sending documents here and still  
 20 questioning whether I still lived at that address.  
 21 My kids only knew that address. And in this  
 22 particular situation, it seems as if someone rents a  
 23 house and now they're a resident.  
 24 **Q. Okay.**  
 25 A. And history, past history has shown a lot of people

1 come into the city, they move in and out, and they  
2 want to take part of the city, run the city; and  
3 then when they're done, they leave. I believe in,  
4 you know, people who live in the city, who love the  
5 city, and stay here and serve the city. Like  
6 Richard Watkins, he lived here, grew up here, was  
7 raised here I believe from my understanding, served  
8 here as a city councilman, mayor, and he actually  
9 died here. That's what I like to see in people  
10 representing our city.

11 **Q. All right. Well, Mr. Bernabei served your city  
12 as --**

13 A. Uhm-huhm.

14 **Q. -- as a law director, didn't he?**

15 A. He did.

16 **Q. As the safety director, as a councilman, and then he  
17 moved away?**

18 A. Uhm-huhm.

19 **Q. You think he's a talented man?**

20 A. Oh, very much so. Yeah.

21 **Q. So why aren't you welcoming him back?**

22 A. I, I would have -- if I seen that Tom Bernabei  
23 stepped up on a primary, you know, that's the type  
24 of man I that I believe is he. He'll take you head  
25 -- toe to toe in my mind from my -- from what I see

1 about him. He's a gentleman that he ain't afraid of  
2 nobody. Okay. And he will step up in a primary and  
3 run against Healy. And that to me would have been a  
4 perfect scenario. But that didn't happen. It  
5 happened at the 11th hour from what I understand.  
6 There was other people circulating petitions. And  
7 it did seem like this was some trickery, if you used  
8 those words, going on. And it may not have been  
9 him. It could have been other political affiliates  
10 in my mind. But that has nothing to do with today.

11 From my understanding, this Board of  
12 Elections has to decide whether his residency was  
13 valid or not and whether his petition was valid,  
14 from my understanding.

15 **Q. And you don't have any reason to doubt that the  
16 petition was, the disaffiliation was made in good  
17 faith?**

18 A. I don't have that knowledge.

19 **Q. And you have no specific knowledge with respect to  
20 the residency?**

21 A. From his residency?

22 **Q. You have no specific knowledge with respect to where  
23 he was on that day?**

24 A. I don't.

25 **Q. Thank you.**

1 MR. VASVARI: I have no more questions.

2 MR. WEST: I just have one question.

3 CROSS-EXAMINATION

4 BY MR. WEST:

5 **Q. Mr. West, if I told you I was living in a house for  
6 a month until I moved into another house, would you  
7 say the house I was living in for the month would be  
8 permanent or temporary?**

9 A. Temporary.

10 **Q. Thank you.**

11 MR. VASVARI: Quick followup.

12 MR. FERRUCCIO: Sure.

13 REDIRECT EXAMINATION

14 BY MR. VASVARI:

15 **Q. Quite a few people rent in the City of Canton; don't  
16 they?**

17 A. Many.

18 **Q. Okay. Some rent houses?**

19 A. Yes.

20 **Q. Different leases have different terms?**

21 A. Correct.

22 **Q. It's not uncommon for somebody to live in a house on  
23 a month-to-month lease, is it?**

24 A. No. I believe that happens.

25 **Q. And yet based upon living in a house on a**

1 **month-to-month basis, no one would say that that  
2 form of residency made somebody a temporary  
3 resident, would they? A commitment of at least a  
4 month, is that to your mind the same as staying in a  
5 hotel room?**

6 A. No. I mean I think if somebody just leased an  
7 apartment I don't think that's permanent in my mind.

8 **Q. So by your reasoning, somebody newly moving into a  
9 city could never really run for office, could they?**

10 A. You know, interestingly enough, I've been a social  
11 worker in this community for over 20 years.

12 **Q. Okay.**

13 A. And a lot of people are called on their residency.  
14 As a matter of fact, a lot of documents are signed  
15 based on an individual living at their residence for  
16 a certain amount of time before they get government  
17 benefits. Like, for example, you have to live in a  
18 residence for quite some time before you actually  
19 get benefits. So in my stance, from my  
20 understanding, permanency means something different  
21 than I just got -- I signed a lease and I live here  
22 and now I can live at both these two addresses. I  
23 don't think that can happen in my mind.

24 **Q. But the law actually specifies what constitutes a  
25 residence for elector purposes --**

1 A. Okay.  
 2 **Q. -- correct?**  
 3 A. I would assume.  
 4 **Q. Okay. And different laws may specify different**  
 5 **rules for different benefits or different**  
 6 **circumstances depending on the way the legislatures**  
 7 **decided to write them; correct?**  
 8 A. I assume.  
 9 **Q. Okay.**  
 10 MR. VASVARI: Thank you.  
 11 MR. FERRUCCIO: Anything further of this  
 12 witness?  
 13 Thank you, Mr. West.  
 14 (Thomas E. West was dismissed.)  
 15 MR. VASVARI: Randy Gonzalez.  
 16 (Randy Gonzalez was duly sworn by Notary  
 17 Public Jocelyn S. Harhay.)  
 18 DIRECT EXAMINATION  
 19 BY MR. VASVARI:  
 20 **Q. Mr. Gonzalez, would you state your name for the**  
 21 **Record, even know I just did?**  
 22 A. Randy Gonzalez.  
 23 **Q. Okay. And, sir, do you have affiliation with the**  
 24 **Stark County Democratic Party?**  
 25 A. I do not.

1 **Q. Okay. Do you hold an office with the party?**  
 2 A. I do not.  
 3 **Q. Did you?**  
 4 A. Yes, I did.  
 5 **Q. When?**  
 6 A. Up until about a year ago. I served as Stark County  
 7 Democratic chairman.  
 8 **Q. And for how many years were you that?**  
 9 A. Five or six.  
 10 **Q. Okay. And during the course of that time, did you**  
 11 **have the opportunity to work with Mr. Bernabei?**  
 12 A. Many occasions.  
 13 **Q. Okay. Did you form an opinion as to his integrity?**  
 14 A. I would never question his integrity.  
 15 **Q. Do you have any doubt that he is an honest man?**  
 16 A. No doubt at all.  
 17 **Q. Do you have any doubt that if he says he is**  
 18 **disaffiliated from the Democratic Party that he**  
 19 **means it in good faith?**  
 20 A. I believe he means it.  
 21 **Q. Do you believe he means it in good faith?**  
 22 A. Yes.  
 23 **Q. I have no more questions, sir. Thank you.**  
 24  
 25

1 CROSS-EXAMINATION  
 2 BY MR. PLAKAS:  
 3 **Q. Mr. Gonzalez, you've been here and heard references**  
 4 **by Mr. Bernabei and quotes that he's a**  
 5 **dyed-in-the-wool Democrat?**  
 6 A. Yes, sir.  
 7 **Q. Did you know him as a dyed-in-the-wool Democrat?**  
 8 A. Yes, sir.  
 9 **Q. And do you think that his conduct in trying to**  
 10 **disaffiliate from the party and run at the last**  
 11 **minute as an Independent is consistent with your**  
 12 **knowledge of Mr. Bernabei as a dyed-in-the-wool**  
 13 **Democrat?**  
 14 A. It is not.  
 15 **Q. Tell us why it's not consistent.**  
 16 A. Mr. Bernabei is one of most thorough people I know.  
 17 I think he's known, and said over and over, the  
 18 devil's in the details. He's very thorough in  
 19 everything he's ever done that I have ever worked  
 20 with him on. I don't believe this process has been  
 21 nearly as thorough as I've known him in the past.  
 22 **Q. So how do you square those two, Mr. Gonzalez?**  
 23 **You've known Mr. Bernabei how many years now?**  
 24 A. Probably 30.  
 25 **Q. You've known him for 30 years. You've just**

1 described him as knowing him as a dyed-in-the-wool  
 2 Democrat and his thoroughness. How do you square  
 3 that with at the 11th hour literally him running  
 4 around almost in a frenzy? And I forgot; I'll make  
 5 reference to it. But he didn't even have enough  
 6 time to put letters in the U.S. Postal Service to,  
 7 to resign from certain offices or certain clubs.  
 8 How do you square that with your knowledge of Mr.  
 9 Bernabei for over 30 years? How would someone who  
 10 says the devil's in the details, how would someone  
 11 be running around like a chicken with its head off  
 12 in the last minutes before the deadline?  
 13 A. I would say that I believe most of it was date  
 14 driven. I mean he was up against sometime frames.  
 15 **Q. Well, Mr. Bernabei has, has known both Mr. Perez and**  
 16 **Mayor Healy for a number of years?**  
 17 A. Yes.  
 18 **Q. Okay. And if he were dissatisfied with their**  
 19 **abilities, their characters, their personalities,**  
 20 **their performance, that's something that would have**  
 21 **been made and known apparent to him prior to the day**  
 22 **before the election deadline; correct?**  
 23 A. Yes.  
 24 **Q. So then how do you square it with a guy whose**  
 25 **attention always has a devil in the details, how do**

1 **you square that with at the last minute attempting**  
2 **to disassociate and running around trying to cut all**  
3 **the ties and make himself clearly disassociated?**  
4 **How do you square that?**

5 A. I believe that, from what I read and from the  
6 transcripts and from what Mr. Bernabei has said, a  
7 lot of this was driven by an article in the Canton  
8 Repository, which is this endorsement editorial  
9 which came up here today earlier, and also that he  
10 listened to the debate in the Ron Ponder show and  
11 was totally dissatisfied with both of those  
12 candidates which stemmed his wanting to step in.  
13 Again, those dates all came after the fact. The  
14 time to step in would have been during the primary  
15 election.

16 **Q. I understand you've just recited what they've**  
17 **represented, both in the media on numerous**  
18 **occasions, both in video interviews and written**  
19 **interviews and in their Briefs. But that's the**  
20 **reason I asked you about Mr. Bernabei's knowledge**  
21 **and experience with both Mr. Perez and the mayor.**

22 **If he's known them for years and worked**  
23 **with them, then how all of a sudden does he have an**  
24 **epiphany after listening apparently on the radio to**  
25 **a, to a debate and/or a, a newspaper nonendorsement,**

1 **how does that square with -- how can you have a**  
2 **epiphany as to something that you already know? An**  
3 **epiphany is about something that you never knew**  
4 **before. How does that square with your**  
5 **understanding and experience with Mr. Bernabei?**

6 A. I can't speak to what Tom Bernabei was thinking. I  
7 don't know what was in his mind. As I said, I, I  
8 think that he did it and has done it, went through  
9 this whole process thinking that he's done it  
10 correctly. Do I agree with that? I do not. But  
11 that doesn't mean that -- I said this over and over.  
12 And I think that everybody in this room -- and  
13 there's a lot of us that are all friends in this  
14 room, have tried to remove the personalities out of  
15 this issue. This is a legal issue that we're  
16 looking at. And I never questioned Tom Bernabei's  
17 integrity. Or his trying to do something under the  
18 table, I would never question that.

19 **Q. You just said "Do I agree with that? I do not."**  
20 **What did you mean by that?**

21 A. I don't agree with the process that he's trying to  
22 run as mayor. I do not agree with that.

23 **Q. Why?**

24 A. I believe we have democratic primaries. We have  
25 Republican primaries. It is the law of the land.

1 And I'm a big believer that if you don't like the  
2 laws you can have them changed, as I have many  
3 times. But unfortunately the law is the law. And  
4 like I said, we are not sitting here describing  
5 personalities. We're describing a process and the  
6 law at hand. I think we've gone -- and a lot of  
7 people have listened to way more than they needed to  
8 hear today.

9 **Q. Has Mr. Bernabei ever suggested to you that the**  
10 **laws, the rules of political elections are unfair**  
11 **and he wants to change them?**

12 MR. VASVARI: Objection. Beyond the scope.

13 MR. FERRUCCIO: Sustained.

14 MR. PLAKAS: I have nothing further. Thank  
15 you.

16 THE WITNESS: Thank you.

17 MR. VASVARI: Just two or three.

18 REDIRECT EXAMINATION

19 BY MR. VASVARI:

20 **Q. Mr. Gonzalez, how old a man are you?**

21 A. Sixty.

22 **Q. You don't look it?**

23 A. Thanks.

24 MR. PLAKAS: Objection. Pandering to the  
25 witness. It's a -- I ask for sanctions.

1 BY MR. VASVARI:

2 **Q. Have you in the course of your 60 years ever been**  
3 **called upon to make a decision that was really gut**  
4 **wrenching to you?**

5 A. Yes.

6 **Q. Is it your experience that when people are faced**  
7 **with decisions that are really fundamental that they**  
8 **sometimes kick the can down the road to the last**  
9 **minute?**

10 A. Yes.

11 **Q. Has it been your experience in 60 years of living**  
12 **that when you kick down, kick the can down the road**  
13 **to the last minute that things get hasty, sometimes**  
14 **process suffers?**

15 A. It's possible.

16 **Q. Thank you.**

17 RECROSS-EXAMINATION

18 BY MR. PLAKAS:

19 **Q. Sometimes process suffers when you don't do things**  
20 **the right way in time. I think I just heard you say**  
21 **that you believe the political process and the**  
22 **election laws and the primary process is important?**

23 A. Yes, sir.

24 **Q. And that's something that regardless of**  
25 **personalities we should abide by?**

1 A. Yes, sir.  
 2 MR. VASVARI: Objection. Beyond the scope.  
 3 MR. FERRUCCIO: That's all right. He's....  
 4 Are you done with this witness?  
 5 MR. VASVARI: I am.  
 6 MR. FERRUCCIO: Okay. Thank you.  
 7 THE WITNESS: Thank you.  
 8 (Randy Gonzalez was dismissed.)  
 9 MR. VASVARI: Can we get a three-minute  
 10 break?  
 11 MR. FERRUCCIO: Well, actually 15 minutes  
 12 might be good. What time is it?  
 13 MR. VASVARI: It's 2:35.  
 14 MR. FERRUCCIO: Quarter till.  
 15 MR. VASVARI: Good. Thanks.  
 16 (A recess was taken.)  
 17 MR. FERRUCCIO: We are back on the Record.  
 18 Mr. Vasvari, next witness.  
 19 MR. VASVARI: Ready when you are, sir.  
 20 MR. FERRUCCIO: We are ready. Okay.  
 21 Everybody, if we could have some order.  
 22 MR. MATTHEWS: Can we come to order,  
 23 please.  
 24 MR. SHERER: Hey.  
 25 MR. CLINE: Please have a seat.

1 MR. FERRUCCIO: Mr. Vasvari, your next  
 2 witness.  
 3 MR. PLAKAS: If I may, judging from the  
 4 number of the last several witnesses, it appears  
 5 that we're going to be seeing a, a line of people  
 6 that like Mr. Bernabei or who are going to attest to  
 7 his character. If, in fact, character is an issue,  
 8 the only time it would be an issue is obviously if  
 9 there's any allegation of criminal wrongdoing.  
 10 If Mr. Bernabei wants to suggest that one  
 11 of the issues is whether or not an election fraud  
 12 occurred, that's a criminal offense and he needs  
 13 character witnesses, that's fine. But other than  
 14 that, I've been lenient. I thought if he wanted to  
 15 listen to people say nice things about him, that's  
 16 fine. But I think we have gone above and beyond  
 17 what are the issues in this case.  
 18 MR. FERRUCCIO: I agree.  
 19 I don't know.... How many witnesses do you  
 20 have?  
 21 MR. VASVARI: I have six more witness. But  
 22 I want to convince you to disagree before, before  
 23 that.  
 24 MR. FERRUCCIO: Go ahead.  
 25 MR. VASVARI: You know, they say that

1 character is only but in issue by virtue of the  
 2 potential admission of a criminal act. That's  
 3 pretty clever. And it's also wrong.  
 4 You want to see character? Then look at  
 5 this 49-page Brief chock full of words like of  
 6 scheme, sham, subterfuge, trick, every word in the  
 7 book to impune the reputation of this man and his  
 8 good faith. Character and good faith are intimately  
 9 intertwined. If somebody is acting in good faith,  
 10 they're acting in accordance with and out of a good  
 11 and decent character.  
 12 They put Mr. Bernabei's character at issue.  
 13 They called him every cloth name in the book.  
 14 They've effectively written a Brief that calls him a  
 15 liar, a cheat, a fraud, if not a legal fraud, then a  
 16 fraud in fact. They've done everything they can do  
 17 to suggest that he came out as an Independent for  
 18 ill motive and as part of a stratagem and a scheme  
 19 and an attempt to deceive.  
 20 That absolutely puts his character at  
 21 issue. The question of good faith puts his  
 22 character at issue. And I got three more public  
 23 servants who are willing to testify based on their  
 24 many decades of experience with Mr. Bernabei that  
 25 they have nothing but the greatest faith in his

1 character.  
 2 They have made character the central issue  
 3 in this case by impugning his honesty. We have a  
 4 right to defend his character.  
 5 MR. FERRUCCIO: Well, perhaps they  
 6 stipulate to his character, those three that you  
 7 have.  
 8 MR. VASVARI: I would rather you hear them  
 9 because I think as pillars of this community, the  
 10 two judges and the county commissioner, who are  
 11 going to speak for Mr. Bernabei would like to be  
 12 heard.  
 13 MR. FERRUCCIO: Okay.  
 14 MR. PLAKAS: If I may.  
 15 MR. FERRUCCIO: Sure.  
 16 MR. PLAKAS: In as much as he's making an  
 17 argument, I'll makes ours. Clearly the issue is  
 18 does the conduct that is objectively proven here and  
 19 the circumstances, do they establish the principles  
 20 that this court decides on. The fact that he was a  
 21 Boy Scout leader, may or may not have been 20 years  
 22 ago, isn't relevant. In every case, bar a criminal  
 23 case or bar a defamation case, character with regard  
 24 to past conduct is not an issue, is not legally  
 25 admissible.

1 If he wants to recess and make this case  
2 about character and if we by the preponderance of  
3 evidence bring more people that don't like his  
4 character, is he willing to admit then we win this  
5 protest? This protest isn't won or lost on  
6 character. This protest is won or lost depending on  
7 the objective facts and the conducts as they're  
8 applied to the election laws. So I think it's --  
9 we've given him free reign.

10 MR. VASVARI: With all do respect, you  
11 haven't given me anything.

12 MR. PLAKAS: That's because I have nothing  
13 to give.

14 But the Board of Elections has already,  
15 with some very relevant information, limited the  
16 testimony. Character going back, as he's just said,  
17 20 or 30 years, how does that advance the issues  
18 here? I would object to that. He got some  
19 character in. I think he should be satisfied with  
20 that. And we should proceed.

21 MR. VASVARI: I will tell you how it weighs  
22 in. First of all, we heard that their entire theory  
23 of the case is that Mr. Bernabei entered this  
24 Independent candidacy out of revenge and spite and a  
25 way to get his revenge on Mayor Healy. That

1 motivation which is central to their theory of the  
2 case goes directly to whether or not he's the sort  
3 of man who would do such a thing or whether his  
4 motives are otherwise.

5 The people who know him and have worked  
6 with him can speak directly to those motives. And  
7 don't for a minute buy this line from Mr. Plakas  
8 that the only thing that matters are his actions.  
9 Because here the Supreme Court says the requirement  
10 imposed by RC 3513.257 in Morrison versus Colley is  
11 that a candidate must declare his lack of  
12 affiliation in good faith, not that you should take  
13 affirmative action in order to demonstrate good  
14 faith. It's about good faith. It's not about acts.  
15 It's about good faith intimately intertwined with  
16 character. And central to their theory of the case,  
17 that this was all an act of vengeance. They can't  
18 have it both ways. They can't sit there and say  
19 that it was a scheme, a subterfuge, a lie. They  
20 can't sit there and say these things and then it was  
21 all done out of vengeance and spite and ill will and  
22 then prevent the people who know him best and have  
23 worked with him as politicians from testifying. It  
24 is whether or not that's more likely the truth or  
25 not. They can't have it both ways.

1 MR. PLAKAS: If I may. The issue is good  
2 faith under these present conditions. The fact that  
3 he might have done something in good faith or had a  
4 good character with regard to other instances going  
5 back 30 years is legally immaterial and irrelevant  
6 and never gets in a courtroom and should not get in  
7 here. The fact is do these people -- are they  
8 inside his head for this conduct that happened on  
9 May 3rd, May 4th, and May 5th. If they've known him  
10 and loved him or hated him, it doesn't matter.  
11 Because then what this case would turn into is we  
12 bring in a dozen witnesses that say he's a scoundrel  
13 and that he lies to them and they don't believe he  
14 has good faith. So that's where that goes. And if  
15 you're going to allow that, then we would ask for  
16 leave to bring in people who can contradict and  
17 rebut now that this issue, which isn't an issue in  
18 this case, is good faith or good conduct 20 years  
19 ago comes in.

20 MR. VASVARI: Mr. Plakas is inviting error,  
21 for the people who are going to testify are going to  
22 testify to their working with Mr. Bernabei, having  
23 worked with him and observed him on other things,  
24 his relationship with Mayor Healy and his  
25 motivations in dealing with his responsibility as a

1 public servant.

2 MR. FERRUCCIO: If you want to limit it to  
3 the relationship that he had with Mr. Healey -- that  
4 has been one of the allegations -- then call your  
5 next witness.

6 MR. VASVARI: I would like some  
7 clarification. And I would like some leave for  
8 people to talk about the underlying motivations of  
9 this man as a political animal. They have put that  
10 squarely at issue. They have said that he's  
11 motivated by vengeance. That is a substantial part  
12 of their theory in the case. In fact, Mr. Mack here  
13 testified that the only possible, conceivable  
14 explanation for any, of all of this was vengeance.  
15 It's the only thing that could come to his learned  
16 mind, the expert on election law. The only thing he  
17 could think of as a motivation is vengeance. Well,  
18 if he is going to say vengeance is the motive --

19 MR. FERRUCCIO: Call your next witness.

20 MR. VASVARI: I sure will.

21 MR. FERRUCCIO: We will take it question by  
22 question.

23 MR. PLAKAS: Mr. Mack's testimony in that  
24 regard was based on questioning from his counsel,  
25 not me. I didn't introduce it. He apparently

1 wanted to weigh into that during his adverse  
2 questioning.

3 MR. FERRUCCIO: That's correct, so....

4 MR. VASVARI: I sure did. Because it's  
5 what they've made the heart of their case which I  
6 think is a terrible terrible lie.

7 I would call Mr. Phil Giavasis.

8 (Phil Giavasis was duly sworn by Notary

9 Public Jocelyn S. Harhay.)

10 DIRECT EXAMINATION

11 BY MR. VASVARI:

12 **Q. Sir, you would state your name for the Record?**

13 A. Phil Giavasis.

14 **Q. And are you employed, sir?**

15 A. I am.

16 **Q. And what is that capacity?**

17 A. I'm the clerk of Canton Municipal Court.

18 **Q. And do you hold any other offices in any political  
19 parties?**

20 A. I do.

21 **Q. Which is...?**

22 A. I'm chairman of the Stark County Democratic Party.

23 **Q. An how long have you been that?**

24 A. Too long. No. Since last June.

25 **Q. And prior to that, did you hold any offices in the**

1 **party or any of its affiliates?**

2 A. I was an Executive Committee member for several  
3 years and a member of our various clubs I would  
4 imagine.

5 **Q. Okay. And how long have you been involved in  
6 Democrat Party politics?**

7 A. About 29 years.

8 **Q. And over the course of those 29 years, have you had  
9 the opportunity to be working with Tom Bernabei, the  
10 public servant?**

11 A. I have.

12 **Q. And have you ever seen him act out of vengeance in  
13 political activity?**

14 MR. PLAKAS: Objection.

15 MR. FERRUCCIO: Sustained.

16 BY MR. VASVARI:

17 **Q. Have you ever seen Mr. Bernabei -- how could you  
18 characterize Mr. Bernabei's motivations in his  
19 discharge of public duties?**

20 MR. PLAKAS: Objection.

21 MR. FERRUCCIO: Sustained.

22 BY MR. VASVARI:

23 **Q. Have you had the opportunity to view Mr. Bernabei in  
24 his interactions with the mayor of Canton, Mr.  
25 Healey?**

1 A. Not that I can recall.

2 **Q. Okay. Do you have any personal knowledge -- you've  
3 dealt with Mr. Healey as the Canton mayor, have you  
4 not?**

5 A. I have.

6 **Q. Do you have any personal knowledge that would  
7 suggest that Mr. Bernabei is motivated to run for  
8 mayor of Canton out of a personal grudge with Mr.  
9 Healey?**

10 A. I wouldn't know that.

11 **Q. Did Mr. Bernabei ever discuss a personal grudge?**

12 A. No, not a personal grudge.

13 **Q. Ever act in a way that to your mind is consistent  
14 with a personal grudge?**

15 A. No.

16 **Q. Okay. Were you a friend of Mr. Bernabei, an  
17 associate of Mr. Bernabei when he was fired from the  
18 safety director job?**

19 A. I was.

20 **Q. Okay. How did he take it?**

21 A. I, I couldn't say how he took it.

22 **Q. Did he complain about it?**

23 A. Not to me.

24 **Q. Did he grouse about it?**

25 A. I didn't hear him do that.

1 **Q. Did you hear from anyone that he had?**

2 A. I heard some of his friends razzing him about it.  
3 But other than that, no.

4 **Q. Did you hear that he went golfing after it happened?**

5 A. I did not.

6 **Q. Did he take that razzing in good nature?**

7 A. Knowing him, he probably responded.

8 **Q. In good fun?**

9 A. Yes, I would say.

10 **Q. Has he discussed with you his decision to  
11 disaffiliate with the party?**

12 A. He has.

13 **Q. Did he discuss that decision with you prior to his  
14 filing petitions as an independent to run for the  
15 mayor of Canton?**

16 A. He did.

17 **Q. When did that discussion take place?**

18 A. I believe it was the 29th of April, if I'm not  
19 mistaken, or 30th.

20 **Q. Did you have a discussion of some length?**

21 A. It was half an hour or so.

22 **Q. Had he yet come to a final conclusion about his  
23 intentions on the 29th of April?**

24 A. He had not.

25 **Q. Did he seem torn?**

1 A. He explained what he was contemplating. And we  
 2 discussed, first of all, the, the debate that had  
 3 taken place and how the race was unfolding, that  
 4 race and some other ones. And then later that led  
 5 into what he was contemplating.

6 **Q. Did the debate seem to have made a great impression**  
 7 **on him?**

8 A. The debate?

9 **Q. Yes.**

10 A. He said that it had.

11 **Q. Okay. And to your recollection, what impression had**  
 12 **the debate made on him?**

13 A. He was I disappointed in, in the debate. He was,  
 14 said he was driving around town listening to it on  
 15 his car radio and, you know, was displeased.

16 **Q. And what was the nature of his disappointment?**

17 A. I, I can't remember specifics, as to what, you know,  
 18 what specific debate questions caused his  
 19 disappointment. But he did relay to me that he was  
 20 disappointed.

21 **Q. Fair to say that he expressed being underwhelmed**  
 22 **with the quality of the candidates?**

23 A. Yes.

24 **Q. Fair to say that he thought he might be able to do**  
 25 **better if he threw his hat in the ring?**

1 A. He didn't put it quite that way. But he was  
 2 contemplating doing that and looking at what, what  
 3 he would have to do in order for that to happen.

4 **Q. Did it seem like this was something about which he**  
 5 **was circumspect?**

6 A. Wasn't sure.

7 **Q. Okay. Was he taking it lightly?**

8 A. He said he was reading. And we were in the midst of  
 9 the end of a primary cycle with two Democratic  
 10 candidates who were running against each other. And  
 11 to hear this was something that, you know, was not  
 12 -- I didn't really want to hear at that time.

13 **Q. Does Mr. Bernabei strike you as a man, in your**  
 14 **dealings with him, whose political motivations would**  
 15 **be based on anything other than public service?**

16 MR. PLAKAS: Objection.  
 17 MR. FERRUCCIO: Sustained.

18 BY MR. VASVARI:

19 **Q. Did he discuss with you what steps might be**  
 20 **necessary or satisfactory to disaffiliate himself**  
 21 **from the party?**

22 A. He mentioned a few things.

23 **Q. What did he mention?**

24 A. Resigning from Democratic associations is one.

25 **Q. Did you give him any advice as to what would be an**

1 **acceptable or proper course of conduct?**

2 A. I don't recall doing that.

3 **Q. Okay. Did he seek your advice?**

4 A. As far as disassociation?

5 **Q. Yes, sir.**

6 A. Not that I recall.

7 **Q. Okay. Did you form an opinion as to whether or not**  
 8 **he was trying to figure out what he needed to do in**  
 9 **order to properly check the disassociation box?**

10 A. I think he was trying to figure out where -- I mean  
 11 it was not a simple process, that it was something  
 12 that he had taken very seriously in the past and was  
 13 trying to weigh whether or not he wanted to do  
 14 something like that.

