

STARK COUNTY BOARD OF ELECTIONS  
SPECIAL BOARD MEETING  
MONDAY, JULY 13, 2015, 9:00 A.M.

- - -

IN RE:

THE PROTEST AGAINST NOMINATING PETITION OF  
FRANCIS H. CICCHINELLI, JR. FOR THE OFFICE  
OF MAYOR OF THE CITY OF MASSILLON, OHIO

- - -

BE IT REMEMBERED that upon the hearing of  
the above-entitled matter, held at the Stark  
County Board of Elections, 3525 Regent Avenue,  
N.E., Canton, Ohio, and commencing on Monday, the  
13th day of July, 2015, the following proceedings  
were had.

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APPEARANCES :

BOARD MEMBERS :

Samuel J. Ferruccio, Jr., Chairman  
Frank C. Braden  
William Cline  
William Sherer, II

STAFF :

Jeffrey A. Matthews, Director  
Jeanette Mullane, Deputy Director

ON BEHALF OF THE PROTESTORS,  
BOB RICHARDS AND TED SCHARTIGER :

The Okey Law Firm, L.P.A.

By: Steven P. Okey, Attorney at Law  
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ON BEHALF OF THE CANDIDATE,  
FRANCIS H. CICCHINELLI, JR. :

Law Offices of Craig T. Conley

By: Craig T. Conley, Attorney at Law  
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## I N D E X

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Witness	DX	CX
Called by Mr. Okey:		
Francis H. Cicchinelli, Jr.	13:18	31:22
Joy M. Cicchinelli	33:24	38:7
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Jill E. Creamer	53:8	-----
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Melvin T. Schartiger	61:7	62:24
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Called by Mr. Conley:		
Phil G. Giavasis	83:14	-----
Shaddrick Stinson	93:17	-----

- - -

## P R O C E E D I N G S

1  
2 CHAIRMAN FERRUCCIO: The next item on  
3 the agenda is the hearing on the protest of the  
4 Independent Candidacy of Francis Cicchinelli, Jr.  
5 In that regard, the Protest Against the  
6 Nominating Petition in the Candidacy of  
7 Francis H. Cicchinelli, Jr. For the Office of  
8 Mayor of the City of Massillon, Ohio was filed by  
9 four people, two which have withdrawn, and  
10 currently Bob Richards and Ted Schartiger are two  
11 of the party protestors, and on the 10th day of  
12 July -- for purposes of some housekeeping, on the  
13 10th of July, 2015, two of the party protestors,  
14 Tony Townsend and Shaddrick Stinson withdrew from  
15 the protest.

16 Before we get started, the first item  
17 to consider is the recusal motion filed by the  
18 candidate's lawyer. In this particular protest,  
19 the attorney for the candidate filed a motion to  
20 recuse myself and Member Sherer. This motion to  
21 recuse was filed June 11th, 2015. This was five  
22 days before any protest was filed by  
23 Attorney Okey on behalf of the protestors. This  
24 motion was a preemptive attempt to cast doubt on  
25 myself and Member Sherer and the Board. Not only

1 is the motion without merit, it is not based on  
2 any facts of bias or prejudice.

3 Subsequently, a protest was filed, and  
4 the candidate's lawyer filed a supplemental  
5 memorandum alleging that Tony Townsend and  
6 Shaddrick Stinson are current members of the  
7 Stark County Democratic Party's Executive  
8 Committee. There are approximately, I think, 75  
9 members in that committee. The attorney for the  
10 candidate suggests that since we are all  
11 Democrats, we should recuse ourselves. To take  
12 this theory further, a judge then would have to  
13 recuse himself for all cases in which a lawyer  
14 appears who is in the same Bar Association.

15 The attorney for the candidate filed a  
16 second supplemental motion, again not alleging  
17 specific facts or evidence that myself or  
18 Member Sherer would be prejudice or bias to his  
19 client; therefore, I would indicate that myself  
20 and Board Member Sherer were not at the Stark  
21 County Executive Committee Meeting where it was  
22 determined by the vote the Democratic Party would  
23 support the protest to the candidacy of Francis  
24 Cicchinelli.

25 In fact, the Stark County Democratic

1 Party or Executive Committee were never  
2 protestors in this particular case, were never  
3 joined in the action currently pending before  
4 this Board. Moreover, Protestors Stinson and  
5 Townsend have withdrawn as party protestors.  
6 Member Sherer and myself never appeared and never  
7 participated in any discussion or vote of the  
8 Stark County Democratic Executive Committee.

9 The nature of the Board of Elections in  
10 all 88 counties in the State of Ohio is to sit in  
11 judgment of the matters that affect people, and  
12 Mr. Sherer and I as the Democratic Party, as  
13 opposed to the Republican Party as Member Cline  
14 and Member Braden do.

15 In this protest case, we sit as  
16 quasi-judicial authority, and we have to be  
17 cognizant of the due process for all involved.  
18 In order for a recusal motion to be sustained,  
19 there has to be some showing of bias or  
20 prejudice, some denial of due process. I have no  
21 interest in the outcome of this protest; I harbor  
22 no prejudice or bias in this matter; I,  
23 therefore, find that the candidate's motion to  
24 recuse myself is not well taken.

25 And I'll let Member Sherer talk about

1 his response.

2 MEMBER SHERER: Basically, not to  
3 rehash what Chairman Ferruccio has just stated,  
4 but at this time, I have no intention of recusing  
5 myself from this Board, and I believe, you know,  
6 as far as having a fair hearing, it can be  
7 accomplished.

8 CHAIRMAN FERRUCCIO: Great. With that,  
9 that motion is denied.

10 The next item is then for the procedure  
11 for today. We'll first hear from the protestors  
12 as their case in chief and cross by the  
13 candidate's lawyer and then questions from any  
14 Board members, if they have any, and then the  
15 candidate's case in chief.

16 As far as the issues, I believe there's  
17 one basic issue, and that is that the protestors  
18 contend Candidate Cicchinelli, pursuant to Ohio  
19 Revised Code 3501.01, sub-paragraph (1), and Ohio  
20 Revised Code 3513.257, and relevant case law, he  
21 was not -- he was not actually unaffiliated or  
22 disaffiliated from the Democratic Party when he  
23 signed this bid as an Independent candidate  
24 nominating petitions, and his claim of  
25 un-affiliation from the Democratic Party was not

1 made in good faith.

2 Are there -- and is that an accurate  
3 depiction of the issue?

4 MR. OKEY: Yes, sir.

5 CHAIRMAN FERRUCCIO: Okay.

6 MR. CONLEY: Not my issue, so I don't  
7 have an opinion.

8 CHAIRMAN FERRUCCIO: Okay. So any --  
9 any opinion -- any opinion is waived with respect  
10 to that issue.

11 So no other additions or corrections?

12 If not, both sides are familiar with  
13 protest hearings, and I know that, as chairman --  
14 I want you to know, as chairman, I have authority  
15 to exercise reasonable control over the  
16 examination of witnesses and can prevent either  
17 counsel from questioning which is not relevant to  
18 the issues, this Board considers cumulative or  
19 repetitive, argumentative, or considered  
20 harassment of a witness.

21 The protestors have the burden of  
22 proceeding first and proving their case by clear  
23 and convincing evidence. For the record, this  
24 Board will incorporate, by reference, all  
25 evidence for and against the Protest for each

1 party protestor.

2 I would now entertain a short opening,  
3 five minutes max, for each.

4 Mr. Okey.

5 MR. OKEY: Thank you, Mr. Chairman.  
6 Members of the Board of Elections, I'm Steve  
7 Okey, appearing on behalf of Ted Schartiger -- I  
8 believe is the pronunciation -- Schartiger and  
9 Bob Richards. We are protesting the nominating  
10 petition filed by Francis H. Cicchinelli, Jr. as  
11 an alleged Independent candidate for the office  
12 of Mayor of Massillon.