15 **Q. Did it seem to you that he understood that it would**  
 16 **be an irrevocable decision?**

17 A. That was clear.

18 **Q. Okay. And a weighty decision?**

19 A. Yes.

20 **Q. Okay. And did anything in that conversation suggest**  
 21 **to you that it was something that he was trying to**  
 22 **do as a rouse, as a scheme, in bad faith, anything**  
 23 **like that?**

24 A. As a scheme?

25 **Q. Yes, sir. Some sort of a trick, to get out and come**

1 **back.**

2 A. I don't recall anything, any discussion to that  
 3 nature.

4 **Q. Thank you, sir.**

5 **CROSS-EXAMINATION**

6 BY MR. PLAKAS:

7 **Q. You've heard or seen the media reports where Mr.**  
 8 **Bernabei has described himself as a dyed-in-the-wool**  
 9 **Democrat. Do you believe that that was an apt and**  
 10 **accurate description based upon your knowledge of**  
 11 **him?**

12 A. I do.

13 **Q. And you've just talked and you said that on or about**  
 14 **April 30th or so you had a discussion with Mr.**  
 15 **Bernabei as to how the race was unfolding. And**  
 16 **that's the race between Mr. Perez and Mayor Healy?**

17 A. That race, the judicial race, Kristen Guardado  
 18 primary as well.

19 **Q. Okay. And with regard to how the mayor's race was**  
 20 **unfolding, what were the comments that Mr. Bernabei**  
 21 **made?**

22 A. Direct comments?

23 **Q. Yes.**

24 A. That he was displeased with the debate, I think with  
 25 the quality of the, the candidates, with the

1 answers. We talked about the format of the debate.  
2 It was not a difficult -- it was a difficult format  
3 to, to listen to over the radio because of the  
4 commercials, lengthy commercials. They would ask a  
5 question and come back. So we talked a little bit  
6 about that as well.

7 **Q. Okay. And with regard to the race unfolding, did**  
8 **you and he discuss who apparently you thought or he**  
9 **thought was going to win the mayor's primary race?**

10 A. No. Well, not directly. I mean we both had  
11 opinions as to who would, who would win and why and  
12 mistakes that were made in the campaign and so  
13 forth. But it was -- that was leading up to our  
14 discussion.

15 **Q. Okay. And what was the opinion of Mr. Bernabei with**  
16 **regard to who he thought was going to win the**  
17 **mayor's primary race?**

18 A. Well, I think he thought whoever won was a loss, is,  
19 is -- I don't know if that's a direct quote but I'm  
20 paraphrasing.

21 **Q. Okay. And you state that based upon his**  
22 **disappointment with the debate?**

23 A. Correct.

24 **Q. And you would agree that Mr. Bernabei has known and**  
25 **worked with Mr. Perez and Mayor Healy for a number**

1 **of years?**

2 A. Oh, yeah.

3 **Q. Knows them both well?**

4 A. Yeah.

5 **Q. You know them both well?**

6 A. Yes.

7 **Q. You listened to the debate?**

8 A. (The witness nodded).

9 **Q. Did anything about that debate startle or surprise**  
10 **you or cause you to think differently of Mr. Perez**  
11 **or Mayor Healy?**

12 A. No. No. I don't think differently of them, no.  
13 They were both -- did not engage each other during  
14 the debate.

15 **Q. Okay. So after listening to that debate, you didn't**  
16 **change your opinion of the competency of either Mr.**  
17 **Perez or Mr. Healy?**

18 A. No.

19 **Q. Okay. Did you see anything in that debate that**  
20 **would cause a, a serious person, serious politician**  
21 **who knew Mr. Healy and Mr. Perez for years or**  
22 **decades to say, "Uh-huh. This has changed my whole**  
23 **opinion on them. I can't continence them being a**  
24 **mayor," anything like that happen as you listened to**  
25 **it?**

1 A. No.

2 MR. PLAKAS: I have nothing further.

3 MR. VASVARI: Just a few.

4 REDIRECT EXAMINATION

5 BY MR. VASVARI:

6 **Q. Mr. Giavasis, Mr. Plakas just asked you some**  
7 **questions about handicapping the mayorial primary**  
8 **between Mr. Perez and Mayor Healy. As party**  
9 **chairman and somebody who as been involved in party**  
10 **politics for 30 years, you do form opinions as to**  
11 **what a given candidate's chances are in the primary**  
12 **and the general election? That comes with the**  
13 **territory; doesn't it?**

14 A. It does.

15 **Q. Okay. Let me ask you this. In your opinion, would**  
16 **Tom Bernabei have stood a better chance of being**  
17 **elected mayor if he had gone through the primary**  
18 **process or if he ran as an Independent?**

19 MR. PLAKAS: Objection.

20 MR. VASVARI: You opened the door to horse  
21 races. I want to hear what the horse says.

22 MR. PLAKAS: Objection.

23 MR. FERRUCCIO: Overruled.

24 THE WITNESS: Wow.

25 A. Can you rephrase?

1 **Q. Sure. You handicap races.**

2 A. Right.

3 **Q. Mr. Bernabei is running as an Independence -- as an**  
4 **Independent. Do you like his odds better as an**  
5 **Independent of ending up as the mayor? Had he run**  
6 **in the primary, would, what do you think would have**  
7 **been the surer route to the mayoralty?**

8 MR. PLAKAS: Objection. Again,  
9 speculation.

10 MR. FERRUCCIO: Overruled.

11 A. That's hard to say simply because of turnout. And  
12 that's part of what we talked about. The turnout in  
13 Canton was abysmal. It was 10 percent I think  
14 ultimately. And that was prior to the fact that we  
15 knew it was going to be low. So it's hard for me to  
16 speculate as to whether he would have done better in  
17 the primary or the general election. I can tell you  
18 that his, the opponent, the unsuccessful opponent to  
19 Mayor Healy, Mr. Perez, feels as though he would  
20 have been a better candidate in the general election  
21 as opposed to the primary and is upset over the fact  
22 that, that, you know, somebody not doing it that way  
23 and being able to do it that way.

24 **Q. So let me ask you this question. Would you agree**  
25 **with me that a candidate who runs on the ticket of a**

1 **major political party enjoys advantages that an**  
 2 **Independent does not?**  
 3 A. Well, in a primary?  
 4 **Q. No. In the general election.**  
 5 A. I, I guess it depends on the circumstance. But,  
 6 yes, that's fair to say.  
 7 **Q. They have apparatus and a machine and an**  
 8 **infrastructure behind them that an Independent**  
 9 **doesn't usually have?**  
 10 A. Correct. That's correct.  
 11 **Q. You would also agree with me that Tom Bernabei, who**  
 12 **has been active in politics here for 40 years, stood**  
 13 **a fair chance of winning the primary if he had**  
 14 **thrown his hat in --**  
 15 A. He's --  
 16 **Q. -- credible candidate?**  
 17 A. He's a credible candidate.  
 18 MR. PLAKAS: Objection.  
 19 MR. FERRUCCIO: Sustained.  
 20 BY MR. VASVARI:  
 21 **Q. One last thing. You didn't hear anything in the**  
 22 **Perez/Healy debate that pushed you over the edge and**  
 23 **said "I can't continence this"? You've already**  
 24 **testified to that; right?**  
 25 A. I'm sorry.

1 **Q. Mr. Plakas threw up his hands and said "I can't**  
 2 **continence these men running for mayor." You didn't**  
 3 **hear anything that pushed you past your tipping**  
 4 **point?**  
 5 A. No. They were just non -- they just did not engage  
 6 each other.  
 7 **Q. But you will agree with me that the decision of when**  
 8 **somebody's had enough in matters personal and**  
 9 **matters political is a subjective decision that**  
 10 **every man makes for himself?**  
 11 A. I guess in any subject that would hold true.  
 12 **Q. And that different men have different tipping points**  
 13 **when it comes to the point where they're no longer**  
 14 **willing to stand the status quo and feel the need to**  
 15 **do something about it?**  
 16 A. That's fair to say.  
 17 **Q. And Tom Bernabei has his own?**  
 18 A. As everyone does I guess.  
 19 MR. VASVARI: Thank you.  
 20 RE-CROSS-EXAMINATION  
 21 BY MR. PLAKAS:  
 22 **Q. You were just asked questions with regard to the**  
 23 **advantages that a candidate from a political party**  
 24 **has as opposed to an Independent candidate. And**  
 25 **that door was opened by this counselor here.**

1 **To the Panel, I would respectfully suggest**  
 2 **that part of the analysis and the testimony --**  
 3 MR. VASVARI: Objection. Is this a  
 4 question on Recross or is this a speech?  
 5 MR. FERRUCCIO: I haven't heard it yet.  
 6 MR. PLAKAS: I'm asking it at this point to  
 7 the panel, that Doctor Klarnar was specifically  
 8 going to address the issue that was raised by  
 9 counsel with regard to the effect of spoilers, the  
 10 effect of candidates who declared as Independents,  
 11 who had previously been part of a major campaign.  
 12 There's study, there's empirical data. Apparently  
 13 counsel over my objection elicited, thought this was  
 14 relevant. I would ask that at the conclusion of  
 15 their case that we be permitted to call Doctor  
 16 Klarnar to testify from an expert's perspective  
 17 rather than the speculation of a nonexpert as to the  
 18 effect of this. Because this is critical. They  
 19 opened the door and over my objection.  
 20 So I will go on with the Cross-Examination,  
 21 with the Cross of Mr. Giavasis. But I wanted to  
 22 make that now in the context of his testimony which  
 23 was elicited by counsel.  
 24 MR. FERRUCCIO: We'll reserve judgment at  
 25 that point.

1 MR. VASVARI: May I speak to that just  
 2 momentarily?  
 3 MR. FERRUCCIO: No. Not right now.  
 4 MR. VASVARI: Okay. Later?  
 5 MR. FERRUCCIO: Sure.  
 6 MR. VASVARI: Thanks.  
 7 BY MR. PLAKAS:  
 8 **Q. With regard to your discussions with Mr. Bernabei,**  
 9 **and now they've been further detailed, would it be**  
 10 **fair to say that you were shocked by this man that**  
 11 **you knew to be a dyed-in-the-wool Democrat; you were**  
 12 **shocked by the things that he was starting to tell**  
 13 **you?**  
 14 A. Shocked? I had heard some I guess people saying  
 15 that he was contemplating it. So I wasn't  
 16 completely taken by surprise.  
 17 **Q. Okay. Had you not heard that from whatever other**  
 18 **source, you would have been shocked?**  
 19 A. Coming from him, yes. He's been a Democrat for  
 20 quite a long time. He and I were appointed by the  
 21 same individual. And he's been, you know, a  
 22 long-standing Democrat for years.  
 23 **Q. Do you agree with what Mr. Bernabei is attempting to**  
 24 **do?**  
 25 A. I do not.

1 **Q. Why?**  
 2 A. Because I believe that he is a -- I question the  
 3 timing of the debate. If the same debate would have  
 4 been heard early on when he still had time to file  
 5 as a Democrat, would we be sitting here? That would  
 6 be my only question.  
 7 **Q. You've told him you disagree?**  
 8 A. Not at that initial meeting. I told him that I  
 9 disagreed on the telephone afterwards.  
 10 **Q. Do you believe that what Mr. Bernabei is trying to**  
 11 **do harms the electoral process in this community,**  
 12 **not only for Democrats but for Republicans?**  
 13 MR. VASVARI: Objection. Relevance.  
 14 MR. FERRUCCIO: Sustained.  
 15 MR. PLAKAS: I have nothing further. Thank  
 16 you.  
 17 MR. VASVARI: Nor do I.  
 18 MR. FERRUCCIO: I'm sorry.  
 19 MR. VASVARI: I've nothing.  
 20 MR. FERRUCCIO: Thank you. Next witness.  
 21 (Phil Giavasis was dismissed.)  
 22 MR. VASVARI: Tom Bernabei.  
 23 THE COURT REPORTER: Mr. Bernabei, you've  
 24 been sworn.  
 25

1 DIRECT EXAMINATION  
 2 BY MR. VASVARI:  
 3 **Q. Sir, would you state your name for the Record again?**  
 4 A. Tom, Thomas M. Bernabei.  
 5 **Q. Mr. Bernabei, are you a Democrat?**  
 6 A. I am not. Excuse me. I am -- I'm having a hard  
 7 time speaking. I am not a Democrat. I was a  
 8 Democrat for 40 years or so.  
 9 **Q. When did you --**  
 10 A. But I am no longer a Democrat. I have disaffiliated  
 11 from the Democratic Party.  
 12 **Q. When did you become a Democrat?**  
 13 A. I was reviewing that. I was born in 1946. I think  
 14 that you in those days, in the '60s, you didn't vote  
 15 until you were 21. So probably I was in the middle  
 16 of my college years, probably in 1967. I don't know  
 17 if I voted then. I do not have that recollection as  
 18 to whether I voted in '67, or I may have voted in  
 19 the '68 presidential race. I suspect I may have.  
 20 But probably approximately in the very late 1960s  
 21 by, just simply by my age.  
 22 **Q. And have you continued or did you continue in that**  
 23 **affiliation until late April of this year?**  
 24 A. Yes.  
 25 **Q. We have heard correctly that you have served as an**

1 **appointed official under Democratic elected**  
 2 **officials; correct?**  
 3 A. Yes.  
 4 **Q. You have served as a councilman --**  
 5 A. Yes.  
 6 **Q. -- as a Democrat.**  
 7 **You have served as a safety director under**  
 8 **a Democratic mayor?**  
 9 A. As service director, not as safety director.  
 10 **Q. As service director. You have held elective office**  
 11 **as a Democrat?**  
 12 A. Yes.  
 13 **Q. Including most recently you were elected to the**  
 14 **Board of Commissioners of --**  
 15 A. Yes.  
 16 **Q. -- Stark County and you ran on the Democratic**  
 17 **ticket?**  
 18 A. Yes. I ran in November of 2010 and was elected for  
 19 a year term. And I ran again in I believe 2012,  
 20 November of 2012 and was elected to a four-year  
 21 term.  
 22 **Q. You have spoken to Democrat groups?**  
 23 A. I have.  
 24 **Q. You have been involved with, till your resignation,**  
 25 **Democrat clubs?**

1 A. I have.  
 2 **Q. You have served on the committee of the Stark County**  
 3 **Democratic Party which won?**  
 4 A. I've never been a member of the Democratic Executive  
 5 Committee in 40 years I do not believe. I was  
 6 elected as a Democratic precinct person. So I'm an  
 7 elected precinct representative. And I was part of  
 8 the Democratic Central Committee possibly.  
 9 **Q. That is the Democratic Central Committee?**  
 10 A. And that was for one term. I would be I think in a  
 11 year or a year-and-half term since that election.  
 12 **Q. And is it fair to say that these were heartfelt**  
 13 **connections for you?**  
 14 A. Absolutely. I had an excellent relationship with  
 15 the Democratic Party and with the other Democratic  
 16 elected officials and with members of the Democratic  
 17 party.  
 18 **Q. Do you count those people among your friends?**  
 19 A. Absolutely.  
 20 **Q. Do you count those people among your colleagues?**  
 21 A. Absolutely.  
 22 **Q. Do you wish them well?**  
 23 A. Absolutely.  
 24 **Q. Do you agree with many of the principles for which**  
 25 **they stand?**

1 A. I believe even as an Independent I have to choose  
2 precepts or principles in which I will choose. Some  
3 of them may be conservative. Some may be middle of  
4 the road. Some of them may be liberal. Some of  
5 them are Democratic. And some of them are probably  
6 republican to some extent.

7 **Q. You have served as a county commissioner for how  
8 long?**

9 A. Approximately four and one half years I believe.

10 **Q. Okay. I have been told by others, and I would ask  
11 what you would say to those who say, that you've not  
12 been particularly a Democratic partisan in the  
13 exercise of your duties as county commissioner. How  
14 would you answer that allegation?**

15 A. I think that that is correct. Again, I have been,  
16 as discussed, I've been a Democratic member of the  
17 Democratic Party and an officeholder for 40 years.  
18 As indicated, I've not been a member of the  
19 Committee which means that no party chairperson has  
20 chosen ever to, you know, appoint me to that  
21 committee. I am not necessarily a loyalist to the  
22 Democratic Party as it exists. My conduct in  
23 office, I think in all offices, has been more a  
24 middle of the road.

25 I believe that we are here first to serve

1 the public rather than the party. I believe  
2 strongly that we are here to, when appointing  
3 persons to work for us, that we select the best.  
4 And, as I described it, whether one or two people --  
5 by the way, I don't necessarily mean the best out of  
6 one or two. If there are one or two people and they  
7 do not satisfy the standard that is a prerequisite  
8 for the job, we go back and we re-advertise and we  
9 hire.

10 I believe the government is for the people.  
11 And then we hold them to the highest agree of  
12 service.

13 MR. PLAKAS: This is like a campaign speech  
14 rather than testimony that's germane to the  
15 attending issues.

16 MR. FERRUCCIO: I think he's trying to  
17 establish his good faith argument. But --

18 MR. VASVARI: It is good faith.

19 MR. FERRUCCIO: But move it along.

20 MR. VASVARI: I got only two points here,  
21 good faith and residency. This goes to good faith.

22 BY MR. VASVARI:

23 **Q. Mr. Bernabei, has that stood you in good stead with  
24 the party at all times?**

25 A. I don't know that it's necessarily stood me in good

1 stead with the party at all times. Again, as I have  
2 indicated, I have not been appointed, for example,  
3 to the Executive Committee. I don't know what that  
4 does or does not indicate. I have not always been  
5 endorsed; and, in fact, in the most recent election  
6 for county commissioner I was, for example, not  
7 endorsed by the AFL-CIO because of stances that we  
8 took in the commission's office with regard to  
9 collective bargaining issues.

10 **Q. How has it been for you, the process of coming to  
11 the decision that you were no longer a Democrat?  
12 How emotionally has that process impacted you?**

13 A. Well, it was particularly -- when I began  
14 considering this and when, when -- and we can cover  
15 the timetable with a different question -- but in my  
16 consideration, it was a very difficult issue. I  
17 hold myself to the high standards and attempt to  
18 hold myself to the same high standards that I tend  
19 to hold other people to. Honesty and integrity is  
20 one. Loyalty is also an important characteristic.

21 And I felt that possibly -- or, I felt, you  
22 know, some questioning of myself with regard to the  
23 loyalty issue in making the decision I was making.  
24 So that was a difficult aspect of this decision.

25 Because it would affect my own feeling toward myself

1 with regard to that issue. But it would also affect  
2 my relationship with some other, again, friends  
3 and/or colleagues and acquaintances who are in the  
4 Democratic Party who may judge me or think of me  
5 differently because of my decision.

6 **Q. And so is it fair -- so that I summarize what you  
7 just said, that when you made the decision or  
8 contemplated the decision to disaffiliate you  
9 realized that there would be personal and political  
10 costs to that decision?**

11 A. Yes.

12 **Q. And what were those costs as you saw them?**

13 A. Well, again, the costs were, you know, I looked to a  
14 certain extent to my own view of myself, that I was  
15 questioning the loyalty that I may potentially owe  
16 to the party that had treated me well. I think I  
17 treated the party well also for 40 years. There  
18 were issues associated with my future candidacy.

19 MR. PLAKAS: I would renew my objection.

20 MR. FERRUCCIO: Well --

21 MR. PLAKAS: Going far afield.

22 MR. FERRUCCIO: -- it's their case in  
23 chief. And we've been really liberal in allowing  
24 both sides to put on their case. And I think that  
25 at this point with the candidate's testimony I'll

1 allow him to proceed.

2 A. This is an irrevocable decision for me. I've made

3 an election. I have disaffiliated. And I'm not

4 going back. That has an effect that I am a

5 Democratic officeholder -- or, strike that -- I was

6 a Democratic officeholder. Had I stayed being a

7 Democrat, I would have been eligible because I, in

8 two or one and one half years if I so choose, to run

9 for office as commissioner again. I have been

10 elected twice. The second time I was uncontested.

11 You know, the potential probably existed based upon

12 my reputation in the work of the commissioners

13 office and the good standing that we have in the

14 community, that had I remained a Democrat in one or

15 two years had I chosen to go forward and run again I

16 would have been able to run uncontested for four

17 more years in office if I so chose. I never make

18 that choice until I get to the day when it's

19 necessary to make those kind of choices.

20 But I think by making this choice I have,

21 again, irrevocably chosen to disaffiliate. I have

22 disaffiliated. That means that I don't think that

23 there's any realistic possibly that I run as an

24 Independent for county commissioner, particular in a

25 presidential year. So I anticipate or believe

1 that part of the consequence of making the decision

2 that I made, in addition to the loyalty issue and

3 that aspect, is that I have probably foreclosed, you

4 know, another term in that office. Had I chosen to

5 take that, that is another matter.

6 **Q. Do you enjoy serving as county commissioner?**

7 A. Yes. Absolutely.

8 **Q. Foregoing the opportunity to do that to serve the**

9 **people of Canton, was this an easy decision?**

10 A. That was not an easy decision, no.

11 **Q. Was it an decision you made at all once?**

12 A. No.

13 **Q. One of the questions that's been posed rhetorically**

14 **all day long is why didn't Bernabei run in the**

15 **primary. And we got Bernabei on the witness stand.**

16 **What's the answer? Why didn't you run in the**

17 **primary?**

18 A. That's a great question. Why didn't Bernabei run in

19 the primary?

20 **Q. Yes, sir.**

21 A. You know, again hindsight says that Bernabei

22 probably should have chosen to run in the primary.

23 The answer is that during the primary season I was

24 not focused on the issue of the mayoral race in the

25 City of Canton. My focus at that time was with

1 regard to county government which was always my

2 primary function or focus, whatever office may be

3 involved.

4 It was a determination. At the time prior

5 to filing, I did not know who may or who may not

6 file. I did not know that a Republican was not

7 going to file. Those all became issues later on.

8 The straight answer is that that was not my

9 focus at the time. And either I chose -- and I did

10 not make a choice because it was conscious decision;

11 it was just an item that I did not contemplate at

12 the time. It was a choice that I did not

13 contemplate at the time.

14 **Q. Two followups on that theme. All of this has been**

15 **talked about as a fight within the Democratic house.**

16 **Why did it matter to you? Why is it significant**

17 **that the Republicans didn't put up a mayorial**

18 **candidate?**

19 A. It's significant to me because the issue of what all

20 of us who are elected officials, appointed officials

21 do every day is that we are to provide good

22 government, the best government possible to the

23 people that we serve. And it matters whether or not

24 you have candidates. Issues need to be debated.

25 You need to have candidates with different views on

1 things. And you need to give the public electoral a

2 choice with regard to elected office. So it did

3 matter. The Republican Party failed us in my mind

4 as much as the Democratic Party failed us in not

5 providing the quality candidates.

6 **Q. Two party system failed us in your mind?**

7 A. In my mind in this particular instance, it did, yes.

8 **Q. Did there come a time when you began to think**

9 **seriously, not in passing, but seriously about the**

10 **prospect of seeking the mayoralty as an Independent?**

11 A. I was aware during the primary election season, of

12 course; you know, received some literature, reading

13 the newspapers, gossip, conversations, you know, as

14 to the quality and the nature of the campaign. But,

15 again, that's discussed not to belabor the point.

16 Two focal points or galvanizing points

17 occurred. They occurred late. One I believe was on

18 April 22. This was a Wednesday. That was the day

19 of the debate. Normally I would never have heard

20 the debate and was -- I like to say no good deed

21 goes unpunished. Wednesdays I deliver Meals On

22 Wheels. And as a result, I was in my car with the

23 radio on with the Ron Ponder show on. And that was

24 the date that I heard that debate. And I was

25 disillusioned by the nature, quality, and responses

1 of both candidates. In short follow up to that,  
2 immediately following Sunday, which was April the  
3 26th I believe -- that was the date of the  
4 Repository editorial -- I had already contemplated  
5 in my own mind; I thought that the Repository  
6 probably would not and could not endorse either  
7 candidate based upon everything that I had  
8 personally seen. When the editorial came out and  
9 did not do so and was critical as to the choice and  
10 made a call to an Independent, that was the second  
11 galvanizing point.

12 **Q. What was in the debate that you found lacking or**  
13 **troubling?**

14 A. Again, I'm sure I'll be asked that again further. I  
15 did know both candidates. I know both candidates  
16 well. I worked with William Healy for one and a  
17 half years in very very close daily proximity. And  
18 I have had continuing relationships with him since  
19 then, you know, as a county commissioner and he as  
20 the mayor. Also sit on, for example, the Stark  
21 Council of Governments together. So we see each  
22 other with regard to business matters that are  
23 matters between county and city that occur and  
24 continue to occur.

25 So I was aware of him. I'm aware of his

1 character. I'm aware of issues involved in the city  
2 in which there is some successes and which there  
3 have been many things I feel have failed to have  
4 been properly handled.

5 And I'm also aware of Kim Perez. I knew  
6 Kim a long time ago. I was a city law director for  
7 a long time. Kim was initially a councilman. Later  
8 on he became the auditor for the City of Canton  
9 auditorship and actually was elected county auditor.  
10 So in my first term as commissioner, Kim was a  
11 county auditor for the first two years or one and a  
12 half years of that period of time. So I have known  
13 him for a long time.

14 It was my hope that Kim, you know, would  
15 mature and grow. He had been out of the auditor's  
16 office for about three years because he lost that  
17 election there. He ran, was elected as treasurer.

18 It was my hope that he would have, you know, grown  
19 and matured. And I determined primarily from that  
20 particular debate that he had not done so.

21 **Q. So the debate added something to your analysis? It**  
22 **gave you a new look at Kim Perez that you hadn't had**  
23 **in a while?**

24 A. Yes.

25 **Q. Okay. So Mr. Plakas asked earlier today why the**

1 **epiphany. Why suddenly then. You didn't have the**  
2 **opportunity to answer that question. But you do**  
3 **now. Why the epiphany?**

4 A. Well, the epiphany, again, two events triggered it.  
5 But I think that the, the underlying or the  
6 overdriving issue for me I guess is the fact that I  
7 am 68, 69 years of age. I am very very close to my  
8 family, to my grandchildren. I'm insistent in  
9 telling them and teaching them and telling my  
10 children, telling my wife that you always accept  
11 challenges and you go forward and you do what you  
12 believe is good and what is necessary. I believe  
13 that we all should hopefully have that same  
14 obligation. I appreciate more as I get older.

15 But it was the culmination of that feeling  
16 that has been flowing on me in the last, you know,  
17 one year or one or two years as I grow older and so  
18 forth that I need to do more. I think that,  
19 probably by way of my elected office that I had  
20 hold, that I have done many things. I think that  
21 other things I have done I've done well. But I  
22 believe that I could do more and that I owe the  
23 community more.

24 And it was a combination or convergence of  
25 that state of mind with the, again, the debate and

1 the editorial that led me to seriously undertake  
2 this decision and to ultimately make it. I know  
3 that sounds hokey. But it was made for reasons of  
4 what I believe to be good government and our  
5 obligations as citizens to participate in good  
6 government.

7 **Q. So when did it occur to you at last that you were**  
8 **going to really do this? When did you firmly in**  
9 **your mind decide to disaffiliate from the party and**  
10 **seek the mayoral?**

11 A. I ultimately firmly made the decision in, when I was  
12 in Clearwater Beach on probably Saturday, May 2nd,  
13 2015.

14 **Q. And up to then, your consideration had been**  
15 **contingent?**

16 A. It had been contingent. But it was leaning, leaning  
17 in the direction of doing it.

18 **Q. Now, while you were moving toward that decision, the**  
19 **decision you took in Florida -- by the way, you had**  
20 **planned this trip to Florida sometime in advance,**  
21 **had you not?**

22 A. Yes. Or my wife had planned it for me.

23 **Q. And you had determined to return early from Florida**  
24 **to put all of this business in play; correct?**

25 A. My wife had not planned that for me. On Saturday.

1 **Q. Perhaps another disadvantage.**  
 2 A. I believe on Saturday when the decision was made I  
 3 asked my wife to please change the plane  
 4 reservations and get us back to Canton as early as  
 5 possible.  
 6 **Q. But before you left for Florida, you did some things**  
 7 **to set the wheels of disaffiliation, at least in a**  
 8 **contingent way, in motion, did you not?**  
 9 A. Yes.  
 10 **Q. You lined up your ducks in case you decided to pull**  
 11 **the trigger in Florida?**  
 12 A. Yes.  
 13 **Q. What did you do?**  
 14 A. Without great detail, the first time I talked to an  
 15 elections law lawyer was on Monday, the day after  
 16 the Repository editorial which would have been  
 17 Monday, I believe April 27, if that is the correct  
 18 date.  
 19 **Q. Just so we're clear, that lawyer was not me?**  
 20 A. That lawyer was not you. That lawyer was Mr.  
 21 McTigue who is a very well-established elections  
 22 lawyer. I had a lengthy conversation with him for  
 23 the first time.  
 24 **Q. Okay. And without going too much into what Mr.**  
 25 **McTigue told you, why did you feel the need to**

1 **consult a lawyer? What advice were you seeking?**  
 2 A. I was seeking information with regard to the issue  
 3 of becoming an Independent. I really was not  
 4 familiar with either the issue of residency in great  
 5 detail because I had never dis -- had the necessity  
 6 of understanding all of the details associated with  
 7 residency. And I also had no understanding or  
 8 knowledge with regard to any rules that may be  
 9 associated with, you know, becoming an Independent.  
 10 I'm not sure the word "disaffiliation" as  
 11 we're using it today, disaffiliating from the  
 12 Democratic Party was a word that was known to me in  
 13 that type of usage as of that date until I had the  
 14 conversation with him.  
 15 **Q. So that's something you learned from counsel. Did**  
 16 **you seek out, did you receive any information about**  
 17 **the practical mechanics of going about the business**  
 18 **of disaffiliation?**  
 19 A. Yes. Again --  
 20 **Q. What did you learn?**  
 21 A. And that's where I learned from that source  
 22 primarily that disaffiliation means you're cutting  
 23 the ties with any and all Democratic associations  
 24 that you have. I had explained to him -- I think  
 25 our first conversation was probably half an hour or

1 so. And it was a telephone conversation. I had one  
 2 -- I'd have to look at a log to understand, to know  
 3 when I talked to him subsequently but again that  
 4 week on several occasions. But one was to resign  
 5 from Democratic clubs. One was to resign from the  
 6 Democratic Central Committee. One was to resign  
 7 from any associations with the candidates.  
 8 And I was the treasurer of three campaigns.  
 9 And there were also discussions in the course of  
 10 that week with him with regard to I believe change  
 11 of designation of treasurer which had some  
 12 implications. Changing addresses as soon as that  
 13 was identified. Possibly voting a, a provisional,  
 14 you know, nonpartisan ballot. And I may be  
 15 forgetting something. But it covered all of those  
 16 types of areas.  
 17 **Q. So you were very interested in the concrete steps**  
 18 **that had to be taken. Remind us again when that**  
 19 **conversation with Mr. McTigue took place.**  
 20 A. I believe the first conversation I had with him was  
 21 Monday afternoon, April 27.  
 22 **Q. Okay. So the Monday before the Monday when you**  
 23 **actually filed --**  
 24 A. Yes.  
 25 **Q. -- petitions?**

1 **Okay. What steps did you then begin to**  
 2 **take during the week of Monday April 7th to put that**  
 3 **plan in action?**  
 4 A. I talked to, you know, various friends and advisors,  
 5 people that I talked to before about political  
 6 issues as they may have arisen in the past, whose  
 7 opinions I valued as to contemplate the steps that I  
 8 was taking.  
 9 I looked and -- when I understood what the  
 10 issue of residency was, I was living in Jackson  
 11 Township and had been living there for approximately  
 12 11 or 12 years on Dunkeith Drive, Northwest. I  
 13 understood that I needed to obtain a residence in  
 14 the City of Canton.  
 15 And to that end, and I will focus for a  
 16 moment on residency, I am the owner -- or, rather I  
 17 believe the house is actually titled in my wife's  
 18 name. Everything, by the way, is titled in my  
 19 wife's name. I wonder why that is. But we had  
 20 owned the house I think since about 1986. I had  
 21 never sold it. It was a house I actually enjoyed  
 22 living in. We moved from that house I believe in  
 23 approximately 2004. I could be off by a year with  
 24 regard to that. But that house had been rented by  
 25 me ever since 1986. It was presently being leased

1 to a doctor and his family. That lease started  
2 about 18 months prior to that date.

3 They had advised me in early April that  
4 they were looking for a house and were planning to  
5 move because they needed a bigger house for an  
6 expanding family. I talked to them as to when that  
7 might happen. They anticipated that closing was  
8 going to happen sometime at the end of April, but  
9 they were unable to identify it.

10 And this is -- now I get to the date of  
11 approximately April, April 28th which would have  
12 been Wednesday. I'm leaving for Florida on  
13 Thursday. I need to make a decision with regard to  
14 having a place to live. Their house was not  
15 available to me because they were continuing to live  
16 in it.

17 And it had not closed. And, in fact, it  
18 did not close until the afternoon of April the 29th  
19 which is the date that I went to Florida.

20 **Q. Let me just stop you. When you say you did not**  
21 **close, the family hadn't closed on the new home that**  
22 **would permit them --**

23 A. Yes.

24 **Q. -- to move out of Lakecrest; correct?**

25 A. Correct. I, in fact, I believe I received an e-mail

1 or text from them about 6:00 p.m. on Thursday night  
2 in Florida saying "we closed." But they were still  
3 occupying the house because, again, now they had to  
4 engage movers to move and so forth.

5 **Q. So during the time -- let's just visit this. I**  
6 **thought we might talk about this later. We might.**  
7 **But we're here. And so while we're on the subject,**  
8 **the family had not yet moved. In that last week of**  
9 **April, you really didn't know when they would**  
10 **finally be out, did you?**

11 A. No. Neither did they.

12 **Q. And was it under your control in any way?**

13 A. It was not under my control.

14 **Q. Did you visit the issue of potentially moving in or**  
15 **the family while they were still there?**

16 A. Approximately -- and I believe that the date was  
17 approximately that Tuesday, April 28th -- again,  
18 when I realized that I had to consider  
19 re-establishing, you know, residency in the City of  
20 Canton to be a qualified elector, I approached Mrs.  
21 Noyse. I was working in the yard and she was  
22 outside. Again, she had two very small children. I  
23 would say that they're 3 and 5 maybe. And in that  
24 conversation she told me she was seven months  
25 pregnant.

1 On that particular date, I asked her, I  
2 said, without providing any details, I said "I'm  
3 considering running for office in the City of  
4 Canton. Would you consider allowing me to live in  
5 the house in the back bedroom, for example, on a  
6 Wednesday night and stay there for this purpose?"  
7 Her answer at that time was no. And understandably  
8 no.

9 I think subsequently her husband and she  
10 had a conversation. Because then later on I  
11 received a text saying "Tom, it would be okay if you  
12 want to stay here." And I realized, however,  
13 because I had a conversation with her husband, that  
14 I did not want to create any marital discord for  
15 them. And I didn't think it was appropriate. I  
16 also wasn't sure whether there was better living in  
17 the back room of a house in which they were in  
18 possession for establishing residency as opposed to  
19 getting my own house by way of a lease.

20 So I made the decision to on that occasion,  
21 on a Wednesday night, to lease the house at 2118  
22 University Avenue from Bob Johns who is a very  
23 long-standing friend. That house has been in his  
24 family for 50 years. He grew up in that house.  
25 I've been in that house many times. His parents

1 have passed away. He leased it for a period of  
2 time. I actually was in the house to write a lease  
3 for him. So I was very familiar with the house. I  
4 knew it was empty. I knew it was available. And I  
5 discussed with him. And he said that he would lease  
6 it to me. And I prepared a lease. And that lease  
7 was signed on April 29.

8 **Q. Do we have that lease here?**

9 A. Look in one file. I'm not sure if we made copies.

10 MR. VASVARI: Mr. Chairman, it looks like  
11 the most efficient way to do this is just hand  
12 everybody the pile. Because they've been collated  
13 as a group rather than as individual documents. May  
14 I approach?

15 MR. FERRUCCIO: Sure. Is there an exhibit?

16 MR. VASVARI: Well, we haven't put  
17 stickers. So I guess we are going to call it A.

18 MR. FERRUCCIO: A. Okay.

19 MR. FERRUCCIO: This whole pile is A?

20 MR. VASVARI: No. Call the lease A.

21 MR. FERRUCCIO: So we'll mark the lease  
22 agreement as Candidate's Exhibit A.

23 (A lease agreement was marked Candidate's  
24 Exhibit A.)  
25

1 BY MR. VASVARI:  
 2 **Q. Mr. Bernabei, you've been handed what's been marked**  
 3 **for purposes of identification Exhibit A to your**  
 4 **testimony today. Do you recognize it?**  
 5 A. Yes.  
 6 **Q. And, sir, what is it?**  
 7 A. This is the lease agreement which I prepared. This  
 8 is the lease agreement which I executed with Mr.  
 9 Johns on April 30th. That would have been a  
 10 Thursday morning, early in the morning on Thursday  
 11 morning, the day that I went to Florida later on in  
 12 that day.  
 13 **Q. And the document -- while it speaks for itself, a**  
 14 **couple of quick highlights by way of exposition --**  
 15 **this gave you a month-to month tenancy; correct?**  
 16 A. This gave me a tenancy for one month commencing May  
 17 1, ending May 31 with a provision that I may renew  
 18 this lease on a month-to-month basis.  
 19 **Q. You did pay a thousand dollars for the month?**  
 20 A. I did pay a thousand dollars on that date. And  
 21 attached to the -- at the back of this item -- I  
 22 guess there's some other things in here. But the  
 23 back of this item is the check which I gave to  
 24 Robert G. Johns dated May 1, 2015, for \$1,000. And  
 25 I know that that check -- the bottom of that, that

1 is from my bank account -- I know that that check  
 2 has been cashed.  
 3 **Q. Never sought your money back from Mr. Johns?**  
 4 A. I have not.  
 5 **Q. Never sought any sort of proration back?**  
 6 A. I have not.  
 7 **Q. Okay. Got a security deposit back?**  
 8 A. He did not cash the security deposit. I never  
 9 received the check back from him. To my knowledge,  
 10 he just held it and/or destroyed it. I don't know  
 11 what he did with it. I also received from him at  
 12 the time of signing the lease a garage door opener  
 13 and the security -- you know, keys and security code  
 14 to the house.  
 15 **Q. You prepared this lease so that you would have a**  
 16 **place to go to be a resident in Canton; correct?**  
 17 A. Yes.  
 18 **Q. Pending your move to the house which you also owned**  
 19 **in Canton; correct?**  
 20 A. Yes.  
 21 **Q. Okay. Why did you make the lease out for a month?**  
 22 A. Because I did not know as of April 30th, 2015, how  
 23 long or how short of duration the tenants in the  
 24 house at 441 Lakecrest would remain. They had been  
 25 waiting for closing. The closing had not happened.

1 I didn't know whether this was going to be  
 2 day-to-day or week to week. And, you know, I think  
 3 that we've experienced an area of law with regard to  
 4 real estate closings that the laws have changed and  
 5 closings have been backed up since the changing in  
 6 banking laws and so forth. So it was uncertain to  
 7 me as to when it may happen. I was hopeful it would  
 8 happen quick. I wish it happened on April the 29th.  
 9 I wouldn't be here today at least discussing the  
 10 issue of residency if I had been able to move  
 11 directly into the Lakecrest house, because it was  
 12 not available. So I made it a one-month lease with  
 13 a month-to-month thereafter.  
 14 **Q. Did it happen sooner than you expected, the ultimate**  
 15 **vacation the by Motts -- by the Noyse?**  
 16 A. It ultimately happened, you know, within the time  
 17 frame that I speculated. Again, I wish it would  
 18 have happened on April the 28th. It probably would  
 19 have all been resolved. As I said, I received a  
 20 text from them. And I subsequently looked on at the  
 21 recorder's site. The house actually closed, their  
 22 new purchase closed on Thursday afternoon, April  
 23 30th. I'm sorry. Which day? Yeah, Thursday is on  
 24 April 30th. Correct me with my dates if I keep  
 25 making that mistake.

1 **Q. But we know in April?**  
 2 A. It was in April when it closed.  
 3 **Q. Okay. On April 30th you signed this lease?**  
 4 A. Yes.  
 5 **Q. That was a Thursday?**  
 6 A. Yes.  
 7 **Q. Okay. What else did you do that week to prepare for**  
 8 **the eventuality that you might disaffiliate?**  
 9 A. Well, I had the discussion that Mr. Giavasis has  
 10 alluded to in which we discussed certain aspects of  
 11 this, as to what I needed to do. One thing  
 12 associated with it was filing mailing of the letters  
 13 of resignation from the three clubs, the three  
 14 Democratic clubs and the filing of the letter of  
 15 resignation from the Democratic Central Committee  
 16 which I was a member.  
 17 And in anticipation of doing, of making a  
 18 decision -- and I had not made that decision -- I  
 19 prepared those letters, signed those letters. And  
 20 on the morning or sometime possibly closer to the  
 21 noon hour on April the 30th, I actually had intended  
 22 to deliver those directly to Mr. Giavasis as party  
 23 chairperson.  
 24 Thursday, April 30th, was actually the date  
 25 of the Democratic cocktail party at 5:00. I tried

1 to call him several times. He was, you know,  
2 running around, preparing for that. I was told by  
3 one of his associates that he was unavailable  
4 because he was running around. I talked to Jeanette  
5 Mullane with another issue at the Board of  
6 Elections. And we met and I handed her those  
7 letters with the request that they be delivered, you  
8 know, to Mr. Giavasis.

9 **Q. Okay. Let's take this a piece at a time. Where did**  
10 **you meet Miss Mullane and when?**

11 A. I met Miss, Jeanette Mullane at the, I believe the  
12 Chase Bank on 30th Street, Northwest. I believe  
13 that I had called her with regard to coming out.  
14 Because, again, I was racing on Thursday morning  
15 because I had to go to the airport. So I was  
16 racing, doing many different things. But to come  
17 out and either deliver them to, deliver them to her  
18 at the Board.

19 I believe that when I talked to her, she  
20 had already left the Board or was running personal  
21 errands. She indicated to me that it would be just  
22 as easy for her and for me if it was the same  
23 distance for me to go to the 30th Street bank. And  
24 so I drove up Cleveland Avenue. She came, I don't  
25 know, from the Board or whether she came from home.

1 I'm not sure where she was. I don't know that we  
2 discussed whether she was at the Board or not. But  
3 I met her at the bank.

4 **Q. Okay. And you handed her -- you met her expressly**  
5 **for the purpose of handing her the resignation**  
6 **letters?**

7 A. Yes.

8 **Q. Okay.**

9 MR. FERRUCCIO: Are those marked?

10 MR. VASVARI: They are in the package.

11 MR. FERRUCCIO: All right. So we can  
12 identify those.

13 THE WITNESS: Yeah. I don't have any  
14 either by the way for myself.

15 MR. FERRUCCIO: We have one dated May 4th  
16 regarding I guess all three.

17 MR. VASVARI: Right. There's a packet of  
18 three. That are dated May 4th.

19 MR. FERRUCCIO: But all three are in one  
20 letter. So --

21 MR. VASVARI: Correct.

22 MR. FERRUCCIO: -- is that the letter that  
23 we're talking about being delivered?

24 MR. VASVARI: Yes. They look --

25 MR. FERRUCCIO: We will mark that as

1 Exhibit B.

2 MR. VASVARI: Let's call that B. There  
3 should be three attached with an overleaf half  
4 sheet.

5 MR. CLINE: Says "receipt number" and then  
6 it's got --

7 MR. FERRUCCIO: So the letter that is  
8 addressed to the Board regarding Donohue, Hartnett  
9 and Martuccio, is that what we're referring to?

10 MR. BERNABEI: That is a different letter.  
11 That letter occurred on March -- May the 4th.

12 MR. FERRUCCIO: So the letters that we're--

13 MR. BERNABEI: We should take these apart.

14 MR. VASVARI: Should be Receipt No. 6611.

15 MR. FERRUCCIO: All right.

16 MR. BERNABEI: Those are the four letters  
17 that were delivered.

18 MR. FERRUCCIO: All right. So that will  
19 make that B.

20 MR. VASVARI: That should be B. Yes, sir.

21 MR. FERRUCCIO: All right. Thank you.

22 (A receipt coversheet and four resignation  
23 letters were marked Candidate's Exhibit  
24 B.)

25 A. The originals of those four letters were then

1 delivered to Jeanette under that understanding.  
2 Originals were delivered to her. I had copies, the  
3 reason that they have file stamps on them.

4 **Q. Let's back up just a second because we have the**  
5 **boring business of this. You have been handed what**  
6 **has been marked for purposes of identification as**  
7 **Exhibit B to your testimony. Do you recognize it?**

8 A. Yes.

9 **Q. And what is it?**

10 A. These are four letters which I prepared resigning  
11 from the Democratic Central Committee and the three  
12 Democratic clubs in Canton, Massillon, and Alliance.

13 **Q. When were the letters prepared?**

14 A. Those would have been prepared the morning of April  
15 30th or the evening of April 29th. Probably the  
16 morning I believe.

17 **Q. Fair to say that when the letters were prepared you**  
18 **were very much leaning toward disaffiliation but you**  
19 **had yet to reach a final decision?**

20 A. That is correct.

21 **Q. Okay. So you prepared the letters in the**  
22 **eventuality that while in Florida you would come to**  
23 **the conclusion that you would disaffiliate?**

24 A. Yes.

25 **Q. And you gave them to Jeanette Mullane?**

1 A. Yes.

2 **Q. Why to Jeanette Mullane?**

3 A. Jeanette was, No. 1, the deputy director of the

4 Board of Elections. No. 2, Phil in my conversation

5 with him -- that he referenced of our meeting -- had

6 indicated that I could use Jeanette with regard to a

7 contact person on these issues.

8 **Q. So just so that I'm clear, you and Phil Giavasis had**

9 **a previous conversation which he said that if you**

10 **needed to get him things Jeanette could be a proper**

11 **conduit by which to do that?**

12 A. I can't say that that was specific with regard to if

13 I needed to get him things. Because Jeanette does

14 not work for Phil. She works for the Board of

15 Elections. My conversation with him was that

16 Jeanette was a contact person with regard to

17 questions dealing with the affiliation and/or

18 residency.

19 **Q. I see. And so you expected when you gave them to**

20 **Jeanette Mullane that she would communicate this**

21 **then to Mr. Giavasis?**

22 A. Well, I asked her when I saw her and met her. Yes.

23 **Q. And did you she tell you what she would to?**

24 A. That she would do so.

25 MR. FERRUCCIO: Counsel, may I interject.

1 This Exhibit B then dated April 30th,

2 received in our office May 4th, was a conditional

3 receipt; right? Basically she was not to do

4 anything with these unless you told her you were

5 going to disassociate.

6 MR. BERNABEI: She was -- my conversation

7 with her to my best recollection was that she was to

8 give those to Phil. And I anticipated that she

9 would probably give them to him that night. Because

10 that was the night of the Democratic cocktail party.

11 She was going to meet with him.

12 My conversation with Phil had been I'm

13 going to prepare this, these resignations and on a

14 conditional basis. And if I make a final decision

15 to go, then, then please deliver them.

16 MR. FERRUCCIO: Okay. Thank you.

17 BY MR. VASVARI:

18 **Q. So you have a loaded chamber but you've not yet**

19 **decided to pull the trigger?**

20 A. That is correct.

21 **Q. Okay. Any other ways in which you have set the**

22 **machinery up to go into motion when you decide to**

23 **pull the trigger?**

24 A. One other aspect in my meeting with Jeanette -- and

25 this, again, would be Thursday, approximately noon,

1 April the 30th, was the need to file with the Board

2 of Elections the voter registration change of

3 address form.

4 **Q. Okay. Where did you do that?**

5 A. I also filled that out in the Chase Bank parking

6 lot.

7 **Q. Okay.**

8 A. Jeanette had with her a large file, not a file

9 folder, a three-leaf binder I think of just, in her

10 car, of different Board of Elections forms. One of

11 them was that form.

12 MR. FERRUCCIO: Counsel, do you want to

13 mark what he's referring to? Because we have two

14 different ones.

15 MR. VASVARI: We do have two.

16 MR. BERNABEI: One is dated May 3. One is

17 dated May 15th. One is indicated for my change of

18 address from Dunkeith Avenue to 21 --

19 MR. VASVARI: Let's call C the one that's

20 dated in the lower left corner 5/3/2015.

21 MR. FERRUCCIO: All right. Is this the one

22 that you're talking about in this testimony right

23 now?

24 MR. VASVARI: Right. This is relevant to

25 the testimony that's going on.

1 MR. FERRUCCIO: All right.

2 (A May 3, 2015, Voter Registration Form was

3 marked Candidate's Exhibit C.)

4 BY MR. VASVARI:

5 **Q. So tell us about that.**

6 A. May I have a copy?

7 **Q. You should have a copy.**

8 A. I don't have a copy.

9 **Q. Mr. Bernabei, you've been handed what has been**

10 **marked for purposes of identification as Exhibit C**

11 **to your testimony. Do you recognize it?**

12 A. Yes, I do. This is a Voter Registration Form for

13 the purposes of changing my voter address. The

14 change is to provide a change from my previous

15 address of 2745 Dunkeith Drive, Northwest, to my

16 address, to my new address at 2118 University

17 Avenue, Northwest.

18 **Q. Okay. When did you complete that document?**

19 A. Completed this document on Thursday, April 30th,

20 2015.

21 **Q. The document says May 3rd. Why does the document**

22 **say May 3rd?**

23 A. I dated this document May 3 because Jeanette

24 indicated that she would be working at the Board on

25 May 3 and that she could take the document and file

1 it. That discussion was, again, the same as the  
2 discussion with regard to the letters of  
3 resignation: I need to make a final decision on  
4 this. I've not made a final decision. I will be  
5 making the final decision this weekend. And I will  
6 have conversation with you, when that decision is  
7 made, to file or not to file this document.

8 **Q. Fair to say then that you lodged this document with**  
9 **Jeanette and told her that instructions with respect**  
10 **to filing would come later?**

11 A. Yes.

12 **Q. And you filled out the date on it contemplating the**  
13 **future filing date based on her saying she would**  
14 **have been in the office on the 3rd?**

15 A. That is correct.

16 **Q. Not unlike lawyers; they prepare a Brief in advance**  
17 **and leave it for an associate to file it on a given**  
18 **day at the end of the week dated appropriately?**

19 A. Yes.

20 **Q. Is there any intent to deceive?**

21 A. None.

22 **Q. Did you already have a leasehold at University**  
23 **Avenue?**

24 A. Yes. I had signed a lease that morning.

25 **Q. And was this clear in your mind if you pulled the**

1 **trigger and told her to file the change of address,**  
2 **did you understand that that would affect where you**  
3 **would have to begin living?**

4 A. Yes.

5 **Q. Okay. What did you understand in that regard?**

6 A. I understood that with regard to becoming an elector  
7 and with regard to becoming -- maintaining the  
8 consistency as the Voter Registration Form requires  
9 and as -- as is required, that my address, you know,  
10 for voting purposes and for residency purposes would  
11 be 2118 University Avenue, Northwest.

12 **Q. If you said "file the form," that meant you were**  
13 **moving house?**

14 A. Yes.

15 **Q. Okay. You did say "file the form"?**

16 A. Yes.

17 **Q. When?**

18 A. That phone call happened either sometime on  
19 Saturday, May 2, on or Sunday morning, May 3. I  
20 cannot recall specifically.

21 **Q. What was the business you were telling us about**  
22 **earlier about deciding to return against your wife's**  
23 **wishes from Florida early?**

24 A. We had reservations that took us to Florida from  
25 Thursday night until Sunday night. I think that --

1 I'm not sure what time the return ticket was, but it  
2 was sometime after probably 6:00 in the evening or  
3 something of that time.

4 **Q. And when did you come back in fact?**

5 A. We, in fact, caught an earlier flight I think at 11,  
6 10 or 11:00 in the morning and returned  
7 approximately 12 to 1:00 p.m. on Sunday.

8 **Q. Okay. What did you begin to do? What did you do**  
9 **with the rest of Sunday that you got from having**  
10 **shortened your vacation?**

11 A. The first thing that I did was to prepare the,  
12 petition the nominating petition.

13 **Q. And that nominating petition is the nominating**  
14 **petition that we have --**

15 A. Yes.

16 **Q. -- seen in the exhibits prepared by the protesters**  
17 **was the one that would announce your candidacy or**  
18 **propose your candidacy as --**

19 A. Yes.

20 **Q. -- an Independent?**

21 A. Yes.

22 **Q. Okay. And WHAT did you do after you prepared that?**

23 A. I prepared that petition. I went to OfficeMax, ran  
24 40 copies of it, signed 40 copies as originals, and  
25 then began the process of circulating them to, you

1 know, a list of names that I had worked on Saturday  
2 night and Sunday morning as the people that I  
3 thought potentially, you know, would or could  
4 circulate them for me.

5 **Q. And the people who circulated your part-petitions,**  
6 **some were Democrats?**

7 A. Yes.

8 **Q. Some Independents?**

9 A. I'm not -- yes, some Independents.

10 **Q. Some Republicans?**

11 A. Yes.

12 **Q. All flavors?**

13 A. Yes.

14 **Q. Okay. And when did you get back what you considered**  
15 **to be a sufficient number of signatures on the**  
16 **part-petitions that you were satisfied you could**  
17 **file?**

18 A. Not until probably Monday, May 4, late, you know. I  
19 mean they began to come in morning late, noon, you  
20 know, late morning, none time.

21 **Q. What else did you do on Sunday to advance your**  
22 **status as a potential mayoral candidate?**

23 A. That took a significant amount of time. Because in  
24 the course of distributing petitions it involved,  
25 you know, conversations with people. I actually

1 personally went to four or five houses in one area,  
2 obtained signatures. And that involved talking to  
3 people and so forth. But I know I went to see five  
4 or ten different people in different parts of the  
5 county. And that essentially took probably, you  
6 know, three- or four-hour blocks of time.

7 **Q. Did you move on Sunday night?**

8 A. Yes.

9 **Q. Tell me about the move. What steps did you take to  
10 move?**

11 A. I had stuff that I took to move. I actually made a  
12 list of it. And it ended up on this exhibit which  
13 really isn't a part of Exhibit A. But it is the  
14 fifth page of Exhibit A. Those are the items that I  
15 took with me to 2118 University Avenue on the night  
16 of Sunday, May 3. And those are the same items that  
17 I then removed on late afternoon of Thursday, May  
18 the 7th, back to 441 Lakecrest Street.

19 **Q. You took a relatively minimal kit to University.  
20 Was it sufficient for your purposes?**

21 A. It was more than sufficient for my purposes.

22 **Q. And if you had stayed there a month, would you have  
23 moved any more in?**

24 A. I probably would not have moved any more substantive  
25 items. I would have, you know, brought in clean

1 underwear as opposed to wearing dirty underwear for  
2 a month. But other than that, no, this was  
3 sufficient.

4 **Q. All the testimony about your character is true then,  
5 clean underwear?**

6 A. I, I --

7 **Q. Did you sleep --**

8 A. I, and I think people are aware I, I live in a nice  
9 house at 441 Lakecrest. It's a beautiful home. I  
10 had a beautiful home, you know, at Dunkeith. But  
11 really the living standard that I have, I think my  
12 wife actually met me living in what she called, I  
13 guess what I call, the cave in my days, as far as  
14 that continued to this day. I mean I can live very  
15 very simply. And this was more than sufficient.  
16 And that was very comfortable at 2118 University.

17 **Q. Where did you sleep on the night of Sunday, May 3rd?**

18 A. Night of Sunday, May 3, 2118 University, Northwest.

19 **Q. And did you sleep there every subsequent night until  
20 you left?**

21 A. Absolutely.

22 **Q. And what night was the last time that you slept  
23 there?**

24 A. The last night would have been Wednesday, May the  
25 6th. On I believe on Wednesday, May 6th, I met with

1 the tenant, Doctor Noyse, at my house at 441  
2 Lakecrest. I think we met at 4:00 in the afternoon.  
3 He said "Come on." You know, "We are out of here."  
4 Gave me a quick tour of it. I wrote a check for him  
5 on that particular date to return his security  
6 deposit of 22 hundred dollars. And that check was  
7 cashed within one or two days.