13 This -- this Board may be relieved to  
14 hear that the merits of the protest are not  
15 measured by the length of the presentation, and  
16 our issues in this case are straightforward, and  
17 our presentation will be straightforward as well.

18 In the race, gentlemen, for the Mayor  
19 of Massillon in 2015, Mr. Cicchinelli has  
20 affirmatively stated -- under the penalty of the  
21 felony of election falsification, he's  
22 affirmatively stated that he is a Democrat, and  
23 he did so and he made that statement when he  
24 signed the Democratic petition for the office of  
25 mayor of Mr. James Ress, who was an unsuccessful

1 candidate for the Democratic Party for the office  
2 of Mayor of Massillon.

3 It was interesting to hear some of the  
4 discussion during one of the earlier agenda items  
5 about intent of -- of someone, in that case,  
6 intent of someone signing or circulating a  
7 petition, and I think, when Mr. Cicchinelli, in  
8 relation to the race for Mayor of the City of  
9 Massillon, signed a Democratic petition, it was  
10 his intent to inject himself, in relation to that  
11 race, as a Democrat.

12 Now, for the very same race of mayor  
13 and in the same election cycle, he's now claiming  
14 that he is an Independent. Mr. Cicchinelli can't  
15 be both. In relation to one race and one  
16 election cycle, you can't be both a Democrat and  
17 an Independent. It's not possible. He can't be  
18 both.

19 And by first saying that he's a  
20 Democrat in relation to this race for mayor and  
21 then claiming that he is an Independent for the  
22 same race and in the same election cycle, we  
23 believe that Mr. Cicchinelli has, himself, proven  
24 by clear and convincing evidence, conclusively,  
25 we believe that his claim of independence is not

1 in good faith; therefore, his petition should be  
2 disqualified.

3 We believe that Mr. Cicchinelli has  
4 also flip-flopped in his affiliation, starting  
5 off this election cycle as a Democrat and then  
6 trying to become an Independent and then flipping  
7 back to be a Democrat again and then, ultimately,  
8 just, I believe, five days before the filing  
9 deadline, claiming to be an Independent once  
10 again, all again in the same cycle and all again  
11 for the -- not in good faith.

12 So for those two reasons, first of all,  
13 saying for the race of mayor that he's a Democrat  
14 and then trying to go back off that for the same  
15 race and in the same cycle and for flip-flopping  
16 back and forth twice, we believe that this Board  
17 of Elections should invalidate Mr. Cicchinelli's  
18 petition and he should be disqualified from  
19 appearing on the ballot for Mayor of the City of  
20 Massillon.

21 Thank you very much.

22 CHAIRMAN FERRUCCIO: Thank you,  
23 Mr. Okey.

24 Mr. Conley.

25 MR. CONLEY: I think in the interest of

1       brevity, I would just refer the Board to my  
2       client's memorandum contra the protest, which was  
3       filed with this Board on June 22, 2015. I think  
4       it rather succinctly sums up the issue. The  
5       bottom line, as the United States Supreme Court  
6       has hailed, the right of affiliation with a party  
7       includes the right of disaffiliation.

8               The fact that Mr. Cicchinelli signed  
9       somebody's Democratic primary petition in January  
10       of this year doesn't have anything to do with his  
11       post-petition activity. He files his petition  
12       four or five months later, basically, I changed  
13       my mind; I no longer want to be a Democrat. That  
14       is constitutionally appropriate and permissible.

15               And although the case law seems to  
16       imply that this Board may look at pre-petition  
17       activity, I suppose for purposes of what was  
18       yesterday and what's today and was the umbilical  
19       cord properly cut, the primary emphasis in all of  
20       the case law is what happens on and after you  
21       file your petition, and of course, the most  
22       obvious of problems for such candidate -- and I  
23       think this Board has dealt with it and maybe is  
24       going to deal with it again -- is a candidate  
25       that says on Monday before the primary, I'm an

1 Independent, and then on Tuesday is foolish  
2 enough to vote on a partisan ballot. Well,  
3 that's pretty crystal clear. That didn't happen  
4 here. Nothing close to that happened here.