8 Received the keys and the garage door  
9 opener back to 441 Lakecrest. I took possession on  
10 Wednesday afternoon late. I was unable to move,  
11 however. That was the evening of the Italian  
12 American Scholarship Foundation Committee that I sit  
13 on. And I have to sit on that. I wasn't able to  
14 move, so I moved the next day.

15 **Q. So when was the first time you slept in Lakecrest?**

16 A. The first time I slept in Lakecrest would have been  
17 Thursday night, May the 7th.

18 **Q. And when was the last time you spent at your  
19 residence at Dunkeith?**

20 A. My last night would have been Wednesday night, April  
21 the 29th.

22 **Q. Then Florida. And then University. And since you  
23 moved into University, you have lived and slept and  
24 lived continuously in the City of Canton?**

25 A. Did you say since I moved into University or

1 Lakecrest?

2 A. Since you first moved to University on May 3rd, you  
3 have slept, lived, and had your place of residence  
4 in the City of Canton?

5 A. Absolutely. Yes.

6 **Q. Do you intend to move back in Hills & Dales?**

7 A. No.

8 **Q. Has that house been listed for sale?**

9 A. That house has not been listed for sale. Again, so  
10 that there's no issues associated with it by way of  
11 timing, one of the very first things that happened  
12 with regard to the house at 441 Lakecrest was my, my  
13 wife BeBe came in with her girlfriend who I believe  
14 is an interior decorator on May 8th and said there  
15 will be some changes made to this house. And part  
16 of that was carpeting, part was changing all of the  
17 fixtures in the bathrooms, in two bathrooms,  
18 changing all of the plumbing and electrical fixtures  
19 to a more modern update. There was a lengthy list  
20 of items I believe that was actually constructed on  
21 May 8th.

22 They, thereafter, went shopping for items.  
23 Another item was to order carpet. Mike Kanam Carpe  
24 came out. He gave me an estimate to recarpet the  
25 entire house for eight or nine thousand dollars.

1 There was a debate about whether the whole house  
2 needed recarpeting or not. We concluded four rooms  
3 did and the master bedroom did not. That carpet was  
4 ordered.

5 The house needed painting. We actually --  
6 I believe BeBe helped to paint the bedroom and that  
7 left the four other rooms which had to be repainted.  
8 And those were repainted. So there was work to be  
9 done. But I did make a list of that work. And I  
10 also made a list expenditures with regard to the  
11 money put in that house through today's date. So  
12 that's the status really of Lakecrest.

13 **Q. And approximately how much have you put into**  
14 **revising Lakecrest?**

15 A. I think we ran a tape on this.

16 MR. PLAKAS: I have an objection. Is this  
17 like a home and garden stroke?

18 MR. FERRUCCIO: Maybe we could speed this  
19 up and --

20 A. \$17,000.

21 MR. FERRUCCIO: -- respond to his  
22 questions.

23 MR. VASVARI: What's that?

24 MR. FERRUCCIO: Maybe we can have some  
25 direct questions that he can respond to.

1 MR. VASVARI: I'll try not to lead.

2 MR. FERRUCCIO: Well, you're not.

3 MR. BERNABEI: By the way, I talk a lot.  
4 And you should cut me off and go ahead.

5 MR. FERRUCCIO: We may start doing that.

6 BY MR. VASVARI:

7 **Q. Quick question. Then your wife never moved to**  
8 **University; did she?**

9 A. No.

10 **Q. Okay. And so she moved directly from Hills & Dales**  
11 **to Lakecrest?**

12 A. Yes.

13 **Q. But was she in Ohio for the time that you lived in**  
14 **University?**

15 A. Yes.

16 **Q. For how many days?**

17 A. I lived at University from May 3 through, again as  
18 stated, the last evening would have been May the  
19 6th. I went to Lakecrest on May the 7th. My wife  
20 actually went to Hilton Head on May the 10th and  
21 stayed there I believe until May the 18th. So she  
22 did not make a move to Lakecrest also until she  
23 returned from Hilton Head.

24 **Q. Okay. That was a pre-existing annual trip that she**  
25 **makes with friends?**

1 A. Yes.

2 **Q. Okay. Let's go back now to your trip to the Board**  
3 **of Elections. In fact, there's more than one. You**  
4 **went to the Board of Elections twice on Monday, May**  
5 **4th; correct?**

6 A. Yes.

7 **Q. Can you tell me what transpired the first time?**

8 A. The first trip to the Board of Elections was that  
9 provisional balloting was closing I believe at 2:00  
10 p.m. I did not have the petitions yet prepared and,  
11 in similar, did not have all of them back in order  
12 to file them at 2:00 p.m. And, therefore, I went to  
13 the Board of Elections about approximately 20  
14 minutes before that and to cast a provisional  
15 ballot.

16 **Q. Okay. Did you return to the Board of Elections**  
17 **later that day?**

18 A. Then I think we may have done some filing. I have  
19 to look at some of the documents that were or were  
20 not filed.

21 **Q. Let's start with the receipt that's No. 6610.**

22 MR. VASVARI: And we'll call that D.  
23 (A receipt coversheet, Receipt No. 6610,  
24 and a Designation of Treasurer form were  
25 marked Candidate's Exhibit D.)

1 **Q. Mr. Bernabei, you've been handed Exhibit D. Do you**  
2 **recognize it? And if so, what is it?**

3 A. There's another part to this Exhibit D. But Exhibit  
4 D, when I was there at 2:00 after completing the  
5 provisional ballot, I also wanted to file the  
6 Designation of Treasurer. That was another item I  
7 had mentioned earlier.

8 I had earlier in that day spoken with  
9 Michael E. Hanke and asked him whether he would  
10 consent to being my treasurer. He indicated that he  
11 would. So I initially filed this form when I was  
12 there at, at 2:00 for the provisional ballot. And  
13 this was filed at 2:02 p.m.

14 **Q. I hand you what will now be marked as E. If you**  
15 **look at that document, that has Mr. Hanke's name**  
16 **filled in in handwriting, time stamped 2:02 in the**  
17 **upper right corner. That's what we're calling E.**

18 (A Designation of Treasurer by Michael E.  
19 Hanke was marked Candidate's Exhibit E.)

20 A. This is E, Exhibit E. Exhibit D, the same document  
21 as Exhibit E, contains Michael Hanke's signature.  
22 He was not available to come to the Board I believe  
23 at 2:00 p.m. And I had left. And, therefore, when  
24 he returned, he signed this document. And it was  
25 then refiled again at 3:29 p.m. That was when I

1 would have been there for the filing of the  
2 petitions.

3 **Q. Okay. And also at 2:02 that day, you filed what we**  
4 **will call F. Also time stamped marked 2:02. We'll**  
5 **designate that F.**

6 MR. FERRUCCIO: Which one is that?

7 MR. BERNABEI: Exhibit F is the letter  
8 dated May 4, 2015, to the Board of Elections in  
9 which I resigned as treasurer of the Guardado,  
10 Hartnett, and Martuccio committees.

11 MR. FERRUCCIO: All right.

12 MR. SHERER: That is Exhibit F?

13 MR. BERNABEI: That is now F. And that was  
14 filed at the same time as the original Designation  
15 Of Treasurer.

16 BY MR. VASVARI:

17 **Q. So the Designation of Treasurer, the resignation as**  
18 **treasurer from the three campaigns, what was the**  
19 **purpose of that?**

20 A. Those were requirements as previously discussed both  
21 with legal counsel -- not yourself -- but first with  
22 legal counsel as well as my understanding in my  
23 conversations with different people that part of the  
24 disaffiliation process was to disaffiliate and  
25 resign from committees and/or campaign committees.

1 **Q. And you tendered those to...?**

2 A. Those were tendered to the clerk, may have been  
3 Jeanette. Different people helped me. Because it  
4 was somewhat busy I think about 2:00 on that  
5 particular day. Someone else helped me with the,  
6 with the provisional ballot. I think one of the  
7 volunteers helped me do that. And that took about  
8 20 minutes. This was then filed with Jeanette  
9 and/or with someone else at the desk.

10 **Q. Okay.**

11 MR. VASVARI: If I may have a minute just  
12 to see how far I've come so I know how far I have to  
13 go.

14 (The court reporter requested a break.)

15 (A recess was taken.)

16 MR. FERRUCCIO: Back on the Record. It is  
17 4:24. Just out of sort of a point of order, how  
18 many witnesses are left? Is this your last witness?

19 MR. VASVARI: I can't hear you.

20 MR. FERRUCCIO: Everybody.

21 MR. SHERER: Hey.

22 MR. FERRUCCIO: Is this your last witness?  
23 I'm trying to get sort of an idea.

24 MR. VASVARI: No. I have a handful more.

25 MR. FERRUCCIO: Okay.

1 MR. VASVARI: And I think I estimate those  
2 at five minutes, five minutes, seven, seven, and  
3 seven.

4 MR. FERRUCCIO: All right. Okay. Let's  
5 get started.

6 MR. PLAKAS: I have a follow-up question.  
7 During the course of Mr. Giavasis' testimony, I  
8 raised the issue that the door had been opened as to  
9 the subject matter for Doctor Klarner. Has the  
10 panel had any further ability to review that  
11 request?

12 MR. FERRUCCIO: Really haven't. I don't  
13 anticipate that we will have him testify. But I  
14 mean I think we understand, you know, the issue  
15 that's raised. But, you know, the speculation with  
16 respect to the political process, I think we can all  
17 grasp that issue. I think I'm not inclined to have  
18 him testify. I'll reserve the decision until later.  
19 But I think that's where we're leaning.

20 MR. VASVARI: If I could just for 30  
21 seconds.... Our position on that, Mr. Chairman, is  
22 that there -- these are different horses and  
23 different barns with respect to the doors that have  
24 been opened. They have brought in the social  
25 scientist to talk about national data over a

1 long-series survey about what sort of effect an  
2 Independent candidate has on chances in a general  
3 election. We're not -- that's not us. I was asking  
4 Tom, and we intend to ask Tom, "Do you think you  
5 made your life easier by making this choice?"  
6 Different issue.

7 MR. FERRUCCIO: Please proceed.

8 BY MR. VASVARI:

9 **Q. Mr. Bernabei, it has been alleged that you are**  
10 **running for mayor to slake your thirst for vengeance**  
11 **against Mr. Healy. What do you say that to?**

12 A. I guess my comment would be that that is probably  
13 the craziest part of this entire protest process. I  
14 can only indicate that my relationship with Mayor  
15 Healy, despite the fact that he, in fact, did fire  
16 me eight years ago approximately, has been  
17 professional, cordial, and on many occasions  
18 laughing. He's the elected mayor of the City of  
19 Canton. I am a sitting county commissioner and have  
20 been the president of Board of Commissioners for  
21 four years.

22 But we have many transactions between us.  
23 There is the need for us to work, he on behalf of  
24 the city, myself on behalf of the county as a whole  
25 -- this includes the city -- to attempt to get work

1 done. So we have had a cordial and good-working  
2 relationship.

3 As far as the termination of me, there were  
4 many issues that led to that termination. I don't  
5 need to get into those today. But my comment with  
6 regard to that termination has been, and always has  
7 been, he is the mayor; he had the right to fire me.

8 **Q. Are you over it?**

9 A. I've been over it forever.

10 **Q. Is that what's motivated your desire to run for  
11 mayor?**

12 A. That has nothing whatsoever to do with this. And  
13 speculations as that being the only motive or the  
14 motive that they come up with to justify my actions  
15 is bizarre. I mean we have a group of people that  
16 forget that someone could actually have good  
17 motivation, which I would testify to myself that I  
18 do have; and that is my concern, is over good  
19 government and the future of all of us, including my  
20 grandchildren.

21 **Q. Why are you running for mayor?**

22 A. And may I clarify one thing. And I did bring some  
23 notes on a file just so you understand the  
24 relationship between the mayor and I. And this  
25 concerns the Building Department merger issues which

1 had been an issue in the newspaper back in, back in  
2 2013.

3 MR. PLAKAS: I would object again. This is  
4 really far afield again.

5 MR. FERRUCCIO: I mean I think you've  
6 answered the question with respect to it's not the  
7 burning desire because of the firing. So I mean I  
8 think we can move on.

9 MR. BERNABEI: As long as that eliminates  
10 the question as to speculation being accepted in  
11 lieu of my direct testimony as to what, in fact, was  
12 and what, in fact, has been.

13 MR. FERRUCCIO: I don't know what you're  
14 trying to add with respect to the answers, that  
15 you're just adding to a question that wasn't asked.  
16 So I'm just trying to --

17 BY MR. VASVARI:

18 **Q. Let's call this horse dead. It isn't vengeance, is  
19 it?**

20 A. It is not vengeance.

21 **Q. All right. Horse killed. You don't contemplate  
22 ever going back and rejoining the Democratic Party,  
23 do you?**

24 A. I do not contemplate going back to the Democratic  
25 Party. That is final and irrevocable. That is my

1 decision. It was my decision, that I believe I'm  
2 entitled to withdrawal from the Democratic Party and  
3 disaffiliate under law and under the Constitution.  
4 And I don't think that the Democratic Party wants me  
5 back anyways.

6 **Q. All right. You recorded a radio ad for a candidate  
7 for judge. Her name?**

8 A. Kristen Guardado.

9 **Q. And when did you record that advertisement?**

10 A. Apparently it happened on the 29th. I wasn't sure  
11 earlier as to whether it happened on the 27th or the  
12 29th. I don't find anything to indicate either date  
13 in any of my own records. I'll accept the WHBC  
14 records it was the 29th.

15 **Q. And that was sort of in the thick of the tumuli in  
16 your own mind --**

17 A. Yes.

18 **Q. -- over "do I stay" or "do I go"?**

19 A. Yes.

20 **Q. All right. You promised to do that earlier?**

21 A. Yes. And that ad was prepared by Kody Gonzalez who  
22 was her ad campaign manager. He had sent me a draft  
23 in an e-mail earlier in the week -- and that may be  
24 the date that I'm getting confused with -- with  
25 draft language. I re-edited it back and reworked it

1 and went to the, went to WHBC to record at her  
2 request.

3 **Q. Given all your angst, given all the trouble that was  
4 in your heart about whether this was the right thing  
5 to do, why did you go ahead and record this ad for a  
6 Democrat?**

7 A. Well, for anyone on, of course, everybody on, on  
8 this side of the podium who is involved in politics,  
9 anyone who is involved in election -- and I think  
10 that this is certainly an election for a very hotly  
11 contested, very hotly contested race for the  
12 Democratic primary candidate for municipal court  
13 judge, Kristen Guardado and anybody in that  
14 position, it is a life and death matter that exceeds  
15 any and all other concerns. She asked me for my  
16 assistance in that. I have known her for a long  
17 time. Originally hired her to the Law Department.  
18 I knew her prior to that. And she was in need. She  
19 asked and I agreed.

20 **Q. By the way, when you recorded the advertisement,  
21 were you earnest? Did you think she'd be a good  
22 judge?**

23 A. Yes. Absolutely would not have done so otherwise.

24 **Q. Okay. And can you say sitting here as an  
25 Independent today you still think she would be a**

1 good judge?

2 A. Yes.

3 **Q. And that really doesn't depend on her party**

4 **affiliation?**

5 A. No, it does not.

6 **Q. Much has been made of loyalty, Mr. Bernabei.**

7 **Rounding near the end. You signed some statements,**

8 **and we saw them in evidence, that you would be**

9 **faithful to the principles of the Democratic Party**

10 **if elected. Why have you not resigned as**

11 **commissioner?**

12 A. Initially -- and, again, I guess I'm getting into

13 attorney/client discussion that I had with, the

14 initial conversation that I had with Don McTigue

15 which would have been back on Monday, April 28th --

16 again, I reviewed... -- the first thing I told him

17 was I was a sitting commissioner. Because that was

18 the most immediate issue. But then I reviewed my

19 past history briefly and other issues and so forth.

20 We discussed that specifically, as to whether or not

21 there was a need for me to resign from office as a

22 part of the disaffiliation process. And he

23 instructed me that it was not, that I, although I

24 may have been elected as a Democrat, as an

25 officeholder itself, you know, I, I don't act in the

1 capacity as a Democrat in holding that office. And

2 that my duty is to the public at large, not to the

3 Democratic Party, and that it was not an issue

4 associated with disaffiliation.

5 **Q. So unlike the Board members who statutorily are**

6 **appointed based on party affiliation, county**

7 **commissioner isn't a Democrat commissioner or a**

8 **Republican commissioner? It's plain ol'**

9 **commissioner?**

10 A. Yes.

11 **Q. And that's what you are?**

12 A. Yes.

13 **Q. Okay.**

14 A. That was my understanding. That is still my

15 understanding today. And that is why that issue was

16 really never discussed after, you know, the first or

17 second time.

18 **Q. Okay. The other side responds when they're asking**

19 **the questions of saying character matters, I'll ask**

20 **this. You signed a statement that said you would be**

21 **true to the principles of the Democratic Party.**

22 **When you signed those statements, when you signed**

23 **those pledges, in your heart did you intend to honor**

24 **them?**

25 A. Yes.

1 **Q. Whether you understood then, what are the principles**

2 **of the Democratic Party?**

3 A. I am not familiar with what the specifically written

4 cannons or tenants of the Democratic Party are. I

5 associate my understanding and adherence to the

6 Democratic Party, primarily probably larger on

7 national and state issues with regard to fiscal

8 matters. With regard to the social policy, I think

9 I am a liberal on social policy. Whereas I think

10 the Republicans are reasonably conservative on that,

11 I am conservative probably on fiscal matters;

12 although, I believe that people should pay taxes.

13 We should pay higher income taxes in order to obtain

14 the necessary services and infrastructure that we

15 need.

16 But from a local perspective, I never had a

17 particular perspective on that as to the Democratic

18 Party versus the Republican party. Only because we

19 don't print money, therefore, there's no loss to be

20 attached to our spending of money. Our goal is to,

21 to have balanced budgets and spend the money in

22 order to deliver services efficiently.

23 **Q. You never signed an oath that said you would remain**

24 **in the Democratic Party; did you?**

25 A. To my knowledge, no.

1 **Q. Have the principles by which you speak to be a**

2 **public servant changed since you signed that oath?**

3 A. No.

4 **Q. Are you still guided by the same principles of**

5 **public service as when you signed that oath?**

6 A. Yes.

7 **Q. Those principles are what?**

8 A. Those I'm not sure. Well, the primary principle is

9 that we are here all elected officials regardless of

10 party; we're here to serve the public at large, the

11 good of the people, and not the party.

12 MR. VASVARI: One second, Mr. Chairman.

13 (A pause was taken.)

14 MR. VASVARI: I'm done.

15 MR. BERNABEI: Pardon? You want to talk to

16 me.

17 (A recess was taken.)

18 MR. VASVARI: I think that's all. And it

19 is, Mr. Chairman, all I have for direct on Mr.

20 Bernabei. Thank you for your patience.

21 MR. FERRUCCIO: Thank you.

22 Mr. Plakas.

23 MR. PLAKAS: Thank you.

24 MR. BERNABEI: Now, there's one thing that

25 I did forget to clarify, if I may.

1 MR. FERRUCCIO: Sure.

2 MR. PLAKAS: Probably not a question on

3 the, on the floor.

4 MR. FERRUCCIO: Well, that's all right. Go

5 ahead.

6 MR. BERNABEI: That was -- you know, one

7 thing when I was answering the question, and that

8 was why I gave the letters of resignation to

9 Jeanette, and I was thinking about that.

10 I had called Jeanette with regard to how

11 one completed the petition for nomination. I think

12 that she had sent me a copy of the petition that Mr.

13 Cicchinelli had filed in Massillon. But she also

14 then was going to provide to me a petition on that

15 date, again, that, that we're talking about, on

16 April the 30th, for my potential use.

17 MR. FERRUCCIO: Okay.

18 MR. BERNABEI: That was the purpose of I

19 believe either my call to her or her call to me.

20 And then turns out I was unable to find Phil

21 Giavasis with regard to the delivery of the letters

22 of resignation, so I gave them to Jeanette.

23 MR. FERRUCCIO: Okay.

24 MR. BERNABEI: She was going to see him

25 that evening. I wanted to clarify. In my own mind

1 it didn't make sense because I had forgotten about

2 the petition issue.

3 MR. FERRUCCIO: Okay.

4 Mr. Plakas.

5 CROSS-EXAMINATION

6 BY MR. PLAKAS:

7 **Q. Mr. Bernabei, I think we had a Freudian moment in**

8 **the first three minutes of your Direct Examination.**

9 **And actually I wrote it down and quoted you because**

10 **within the first three minutes you stated under**

11 **oath, quote, I am a Democratic officeholder. And**

12 **then you said "Strike that. I was." So it's not**

13 **difficult, if you are, in fact, confused, that the**

14 **potential voter can be confused.**

15 **So let's look at Exhibit 16. And 16 is the**

16 **promise or the oath that you just --**

17 A. By the way, Mr. Plakas, I am not confused about that

18 whatsoever. But go ahead.

19 **Q. I'm just taking your words under oath.**

20 A. And it was a --

21 **Q. You said, I quote, "I am a Democratic officer." Did**

22 **you not say that under oath?**

23 A. What did I say right after that, sir?

24 **Q. You said "Strike that. I was."**

25 A. Have you ever heard that term before? Have you ever

1 done that?

2 **Q. Actually not with the regularity that you contradict**

3 **yourself.**

4 MR. FERRUCCIO: All right. Let's not --

5 MR. VASVARI: Objection.

6 MR. FERRUCCIO: We are not going to have

7 any argument, Guys. Just stick to the facts.

8 BY MR. PLAKAS:

9 **Q. So Exhibit 16. And that oath that you will support**

10 **and abide by the principles of the Democratic Party,**

11 **that was one of the vehicles that allowed you to**

12 **become a Democratic officeholder. Now, with regard**

13 **to that --**

14 MR. PLAKAS: And if you would pop that out.

15 I will support and abide by the principles of the

16 Democratic -- about three-fourths of the way down.

17 **Q. -- with regard to that representation to the public**

18 **and under the election laws of Ohio, tell me. I**

19 **don't seem to see an expiration date on that**

20 **promise. Is there one? Is there an expiration date**

21 **on that promise?**

22 A. No.

23 **Q. And when you made that promise under the election**

24 **laws of Ohio, you intended the office which you were**

25 **receiving, obtaining with the support of the**

1 **Democratic Party, that that oath, that statement,**

2 **that promise would continue during the term of your**

3 **position as a Democratic county commissioner; right?**

4 MR. VASVARI: Objection. There is no such

5 thing as a Democratic county commissioner.

6 BY MR. PLAKAS:

7 **Q. Isn't that true, sir? When you made that promise,**

8 **you intended to fulfill that promise; didn't you?**

9 A. I intended to fulfill the promise. Or I don't know

10 that it's a promise or not. I intended to fulfill

11 the statement as written on the petition.

12 **Q. Well, and that was the -- the promise on Exhibit 16**

13 **for the Democratic commissioner, you made the**

14 **identical promise on Exhibit 17 for the position of**

15 **the Central Committee of the Democratic Party in**

16 **Stark County; correct?**

17 A. 17. Let me see. That is the same, same statement.

18 **Q. Exact same statement?**

19 A. I believe, yes.

20 **Q. And because you felt that you could no longer**

21 **fulfill the promise on Exhibit 17 as a Democratic**

22 **Central Committee member, you resigned; correct?**

23 A. I resigned because I was told that that was an issue

24 that had to be completed in order to officiate

25 disaffiliation.

1 **Q. You were told that by your attorney, Donald McTigue,**  
 2 **right?**  
 3 A. Yes.  
 4 **Q. You talked at length about your grandchildren and**  
 5 **good government here in your Direct Examination. I**  
 6 **presume that you teach your grandchildren to play by**  
 7 **the rules; right?**  
 8 A. Yes.  
 9 **Q. To comply with the spirit and letter of rules or**  
 10 **regulations or the law --**  
 11 A. Yes.  
 12 **Q. -- right?**  
 13 **You talk to your grandchildren about good**  
 14 **government; correct?**  
 15 A. Yes.  
 16 **Q. You tell them that good government encompasses the**  
 17 **rule of law, the rule of law versus the rule of**  
 18 **personalities; correct?**  
 19 A. I don't know that I've had that conversation with my  
 20 grandchildren. But --  
 21 **Q. If you have the opportunity?**  
 22 A. I understand. I understand the principle.  
 23 **Q. And you agree with the principle; don't you?**  
 24 A. Yes.  
 25 **Q. You also agree with the principle that no man is**

1 **above the law, as we quoted Teddy Roosevelt earlier;**  
 2 **correct?**  
 3 A. Generally.  
 4 **Q. We've heard testimony that you're a man that's noted**  
 5 **as believing that the devil is in the details;**  
 6 **correct?**  
 7 A. Yes.  
 8 **Q. Your Exhibit C is the voter registration form that**  
 9 **you have signed under "I declare under penalty of**  
 10 **election falsification," et cetera. Exhibit C,**  
 11 **right to the left of your signature, is dated May**  
 12 **3rd, 2015; correct?**  
 13 A. Yes.  
 14 **Q. You wrote in that date; correct?**  
 15 A. Yes.  
 16 **Q. That date is false, isn't it?**  
 17 A. No. The date is May the -- date that I wrote it on  
 18 was not May 3rd.  
 19 **Q. Okay.**  
 20 A. I don't know if that makes the date false.  
 21 **Q. Well, when you sign any legal or important document**  
 22 **and they ask you for the date next to your**  
 23 **signature, isn't it customarily recognized if not**  
 24 **universally recognized that that's the date that you**  
 25 **sign the document?**

1 A. On occasion you can write a document with a date to  
 2 be prospective. And that was the purpose of dating  
 3 it May the 3rd.  
 4 **Q. Well, why didn't you write then under the date that**  
 5 **this is just a prospective or conditional date?**  
 6 **This isn't really the accurate, true date that you**  
 7 **signed this document? You knew that there was a**  
 8 **deadline involved in this situation; didn't you?**  
 9 A. I knew that the deadline was May 4.  
 10 **Q. You could have written "conditional" or**  
 11 **"prospective" or "I may not really mean this";**  
 12 **correct?**  
 13 A. I could have.  
 14 **Q. And that's what you told Jeanette Mullane, that you**  
 15 **weren't sure if you really meant it or not; correct?**  
 16 MR. VASVARI: Objection.  
 17 MR. FERRUCCIO: Overruled.  
 18 BY MR. PLAKAS:  
 19 **Q. In substance that's what you told her, is it not?**  
 20 A. Not if I really meant it or not, that I would make a  
 21 decision as to whether or not that document should  
 22 be filed.  
 23 **Q. Well, if the document was not going to be filed,**  
 24 **that means you didn't really mean to dis -- attempt**  
 25 **to disaffiliate from the Democratic Party; correct?**

1 A. I don't know what this has to do with  
 2 disaffiliation.  
 3 **Q. Isn't this part of the process?**  
 4 A. For someone reading the voter registration form?  
 5 **Q. So would you have disaffiliated but still moved to**  
 6 **the vacant home at 4118 University Avenue? Was that**  
 7 **an option? "I'm no longer a Democrat but I'm**  
 8 **thinking maybe I'll just go ahead and move into this**  
 9 **vacant home"? Was that Option B or C or D?**  
 10 A. No. The two were combined. I had two steps to  
 11 take, one dealing with this disaffiliation, one  
 12 dealing with voter registration and residency. This  
 13 form deals with residency, not disaffiliation.  
 14 **Q. But the steps were intertwined, weren't they?**  
 15 **Disaffiliation and residency were a package in your**  
 16 **mind? You weren't going to do one without the**  
 17 **other, were you?**  
 18 A. They are two separate issues. And I think that you  
 19 frame them for the court very well as two separate  
 20 issues. I don't know why you're now trying to  
 21 intertwine them.  
 22 MR. PLAKAS: Can I ask the Panel to please  
 23 have him answer the questions.  
 24 MR. FERRUCCIO: Well, I think he is trying  
 25 to answer your question. Want to restate it?