5 Mr. Cicchinelli is qualified, and this  
6 Board should so find.

7 Thank you, gentlemen.

8 CHAIRMAN FERRUCCIO: Thank you,  
9 Mr. Conley.

10 First witness.

11 MR. OKEY: Thank you, Mr. Chairman.

12 We call Mr. Cicchinelli.

13 - - -

14 FRANCIS H. CICCHINELLI, JR.

15 of lawful age, being by me first duly sworn, as  
16 hereinafter certified, testified and said as  
17 follows:

18 DIRECT EXAMINATION

19 BY MR. OKEY:

20 Q. Good morning, sir.

21 A. Good morning.

22 Q. Mr. Cicchinelli, for our record, would you  
23 please state your name and address, sir.

24 A. Francis H. Cicchinelli, Jr., 2105 Cyprus  
25 Drive, S.E., Massillon.

1 Q. Mr. Cicchinelli, as you've heard the  
2 introductions a few minutes ago, I'm Steve Okey,  
3 appearing on behalf of the protestors here this  
4 morning, sir, and I'll be asking you some  
5 questions. If any of my question doesn't make  
6 sense or if you need it repeated, please let me  
7 know, sir. Okay?

8 A. Yes, sir.

9 Q. All right, sir. Mr. Cicchinelli, could  
10 you please tell this Board of Elections, what is  
11 the date that you claim you were first an  
12 Independent?

13 A. Technically, it would be the May primary,  
14 when I voted non-issues -- or nonpartisan ballot.

15 Q. That would have been -- the May primary  
16 would have been, I believe, May 5th --

17 A. The 5th.

18 Q. -- Tuesday, May 5th, sir?

19 A. Yes.

20 Q. All right. Now, sir, is it correct,  
21 Mr. Cicchinelli, that you used your affiliation  
22 with the Democratic Party to help a fellow  
23 Democrat, Mr. James Ress, get on the primary  
24 ballot in the race for mayor in 2015?

25 A. No.

1 Q. Well, sir, I want to -- there's an exhibit  
2 book right to your left there, and I'd like to  
3 direct your attention to Exhibit 3, tab 3.  
4 That's -- there's two pages of that document,  
5 sir. Do you have that in front of you,  
6 Mr. Cicchinelli?

7 A. Yes, sir.

8 Q. Okay. And I'll represent to you, sir,  
9 that this is a Declaration of Candidacy, Party  
10 Primary Election, filed with the Board of  
11 Elections. It appears on the time stamp that it  
12 was February 3rd, 2015; is that correct?

13 A. Yes, sir.

14 Q. All right. Now, Mr. Cicchinelli, this  
15 petition and declaration of candidacy indicates  
16 that it is for the name of James D. Ress,  
17 correct?

18 A. Correct.

19 Q. And Mr. Ress was running for Mayor of the  
20 City of Massillon, correct?

21 A. Yes.

22 Q. You're running for the Mayor of -- the  
23 office of Mayor of Massillon. Currently, that's  
24 your desire; is that correct?

25 A. Yes.

1 Q. And this petition, Exhibit 3, also  
2 indicates that Mr. Ress was running as a member  
3 of the Democratic Party, correct?

4 A. Yes.

5 Q. And there are a number of signatures down  
6 in the lower portion of Exhibit 3,  
7 Mr. Cicchinelli; do you see those?

8 A. Yes.

9 Q. And above those signatures, do you see  
10 where it says -- and it's somewhat small type,  
11 but I'll read it, and you read along. Okay?

12 "Signatures on this petition should be  
13 from only one county and must be written in ink.  
14 Signatures on this petition shall be of persons  
15 who are of the same political party as stated  
16 above by the candidate."