1 MR. PLAKAS: Sure.

2 BY MR. PLAKAS:

3 **Q. The issue of you moving and you disaffiliating or**

4 **attempting to do both were intertwined, weren't**

5 **they? You wouldn't have done one without the other?**

6 A. Intertwined with regard to my desire to run as mayor

7 for the City of Canton.

8 **Q. Thank you for answering. Now, you've talked at,**

9 **you've talked at length about Jeanette Mullane and**

10 **how you gave her these conditional documents or**

11 **whatever you're calling them. When did you tell her**

12 **to actually file them?**

13 A. When did I tell her to actually file them?

14 **Q. Sure.**

15 A. My conversation was.

16 **Q. With the Board of Elections. When did you --**

17 A. Sometime Saturday or Sunday.

18 **Q. Well, that's what I'm asking.**

19 A. May 2 or May 3.

20 **Q. Since we are dealing with some specific and critical**

21 **dates, can we do better than sometime Saturday or**

22 **sometime Sunday?**

23 A. No.

24 **Q. No. On this critical, important decision, you don't**

25 **recall the circumstances by which you told her "Yes,**

1 **I'm pulling the trigger I'm going to do this" or**

2 **not? You don't remember the circumstances?**

3 A. No. Because I had wall-to-wall conversations with

4 multiple people over this weekend. And, no, I don't

5 remember which conversation that was with Jeanette

6 Mullane.

7 **Q. So let's drill down a little bit to maybe help**

8 **refresh your recollection so there won't be**

9 **confusion. When you gave Jeanette Mullane the final**

10 **instructions to go ahead and file this with the**

11 **Board of Elections, was that in person? Were you in**

12 **person with her when you told her that?**

13 A. The only in-person meeting that I had with Jeanette

14 Mullane was on Thursday, April the 30th, when I

15 completed this form, when I received the petitions,

16 and when I gave her the four letters.

17 **Q. Okay. So I take it --**

18 A. That was the in-person.

19 **Q. I take it that your answer to my question is "No, it**

20 **wasn't in person when I told her that I made my**

21 **final decision"? Is that your answer?**

22 A. Well, you are aware that I was in Florida. So I

23 didn't know that you were asking me that question.

24 **Q. So when you gave her the final directions that you**

25 **made your decision, it was not in person; so,**

1 **therefore, was it by telephone?**

2 A. It would have been by telephone.

3 **Q. Okay. And where were you when you made that**

4 **telephone call?**

5 A. I would have been in Clearwater Beach I believe.

6 **Q. Okay. And what time during the day?**

7 A. I cannot tell you what time of day, as I previously

8 testified.

9 **Q. And you previously testified you didn't know whether**

10 **it was May 2nd or May 3rd; correct?**

11 A. Correct.

12 **Q. And you still don't know whether it was May 2nd or**

13 **May 3rd?**

14 A. I do not.

15 **Q. And then that tells me that you still don't know**

16 **what finally triggered your final decision to say**

17 **"I'm going to go ahead and try to do this," because**

18 **it would seem to me that one of the first steps you**

19 **would take would be to actually call Jeanette**

20 **Mullane who was holding these conditional or "maybe"**

21 **documents and tell her "Go ahead and file." So you**

22 **don't remember what triggered then that final**

23 **decision or which day it was, 2nd or 3rd; correct?**

24 A. That is correct.

25 **Q. And with regard to the interaction you had with**

1 **Jeanette Mullane, that was on April 30th; correct?**

2 A. That would be Thursday, the day that I left for the

3 airport.

4 **Q. And what time during the day was that interaction?**

5 A. About, approximately I believe 12 to 1

6 approximately.

7 **Q. And at that time, was Jeanette Mullane working here**

8 **at the Board of Elections?**

9 A. That was the meeting that was held at Chase Bank.

10 **Q. Sure. But that, that Thursday, April 30th, is a**

11 **regular work day, isn't it?**

12 A. Yes. But I'm not her employer. I don't know

13 whether she was working at the Board of Elections or

14 not.

15 **Q. You could have come down to the Board of Elections.**

16 **But you chose not to and you chose to see if she**

17 **would come and meet you somewhere; correct?**

18 A. No. That's incorrect. And that's not what I

19 testified to.

20 **Q. You don't know whether she was on the job or on the**

21 **clock on April 30th, but you assumed she was;**

22 **correct?**

23 A. I assumed that she was. But she may not have been.

24 **Q. But you didn't ask her?**

25 A. No.

1 **Q. You've gone also into great detail about the**  
2 **discussions you had with Don McTigue. And you've**  
3 **relayed to us the advice that he's given you on a**  
4 **number of matters. You also had previously in the**  
5 **community relayed to others what Don McTigue had**  
6 **told you; correct?**

7 A. I'm not sure what those items would be. If you  
8 wanted to tell me about that.

9 **Q. Let me try to remind you of the things he told you**  
10 **and the things you relayed in the community. Mr.**  
11 **McTigue told you that this is the most difficult**  
12 **case he had ever seen with regard to these issues,**  
13 **that it was a loser because there were bad facts and**  
14 **you only had a 30 percent chance of success; isn't**  
15 **that true?**

16 A. Please tell me to whom or to where I made those  
17 statements.

18 **Q. Well, the good thing about you being under oath is**  
19 **you got to answer the questions. So let's break**  
20 **them down. Mr. McTigue told you that this was --**  
21 **would be a very difficult case; correct?**

22 A. I don't believe that I discussed those issues with  
23 anyone.

24 MR. PLAKAS: Well, once again, I would ask  
25 the Board to please require the witness to answer

1 the question.

2 **Q. The question is, Mr. McTigue told you that this was**  
3 **a very difficult case, in fact, the most difficult**  
4 **case he had ever seen on these issues; correct?**

5 MR. VASVARI: I'm going to object.  
6 Relevance. Mr. McTigue's prognostication is not  
7 relevant.

8 MR. FERRUCCIO: That's --

9 MR. VASVARI: It's a decision for the  
10 Board, not Don McTigue.

11 MR. FERRUCCIO: That's sustained.

12 MR. PLAKAS: And the reason I went there  
13 is, of course, we've heard about two dozen questions  
14 about the advice that Mr. McTigue has given to Mr.  
15 Bernabei and that how Mr. Bernabei acted in reliance  
16 upon that. So the implications that this is somehow  
17 blessed by Don McTigue and he told him what he was  
18 doing was appropriate, that is not the fact and that  
19 that's not what happened.

20 MR. VASVARI: The implication?

21 MR. FERRUCCIO: We understand that. And I  
22 understand that the attorney/client privilege has  
23 been waived. But we have the ability as a Board to  
24 assess those statements, and that's what our job is.

25 MR. VASVARI: We only offered McTigue, Mr.

1 Chairman, for the following: He sought counsel, he  
2 got advice from counsel, he acted in compliance with  
3 that advice.

4 MR. FERRUCCIO: Yeah. And we understand  
5 that. And it may not have been the right advice.  
6 But the point is that it was advice that he got.  
7 And we understand that. We'll give it the proper  
8 weight.

9 BY MR. PLAKAS:

10 **Q. You've talked, you've spoken in your testimony here**  
11 **this afternoon about the candidacy of Kristen**  
12 **Guardado. And the fact is that you did not tell her**  
13 **until May 4th, the day before the election, that you**  
14 **were resigning; correct?**

15 A. That is correct. I told her after I had resigned.

16 **Q. And you didn't give her any kind of heads up before?**

17 A. I do not believe that I had any prior conversation.  
18 No.

19 **Q. You've talked about your claim that you slept at the**  
20 **University Avenue address from May 3rd through May**  
21 **6th. During that period that you claimed you were**  
22 **living or sleeping there, your wife was actually**  
23 **living and sleeping at the home, at your Hills &**  
24 **Dales home; correct?**

25 MR. VASVARI: Asked and answered.

1 MR. FERRUCCIO: That's correct.

2 BY MR. PLAKAS:

3 **Q. Is that correct?**

4 MR. FERRUCCIO: No. That's been asked and  
5 answered but....

6 A. My answer would be I hope so but....

7 **Q. When you --**

8 A. Because she wasn't with me.

9 **Q. That would open up a whole new barn door. You know**  
10 **that your wife, when you voted for provisionally in**  
11 **the City of Canton, at the same time on the same day**  
12 **she voted at your regular precinct in Hills & Dales;**  
13 **correct?**

14 A. Yes.

15 **Q. She is a long-time Democrat also; correct?**

16 A. I believe. That's not why I married her.

17 **Q. You in the last several days received a subpoena**  
18 **requesting all communications including text**  
19 **messages, e-mails, any circulars, signatory**  
20 **petitions, et cetera, et cetera, et cetera. Do you**  
21 **recall receiving this?**

22 A. That's the subpoena that the -- subpoena that was  
23 served by the process server. I received a subpoena  
24 from the process server I believe on --

25 **Q. Let me just --**

1 A. -- Monday morning.  
2 **Q. Let me just give it to you.**

3 MR. VASVARI: I've never seen this, not  
4 from you.

5 MR. PLAKAS: Not from me. But you've seen  
6 it from --

7 MR. VASVARI: I've seen it from my client.

8 MR. PLAKAS: Okay.

9 MR. VASVARI: But I haven't seen it, like  
10 the other subpoenas that I've seen from the Board.

11 BY MR. PLAKAS:

12 **Q. Based upon that, your counsel just indicated that**  
13 **he's seen it from his client. So you've received**  
14 **this subpoena, haven't you?**

15 A. This subpoena, yes. This is not the subpoena that I  
16 received from the process server. I received --  
17 actually I didn't receive. My wife signed for a  
18 second document from your office I believe on  
19 Friday.

20 **Q. And have you complied with the subpoena? Have you**  
21 **brought the documents that we've requested in the**  
22 **subpoena?**

23 A. No.

24 **Q. And the reason that you haven't complied with the**  
25 **subpoena is what?**

1 A. I gave the subpoena to my counsel.

2 **Q. Your counsel told you not to comply with the rule of**  
3 **law and to provide the information in the subpoena;**  
4 **is that right?**

5 MR. VASVARI: Objection. Communications  
6 with me are none of your business. I'll be willing  
7 to tell the Board why he hasn't complied with the  
8 subpoena.

9 MR. FERRUCCIO: That's true.  
10 Attorney/client communication.

11 BY MR. PLAKAS:

12 **Q. Finally then we, we've talked about these. In**  
13 **addition to the forms, the conditional forms, we've**  
14 **talked about these resignation letters that you**  
15 **weren't sure that you were going to pull the trigger**  
16 **on in terms of resigning from the various Democratic**  
17 **committees. It's clear that when you drafted those**  
18 **you weren't sure that you wanted them delivered;**  
19 **correct?**

20 A. Yes.

21 **Q. And even though you indicate that you apparently**  
22 **gave originals or some originals to Jeanette, you,**  
23 **of course, retained copies; didn't you?**

24 A. Yes.

25 **Q. And you could have, if you had so chosen to do so,**

1 **you could have mailed either the original, if you**  
2 **had more than one, or you could have mailed copies**  
3 **when you went to the airport on Thursday on your way**  
4 **to Florida? If you wanted to ensure that delivery**  
5 **was made, you could have flipped them in the mailbox**  
6 **at the airport?**

7 A. Yes.

8 **Q. You could have done that but you choose not to?**

9 A. It was not an issue. I think we covered this  
10 before. It was not an issue of choice. It was an  
11 issue of omission.

12 **Q. An issue of omission?**

13 A. Omission on my part to fail to mail them. Yes, I  
14 wish I had mailed them obviously. I wish I had run  
15 in the Democratic primary. We wouldn't be here  
16 today. Neither of those things happened. I omitted  
17 to mail them. I did not intentionally chose not to  
18 mail them.

19 **Q. So thank you. Finally then, once again quoting you,**  
20 **you say you wish you had mailed them or delivered**  
21 **them and you wish you had run in the Democratic**  
22 **primary. And earlier I wrote down your quote in**  
23 **your earlier testimony. You said in hindsight you**  
24 **should have chosen to run in the Democratic primary?**

25 A. The purpose of both of those statements is that that

1 would have eliminated all of today's hearing and  
2 everything else that has occurred since May the 3rd.

3 **Q. Thank you.**

4 MR. VASVARI: Just a few, very few.

5 MR. FERRUCCIO: All right.

6 MR. VASVARI: Conscious of the time.

7 REDIRECT EXAMINATION

8 BY MR. VASVARI:

9 **Q. It would have been better if you mailed the letters,**  
10 **wouldn't it?**

11 A. I think that was my answer. Yes. I wish I had done  
12 so. This would have been better. Would have  
13 eliminated the issue of whether or not they were, in  
14 fact, delivered or whether, in fact, they constitute  
15 resignation or not.

16 **Q. When they weren't busy characterizing you as a snake**  
17 **that shed its skin, they were busy characterizing**  
18 **you as a chicken running around without a head. You**  
19 **were very busy that week?**

20 A. Many many many things were happening and many many  
21 things had to be put together in order to make the  
22 filing date of 4:00 p.m. on Monday, May the 4th.

23 **Q. You gave the letters to Jeanette with the full**  
24 **expectation that she would deliver them for you?**

25 A. Yes.

1 MR. PLAKAS: Objection.  
 2 BY MR. VASVARI:  
 3 **Q. You didn't do that as some sort of subterfuge or**  
 4 **some trick?**  
 5 A. No.  
 6 **Q. Your intention was if you released them then they**  
 7 **would go and they would be delivered and that was**  
 8 **your expectation?**  
 9 A. Yes.  
 10 **Q. All right. By the way, you say you wish you --**  
 11 A. My expectation was that I was completing, you know,  
 12 a resignation when delivered.  
 13 **Q. All right. Now you said you wish you would have run**  
 14 **in the Democratic primary. But before that comes**  
 15 **back at you twisted into a different ball of rubber**  
 16 **bands, let's just be clear. Do you mean that your**  
 17 **decision to run for mayor was basically an "Oops, I**  
 18 **missed the primary. I better do this thing as an**  
 19 **Independent"? Is that why you ran as an**  
 20 **Independent?**  
 21 A. No. We've already covered that. But, no. I had no  
 22 contemplation of running as a, as a Democrat in that  
 23 primary. I had no contemplation of running for  
 24 mayor at the time of filing for the primary.  
 25 **Q. So this is not something you were doing because you**

1 **missed the deadline for the primary filing?**  
 2 A. That is correct.  
 3 **Q. Something you're doing because you came to the**  
 4 **decision afterward that somebody ought to run as an**  
 5 **independent?**  
 6 A. That is correct.  
 7 **Q. Finally, we heard that there's no expiration date on**  
 8 **your oath of loyalty to the Democratic Party. When**  
 9 **you signed that, did you intend yourself to be bound**  
 10 **by some blood oath for life?**  
 11 A. No.  
 12 **Q. That would be silly, wouldn't it?**  
 13 A. I would not anticipate that I am obligated to remain  
 14 in the Democratic Party for life.  
 15 **Q. Because that would be inconsistent with your First**  
 16 **Amendment freedom of association, wouldn't it?**  
 17 MR. PLAKAS: Objection. Move to strike.  
 18 MR. FERRUCCIO: Sustained.  
 19 MR. VASVARI: Withdrawn.  
 20 MR. PLAKAS: One question.  
 21 RE-CROSS-EXAMINATION  
 22 BY MR. PLAKAS:  
 23 **Q. You do expect to be bound by people being able to**  
 24 **rely upon "you will say what you do and do what you**  
 25 **say"; correct?**

1 A. That is an important thing.  
 2 MR. PLAKAS: Nothing further.  
 3 MR. FERRUCCIO: Thank you. Any questions  
 4 from any of the Board members?  
 5 MR. SHERER: (Mr. Sherer moved his head  
 6 from side to side).  
 7 MR. FERRUCCIO: No. Okay.  
 8 Mr. Bernabei, you can be excused from the  
 9 chair.  
 10 (Thomas M. Bernabei was dismissed.)  
 11 MR. FERRUCCIO: Although you know what?  
 12 Actually there is one other.... Was there a mark  
 13 for the signature of 5/15/2015, the voter  
 14 registration?  
 15 MR. VASVARI: There is. And we should  
 16 just -- I mean if it's at all relevant, we don't  
 17 intend to offer it. It is what it is.  
 18 MR. FERRUCCIO: All right. So we won't  
 19 mark it.  
 20 MR. VASVARI: There's no need to mark it.  
 21 I don't think it adds anything.  
 22 MR. PLAKAS: It's in our package.  
 23 MR. FERRUCCIO: Okay.  
 24 MR. VASVARI: It is in theirs.  
 25 MR. FERRUCCIO: So we'll make it G.

1 (A 5/15/2015 Voter Registration and  
 2 Information Update Form was marked  
 3 Candidate's Exhibit G.)  
 4 MR. VASVARI: Before we depart Mr.  
 5 Bernabei's testimony, I wanted to respond to the  
 6 allegation that he was somehow deficient in not  
 7 answering the subpoena. When I requested subpoenas  
 8 be issued by the Board -- and I understand that the  
 9 Board met and decided issues of subpoenas -- it was  
 10 our understanding that in this matter subpoenas and  
 11 compulsory testimony would be required by the Board.  
 12 I was sent by Ms. Mullane subpoena forms in  
 13 blank which had two signature lines on them, one for  
 14 her and one for the director, no signature line for  
 15 counsel. I said "Ought not I to add a signature  
 16 line for counsel as the person requesting," and she  
 17 said that would be okay. But what was present on  
 18 those documents and what is absent from this one is  
 19 any signature by any member of the Board and the  
 20 entity issuing the subpoena. So we are playing by  
 21 two different sets of rules. I get my subpoenas  
 22 from you; he gets his subpoenas wherever. That's  
 23 why we haven't answered the subpoena. We don't  
 24 consider it to have been issued in due course to the  
 25 same sense that the other subpoenas have been

1 issued. That's all on that.  
2 MR. FERRUCCIO: Thank you.  
3 MR. PLAKAS: To respond pursuant to  
4 statutory case law, we have the absolute right to  
5 issue supplemental subpoenas when we understood and  
6 knew that the Board was swamped with a number of  
7 subpoenas and we wanted to ensure that the subpoena  
8 that we have a legal right to issue was actually  
9 served. And it was.

10 MR. FERRUCCIO: Thank you. So noted.  
11 MR. VASVARI: I didn't know about the  
12 "swamped" clause. But okay.  
13 Jeanette Mullane, please.  
14 (Jeanette Mullane was duly sworn by Notary  
15 Public Jocelyn S. Harhay.)

16 DIRECT EXAMINATION

17 BY MR. VASVARI:

18 **Q. Ms. Mullane --**

19 A. Yes

20 **Q. -- I'm going to try and make this the quickest  
21 examination of my whole life. You sat here today  
22 and you heard Tom Bernabei testify for hours;  
23 correct?**

24 A. Yes.

25 **Q. You heard him testify to interactions between the**

1 **two of you on the 30th of April and then over the  
2 weekend of May 2nd and 3rd and then again in two  
3 meetings of the Board of Elections on the 4th of  
4 May; correct?**

5 A. Yes.

6 **Q. Has he said anything to your knowledge inaccurate or  
7 incorrect?**

8 A. No.

9 MR. PLAKAS: Objection. Mr. Bernabei has  
10 testified for several hours. For her to answer that  
11 question, she needs a transcript. I think if he  
12 wants to put a question to her as to whatever he  
13 thinks is relevant or important he can. But to ask  
14 for a summary of another witness's testimony and say  
15 "What do you think of that testimony," I mean  
16 that's, that's a first in Ohio also. The --

17 MR. FERRUCCIO: Well, maybe you can ask  
18 whether or not she has anything to add.

19 MR. VASVARI: Just give me three for  
20 foundation and I'll fix all that.

21 MR. FERRUCCIO: All right.

22 BY MR. VASVARI:

23 **Q. This is a matter of grave importance to you, isn't  
24 it?**

25 A. Yes.

1 **Q. You have been listening very carefully to what Mr.  
2 Bernabei has said; because in some way, it weighs  
3 upon your station in the party and your job?**

4 A. Yes.

5 **Q. And if Mr. Bernabei said something with which you  
6 disagreed or you felt he mischaracterized something  
7 that would certainly jump out at you? Because you  
8 have a vested interest in the truth being told;  
9 right?**

10 A. That's correct.

11 **Q. Anything jump out at you?**

12 MR. PLAKAS: Same objection. Anything jump  
13 out at you after several hours of testimony?

14 MR. VASVARI: We just established that  
15 she's been sitting here on the edge of her seat  
16 watching Tom Bernabei testify and is deeply invested  
17 in making sure he gets it right and that she would  
18 notice any instance in which he got it wrong.

19 MR. PLAKAS: I would like to think that the  
20 audience is sitting on the edge of their seat to  
21 what we have to say. But I sense that that's not  
22 right. This is totally inappropriate. Never going  
23 to happen and never has.

24 MR. FERRUCCIO: You have the opportunity to  
25 ask her the questions that you want.

1 BY MR. VASVARI:

2 **Q. Is there anything that you heard Mr. Bernabei  
3 testify to today that you marked as something to  
4 which you would like to object, correct, add,  
5 clarify?**

6 A. Only thing I would say, he, he was unclear whether  
7 he had contacted me on Saturday or Sunday. And he  
8 had contacted me on Sunday.

9 **Q. That's the only thing?**

10 A. Yes.

11 **Q. Other than that, what you heard today doesn't strike  
12 you as inaccurate?**

13 A. No.

14 **Q. Thank you.**

15 MR. VASVARI: I'm done.

16 MR. PLAKAS: I guess I'm not sure really  
17 how to respond to a summary.

18 CROSS-EXAMINATION

19 BY MR. PLAKAS:

20 **Q. On April 30th, were you working here at the Board of  
21 Elections?**

22 A. Yes.

23 **Q. You were on the job?**

24 A. Yes.

25 **Q. You went out, you left the job and went out to Chase**

1 **Bank?**  
 2 A. Yes. I went out for lunch and was doing some  
 3 errands during my lunchtime.  
 4 **Q. All right. When Mr. Bernabei gave you the**  
 5 **documents, whether they were the letters or the**  
 6 **Board of Elections forms, at that point, he told**  
 7 **you, as he testified here today, that he hadn't made**  
 8 **a final decision, that these were conditional or**  
 9 **"maybe"; correct?**  
 10 A. The letters, he had, had asked me if I was attending  
 11 the Democratic cocktail party that evening and if I  
 12 would give them to Phil Giavasis. And I agreed to  
 13 do that for him.  
 14 **Q. Okay. And did he tell you that he had not yet made**  
 15 **up his mind?**  
 16 A. He didn't say that.  
 17 **Q. What did he say?**  
 18 A. He, he was still -- I mean he had -- he was still  
 19 going through and thinking about everything. But I  
 20 would say he didn't tell me that he didn't make up  
 21 his mind yet. He just said "Would you please" --  
 22 you know, asked me to give those letters to Mr.  
 23 Giavasis which I did. And, and then he had filled  
 24 out the registration form. And I was going to file  
 25 it on Sunday, you know, after I heard from him.

1 **Q. Did you notice when he filled out the Voter**  
 2 **Registration Form, Bernabei Exhibit C, that it was**  
 3 **not dated the date that he actually signed the**  
 4 **document?**  
 5 A. I didn't really notice at first. Because he filled  
 6 it out and I went through the drive-through of the  
 7 bank while he was filling that out. And I mean I  
 8 did notice it later.  
 9 **Q. When did you notice it later?**  
 10 A. I don't really know. I don't remember exactly when.  
 11 MR. PLAKAS: One second.  
 12 (A pause was taken.)  
 13 MR. PLAKAS: I have nothing further. Thank  
 14 you.  
 15 MR. FERRUCCIO: Do you have any questions?  
 16 MR. SHERER: No.  
 17 MR. BRADEN: I have no questions.  
 18 MR. CLINE: I have no questions for this  
 19 witness.  
 20 MS. MULLANE: Thank you.  
 21 (Jeanette Mullane was dismissed.)  
 22 MR. VASVARI: We're just ascertaining the  
 23 presence of our witnesses. We think they're here.  
 24 And I promise I'll be as quick as I can.  
 25 MR. FERRUCCIO: No problem.

1 MR. VASVARI: We call Judge Frank  
 2 Forchione.  
 3 (Frank G. Forchione was duly sworn by  
 4 Notary Public Jocelyn S. Harhay.)  
 5 DIRECT EXAMINATION  
 6 BY MR. VASVARI:  
 7 **Q. Your Honor, would you state your name and title for**  
 8 **the Record, please?**  
 9 A. My name is Frank Forchione. And I am a judge at  
 10 Stark County Common Pleas Court. If I can put on  
 11 the Record, I am here under subpoena today.  
 12 **Q. You can certainly put that on the Record.**  
 13 A. Yes.  
 14 **Q. And so you are.**  
 15 A. Yes, sir, I am.  
 16 **Q. Judge Forchione, do you know Tom Bernabei?**  
 17 A. Yes, I do.  
 18 **Q. And how long have you known him?**  
 19 A. About 30 years.  
 20 **Q. And what sort of associations have you had with him?**  
 21 A. Well, I worked with Mr. Bernabei in the Law  
 22 Department. He appointed me as the Canton City  
 23 prosecutor where I was for about 14 years. I worked  
 24 with him as a county commissioner. And Tom's a  
 25 friend of mine.

1 **Q. Okay. And have you over the course of the years had**  
 2 **the opportunity to discuss politics with him?**  
 3 A. Yes.  
 4 **Q. Okay. And did there come a time when you learned**  
 5 **that Mr. Bernabei was contemplating disassociating**  
 6 **himself from the Democratic Party?**  
 7 A. Yes.  
 8 **Q. And when was that, sir?**  
 9 A. It was shortly before he, you know, filed his  
 10 petitions. Generally came right after he heard the  
 11 mayoral debate and the Repository wrote an editorial  
 12 that didn't endorse candidates. And I think that is  
 13 when he first started talking about that. He had  
 14 made other expressions of disillusionment with some  
 15 things along the way.  
 16 **Q. Things such as...?**  
 17 A. The direction and vision and things like that,  
 18 especially for the City of Canton.  
 19 **Q. Okay. You mentioned two events. The candidates'**  
 20 **debate, that would have been between Mr. Healy and**  
 21 **Mr. Perez?**  
 22 A. Yes.  
 23 **Q. And the Repository editorial that would have run on**  
 24 **the last Sunday in April if I'm not mistaken?**  
 25 A. I believe that was the date. Yes.

1 **Q. Why did those jump to mind?**  
 2 A. Well, they jumped to my mind. I had never seen an  
 3 editor for a race like that not endorse either  
 4 candidate. So I mean that triggered I think a lot  
 5 of people. And when Tom talked to me about that,  
 6 and also the debate, there were some people that  
 7 were unhappy with both candidates. And then there  
 8 was low turnout. So I mean it certainly was out  
 9 there.  
 10 **Q. Did it seem to make a great impression on him, those**  
 11 **two events?**  
 12 A. Mr. Bernabei, absolutely. They seemed to be the  
 13 focus. And I think he also, you know, talked about  
 14 leaving a legacy. I mean if you look at his  
 15 history, you know, he's rescued SARTA. He took over  
 16 Canton Law Department and redirected that. He  
 17 redirected the county commissioners office and the  
 18 county, got them on the right path. He expressed an  
 19 interest in leaving, you know, somewhat of a legacy  
 20 for the City of Canton and turning it around.  
 21 **Q. Did you have any doubt that, that this was a**  
 22 **difficult decision for him?**  
 23 A. Yeah, I think it was a difficult decision. And I  
 24 explained some of that to him, that, you know, to  
 25 make sure that it's what he wanted to do. But in

1 the end, one thing I learned working for Tom, he's  
 2 always said "I'm going to do the right thing."  
 3 **Q. So when you say you sort of apprised him of the**  
 4 **difficulty, did you sort of test his conviction with**  
 5 **respect to this?**  
 6 A. Yeah. I think it's an important thing. Because I'm  
 7 a member of the Democratic Party. And that's quite  
 8 a leap. I mean historically we've seen people do  
 9 it. But, you know, there was no question in my mind  
 10 his sincerity of it, that he was disillusioned with  
 11 what was going on, and that that was a decision that  
 12 he wanted to make. And just as he's given me advice  
 13 in the past, I gave him, you know, that advice to  
 14 think about these things.  
 15 **Q. Fair to say that he took the decision seriously?**  
 16 A. Very seriously. When it comes to politics and  
 17 what's best for the county and the City of Canton,  
 18 he takes everything very seriously. I learned that  
 19 by working with him.  
 20 **Q. You had no doubt then as to his sincerity. Do you**  
 21 **have a general sense of, of his reputation for**  
 22 **honesty?**  
 23 MR. PLAKAS: Objection for the same  
 24 reasons.  
 25 MR. FERRUCCIO: Sustained.

1 BY MR. VASVARI:  
 2 **Q. Okay. Judge, Mr. Bernabei has served in various**  
 3 **forms within the Democratic Party. We also learned**  
 4 **that he has served as a treasurer for three**  
 5 **campaigns in the course of recent years. Is that**  
 6 **true?**  
 7 A. Yeah. He was the treasurer -- I guess the best way  
 8 to define Mr. Bernabei, he was the treasurer of  
 9 Judge Hartnett, Chryssa Hartnett, the treasurer of  
 10 the campaign of Kristen Guardado, and he was I  
 11 believe my chairman. And I think that tells you the  
 12 most about Tom Bernabei. I don't think any one  
 13 picked him because of his accounting skills.  
 14 **Q. And what did they pick him for?**  
 15 A. His character, his integrity that I've seen  
 16 throughout, I mean whether --  
 17 MR. PLAKAS: Objection. Move to strike.  
 18 MR. FERRUCCIO: Sustained.  
 19 BY MR. VASVARI:  
 20 **Q. Do you have any doubt about his good faith in taking**  
 21 **a step of this significance?**  
 22 MR. PLAKAS: Objection.  
 23 MR. VASVARI: Good faith nature is the  
 24 standard, Mr. Chairman.  
 25 MR. FERRUCCIO: I understand. He can

1 answer.  
 2 A. Could you give me the question again? I'm sorry.  
 3 **Q. Do you have any doubt that Mr. Bernabei took the**  
 4 **step of disassociating himself with the party, based**  
 5 **on your 30 years of knowing him, do you have any**  
 6 **doubt that he took that step in good faith?**  
 7 A. He did --  
 8 MR. PLAKAS: Objection.  
 9 A. -- in good faith. He had always told me to do the  
 10 right thing. And he's the public official I try to  
 11 pattern myself off of ethically.  
 12 **Q. Your Honor, I have no more questions. Thank you for**  
 13 **your time today.**  
 14 **CROSS-EXAMINATION**  
 15 BY MR. PLAKAS:  
 16 **Q. So probably the most risky and dangerous thing to do**  
 17 **in the career of a trial lawyer is to cross-examine**  
 18 **a judge.**  
 19 A. I'm not a judge here today. I'm Frank Forchione.  
 20 **Q. You're a well-respected judge and we respect you.**  
 21 A. Sure.  
 22 **Q. You were aware of the firing of Mr. Bernabei by**  
 23 **Mayor Healy; correct?**  
 24 A. Yes, sir.  
 25 **Q. And you discussed that and heard Mr. Bernabei talk**

1 **about that issue; correct?**  
 2 A. A little bit.  
 3 **Q. Okay. Not much?**  
 4 A. I've never heard him say a disparaging word about  
 5 the mayor.  
 6 **Q. Okay. Ultimately when Mr. Bernabei characterizes**  
 7 **himself in the media as a dyed-in-the-wool Democrat,**  
 8 **prior to the last few weeks, do you think that's an**  
 9 **accurate characterization?**  
 10 A. Oh, I believe for that period, yes, sir.  
 11 **Q. Thank you. I have nothing further.**  
 12 A. Okay. Thank you.  
 13 MR. VASVARI: Nor I.  
 14 MR. FERRUCCIO: Thank you, Judge.  
 15 (Frank G. Forchione was dismissed.)  
 16 MR. VASVARI: Janet Creighton.  
 17 (Janet Weir Creighton was duly sworn by  
 18 Notary Public Jocelyn S. Harhay.)  
 19 DIRECT EXAMINATION  
 20 BY MR. VASVARI:  
 21 **Q. Ma'am, would you state your name and your job**  
 22 **description for the Record, please?**  
 23 A. Sure. Good afternoon. I'm Janet Weir Creighton,  
 24 Stark County commissioner.  
 25 **Q. Commissioner Creighton, do you know Tom Bernabei?**

1 A. Yes, I do.  
 2 **Q. And for how long have you known Tom?**  
 3 A. I knew of Tom Bernabei back in the '80s. But we  
 4 really didn't have the opportunity to work together.  
 5 I got to know him a lot better when I became the  
 6 mayor and he was a councilman at large for the first  
 7 two years of my four-year term. Then in 2010, we  
 8 both ran for the office of county commissioner. And  
 9 since then, I've worked with him on the Board.  
 10 **Q. Have you had the opportunity to work with him on**  
 11 **issues that involve city/county, relations between**  
 12 **the county and the City of Canton?**  
 13 A. Some. He has basically taken the lead on that. I  
 14 have more or less stayed away. And he is the  
 15 president of the Board. Really we defer those  
 16 things to the president of the Board. So he's had  
 17 the most involvement with that.  
 18 **Q. And so the Board has there entrusted him that with**  
 19 **aspect of its business?**  
 20 A. Oh, absolutely.  
 21 **Q. And in that regard, the Board has entrusted him in**  
 22 **dealing on a, on a routine basis, to the extent that**  
 23 **the commission does, with Mayor Healy?**  
 24 A. That is correct.  
 25 **Q. Do you have any reason to believe that the Board has**

1 **made a mistake in entrusting relationships between**  
 2 **the commission and Mr. Healy to Mr. Bernabei?**  
 3 A. We have not made that mistake. In fact, we elected  
 4 Tom Bernabei the president of the Board of County  
 5 Commissioners which is unprecedented. Normally it  
 6 changes every year. But because of his ability and  
 7 his leadership skills and his honesty and his  
 8 truthfulness --  
 9 MR. PLAKAS: Objection. Move to strike.  
 10 A. -- and integrity --  
 11 MR. PLAKAS: Move to strike. That's  
 12 clearly leading.  
 13 MR. FERRUCCIO: Sustained.  
 14 MS. CREIGHTON: Thank you. I'm a  
 15 cheerleader and I always will be, Lee. Thank you.  
 16 MR. PLAKAS: That's why I made the  
 17 objection because I knew it was coming.  
 18 MS. CREIGHTON: Thank you.  
 19 BY MR. VASVARI:  
 20 **Q. Let me ask you this. The Board elected Mr. Bernabei**  
 21 **president in part because the president deals with**  
 22 **the City of Canton, and the Board had confidence**  
 23 **that Mr. Bernabei would discharge those duties well?**  
 24 MR. PLAKAS: Objection.  
 25 A. That is correct.

1 MR. FERRUCCIO: Sustained.  
 2 BY MR. VASVARI:  
 3 **Q. Are you aware of any reason to believe that Mr.**  
 4 **Bernabei is harboring a grudge or seeking vengeance**  
 5 **against Mayor Healy over his termination years and**  
 6 **years ago?**  
 7 A. No, I do not. And he could have run four years ago  
 8 if he wanted to. But he close not to.  
 9 **Q. If you knew or you believed that Mr. Bernabei was**  
 10 **harboring some sort of grudge against Mayor Healy,**  
 11 **would the commission have put him in the position of**  
 12 **being its point man with Mayor Healy?**  
 13 A. No, we would not have put him in that position.  
 14 **Q. Have you formed an opinion as to his ability to**  
 15 **discharge his duties in a civic-minded spirit comes**  
 16 **from vengeance?**  
 17 MR. PLAKAS: Objection.  
 18 MR. FERRUCCIO: Sustained.  
 19 BY MR. VASVARI:  
 20 **Q. By the way, would you say that Mr. Bernabei is a**  
 21 **particularly partisan commissioner?**  
 22 MR. PLAKAS: Objection. Relevancy.  
 23 MR. FERRUCCIO: I agree.  
 24 MR. VASVARI: Well, I'm only suggesting to  
 25 the notion of him being such a dyed-in-the-wool

1 Democrat that he could not possibly have done this  
 2 in good faith. We heard that for eight hours.  
 3 MR. FERRUCCIO: Yeah. Well, I mean I think  
 4 we've heard a lot in eight hours. So we need --  
 5 sustained. His objection is sustained.  
 6 MR. VASVARI: All right.  
 7 MR. FERRUCCIO: This is, you know -- well,  
 8 just go ahead. Next question.  
 9 BY MR. VASVARI:  
 10 **Q. How has he been to work with as a bipartisan --**  
 11 MR. PLAKAS: Objection.  
 12 BY MR. VASVARI:  
 13 **Q. -- participant?**  
 14 MR. FERRUCCIO: Sustained. Relevance.  
 15 BY MR. VASVARI:  
 16 **Q. Did Mr. Bernabei discuss the potential of**  
 17 **disaffiliating himself from the Democratic Party**  
 18 **with you?**  
 19 A. Yes, he did.  
 20 **Q. And when did that discussion take place?**  
 21 A. Monday, April the 27th, I think.  
 22 **Q. And do you remember the substance of that**  
 23 **discussion?**  
 24 A. That he was considering disaffiliating. And that  
 25 was his -- that's his choice, just as I have a

1 choice to do what I do.  
 2 MR. PLAKAS: Objection. Move to strike.  
 3 Editorializing.  
 4 MR. FERRUCCIO: Overruled. Overruled.  
 5 MR. VASVARI: Thank you, Mr. Chairman. I'm  
 6 very near the end. But character and intent are key  
 7 here.  
 8 BY MR. VASVARI:  
 9 **Q. Did you give him any advice with regard to**  
 10 **disassociation?**  
 11 A. My only advice to Tom Bernabei is to always to do  
 12 what is right, just as we all agree on our Board of  
 13 Commissioners, and whatever was in his heart. No  
 14 one else can make that decision but Tom.  
 15 **Q. Did you form an opinion as to whether in seeking to**  
 16 **disassociate himself with the party he was acting**  
 17 **from his heart?**  
 18 MR. PLAKAS: Objection.  
 19 MR. VASVARI: Goes to good faith at motive.  
 20 MR. FERRUCCIO: Yeah. Sustained.  
 21 BY MR. VASVARI:  
 22 **Q. You over the course of...**  
 23 **How many years of politics?**  
 24 A. Over 30 years.  
 25 **Q. ...have had you opportunity to deal with many**

1 **politicians I imagine?**  
 2 A. Yes.  
 3 **Q. You've have the opportunity to weigh the public**  
 4 **mindedness or the pettiness and vindictiveness of**  
 5 **many politicians, have you not?**  
 6 A. Yes.  
 7 **Q. I imagine that one does not rise to become a county**  
 8 **commissioner without being skilled in that regard.**  
 9 A. (Ms. Creighton nodded).  
 10 **Q. Did you take Tom Bernabei's temperature as to his**  
 11 **sincerity when he told you he was going to**  
 12 **disaffiliate?**  
 13 MR. PLAKAS: Objection.  
 14 MR. FERRUCCIO: Sustained.  
 15 MR. VASVARI: I'm not sure, Mr. Chairman;  
 16 if I can't ask about the good faith of his action  
 17 which is the central statutory test, respectfully, I  
 18 don't know what else I can ask.  
 19 I can only thank you, Ms. Creighton, for  
 20 your testimony.  
 21 MR. FERRUCCIO: For the Record, I would say  
 22 that we've had witness after witness talk about his  
 23 good faith --  
 24 MR. VASVARI: I understand, Mr. Chairman.  
 25 MR. FERRUCCIO: -- that it was good faith.

1 So we understand.  
 2 MR. VASVARI: My client is on trial for his  
 3 political life. I have a duty to be zealous.  
 4 BY MR. VASVARI:  
 5 **Q. You were a circulator of Mr. Bernabei's petition for**  
 6 **mayor?**  
 7 A. Yes. And proud of it.  
 8 **Q. Thank you. And you are a member of the Republican**  
 9 **Party Executive and Central Committee?**  
 10 A. Central Committee, not the Executive.  
 11 **Q. Central Committee?**  
 12 A. And a proud member of the Republican Party.  
 13 **Q. Good. That's two prouds; right?**  
 14 A. That's correct.  
 15 **Q. Okay. And you were proud to be the mayor of Canton**  
 16 **for a number of terms; correct?**  
 17 A. Yes. One term.  
 18 **Q. Okay. And the reason that you only had one term of**  
 19 **prideful service is because Mayor Healy beat you as**  
 20 **you tried to get to your second term; correct?**  
 21 A. That is correct.  
 22 MR. VASVARI: I have no further questions.  
 23 MS. CREIGHTON: Thank you.  
 24 MR. VASVARI: Nothing further.  
 25 MR. FERRUCCIO: Thank you.

1 (Janet Weir Creighton was dismissed.)  
2 MR. VASVARI: We have two more and they  
3 won't take more than two minutes each.

4 Michael Hanke.  
5 (Michael E. Hanke was duly sworn by Notary  
6 Public Jocelyn S. Harhay.)

7 DIRECT EXAMINATION

8 BY MR. VASVARI:  
9 **Q. Mr. Hanke, it's been a long day. You've waited a  
10 long time. And I'm afraid you waited a long time  
11 for short.**

12 A. It's been fascinating, so...

13 **Q. You know Tom Bernabei; don't you?**

14 A. I do.

15 **Q. And you work for Tom Bernabei?**

16 A. I did.

17 **Q. In what capacity?**

18 A. I was the Stark County administrator.

19 **Q. Can you tell me what the administrator does?**

20 A. They administer, run day-to-day operations of  
21 county-commissioner related departments for the  
22 Board of Commissioners. The administrator prepares  
23 an annual general fund budget, presents it to the  
24 Board, and monitors it during the year. The  
25 administrator does basically anything else the Board

1 of County Commissioners wants. The county  
2 administrator is somewhat related to a city service  
3 director except a service director has more power by  
4 nature of having one boss in a more statutory system  
5 of, of executive government.

6 **Q. And, again, how long did you serve in this position?**

7 A. December 18th, 2007 to March 5th, 2012.

8 **Q. And during that time, did you have the opportunity  
9 to, to liaise with Mr. Bernabei in his meetings with  
10 Mayor Healy in the City of Canton?**

11 A. Regularly. It was, it was, and probably still is,  
12 Commissioner Bernabei's way of working that he has a  
13 member of the office, usually the county  
14 administrator, sit in on meetings, whether they be  
15 with other elected officials or whether they be a  
16 sheriff or prosecutor or whatever, with the mayor,  
17 with the city service director, in negotiations over  
18 the largest public capital improvement project in  
19 the history of Stark County, the Canton Sewer  
20 Department, on central dispatching, all over  
21 collective bargaining. I had some particular  
22 interest and experience in that.

23 **Q. And during the course of those meetings, you would  
24 be present when Mr. Mayor Healy and Commissioner  
25 Bernabei were doing what they did to liaise?**

1 A. Yes. Both in the commissioners' office and in the  
2 mayor's conference room and in the mayor's office.

3 **Q. How would you characterize their meetings?**

4 A. They were business meetings. Generally I'd say half  
5 the time, at least half the time the mayor would  
6 call and ask Commissioner Bernabei to meet about  
7 some particular issue. And I'd go along with the  
8 commissioner, and when we'd go over there. Or vice  
9 versa, he came over to our place.

10 **Q. Were those meetings ever vitriolic?**

11 A. No.

12 **Q. Would you call them cordial?**

13 A. I'd call them business-like.

14 **Q. Professional?**

15 A. Yes, professional.

16 **Q. Did Mayor -- I'm sorry -- Commissioner Bernabei ever  
17 have any distaste or personal dislike for Mayor  
18 Healy?**

19 A. No.

20 **Q. Did he ever tell you in private of any distaste or  
21 dislike for the mayor?**

22 A. No. I think he questioned some of his decisions in  
23 the city as they related to Canton in our  
24 negotiations.

25 **Q. So he may not have agreed with everything he did but**

1 **never disparaged the man?**

2 A. No. In fact, my second-to-the-last day of work, he  
3 sent me out to the Canton Water Department to  
4 negotiate this split in, in the capital project  
5 funding for the sewer plant. I call it the sewer  
6 plant. There is a much more modern, fancy name for  
7 it, but it's a sewer plant. And I did those  
8 negotiations with Service Director Warren Price,  
9 came back, reported to Commissioner Bernabei.  
10 Fortunately I was leaving the next day so didn't  
11 have to do any of the details. But, of course, I  
12 knew he would because that's the way he is. And  
13 it's being built.

14 **Q. Were you aware that at one point Mayor Healy fired  
15 Tom Bernabei?**

16 A. Oh, yes. Well, before I was county administrator, I  
17 was a newspaper man for 35 years. So....

18 **Q. Did you ever in either capacity hear Tom Bernabei  
19 grouse about that?**

20 A. No. Actually kind of amazed me. No, I didn't.

21 **Q. Okay. Do you have any doubt if Mr. Bernabei said  
22 that his disaffiliation from the Democratic Party  
23 was made in good faith, knowing him and having  
24 worked with him, that it wasn't made in good faith?**

25 A. I absolutely believe that he's done it in good

1 faith. I have never known him to do anything --

2 MR. PLAKAS: Objection.

3 A. -- that he didn't --

4 MR. PLAKAS: Move to strike.

5 A. -- do in good faith.

6 MR. FERRUCCIO: Overruled.

7 MR. VASVARI: Thank you.

8 CROSS-EXAMINATION

9 BY MR. PLAKAS:

10 **Q. Mr. Hanke --**

11 A. Yes, sir.

12 **Q. -- you read the nonendorsement editorial in the**

13 **Repository; correct?**

14 A. I did.

15 **Q. Before reading that in print, you knew or had**

16 **learned that the Repository was not going to endorse**

17 **either candidate; correct?**

18 A. I probably knew that.

19 **Q. Okay.**

20 A. Because I know the newspaper guys.

21 **Q. Okay. And you also shared that advanced knowledge**

22 **with Mr. Bernabei; didn't you?**

23 A. No.

24 **Q. How far in advance did you know that the Repository**

25 **was not going to endorse either party?**

1 MR. VASVARI: This is beyond the scope.

2 MR. FERRUCCIO: Well, he can answer.

3 A. I can give you my best guess.

4 **Q. Thank you.**

5 A. It was the week before, late in the week before I

6 think.

7 **Q. And when did you learn that Mr. Bernabei caught wind**

8 **of the fact there would be a nonendorsement?**

9 A. He and I had breakfast April 28th. And I guess

10 that's -- well, it had already run by then.

11 **Q. Did you -- and you, of course, on April 28th**

12 **discussed the nonendorsement?**

13 A. Yes. To a point. Because of having run the

14 editorial board for a member of years --

15 **Q. Sure.**

16 A. -- we never didn't endorse a mayor's race. But we

17 certainly did in other races at times.

18 **Q. Prior to April 28th, had you and Mr. Bernabei ever**

19 **spoken about the potential nonendorsement?**

20 A. No.

21 MR. PLAKAS: I have nothing further. Thank

22 you.

23 MR. VASVARI: Nor do I.

24 (Michael E. Hanke was dismissed.)

25 MR. VASVARI: Which leaves me with my last

1 witness, Judge Richard Reinbold.

2 (Richard D. Reinbold, Jr., was duly sworn

3 by Notary Public Jocelyn S. Harhay.)

4 DIRECT EXAMINATION

5 BY MR. VASVARI:

6 **Q. Your Honor, would you state your name for the**

7 **Record, please?**

8 A. Dick Reinbold.

9 **Q. If you've been here for a while, you know everyone**

10 **is at the end of their patience, so I'll try to be**

11 **quick. Judge Reinbold, you have served as judge?**

12 A. Yes.

13 **Q. In what capacity?**

14 A. Municipal court six years and common pleas court for

15 12 years, and a visiting judge for six years.

16 **Q. You are currently here under subpoena, are you not?**

17 A. I am.

18 **Q. Okay. Do you know Tom Bernabei?**

19 A. I do.

20 **Q. And how long have you known Tom Bernabei?**

21 A. Oh, you know, probably 1980ish, somewhere in there,

22 maybe a little bit before.

23 **Q. And he's someone that you've known in a political**

24 **capacity?**

25 A. Yes.

1 **Q. In what way?**

2 A. Well, I, I guess starting out, I knew he was one of

3 the assistant Canton law directors in Massillon.

4 And then he came over to, to Canton Law Department

5 and ran, helped run the Law Department. And then at

6 some point in time, Judge Gwin, Scott Gwin resigned

7 from that position and Tom and I vied to be law

8 director. And I have no idea what time of year that

9 was, like '88 or something along those lines. So

10 I've known him as a political ally. I've known him

11 as a political opponent. Sadly the people of Canton

12 made a mistake and elected Tom but....

13 **Q. As opposed to you?**

14 A. As opposed to me.

15 **Q. Have you known him as a man of integrity I imagine?**

16 A. Yes.

17 MR. PLAKAS: Objection. Move to strike.

18 MR. FERRUCCIO: Overruled.

19 BY MR. VASVARI:

20 **Q. You also know at a certain point Mr. Bernabei**

21 **wrestled with the question of whether or not to**

22 **continue as to disaffiliate himself from the**

23 **Democratic Party?**

24 A. Yes.

25 **Q. Okay. Did he discuss that with you?**

1 A. Yes.  
 2 **Q. Did he seek your advice?**  
 3 A. Yes.  
 4 **Q. And when did he seek your advice?**  
 5 A. Actually the advice that he sought was subsequent to  
 6 him I believe making, making a decision, at least  
 7 making it known. It would have been the Friday  
 8 night before the period of time that we circulated  
 9 the petitions. So that would have been that  
 10 Saturday, that Friday night, that Saturday and that  
 11 Sunday when the, the petitions were circulated.  
 12 And we discussed the reasons why he was  
 13 doing it. I was probably of the most skeptical of  
 14 his close friends. And then throughout that week,  
 15 when there was still the opportunity to say "let's  
 16 put a halt to this," we had a number of discussions  
 17 about it, the pros and cons. And I gave him my  
 18 opinions and he gave me his.  
 19 **Q. What was his, his tenor or character during the**  
 20 **course of those discussions?**  
 21 A. Well, you know, he -- you have to go -- as everybody  
 22 said here, you know, Tom is a unique individual, and  
 23 he makes decisions. And then it's difficult to have  
 24 him change his mind about anything. And so his --  
 25 he's always positive about what he's doing. He'll

1 always say something to you and he ends it with  
 2 "right." He'll say something like the "Indians need  
 3 a first base man. Right." Or "You know you're an  
 4 idiot. Right." And so he always ends it saying  
 5 he's right. So you got to deal with Tom in that  
 6 sense.  
 7 So the conversations are that he's correct  
 8 and you tell him why he shouldn't do it. And so  
 9 those were the tenors of things. But also the  
 10 philosophy, the reason why. And I, I would add to  
 11 Judge Forchione. I think one of the, one of the  
 12 things that struck me -- and Tom's point was that  
 13 the City of Canton -- and that's where I'm focusing  
 14 my discussions, because that's what we focused --  
 15 was that the City of Canton is a one-party city.  
 16 The Republican Party has effectively abandoned any  
 17 loyal opposition and doesn't put up a candidate for  
 18 mayor. They don't put up a mandate for city  
 19 council. And so we have a one-party city.  
 20 And I think that is an issue that is of  
 21 significance here. Because you should have two  
 22 parties. You can't change if you are just a  
 23 monolithic city. And I think that was part of Tom's  
 24 thinking, that in order to change, you have to come  
 25 at it as an Independent individual to do what's

1 right for the city. And that was part of his  
 2 decision-making process. It was more positive than  
 3 it was a negative.  
 4 **Q. Did it seem to be a decision with which he wrestled?**  
 5 A. Well, as you know, Tom had another life outside the  
 6 city. And to give up that life to do what he wants  
 7 to do, you, anybody, would be an idiot not to  
 8 wrestle with that decision. In fact, that was one  
 9 of the ways I challenged him. And so he wrestled  
 10 with it. But I don't think he wrestled with the  
 11 philosophical part of it. I don't think he wrestled  
 12 with that. He wrestled with the consequences to his  
 13 family, to his way of life.  
 14 You may have noticed that Tom's getting old  
 15 in the tooth. So it's a life-changing thing. And  
 16 you don't make a decision to do this without  
 17 thinking of the consequences, and not political  
 18 consequences, not personal consequences. You know,  
 19 his wife, his grandkids, his daughter, his friends;  
 20 you know, it hasn't been easy. So when he said "I'm  
 21 going to do it," I tell you it's good faith.  
 22 MR. VASVARI: I have nothing further. Oh,  
 23 I do have something further.  
 24 **Q. You visited him at the University Avenue house;**  
 25 **didn't you?**

1 A. I did.  
 2 **Q. And what did you, what did you do then?**  
 3 A. Well, we have to talk about.... You know, he  
 4 invited me over. I went in. There was a room that  
 5 had the bed in it and it had the clothing in it.  
 6 You know, it was obvious that he was in that place  
 7 to live.  
 8 **Q. Okay.**  
 9 MR. VASVARI: I have no further questions.  
 10 Thank you, Judge.  
 11 MR. REINBOLD: Thank you.  
 12 CROSS-EXAMINATION  
 13 BY MR. PLAKAS:  
 14 **Q. So I will continue upon my perilous travel of**  
 15 **cross-examining judges.**  
 16 A. You only get this chance once in a while. I'd take  
 17 advantage of it.  
 18 **Q. I'm going to go for it. While you visited**  
 19 **University Avenue, the only room with any signs of**  
 20 **habitation was the bedroom; right?**  
 21 A. And the kitchen and the garage.  
 22 **Q. The garage had his car in it?**  
 23 A. That's a sign of habitation.  
 24 **Q. If you live in a car, it is.**  
 25 A. Some of us have lived in cars. No. But I'm saying

1 he had things in the garage. The kitchen had all  
2 the, you know, accoutrements and things, and then he  
3 had the bedroom and the bathroom.

4 **Q. There was toilet paper in the bathroom.**

5 A. There was a toothbrush, brushes. I don't know why  
6 but...

7 **Q. Your wife Nancy was a circulator for your friend  
8 Tom's petitions?**

9 A. She was.

10 **Q. Okay. And it's accurate to say that both you and  
11 Nancy are close friends of Tom Bernabei?**

12 A. It is accurate to say.

13 **Q. Did you listen to the debate between Mr. Perez and  
14 Mr. Healy?**

15 A. I did not.

16 **Q. Okay. Did Nancy?**

17 A. I don't believe she did.

18 **Q. Okay. I think everyone knows Mr. Bernabei would  
19 agree with what you said, that once he makes up his  
20 mind there's -- it is very difficult to dislodge  
21 that belief; correct?**

22 A. I believe so.

23 **Q. Okay. You thought that there were issues on both  
24 sides as, as to whether or not he should  
25 disaffiliate or not; correct?**

1 A. On the issue of disaffiliation, I don't think there  
2 was a change -- there was a difference of opinion in  
3 our discussions. The difference of opinion was the  
4 consequences. What is he willing to give up and  
5 what would I have been willing to give up in his  
6 place. I would not have been willing to give up  
7 anything that Mr. Bernabei did. And so that's where  
8 the disagreement came, the personal consequences of  
9 his making the decision to disaffiliate. It was  
10 never a discussion that it wasn't a philosophical  
11 intellectual decision that he made. That was never  
12 an issue.

13 **Q. In his mind?**

14 A. In my mind and in his mind.

15 **Q. Okay.**

16 A. Well, in my mind, sure. I can't read his mind. But  
17 in our discussions, that was never the debate.

18 **Q. I understand. And did he tell you that he had  
19 written or signed some documents conditionally and  
20 told certain people to told them and maybe and maybe  
21 not file them?**

22 A. I know that he had -- that he talked to me that  
23 Friday night kind of about the status of where  
24 things were. I don't want to say chronologically  
25 but legally. And, yes, he indicated that he had

1 done some things with checks. He had done some  
2 things. He had resigned as, I think, the treasurer  
3 for some of the other candidates. So, yes, Mr.  
4 Plakas, he had told me that he had done a couple of  
5 things in preparation to make this final decision  
6 that he was legally bound to. But I can't remember  
7 individually what each thing was.