17 Have I read that correctly, sir?

18 A. Yes.

19 Q. And the -- the party -- the political  
20 party of the candidate stated above was Democrat,  
21 correct?

22 A. Yes.

23 Q. And do you see in signature block  
24 number 1, the signature there, sir?

25 A. Yes.

1 Q. And whose signature is that?

2 A. That's my signature.

3 Q. All right. So for the race for mayor in  
4 2015 and the candidacy of Mr. James Ress, by  
5 signing this, you indicate to this Board of  
6 Elections and to the public, Mr. Cicchinelli,  
7 that you're a member of the Democratic Party; is  
8 that correct?

9 A. Not really.

10 Q. Well, sir, you're -- you're familiar with  
11 the -- the language on the petition that says,  
12 "Whoever Commits Election Falsification is Guilty  
13 of a Felony of the Fifth Degree"? You were aware  
14 of that obligation when you signed these  
15 petitions, right?

16 A. Yes.

17 Q. And certainly, Mr. Cicchinelli, you have  
18 a -- a long history of -- of experience as a  
19 Democratic office holder and a candidate on  
20 numerous occasions for -- for offices in the City  
21 of Massillon; is that correct?

22 A. That's correct.

23 Q. And I'm sure that you -- you probably  
24 couldn't count all the times you've had to look  
25 and to deal with these petitions right?

1           A.     Yes.

2           Q.     And are -- so are you familiar then,  
3           Mr. Cicchinelli, with the requirement, as  
4           indicated on this petition, that signatures of  
5           people who sign it have to be as the same  
6           political party as stated by the candidate? Were  
7           you familiar with that requirement?

8           A.     Yes.

9           Q.     And again, Mr. Cicchinelli, your signature  
10          on that petition so indicates that you're of the  
11          same political party as Mr. Ress; is that fair?

12          A.     At the time of the signature, yes.

13          Q.     All right. And that -- again, that party  
14          was Democratic, correct?

15          A.     Correct.

16          Q.     Now, Mr. Cicchinelli, for the same office  
17          of mayor in the same year, 2015, you're telling  
18          this Board of Elections that you're not a  
19          Democrat, you're an Independent; is that what  
20          you're telling us, sir?

21          A.     Yes.

22          Q.     Mr. Cicchinelli, I'd like to very  
23          briefly -- and your -- your reputation in the  
24          community, sir, and your long-term service in the  
25          City of Massillon are well-known, but for our

1 record, in case somebody's reading this down the  
2 road, they may not ever -- ever have known you  
3 and they won't know your service, so I'd like to  
4 cover that briefly with you, sir.

5 You ran and were elected as a Democrat  
6 to Massillon City Council for, I think, 14 years;  
7 is that correct?

8 A. Correct.

9 Q. Do you remember the first year that you  
10 ran and got elected as a Democrat in City  
11 Council?

12 A. Yes.

13 Q. What year was that, sir?

14 A. November 1973.

15 Q. All right. And then 14 years through  
16 that, you -- would then bring you to 1987, when  
17 you first ran as a Democrat for Mayor of  
18 Massillon; is that correct, sir?

19 A. Correct.

20 Q. And then the second time you ran as a  
21 Democrat and were elected was 1991?

22 A. Correct.

23 Q. And then similarly, you ran as a Democrat  
24 and were elected -- was elected in '95, '99,  
25 2003, and 2007; is that correct?

1           A.     Yes.

2           Q.     All as -- ran as a Democrat, served your  
3 full term as a Democrat; is that correct?

4           A.     Yes.

5           Q.     And in 2011, you ran a seventh time for  
6 mayor, again as a Democrat; is that correct?

7           A.     Yes.

8           Q.     And then on that election, you were not  
9 successful in that particular election. You were  
10 defeated in the Democratic primary; is that  
11 correct?

12          A.     Yes.

13          Q.     Mr. Cicchinelli, referring you to  
14 Exhibit 1, tab 1, the red tab in your binder  
15 there, does that appear to you, sir, to be a  
16 Certificate of Registration for you with this  
17 Board of Elections?

18          A.     Yes, sir.

19          Q.     And very briefly, Mr. Cicchinelli, does it  
20 indicate, Exhibit 1, that you voted in the  
21 Democratic primary in the years 2006, 2007, 2008,  
22 2009, 2010, 2011, 2012, and 2014?

23          A.     Yes.

24          Q.     Thank you, sir.

25                   I'd like to refer your attention,

1 Mr. Cicchinelli, to Exhibit 7. That's the blue  
2 tab. Sir, do you recognize that as a Declaration  
3 of Candidacy for, I believe, your wife, Joy  
4 Cicchinelli?

5 A. No. That's -- no. Did you say 7? I'm  
6 sorry.

7 Q. Yes, sir, 7.

8 A. I'm sorry. Yes.

9 Q. Okay. I think you were at 6 there for a  
10 moment.

11 A. Yes. I'm sorry.

12 Q. Okay. No problem.

13 That appears to be a Declaration of  
14 Candidacy and petition for your wife Joy  
15 Cicchinelli; is that correct?

16 A. That's correct.

17 Q. And she was running for the Stark County  
18 Central Committee as a member of the Democratic  
19 Party; is that right?

20 A. Yes.

21 Q. And it appears on the second page of that  
22 document, sir, that you were the first signer of  
23 your wife's petition; is that right?

24 A. Yes.

25 Q. And, Mr. Cicchinelli, again, that language

1 above the signature blocks, again, indicates that  
2 you have to be -- if you're going to sign the  
3 petition, you have to be of the same political  
4 party as the candidate; is that right?

5 A. Yes.

6 Q. So in -- would it be fair to say,  
7 Mr. Cicchinelli, that if we would start talking  
8 about the year 2014, you were a Democrat,  
9 correct?

10 A. Yes.

11 Q. Is it true, Mr. Cicchinelli, that sometime  
12 in late 2014, early 2015, sir, you first started  
13 collecting signatures on a petition to run for  
14 the office of mayor as an Independent?

15 A. Yes.

16 Q. And did your wife, Joy, assist you in  
17 approaching a number of people to sign your  
18 petition to run for mayor as an Independent --

19 A. Yes.

20 Q. -- in late 2014, early 2015?

21 A. Yes.

22 Q. And do you have a recollection of how many  
23 signatures you may have collected, sir?

24 A. I believe 155.

25 Q. Okay. And did you ever file those

1 petitions that you started circulating in 2014,  
2 early 2015?

3 A. Yes, we filed those.

4 Q. When did you start circulating those, sir?

5 A. The date actually escapes me, but I'm --  
6 I'm thinking January, February, something like  
7 that. I'm --

8 Q. Well, Mr. Cicchinelli, we're -- we're --  
9 I'll indicate to you that we've inquired, and we  
10 find that there's no record of petitions filed by  
11 you in January or February.

12 A. Oh, when I filed the petition or when I  
13 circulated the petition?

14 Q. Well, when -- when you circulated -- when  
15 did you start -- let me clarify. That's one of  
16 those examples, Mr. Cicchinelli, where my  
17 question maybe wasn't very clear, and I  
18 apologize. Let me start over.

19 When did you -- you indicated you had  
20 started circulating petitions in January,  
21 February; is that right?

22 A. That's -- that's inaccurate. It was later  
23 on.

24 Q. It was later on?

25 A. Like in April.

1 Q. Mr. Cicchinelli, my question is then,  
2 stretching back to late 2014, early 2015, did you  
3 or did you not begin collecting signatures on  
4 petitions to run as an Independent for Mayor of  
5 Massillon?