8 **Q. Okay. So now having just about completed my  
9 Cross-Examination of two judges, if I sign a letter  
10 resigning as a trial attorney but I'm not sure  
11 exactly if I'm going to resign or not, who do you  
12 suggest that I give that letter to to deliver it to  
13 the rest of the county?**

14 MR. VASVARI: Objection.

15 BY MR. PLAKAS:

16 **Q. This is a softball for you.**

17 A. Yeah. Well, I was going to say I don't know if  
18 there's a grand trial lawyer in the sky.

19 **Q. I think there is. And I thank you for your  
20 testimony.**

21 A. Thank you, sir.

22 REDIRECT EXAMINATION

23 BY MR. VASVARI:

24 **Q. One quick question, Your Honor. Your experience as  
25 a judge, lawyers do from time to time lodge with**

1 **clerks of courts documents to be filed at a later  
2 date, do they not?**

3 MR. PLAKAS: Objection.

4 A. That -- my wife can better answer that question than  
5 I can do.

6 **Q. I'll take that back. I'm done. Thank you, sir.**

7 A. Thank you.

8 (Richard D. Reinbold, Jr., was dismissed.)

9 MR. VASVARI: Subject to moving the  
10 admission of our exhibits, which I now do --

11 MR. FERRUCCIO: Okay.

12 MR. VASVARI: -- we rest.

13 MR. FERRUCCIO: All right. And those will  
14 be admitted.

15 How long do you each think that you want to  
16 give a Closing Argument? And then we'll weigh in  
17 whether we think that's going to be sufficient.

18 MR. PLAKAS: How long we think is probably  
19 much different than what the Panel thinks.

20 MR. FERRUCCIO: I think so.

21 MR. PLAKAS: Why don't you just tell us.

22 MR. VASVARI: I would have said half an  
23 hour if you'd asked me this morning. But I sure  
24 wouldn't say half an hour now.

25 MR. FERRUCCIO: How about ten minutes from

1 each of you.  
 2 MR. VASVARI: Could we have five to catch  
 3 our breath?  
 4 MR. FERRUCCIO: Absolutely.  
 5 MR. PLAKAS: And can we divide our time  
 6 between Mr. West and myself?  
 7 MR. FERRUCCIO: Yeah. That's fine.  
 8 MR. PLAKAS: And can we ask for seven and a  
 9 half minutes for each of us? That makes 15.  
 10 MR. FERRUCCIO: Well, we will do 15 each.  
 11 All right.  
 12 MR. PLAKAS: I don't think -- that's fine,  
 13 ten. Ten is fine. Ten is fine.  
 14 MR. FERRUCCIO: Can you do it in ten?  
 15 MR. PLAKAS: Five and five. We're good  
 16 with ten.  
 17 MR. FERRUCCIO: And your arguments really  
 18 should be directed to the facts and how it relates  
 19 to the law with respect to two issues. So I mean  
 20 that's what I would like to see, the bullet points.  
 21 Thanks.  
 22 (A recess was taken.)  
 23 MR. FERRUCCIO: If I could have everybody's  
 24 attention. We're back on the Record.  
 25 Okay. Mr. Plakas.

1 MR. PLAKAS: Since we are the proponent, do  
 2 we get to open and close five and five with the  
 3 Defendant in between? Not Defendant.  
 4 MR. FERRUCCIO: We hadn't discussed that.  
 5 But we can do that if you'd like.  
 6 MR. PLAKAS: We'd like.  
 7 So, Mr. Vasvari --  
 8 MR. VASVARI: Five and five? I thought it  
 9 was seven and a half. But it's up to you guys.  
 10 MR. PLAKAS: Ten minutes total.  
 11 So we will start with our five, then they  
 12 go, and we finish with five.  
 13 MR. FERRUCCIO: That's fine. Great.  
 14 MR. WEST: Mr. Chairman, members of the  
 15 Board, I'll be brief. There are a couple of things  
 16 I want to clarify from earlier this afternoon and  
 17 this morning. One of the questions raised was if  
 18 Mr. Bernabei's commissioner's office became vacant  
 19 for whatever reason at this point who would appoint  
 20 his replacement. And statute is clear is on that.  
 21 It would be the Stark County Democratic Party.  
 22 305.02(B) says that once a person is elected as a  
 23 Democrat, if there is a vacancy after the next  
 24 mid-term elections or if there's not a yearly  
 25 election between the time of the office vacancy and

1 the time the term expires, the Party would fill that  
 2 office whether or not they did try to disaffiliate  
 3 during their term in office. It's only somebody  
 4 elected as an Independent that the Independent would  
 5 be filled.  
 6 I also want to touch on the residency  
 7 issue. Mr. Bernabei at one point said that "I had  
 8 two permanent voting residences in Canton during --  
 9 in May." He had the University Heights address and  
 10 he had the Lakeview address. It should be noted at  
 11 the outset those are different wards and different  
 12 school districts. There is a lot of talk about how  
 13 Canton is Canton and no harm no foul; he's still in  
 14 the same city. But he was voting for different  
 15 wards in the primary and general and in different  
 16 school districts in the primary and general. That's  
 17 something we want to make sure is also on the  
 18 Record.  
 19 Moreover, he actually didn't have any  
 20 permanent residence in Canton in May. Again,  
 21 looking at the statute, the plain text of the Ohio  
 22 Revised Code, 3503.02(D) says that unless the  
 23 spouses are separated, not just moving and then you  
 24 come back later once we get the house renovated, but  
 25 actually going through a divorce or legal

1 separation, the family's residence controls where  
 2 the voting residence is. And that makes sense.  
 3 Your family is theoretically where you tend to go  
 4 back to from when you're absent. It's not, "Oh, I'm  
 5 moving into here for a week. I go to file my  
 6 petitions. This is now my permanent residence." It  
 7 is your permanent residence, the one you're absent  
 8 from for a sustained period of time or number of  
 9 short periods of time. You always intend to go back  
 10 to that place. And that's your family.  
 11 A few more points I'd like to address to  
 12 the claim that the Board cannot look at past  
 13 conduct; it only looks from the moment forward as to  
 14 how Mr. Bernabei behaved as to whether he  
 15 disaffiliated or not. The protesters [sic] will  
 16 have you believe that he's born again when he files  
 17 his petition, that all of his prior conduct is  
 18 washed away, and the Board can't consider that.  
 19 In fact, their own response Brief on Page  
 20 11 where they quote Morrison makes clear that the  
 21 past factors are relevant to the Board's analysis.  
 22 And we discussed that more fully in our Bench Brief  
 23 which was filed this morning, specifically with  
 24 "Jolivette" and "In Re: Boyle" I believe, yes, "In  
 25 Re: Edna Boyle." I will spare you going through

1 those cases. You already have them in front of you.

2 MR. FERRUCCIO: Thank you.

3 MR. WEST: I'll give the balance of my time  
4 to Mr. Plakas.

5 MR. FERRUCCIO: Thank you.

6 Mr. Vasvari.

7 MR. VASVARI: Thank you. Mr. Chairman,  
8 members of the Board. Snakes shed their skin.

9 Traitors change their colors. But free citizens in  
10 democracies sometimes exercise the sacred  
11 constitutional right to alter or amend their  
12 political affiliations. Sometimes they do that  
13 after a short affiliation, maybe having signed up in  
14 youth. Sometimes it takes 40 years and a lifetime  
15 of experience. But the Fourteenth and the First  
16 Amendment gave to each of us the right to change our  
17 minds.

18 And the Ohio Revised Code contemplates the  
19 sort of mischief that that might create, spilling  
20 intransigent party politics onto the general ballot,  
21 affording somebody by trickery an advantage that  
22 they might not have had had they stood for election  
23 in the primary. All of that is permissible. The  
24 State may take cognizance of those concerns, and it  
25 may regulate at less than strict scrutiny to address

1 them. That's the holding of Celebreeze, that's the  
2 holding of Jolivette, and that's the holding of  
3 Morrison.

4 But in the text of the statute that  
5 requires a declaration of independence from a  
6 candidate is a recitation by the General Assembly  
7 that having considered all of those factors the  
8 medicine prescribed for that malady is that there  
9 must be a clearly articulated statement of  
10 disassociation from one party no later than 4 p.m.  
11 on the date before the primary. That is the fix.  
12 That is the box which needs to be checked which,  
13 satisfactory to the General Assembly, remedies the  
14 problem.

15 Tom Bernabei checked that box. The only  
16 question's whether or not he did this in good faith.  
17 Now, two things bear on this coming forward. The  
18 first because we were told today by Mr. Mack that  
19 we're going to make new law, which I suggest is not  
20 your prerogative and at this late hour not your  
21 burden.

22 Two things bear in mind going forward. The  
23 first is that they bear the burden by clear and  
24 convincing evidence to show you that that man's  
25 disassociation was not in good faith. He says he is

1 disassociated and that's all he's required to do, to  
2 say it at a certain place, in a certain way, on a  
3 certain date. He met all of those requirements. He  
4 said it. He's not required -- and this is fully  
5 Briefed -- to do anything to prove his sincerity.  
6 He is not required to take any act. Rather, they  
7 bear the burden to demonstrate by acts, past and  
8 present, collectively taken, that he's done it in  
9 bad faith.

10 So let's be clear about the landscape of  
11 what we seen today. They have picked at the actions  
12 that he took. He disaffiliated himself him from  
13 three Democratic clubs. They don't like the fact  
14 that he didn't put the letters in the mail in the  
15 rush of ballot. He gave them to Ms. Mullane. He  
16 resigned as the treasurer of the three Democratic  
17 campaigns. He resigned from his party position. He  
18 changed his own treasurer. He burnt his bridges; he  
19 consulted with counsel, found what was necessary,  
20 and acted upon the advice of counsel.

21 Now, it may be, as has been suggested, that  
22 the advice of counsel was incomplete or wrong. But  
23 that's not the point. Because he's not required to  
24 take any affirmative actions in support of his  
25 declaration of independence. He's required to

1 declare his independence and, thereafter, not act  
2 inconsistently with it. And they have demonstrated  
3 no subsequent inconsistent action. They may say  
4 that what he did after declaring wasn't enough to  
5 convince them. But that's not the standard.  
6 Subsequent acts go to show bad faith. They are not  
7 required to show good faith.

8 It's in our Brief, the Mahoning County case  
9 dealing with the mayoral race there. And there's  
10 absolutely no contrary law. That is black letter  
11 law from the Ohio Supreme Court. So don't be lulled  
12 into this notion of he didn't establish his bona  
13 fides. He issued his declaration. And that was  
14 enough. It falls to them to show his lack of bona  
15 fides.

16 We point out, by the way, that in no case  
17 since Opinion 2007-05, in no case since Morrison was  
18 decided, in no case has predeclaration activity ever  
19 been found sufficient in and of itself to constitute  
20 an affirmative disproof, an affirmative proof of bad  
21 faith. Never once. Oh, yes, Secretary Brunner has  
22 reserved, and the courts have subsequently held,  
23 that there may some day arise a fact pattern in  
24 which, based on predeclaration activity alone, a  
25 candidate might be found to be in bad faith. But it

1 ain't ever happened.  
 2 And if we ask rhetorically, then we ask  
 3 rhetorically now, what would those predeclaration  
 4 statements have to look like in what would be so  
 5 severe, so binding that it would eradicate all  
 6 future possibility of changing his mind, bind him to  
 7 the Democratic Party for life? It would be as if we  
 8 were here retrying the "Devil and Daniel Webster"  
 9 and say we were appearing from the sulphurous mist  
 10 to claim the soul of this man to pledge for all  
 11 eternity. Except the First Amendment doesn't let  
 12 him make that bargain. He has the right to change  
 13 his mind.

14 Then he moved house. He moved to  
 15 University. We are told that this was a temporary  
 16 residence and that he was just passing through. I  
 17 remind you the second prescription that the Ohio  
 18 Supreme Court has articulated which governs  
 19 decisions here is that the laws governing a  
 20 candidate's access to the ballot are to be liberally  
 21 construed to allow ballot access to provide the  
 22 greatest possible choice for the voters.

23 So when it comes time for construction,  
 24 when it comes time to ask is this case of no harm/no  
 25 foul, let us consider that Mr. Bernabei wasn't some

1 sort of carpet bagger, a paid political circulator  
 2 in Cincinnati from Irvine, California, living in a  
 3 Red Roof Inn, the only case that they can cite about  
 4 temporariness of residency.

5 He was a man who owned a house in Canton,  
 6 who rented another house in Canton, belt and  
 7 suspenders, to be that sure he had a residence in  
 8 Canton when he declared for mayor of Canton. What's  
 9 the trick? There's no trick. There's no artifice.  
 10 There is no fraud. What is the place to which his  
 11 habitation was fixed? Well, it turns out that for  
 12 about four or five days at the beginning of May it  
 13 was University Avenue. But that's as it happened.  
 14 He prepared for the eventually that for as long as a  
 15 month it might be University Avenue. He wrote a  
 16 lease with a month-to-month renewal contract. He  
 17 paid a thousand dollars. He moved in his things.  
 18 He was there for long or short. He was there until  
 19 his tenants moved because he didn't want to impose  
 20 on them because he's a decent man. Ultimately --

21 How much time do I have? I have no sense  
 22 of how much time.

23 MR. FERRUCCIO: About a minute.

24 MR. VASVARI: Ultimately --

25 MR. FERRUCCIO: Two minutes.

1 MR. VASVARI: -- good faith asks that  
 2 we...

3 So with respect to residency, I think it's  
 4 fairly clear for a number of days -- which when he  
 5 went to University, he did not know the number -- he  
 6 intended to return and did return there nightly as  
 7 his place of residence until he had someplace else  
 8 to go in the City of Canton, not in California.

9 Good faith asks that you plumb the heart.  
 10 Not one of the witnesses of the protesters who were  
 11 called could come up with anything that suggested  
 12 that this man disassociated himself from the  
 13 Democratic Party in bad faith. The best thing we  
 14 had was the amateur psychoanalysis of Mr. Mack.  
 15 That's nothing.

16 Person after person, respected elected  
 17 officials and countywide officeholders testified  
 18 this man's integrity is impeccable and if he said it  
 19 he said it in good faith.

20 They tell you a loyal and worthy person can  
 21 never disassociate from their party. Abraham  
 22 Lincoln became a Republican after a lifetime as a  
 23 Whig. Winston Churchill famously crossed the aisle  
 24 to become a conservative prime minister after having  
 25 served years as an M.P. for labor. Hillary

1 Clinton's first term in politics was working for the  
 2 Goldwater campaign. And Ronald Reagan said that the  
 3 Democratic Party left him; he didn't leave the  
 4 Democratic Party which is maybe the place to end it.

5 Tom Bernabei never signed a lifetime blood  
 6 oath with the Democratic Party. He served it well.  
 7 And this is how it thanks him. He's moved on. They  
 8 have no choice but to let him go. And we implore  
 9 you to grant him his freedom.

10 MR. FERRUCCIO: Thank you, Counselor.

11 MR. PLAKAS: First of all, thank all of you  
 12 for your time and attention in this hearing. We can  
 13 appreciate it. We understand it's an imposition on  
 14 your normal schedule.

15 No one in Ohio's legal history has  
 16 attempted to do what Tom Bernabei is attempting to  
 17 do. And the rule of law doesn't allow it. This is  
 18 not a Democrat or Republican issue. This is a unity  
 19 issue. This is an issue for the integrity of  
 20 elections. There are rules. Let him play by the  
 21 rules. He chose not to or was not able to. There  
 22 is no rule of law exception for having an epiphany  
 23 and deciding to do something that you weren't going  
 24 to decide to do. There's no epiphany exception.

25 Counsel refers to the rush of ballot in

1 terms of explaining why all the details weren't  
2 correctly complied with. There is no rush of ballot  
3 exception. This is the rule of law. And you've got  
4 to play by the rules and live by the rules.

5 At the beginning, counsel indicated, well,  
6 what more could he have done. And the answer is  
7 plenty. The law requires a clear and complete  
8 disaffiliation before filing. And it also requires  
9 a "good faith" element. Counsel suggests that all  
10 you have to do is say you're disaffiliated. That's  
11 not what the law is. It's saying and doing. What  
12 more could he have done? He could have done what  
13 anyone would expect of someone who disaffiliates.  
14 If you run for and become a Democratic officeholder  
15 and you are going to abandon the Democratic Party  
16 and the principles, then you should have the courage  
17 of your convictions to give up that position. And  
18 if you want to run as an Independent, do it.

19 If you're going to comply with the law and  
20 clearly completely disaffiliate yourself from the  
21 organizations like the Jefferson-Jackson and the  
22 Alliance Democratic organizations, you've got to do  
23 it. You just can't give a conditional, "maybe"  
24 letter of termination to someone who has no duty to  
25 deliver it to anyone and say, "Well, I tried. It

1 was in the heat of ballot and I did all I could."

2 With radio ads, you can't be on the radio  
3 on the day of the election saying "Join with me in  
4 the Democratic primary of voting for this Democratic  
5 candidate." Sure it's difficult to stop those  
6 things going on. But the law doesn't have these  
7 epiphany and difficulty exceptions. The law is the  
8 law. You got to play by the rules. The devil is in  
9 the details as Mr. Bernabei has apparently said many  
10 times to many people. He failed on the details.

11 When you get to residency, you know, I am  
12 sorry that he just had the epiphany and had to run  
13 around at the last minute. But the law doesn't  
14 allow temporary voting residencies. Because if it  
15 did, people would be busing in a lot of temporary  
16 voters in the elections, especially municipal  
17 elections that are won or lost by a few hundred  
18 votes. You could get three, four, six, seven bus  
19 loads of people, put them in a motel, have them  
20 vote, and, and affect election.

21 In the timeline, you'll see that he's  
22 failed by his own standard of the devil's in the  
23 detail. I suggest to you, look at Exhibit 122 which  
24 is the timeline. And you will see that although he  
25 claims to have established a residence, he may be

1 the only person in history that establishes a  
2 residence before he ever sleeps there or attempts to  
3 sleep there. He filed his, all his petitions May  
4 3rd, dated them that day, he had never slept there  
5 on May 3rd when he had filed his petitions.

6 So where does that leave us? And it leaves  
7 us, where we tried to suggest at the beginning,  
8 where we tried to have the two political science  
9 experts, it leaves us with the responsibility and  
10 this Board with the responsibility of conducting a  
11 higher-level evaluation than maybe would be called  
12 upon in many situations.

13 Ronald Reagan said, I quote, "It has been  
14 said that politics is the second oldest profession."  
15 He continues: "I have learned that it bears a  
16 striking resemblance to the first." And I think  
17 what, what he means by that is just because we're an  
18 R or a D we are expected to do certain things. And  
19 if you look at what the community really expects, I  
20 think....

21 If you pull up 47.

22 That's the oath of office for all of the  
23 Board of Elections members. And 47 confirms that  
24 you are going to uphold the election laws of the  
25 United States. We don't see 47 up on the screen.

1 But I know the Board members know their, their oath.

2 Additionally, I'd like to indicate that  
3 Board members know something when they see it. And  
4 if you go to Exhibit No. 70, you will see that a  
5 number of years ago Mr. Braden had a situation again  
6 involving Mr. Bernabei. Says, as to Mr. Bernabei's  
7 efforts, "'This crass political ploy with its  
8 partisan motives is not the will of the people,'  
9 said Curt Braden, Republican Party chairman. 'It is  
10 a transparent scheme that robs the voters of their  
11 right to elect representative government.'"

12 And if you go to the next quote from Mr.  
13 Braden -- and that is in the public domain, in the  
14 media -- he goes on to say "'It's wrong to take this  
15 selection process away from the voters and place it  
16 into the hands of two candidates that are simply  
17 trying to cover their bets,' Braden said in a press  
18 release."

19 We've heard a lot of things about Mr.  
20 Bernabei. I suspect he's, he's smart, he's  
21 strategic --

22 Thirty seconds?

23 MR. FERRUCCIO: Yeah.

24 MR. PLAKAS: I will suggest to you that  
25 this is an attempt to circumvent the election laws.

1 I can't imagine, and I don't think any of us can  
2 imagine, a factual situation before this Board that  
3 represents such a clear violation of both the letter  
4 and the spirit of law. Mr. Braden recognized it  
5 when Mr. Bernabei tried to do that a number of years  
6 ago, as quoted in the paper. It's in your materials  
7 in, in Exhibit No. 70.

8 So I would ask you that in this case it's  
9 not an issue of Democrats or Republicans; it's an  
10 issue of the integrity of election laws and the  
11 election process. And finally then, if I may quote  
12 Ronald Reagan again, he says, quote, "There are no  
13 easy answers. But there are simple answers." We  
14 must have the courage to do what we know is morally  
15 right. He continues, "Don't be afraid to see what  
16 you see."

17 So, Gentlemen, what you see is an attempt  
18 to pervert the election laws which, you see, is an  
19 attempt that has never been tried in Ohio before. I  
20 would ask that we listen to Mr. Reagan and we must  
21 have the courage to do what is morally right. Don't  
22 be afraid to see what you see. What you see and  
23 what the facts are are very clear. Thank you.

24 MR. FERRUCCIO: Thank you.

25 At this stage of the proceedings, we will

1 MR. FERRUCCIO: Is there a second? I'll  
2 second that.

3 Discussion. Member Braden.

4 MR. BRADEN: Sure. Well, I thank everybody  
5 for their time today. It was quite a long day.  
6 Based on past legal precedent and common sense, Mr.  
7 Bernabei, like any other citizen, has the right to  
8 leave a political party and fulfill all the  
9 requirements of the Ohio Revised Code and the Ohio  
10 Supreme Court decisions which are necessary to  
11 accomplish that. He's fulfilled his disaffiliation  
12 issues through his aggressive efforts to notify  
13 members of the Democratic Party of his exit. He is  
14 an attorney. He's filed many candidate petitions in  
15 the past, all in good faith and with the full energy  
16 and understanding that if otherwise he would be  
17 committing a felony.

18 Concerning residency and voting  
19 registration, again, he has filed many candidate  
20 petitions and the past, all in good faith. He's  
21 fulfilled his residency by claiming in good faith  
22 his fixed address to be in Canton and completed his  
23 voter registration and then voted in the primary  
24 claiming the same. Then he moved to another address  
25 sometime after he filed his petition. And this has

1 caucus individually, member Sherer and myself and  
2 separately member Cline and Mr. Braden. And we'll  
3 be back here in probably 15 minutes to, to come up  
4 with a decision.

5 So in the meantime, let's make sure you got  
6 all your exhibits and everything in order. And  
7 we'll be back.

8 (The proceedings adjourned at 6:23 p.m.)

9 (The proceedings reconvened at 6:42 p.m.)

10 MR. FERRUCCIO: On the Record. Okay. We  
11 are back on the Record after a caucus. First of  
12 all, I want to thank both of the lawyers, all the  
13 lawyers I should say, that were here today and done  
14 an excellent job of presenting the facts of this  
15 case.

16 I know, you know, sometimes it's  
17 frustrating because we're a quasi judicial Board;  
18 and we are trying to get as much information into  
19 the Record as we can to benefit all, all parties.

20 That being said, I would entertain a  
21 motion.

22 MR. SHERER: I would move uphold the  
23 protest an not certify the nominating petition of  
24 the candidacy of Thomas M. Bernabei as mayor of the  
25 City of Canton.

1 no bearing; he remained a Canton resident. In all  
2 of this Mr. Bernabei is exercising his freedom of  
3 speech and freedom of association which are  
4 guaranteed side by side, I might add, in the First  
5 Amendment to the Constitution of the United States.

6 The U.S. Constitution and Ohio law do not  
7 lock someone into a political party for life. They  
8 give all citizens a right to change their mind and  
9 express their opinions as they wish.

10 Given the law and the facts in this case,  
11 the legal requirements they fulfill, I have  
12 determined that Mr. Bernabei has qualified for the  
13 mayoral candidate for the City of Canton, and the  
14 protesters have not reached the level of burden of  
15 proof. Also I choose error on the side of ballot  
16 access and the protest against Mr. Bernabei's  
17 petition for the mayoral ballot for the City of  
18 Canton. And that's my position.

19 MR. FERRUCCIO: Member Cline.

20 MR. CLINE: Yes. Thank you, Mr. Chairman.  
21 I'll apologize if I sound a bit disjointed. There's  
22 been a lot to go through here today and to address  
23 and a lot of good arguments made, a lot of cases  
24 thrown at us. But I would say that I don't find any  
25 of this case law directly on point. There's just

1 nothing on all fours which matches the circumstances  
2 of the facts of this case. And so I don't think we  
3 have guidance in that regard.

4 I think it is significant, though, that the  
5 protesters have a burden of proof that's stated as  
6 clear and convincing evidence. And as the lawyers  
7 in the room know, that's no small burden.  
8 Preponderance of the evidence, for those of you who  
9 are laypeople in the audience, is what you normally  
10 do in a civil trial. But this a much higher  
11 standard of proof that they have to meet. And  
12 there's a presumption based upon the way his  
13 candidacy petition was filed that it was, it was a  
14 legitimate petition for candidacy. It was their  
15 burden to prove that it's not.

16 Having said that, and I won't respond to  
17 all of the arguments because I don't want to waste  
18 anymore time -- or, using more time rather on this  
19 issue -- the first issue on the residency I think  
20 was framed as was he lawfully a resident of the City  
21 of Canton when he filed his petitions. If you look  
22 at the code section that controls this, it refers to  
23 a fixed place to which a person intends to return  
24 when absent. There's been no testimony to the  
25 contrary that that's not where Mr. Bernabei intended

1 to return after he moved into the first Canton  
2 property. The reference to permanency is not in the  
3 code and quite frankly couldn't be because there's  
4 no way that an individual, strictly individuals who  
5 routinely rent properties, can be prohibited from  
6 moving their residence and, therefore, losing their  
7 rights as voters. That's just not the way the law  
8 reads, as I understand it anyway.

9 That he had a second property when he moved  
10 into the first property and had some longer term,  
11 albeit not terribly long-term plan, to move into  
12 that one I don't think really negates the place of  
13 residency at the time that he filed this petition.  
14 If you look at the code section 3503.02, you read  
15 Section (A) of that, it's a question of intent.  
16 It's, it's the person's intent as to where they  
17 intend to return. And I think we have testimony, as  
18 I said before, to that effect. It's not  
19 contradicted.

20 There's been some mention made of where Mr.  
21 Bernabei's wife may have spent a night or two  
22 between her trips to, was it, Florida and Hilton  
23 Head. I'm not sure exactly where she was going or  
24 where she had been but on family vacation. I don't  
25 believe that that's controlling here because it

1 refers to the family of a married person. And the  
2 candidate, I assume, has adult children. His  
3 "family" does not reside in the residence with him.  
4 And I don't think that that's controlling here.

5 And I would agree with member Braden that  
6 we need to liberally construe these statutory  
7 provisions to allow ballot access. So with respect  
8 to the residency determination, I think he met it.

9 With respect to the question of whether his  
10 disaffiliation from the Democratic Party was made in  
11 good faith, I didn't hear any testimony to the  
12 effect that it wasn't. Not one witness, including  
13 the protesters, came up with a factual basis to  
14 determine that it wasn't made in good faith. It was  
15 obviously a very difficult decision that he made and  
16 one that he considered at some length and, indeed,  
17 confirmed with some political allies on the  
18 Democratic side of the ballot so to speak.

19 If you look then at the Secretary of  
20 State's advisory, Jennifer Brunner's, Secretary  
21 Brunner's advisory opinion, whichever one has been  
22 referred to for the past going on ten hours I guess  
23 it is, and you look at the factors that are  
24 referenced there, the first two bullet points of  
25 this directive are not on point. They don't apply

1 to the situation at all.

2 If you look at past history, voting history  
3 and conduct as a, as a member of the political  
4 party, it says in that directive that -- put my  
5 glasses on; excuse me -- such evidence may serve as  
6 evidence, though not necessarily conclusive  
7 evidence, of whether it was a good faith decision to  
8 disassociate from a political party for purposes of  
9 complying with, with Ohio law.

10 So, yes, I agree that you can consider that  
11 behavior. But I think if you look at what the  
12 candidate or the punitive candidate did it was  
13 significant. And he considered his decision and he  
14 knew the consequences and he did, indeed, burn his  
15 bridges behind him. And that's no small matter. I  
16 don't think he was trying to gain the system in any  
17 way. I think his motives were good motives, as he  
18 expressed them, and they were not contradicted by  
19 any testimony here today.

20 So for that reason, I will not be  
21 supporting a motion that member Sherer has  
22 presented, and I would be in favor of certifying the  
23 candidacy and rejecting the protest.

24 MR. FERRUCCIO: Thank you, member Cline.  
25 I'll just go down the line. You know, it's

1 difficult for me because Tom is a friend of mine.  
2 And it's a difficult decision. And I know he's  
3 sincere. And I know his motivation is good  
4 government. I don't think anybody disagrees with  
5 that, no matter what was said here today.