6 A. Yes.

7 Q. But then referring to Exhibit 3, again,  
8 sir, if you could have that in front of you,  
9 that's the petition of Mr. James Ress for the  
10 Democratic nomination for Mayor of Massillon,  
11 correct?

12 A. Correct.

13 Q. And do you see your signature on that  
14 petition, sir?

15 A. Yes.

16 Q. And what is the date that you signed that  
17 petition?

18 A. 1/21/15.

19 Q. Okay. So as of January 21st, 2015, you  
20 were again a Democrat; is that right?

21 A. A registered Democrat, yes.

22 Q. And if I could refer you to Exhibit 6, is  
23 that the petition for Councilwoman Jill Creamer?

24 A. Yes.

25 Q. And she was running as a Democrat for

1 Massillon City Council; is that correct?

2 A. Yes.

3 Q. And the first signature on that document  
4 is your signature; is that correct?

5 A. Yes.

6 Q. January 23, 2015 looks like the date that  
7 you signed that; is that right?

8 A. Yes.

9 Q. So as of January 23, 2015 or for this  
10 petition, you were a Democrat; is that right?

11 A. Yes.

12 Q. And then referring you to Exhibit 5,  
13 Mr. Cicchinelli, do you have that, sir?

14 A. Yes.

15 Q. And is this a petition for Mr. Paul Manson  
16 running for Massillon City Council as a Democrat?

17 A. Yes.

18 Q. And I believe on -- if I could refer you  
19 to the second page of Exhibit 5, I think  
20 signature block 13, do you see that, sir?

21 A. Yes.

22 Q. Yes. Okay. And is that your signature on  
23 Mr. Manson's petition?

24 A. Yes.

25 Q. And so as -- and I believe the date of

1 that is January 31st, 2015?

2 A. Yes.

3 Q. And so as of January 31st, 2015, you're a  
4 Democrat; is that right?

5 A. Yes.

6 Q. And referring you then to Exhibit 4,  
7 that's the yellow tab. That's another part of a  
8 petition for Mr. Manson; is that right?

9 A. Yes.

10 Q. Again, Mr. Manson is running for City  
11 Council in Massillon as a Democrat; is that  
12 right?

13 A. Yes.

14 Q. And looking at the second page of that  
15 Exhibit 4, Mr. Cicchinelli, you actually  
16 circulated that petition for Mr. Manson; is that  
17 right?

18 A. Yes.

19 Q. And in your Circulator Statement, it  
20 specifically says, "I, Francis H. Cicchinelli,  
21 Jr., declare under penalty of election  
22 falsification that I reside at the address below  
23 my signature; that I am a member of the  
24 Democratic Party"; do you see that, sir?

25 A. Yes.

1 Q. Now, it looks on Exhibit 4,  
2 Mr. Cicchinelli, that you collected signatures up  
3 through February 2nd of 2015; is that right, sir?

4 A. Yes.

5 Q. And then this document, looking at the  
6 first page, appears that it was filed the next  
7 day, on February 3rd, 2015; is that right?

8 A. Yes.

9 Q. Mr. Cicchinelli, would you agree with me  
10 then that, at least for -- for that exhibit, up  
11 through February 3rd, 2015, you're a Democrat; is  
12 that right?

13 A. A registered Democrat, yes.

14 Q. All right. Now, Mr. Cicchinelli, I'd like  
15 to refer your attention to Exhibit 2, which is  
16 the orange tab, and, sir, do you recognize that  
17 exhibit, which has, I believe, 20 pages, that  
18 that is your petition that's at issue in this  
19 protest? That's your petition where you're  
20 claiming to be an Independent, and you are  
21 running for the office of Mayor of the City of  
22 Massillon in 2015; is that right, sir?

23 A. Yes.

24 Q. It appears, from my review of your  
25 petition, Mr. Cicchinelli, that you started --

1 you and people who were assisting you started  
2 collecting signatures on this -- this set of  
3 petitions on May -- on April 29th, 2015.