6 But after careful review of the testimony,  
7 the exhibits, the protesters' statements, and the  
8 advisories and case law in this matter, I do believe  
9 that the protesters have met their burden. Good  
10 intentions do not equate to good faith under the  
11 case law and the facts of this case regarding the  
12 Independent candidate. Being an Independent is  
13 fine, and he has said that's what he is now. And  
14 nobody takes issue with that. But can you be an  
15 Independent and be an Independent candidate under  
16 the case law as it exists at this point. And I  
17 don't think that, that he is able to do that.

18 I think that there's a number of issues  
19 that we look at, you know, the whether or not he's a  
20 member of the Alliance Democratic Club at the time  
21 the petitions were passed out, whether or not he was  
22 a member of the Jefferson-Jackson Club at the time  
23 that the petitions were passed out. He's still a  
24 sitting Democrat in office. And I think that that,  
25 that plays a big part in, in this decision.

1 Everybody's talking about whether there's  
2 no case on point. Well, there's going to be a case  
3 on point now one way or another. This is the  
4 situation that there is a sitting Democrat who is  
5 trying to disassociate himself with the party and  
6 didn't, didn't click all gears, didn't make  
7 everything happen in the short period of time that  
8 he had to do it. In his mind view, he was an  
9 Independent and is an Independent, and that's not  
10 the issue. The issue is was there a sufficient  
11 disassociation with the party. And as he sits here  
12 today as a sitting Democrat, there's not.

13 So you do have to look at the past as well  
14 as the future and where, where we're at today. And,  
15 again, good intentions don't equate to good faith.

16 You know, the living residence situation, I  
17 think temporary residence is an issue. And it's a  
18 problem. I mean -- and, again, it's not that he was  
19 trying to do it wrong; he was trying to abide by  
20 what he believed and what his lawyer indicated were  
21 what he needed to do in order to disassociate  
22 himself from the party. A lot to do in five days.  
23 It just didn't get it done.

24 You know, we've been involved in these, in  
25 a big protest recently, as everybody knows, with the

1 sheriff. And I indicated that there should be a  
2 legislative remedy. And I'll indicate that again  
3 today for the Record.

4 I think there should be a legislative  
5 remedy. We have Democrats that can be a Republican  
6 and fill out a 10-Y form. And then they can't go  
7 back for ten years. That's a candidate. You can  
8 switch every primary what you are. But to be a  
9 candidate, there are certain rules. And I think  
10 that there need to be legislative needs to look at  
11 that so that it's specific and we're not here trying  
12 to base a decision on was it good faith or not, good  
13 intention or not, and did it happen.

14 I mean, again, Tom was trying to do what he  
15 thought he had to do in order to disassociate  
16 himself. The conditional resignations I think are  
17 an issue as well. You know, "I may do this; I may  
18 not do it." At what point does he disassociate  
19 himself and does he do everything necessary to  
20 disassociate himself from all the different entities  
21 that he's been involved in.

22 So again, in his mind, yes; and to the  
23 public, he can be an Independent. But it doesn't  
24 rise to him being qualified to be an Independent  
25 candidate. The, you know, being mayor, good

1 government, all the right reasons were  
2 disassociated, well, the evidence I think is clear  
3 and convincing; anyone can be mayor. And because of  
4 good intentions.

5 So, again, it's tough. It's not a  
6 personality contest. But I think that there's clear  
7 and convincing evidence to show that there is a  
8 problem with the good faith and to be a valid  
9 candidate. And also the, the Jolivette case I think  
10 is very instructive in this particular case as well  
11 -- and, you know, I relied on that case to come up  
12 with my decision, and that is that I would uphold  
13 the protest on both the grounds by clear and  
14 convincing evidence.

15 MR. SHERER: This is probably one of the  
16 hardest decisions I have ever had to make.

17 Because, Tom, you've been a dear friend of  
18 my family way before I was probably even thought of.

19 And, you know, I want to thank everybody  
20 for giving their testimony today. And I'm sure  
21 everybody's had a very very long day.

22 The biggest question and biggest issue that  
23 I have is the clear separation from the party, you  
24 know. And I understand and I do agree with Chairman  
25 Ferruccio that I understand that everything was a

1 last-minute decision. But with the evidence that  
 2 was basically presented today, that's basically how  
 3 I came up with my decision.  
 4 MR. FERRUCCIO: Okay. Anything further?  
 5 No further discussion, then I would do a role call  
 6 vote.  
 7 MR. MATTHEWS: Reask your question, Mr.  
 8 Chairman.  
 9 MR. FERRUCCIO: Repeat it, your motion  
 10 again.  
 11 MR. SHERER: The motion was to move to  
 12 uphold the protest and not certify the nominating  
 13 petition of the candidacy of Thomas M. Bernabei as  
 14 mayor for the City of Canton.  
 15 MR. FERRUCCIO: Role call.  
 16 MR. MATTHEWS: Chairman Ferruccio.  
 17 MR. FERRUCCIO: I would vote to uphold the  
 18 motion.  
 19 MR. MATTHEWS: Member Braden.  
 20 MR. BRADEN: No.  
 21 MR. MATTHEWS: Member Cline. Cline.  
 22 MR. CLINE: No.  
 23 MR. MATTHEWS: Member Sherer.  
 24 MR. SHERER: Yes.  
 25 MR. MATTHEWS: Chairman Ferruccio, once

1 MR. FERRUCCIO: Yeah. Okay. Any questions  
 2 from of the candidate?  
 3 MR. MACK: Thank you.  
 4 MR. BRADEN: Motion to adjourn.  
 5 MR. FERRUCCIO: Is there a second.  
 6 MR. SHERER: Second.  
 7 MR. FERRUCCIO: All in favor signify by  
 8 saying "aye."  
 9 (Simultaneous "aye.")  
 10 MR. FERRUCCIO: We are adjourned. Thank  
 11 you, everybody.  
 12  
 13 (The proceeding concluded at 7:00 p.m.)  
 14  
 15  
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 17  
 18  
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 20  
 21  
 22  
 23  
 24  
 25

1 again.  
 2 MR. FERRUCCIO: Yes.  
 3 MR. MATTHEWS: Member Braden.  
 4 MR. BRADEN: No.  
 5 MR. MATTHEWS: Member Cline.  
 6 MR. CLINE. no.  
 7 MR. MATTHEWS: Member Sherer.  
 8 MR. SHERER: Yes.  
 9 MR. MATTHEWS: We have a tied vote.  
 10 MR. FERRUCCIO: Okay. Since we do have a  
 11 tied vote on this matter, we have 14 days to put  
 12 together position statements, one from the Democrats  
 13 and one from the Republicans and transmit the entire  
 14 Record down to the Secretary of State with our  
 15 position. And then the Secretary of State will go  
 16 in and break the tie vote.  
 17 MR. MATTHEWS: For the Record, because the  
 18 motion was stated in support of the protest, so that  
 19 it's clear, the Secretary of State will determine  
 20 whether the candidacy is sufficient or not, because  
 21 otherwise on its face it was, but with respect to  
 22 these two issues, what was being argued on. So it  
 23 won't come back, is what I'm trying to say. He is  
 24 going to decide whether the candidate's on the  
 25 ballot or not.

## C E R T I F I C A T E

STATE OF OHIO

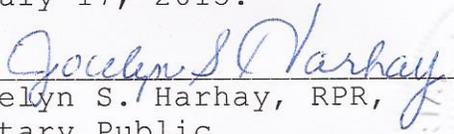
COUNTY OF STARK

I, Jocelyn S. Harhay, RPR, Notary Public in and for the State of Ohio, do hereby certify that the Special Meeting of the Stark County Board of Elections was to the best of my ability reduced to machine shorthand, afterwards transcribed under my direction by means of computer, and that to the best of my ability the foregoing is a true and correct transcript of the deposition.

I further certify that this proceeding was taken at the time and place in the foregoing caption specified.

I further certify that I am not a relative or employee of an attorney of any of the parties in the above-captioned action and that I am not, nor is the court reporting firm with which I am affiliated, under a contract as defined in Ohio Civil Rule 28(D).

IN WITNESS WHEREOF, I have hereunto set my hand at Hartville, Ohio, on July 17, 2015.

  
\_\_\_\_\_  
Jocelyn S. Harhay, RPR,  
Notary Public



My Commission expires: June 15, 2018.

# EXHIBIT

C



**Jon Husted**  
Ohio Secretary of State

180 East Broad Street, 16th Floor  
Columbus, Ohio 43215  
Tel: (877) 767-6446 Fax: (614) 644-0649  
[www.OhioSecretaryofState.gov](http://www.OhioSecretaryofState.gov)

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July 31, 2015

Director Jeffrey Matthews  
Deputy Director Jeanette Mullane  
Stark County Board of Elections  
3525 Regent Ave N.E.  
Canton, OH 44705

Re: Tie Votes on the Independent Candidacies of Mr. Thomas M. Bernabei and  
Mr. Francis H. Cicchinelli, Jr.

Dear Director Matthews and Deputy Director Mullane:

At the Stark County Board of Elections meeting on July 6, 2015, the board held a protest hearing concerning the independent candidacy and residency of Mr. Thomas M. Bernabei for Mayor of Canton. At the close of the hearing, Chairperson Ferruccio and Board Member Sherer voted to grant the protest and keep Mr. Bernabei off the ballot. Board Members Braden and Cline voted to deny the protest and allow Mr. Bernabei to appear on the ballot.

Additionally, at the Stark County Board of Elections meeting on July 13, 2015, the board held a protest hearing concerning the independent candidacy of Mr. Francis H. Cicchinelli, Jr. for Mayor of Massillon. At the close of the hearing, Chairperson Ferruccio and Board Member Sherer voted to grant the protest and keep Mr. Cicchinelli, Jr. off the ballot. Board Members Braden and Cline voted to deny the protest and allow Mr. Cicchinelli to appear on the ballot.

The board members submitted both tie votes to the Secretary of State for a decision pursuant to R.C. 3501.11(X).

Under Ohio law, an independent candidate is “any candidate who claims not to be affiliated with a political party.”<sup>1</sup> The Sixth Circuit Court of Appeals explained that an independent candidate must actually be unaffiliated or disaffiliated from any political party, and that the claim of unaffiliation or disaffiliation must be made in good faith.<sup>2</sup>

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<sup>1</sup> R.C. 3501.01(I).

<sup>2</sup> *Morrison v. Colley*, 467 F. 3d 503 (6<sup>th</sup> Cir. 2006).

**MR. BERNABEI**

There is little doubt Mr. Bernabei took calculated efforts to disaffiliate from the Democratic Party. Thus, in breaking this tie vote, the determination must be whether Mr. Bernabei's disaffiliation from the Democratic Party was made in good faith. Chairman Ferruccio and Board Member Sherer claim that Mr. Bernabei failed to disaffiliate from the Democratic Party in good faith. I acknowledge that evidence highlighted by Members Ferruccio and Sherer reflects Mr. Bernabei's long-standing affiliation with the Democratic Party. However, the Ohio Supreme Court has noted that "disaffiliation by definition presumes a history of support for or membership in a political party," and if evidence of affiliation "standing alone, could trump a declaration of disaffiliation, then disaffiliation would never be possible."<sup>3</sup> Thus, proving that Mr. Bernabei failed to disaffiliate from the Democratic Party in good faith requires more than a recitation of his past political activity. It requires clear and convincing evidence that Mr. Bernabei's declaration was motivated by something other than a sincere change of ideology.

"Clear and convincing" evidence is that measure or degree of proof which will produce in the mind of the trier of facts a firm belief or conviction of the allegations sought to be established.<sup>4</sup> No evidence in the record before me imparts a firm belief or conviction that Mr. Bernabei's disaffiliation from the Democratic Party was not made in good faith. Instead, the record reflects that Mr. Bernabei expressed a change in ideology leading to his disaffiliation from the Democratic Party, and his actions in furtherance of that change are clear.

His situation is factually distinguishable from Mr. Jolivette's in an important way.<sup>5</sup> Unlike Mr. Jolivette, Mr. Bernabei did not file a declaration of candidacy and petition for the partisan primary election, and then file a nominating petition for the general election, claiming to be independent, only after becoming aware that his first petition was insufficient and he would not qualify for the ballot. Instead, Mr. Bernabei did not decide to run for office until well after the primary election, and appears to have taken every reasonable step he could have taken to disaffiliate from the Democratic Party before filing his independent candidate nominating petition for the general election. Ohio law provides him no other avenue for disaffiliation than the one he chose.

Protestors also allege that Mr. Bernabei does not have a qualifying voting residence in the city of Canton. However, the record does not support this assertion either. Mr. Bernabei submitted a voter registration update form, signed a lease for the University Avenue apartment, moved belongings into the apartment, and slept there. The fact that he would later move into a home at another address in Canton, that was not available when he signed the apartment lease, is of little significance. The Ohio Supreme Court has noted that a "person's intent is of great import,"<sup>6</sup> and no evidence in the record before me imparts a firm belief or conviction that Mr. Bernabei's actions exhibited anything but an intent to reside in the city of Canton.

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<sup>3</sup> *State ex rel. Davis v. Summit Cty. Bd. Of Elections*, 137 Ohio St. 3d 222 (2013).

<sup>4</sup> *Cross v. Ledford*, 161 Ohio St. 469 (1954).

<sup>5</sup> *Jolivette v. Husted*, 694 F. 3d 760 (6<sup>th</sup> Cir. 2012).

<sup>6</sup> *Stine v. Brown Cty. Bd. Of Elections*, 101 Ohio St.3d 252 (2004).

Without clear and convincing evidence that Mr. Bernabei's disaffiliation from the Democratic Party was not in good faith or that Mr. Bernabei did not intend to reside in Canton, I break the tie in favor of certifying Mr. Bernabei's independent candidacy for Mayor of Canton to the November 3, 2015 General Election ballot.

**MR. CICCHINELLI, JR.**

Engaging in a similar analysis of the record in Mr. Cicchinelli, Jr.'s case, I arrive at the same conclusion. Once again unlike Mr. Jolivette, Mr. Cicchinelli, Jr. did not seek to run in a party primary election before filing a nominating petition as an independent candidate for the general election, and a recitation of past political activity does not impart a firm belief or conviction that Mr. Cicchinelli, Jr.'s motivation was insincere.

Without clear and convincing evidence that his disaffiliation from the Democratic Party was not in good faith, I also break this tie in favor of certifying Mr. Cicchinelli, Jr.'s independent candidacy for Mayor of Massillon to the November 3, 2015 General Election ballot.

Sincerely,

A handwritten signature in black ink that reads "Jon Husted". The signature is written in a cursive, flowing style with a large initial "J".

Jon Husted

cc: Members of the Stark County Board of Elections

# EXHIBIT

D



**Jon Husted**  
Ohio Secretary of State

180 East Broad Street, 16th Floor  
Columbus, Ohio 43215  
Tel: (877) 767-6446 Fax: (614) 644-0649  
[www.OhioSecretaryofState.gov](http://www.OhioSecretaryofState.gov)

---

June 26, 2012

Lynn Kinkaid, Director  
Jocelyn Bucaro, Deputy Director  
Butler County Board of Elections  
1802 Princeton Road  
Princeton Road Campus  
Hamilton, Ohio 45011

Re: Tie Vote on the Candidacy of Greg Jolivette

Dear Director Kinkaid and Deputy Director Bucaro:

At the Butler County Board of Elections meeting on May 30, 2012, the board held a protest hearing concerning the candidacy of Mr. Greg Jolivette. The protest hearing centered on whether Mr. Jolivette can appear on the ballot as an independent candidate for State Representative for the 51<sup>st</sup> House District. At the close of the hearing, Board Members Ellis and Shelton voted to grant the protest and keep Mr. Jolivette off the ballot. Chairperson Cloud and Board Member Carter voted to deny the protest and allow Mr. Jolivette to appear on the ballot. The vote resulted in a tie vote.

In accordance with R.C. 3501.11(X), your board submitted the tie vote to my office, including the reasoning behind the board members' votes and a copy of the transcript from the May 30, 2012 board meeting. My decision is outlined below.

On December 7, 2011, Mr. Jolivette filed his Declaration of Candidacy and Petition as a Republican candidate for nomination for State Representative in the 51<sup>st</sup> House District, the same office that he now seeks to run for as an independent.

After filing, Mr. Jolivette became aware that it was unlikely that the Butler County Board of Elections would certify his candidacy because of deficiencies in his Declaration of Candidacy and Petition. When the Butler County Board of Elections met on December 14, 2011 to certify candidates to the 2012 Primary Ballot, Mr. Jolivette indicated that he wished he had brought his petitions into the Board of Elections earlier so that the error would have been noted and he would have had additional time to circulate another petition. The Board decided not to act on Mr. Jolivette's certification until the next meeting to provide Mr. Jolivette and his counsel more time to conduct further research.

At the next board meeting, December 19, 2011, Mr. Jolivette withdrew his candidacy for State Representative for the 51<sup>st</sup> District. The same day, he resigned as member of the Republican State Central Committee.

Under Ohio law, an independent candidate is “any candidate who claims not to be affiliated with a political party.”<sup>1</sup> The Sixth Circuit Court of Appeals explained that an independent candidate must actually be unaffiliated, or disaffiliated from any political party.<sup>2</sup>

Although Mr. Jolivette did not vote in the 2012 primary election, Mr. Jolivette’s voting history shows that he voted in Republican primary elections in 2010, 2008, 2006, 2004, 2002, 2000, and 1998. From 1997 to 2010, Mr. Jolivette served as a Republican Legislator and as a Republican County Commissioner. In addition, during the fall of 2011, Mr. Jolivette asserted his affiliation with the Republican Party by circulating and filing a petition to run in the Republican Party primary election for nomination as the Republican candidate for the 51<sup>st</sup> House District for the November 2012 General Election. Because Mr. Jolivette did not have sufficient valid signatures to be certified to the primary ballot as a Republican, he withdrew his candidacy and subsequently filed to run for the same office as an independent candidate.

Based on the facts described above, I find that Mr. Jolivette is not unaffiliated and cannot run as an independent candidate for this election. I therefore break the tie in favor of the protest. If you have any questions please contact the Secretary of State’s election counsel assigned to your county.

Sincerely,



Jon Husted

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<sup>1</sup> R.C. 3501.01(I).

<sup>2</sup> *Morrison v. Colley*, 467 F. 3d 503, 509 (2006).

# EXHIBIT

E



**JENNIFER BRUNNER**  
**OHIO SECRETARY OF STATE**

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

October 5, 2007

Bryan C. Williams, Director  
Summit County Board of Elections  
470 Grant St.  
Akron, Ohio 44311-1157

Re: Tie Votes on Candidate for City of Barberton Law Director

Dear Director Williams:

On October 4, 2007 I received a package sent by your office providing information and arguments on a tie vote by the members of the Summit County Board of Elections ("the Board"). My analysis and decision are below.

**INTRODUCTION**

The tie vote raises the question whether or not Edna J. Boyle is affiliated with a political party and how such status affects whether she may run for office as an independent candidate.

**FACTS**

On September 10, 2007, Edna J. Boyle timely filed a nominating petition to seek election to the office of City of Barberton Law Director at the November 2007 general election.

On September 25, 2007, Dan Whitaker timely filed a protest against the candidacy of Ms. Boyle, asserting that she is affiliated with the Republican party, and so, cannot run as an independent candidate under *Morrison v. Colley*, 467 F.3d 503 (6th Cir. 2006), and Ohio Secretary of State Advisory 2007-05.

**MOTIONS**

At a meeting of the Board on September 25, 2007, Member Arshinkoff moved to "approve" the petition in question. Member Morrison seconded the motion. Members Arshinkoff and Morrison voted in favor of the motion. Chairman Jones and Member Gorbach voted against the motion.

## **ARGUMENTS**

Members Arshinkoff and Morrison argue that the Ms. Boyle has done everything that she can do under the law to disaffiliate herself from the Republican party with which she was formerly affiliated, and so, passes the legal test for independence under *Morrison* and Advisory 2007-05.

Chairman Jones and Member Gorbach argue that Ms. Boyle is affiliated with the Republican Party and cannot run as independent candidate under *Morrison* and Advisory 2007-05.

## **DISCUSSION**

This tie vote is properly before me pursuant to R.C. § 3501.11(X) and Appendix G of the Election Official Manual for Ohio County Boards of Elections.

The municipal charter for the City of Barberton, Ohio provides that the general laws of Ohio prevail with regard to nominations for office.

R.C. 3501.39 provides:

If a petition is filed for the nomination or election of a candidate in a charter municipal corporation with a filing deadline that occurs after the seventy-fifth day before the day of the election, a board of elections may invalidate the petition within fifteen days after the date of that filing deadline. R.C. 3501.39(C)(1).

The general election at which Ms. Boyle seeks election will occur on November 6, 2007. The seventy-fifth day prior to that election was August 23, 2007. The filing deadline for Ms. Boyle's nominating petition was September 10, 2007, the day before the primary election in Barberton, and well after the seventy-fifth day before the election. The protest was filed, and the Board tied on the protest on September 25, 2007, the fifteenth day after the filing deadline.

Under R.C. 3513.01, *Morrison*, and Advisory 2007-05, an independent candidate must declare that she is not affiliated with any political party and must make that claim in good faith. In Advisory 2007-05, I stated that if an independent candidate is on a central or executive committee of a political party when she files her nominating petition or becomes a member of such committee during her candidacy, or if she votes in a party primary the day after she files her nominating petition, those actions are prima facie evidence that the claim of no affiliation is not in good faith. Absent either of those two clear indicia of party affiliation, a board must take into consideration all evidence presented or available that tends to indicate affiliation or no affiliation, and decide whether or not the candidate in question is actually not affiliated with a political party such that she may be an independent candidate.

Here, there is no prima facie evidence of party affiliation as is set forth in Advisory 2007-05. After reviewing the transcript of the Board meeting at which this tie vote occurred, it is clear that the Board did not vote to hold a separate hearing on this matter as it did in the Cuyahoga Falls Municipal Court Clerk tie vote also decided today. Such a hearing would have provided Ms. Boyle an opportunity to be heard and offer additional evidence in support of her non-affiliation with the Republican Party. The Board has requested that I break this tie vote on the ultimate issue of the validity of Ms. Boyle's candidacy rather than on whether or not to further hear the matter. Under other circumstances where the election cycle of the primary and general

elections permitted for more time between the two elections, I would be inclined to refrain from breaking the tie vote and advising the Board to hold such a hearing. However, in light of the impending November 6, 2007 election and the fact that the Board is faced with preparing absentee ballots that were required by law to be mailed beginning on October 2, 2007, I will not order further hearing on the matter and determine the matter on the evidence presented to me by the Board.

The evidence shows that Ms. Boyle voted a Republican ballot in May 2006, September 2005, March 2004, September 2004, May 2002, September 2001, March 2000, September 1999, and May 1998. The evidence does not indicate whether or not Ms. Boyle voted a party ballot in September 2007, and voting history, alone, is not sufficient to determine party affiliation under Advisory 2007-05.

The evidence also shows that Ms. Boyle donated to both the state and Summit County Republican parties in both 2006 and 2007.

Chairman Jones and Member Gorbach indicate that Ms. Boyle was a Republican candidate for nomination in the race for Judge of the 9<sup>th</sup> District Court of Appeals in 2006. For that race alone, Ms. Boyle accepted \$40,000 from the Summit County Republican Party.

All four Board members agree that Ms. Boyle was the Republican Director of the Board several years ago, and that former Republican Governor Bob Taft appointed her to a judgeship.

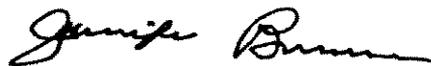
In the face of such evidence tending to indicate that Ms. Boyle is affiliated with the Republican Party, I find no contradictory evidence of any affirmative act to indicate disaffiliation other than filing a nominating petition as an independent candidate.

Because the evidence provided overwhelmingly indicates that Ms. Boyle is actually affiliated with the Republican Party I cannot vote to certify her nominating petition to be an independent candidate under *Morrison* and Advisory 2007-05.

### DECISION

For the reasons stated above, I vote with Chairman Jones and Member Gorbach, AGAINST the motion to certify the nominating petition of Edna J. Boyle.

Sincerely,



Jennifer Brunner

# EXHIBIT

F



LEE E. PLAKAS

JAMES G. MANNOS

JAMES M. MCHUGH

GARY A. CORROTO

DAVID L. DINGWELL

DENISE K. HOUSTON

MEGAN J. FRANTZ OLDHAM

EDMOND J. MACK

MARIA C. KLUTINOTY EDWARDS

JOSHUA E. O'FARRELL

COLLIN S. WISE

BRANDON O. TRENT

Of Counsel

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ROBERT G. KONSTAND\*

\*Also licensed in FL

Deceased

GEORGE J. TZANGAS

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VIA HAND DELIVERY

July 8, 2015

Stark County Board of Elections  
 Jeffrey Matthews, Director  
 3525 Regent Avenue NE  
 Canton, Ohio 44705

RECEIVED

2015 JUL -8 PM 1:38

STARK COUNTY  
BOARD OF ELECTION

**Re: Notice of Filing Certified Mail Return of Service for the Subpoena Duces Tecum Previously Issued to Thomas M. Bernabei in Connection with the Protest Against the Nominating Petitions and Candidacy of Thomas M. Bernabei as an Independent Candidate for the Office of Mayor of the City of Canton, Ohio R.C. §§ 3513.262 and 3501.39(A)**

Dear Director Matthews:

Pursuant to R.C. § 3519.18, and Ohio R. Civ. P. 45 as incorporated by Ohio Sec. of State Adv. Op. No. 2008-10, please find the attached Return of Service for the Subpoena Duces Tecum served upon Thomas M. Bernabei on July 3, 2015, by Certified Mail, addressed to 2745 Dunkeith Dr. NW, Canton, Ohio 44708.

Thank you for your consideration, and do not hesitate to contact our office with any questions or concerns.

Respectfully submitted,

TZANGAS | PLAKAS | MANNOS | LTD

Lee E. Plakas (0088628)

220 Market Avenue South

Eighth Floor

Canton, Ohio 44702

Telephone: (330) 455-6112

Facsimile: (330) 455-2108

Email: lplakas@lawlion.com

Counsel for Protestors

Majority Leader Frank Morris, Canton City Council,  
 Ward 9, Assistant Majority Leader Chris Smith, Canton  
 City Council, Ward 4, Thomas E. West, Canton City  
 Council, Ward 2, Kevin Fisher, Canton City Council,  
 Ward 3, David R. Dougherty, Canton City Council,  
 Ward 6, John Mariol II, Canton City Council, Ward 7,  
 and Edmond J. Mack, Canton City Council, Ward 8

Cc: Raymond V. Vasvari, Jr., Esq.

<p>3. Complete name 1, 2, and 3.</p> <p>4. Print your name and address on the reverse so that we can return the card to you.</p> <p>5. Attach this card to the back of the mailpiece, or on the front if space permits.</p>		<p>6. Received by (Printed Name)</p> <p>7. Date of Delivery</p>	
<p>1. Article Addressed to:</p> <p><b>Thomas M. Bernabei</b>  <b>2746 Dunwoith Drive NW</b>  <b>Canton, OH 44708</b></p>		<p>8. Is delivery address different from item 1? <input checked="" type="checkbox"/> Yes          If YES, enter delivery address below: <input type="checkbox"/> No</p>	
<p>2. Service Type</p> <p><input type="checkbox"/> Adult Signature  <input type="checkbox"/> Adult Signature Restricted Delivery  <input type="checkbox"/> Certified Mail  <input type="checkbox"/> Certified Mail Restricted Delivery  <input type="checkbox"/> Collect on Delivery  <input type="checkbox"/> Collect on Delivery Restricted Delivery</p>		<p><input type="checkbox"/> Priority Mail Express®  <input type="checkbox"/> Registered Mail™  <input type="checkbox"/> Registered Mail Restricted Delivery  <input type="checkbox"/> Return Receipt for Merchandise  <input type="checkbox"/> Signature Confirmation™  <input type="checkbox"/> Signature Confirmation Restricted Delivery</p>	
<p>3. Article Number (Transfer from service label)</p> <p><b>7030 1670 0000 6432 8180</b></p>		<p>4. Restricted Delivery</p>	
<p>PS Form 3811, April 2015 PSN 7530-02-000-9083</p>		<p>Domestic Return Receipt</p>	