4 Mr. Cicchinelli, I'll -- I'll have you go through  
5 that briefly, and I'll represent to you, sir,  
6 that that was the earliest date that I saw on  
7 your petition was April 29th, 2015, and if you'd  
8 like to take a glance at that, let me know if you  
9 find an earlier date, sir.

10 A. Yes, you are correct.

11 Q. Okay. And that was, I believe, the -- the  
12 deadline for filing your petition was the day  
13 before the primary; is that right?

14 A. Yes.

15 Q. The primary being May 5th, so the deadline  
16 would have been May 4th -- would be May 4th; is  
17 that right, sir?

18 A. Yes.

19 Q. And, Mr. Cicchinelli, so it appears that  
20 you started collecting the signatures on these  
21 petitions on April 29th. That's just five days  
22 before that May 4th filing deadline for this  
23 petition; is that correct?

24 A. Yes.

25 Q. Mr. Cicchinelli, you indicated that you

1 started collecting signatures on your Independent  
2 petition in January or February of 2015. What  
3 happened to those petitions, sir?

4 A. That was an inaccurate statement. This is  
5 accurate here. It was in -- it was in April.

6 Q. I'm a little confused because you told --  
7 told us on, I think, two occasions that you  
8 started collecting them -- you didn't file them,  
9 but started collecting them in January or  
10 February 2015.

11 MR. CONLEY: Objection, argumentative.  
12 He's already explained that he was confused, and  
13 I think he's corrected that answer twice, and of  
14 course, the exhibits would support his correction  
15 because they have dates of signatures on them.

16 MR. OKEY: I'm just trying to clarify  
17 the testimony, Mr. Ferruccio, because I think it  
18 is confusing.

19 CHAIRMAN FERRUCCIO: Right. Proceed.

20 BY MR. OKEY:

21 Q. My question, Mr. Cicchinelli, was -- and  
22 I'll be candid with you. I -- I feel confused  
23 because you said a couple of times that you  
24 started collecting signatures on your petitions  
25 in January, February of 2015, understanding that

1 you didn't file them until later. Was that your  
2 testimony earlier?

3 A. One time I said that, and I corrected  
4 myself. The record shows that it was in April  
5 that the actual petitions were circulated.

6 Q. Are you denying that you circulated  
7 petitions earlier than in April?

8 A. Yes, I am denying that.

9 Q. Mr. Cicchinelli, the last question for  
10 you, sir. Would you agree with me that you can't  
11 be both a Democrat and an Independent for the  
12 same office in the same election year?

13 A. Yes.

14 MR. OKEY: Thank you, sir.

15 Mr. Chairman, that's all the questions  
16 I have.

17 CHAIRMAN FERRUCCIO: Thank you,  
18 Mr. Okey.

19 MR. CONLEY: I didn't get an  
20 opportunity to object, but that last question  
21 obviously calls for a legal conclusion that's  
22 within the purview of this Board, so I want my  
23 objection sustained and suggest that the answer  
24 be stricken for want of legal knowledge.

25 CHAIRMAN FERRUCCIO: Overruled.

1 MR. CONLEY: I also want to state, for  
2 the record, my client's continuing objection to  
3 the participation of -- of Messrs. Ferruccio and  
4 Sherer for reasons previously stated.

5 MR. OKEY: Excuse me, Mr. Chairman,  
6 Mr. Conley. As a point of procedure, how will  
7 the Board be proceeding? Will Mr. Conley be  
8 questioning his client at this time following my  
9 cross-examination, or will that be a part of his  
10 case, recognizing it's the discretion of the  
11 Board?

12 MR. CONLEY: Recognizing that  
13 Mr. Conley gets to choose his methodology,  
14 whether I can question him now or later or both,  
15 I believe, is within my discretion, and of  
16 course, I reserve the right to call him in my  
17 case in chief as Mr. Ferruccio indicated earlier.  
18 I just have a few questions now.

19 CHAIRMAN FERRUCCIO: You can proceed.

20 MR. OKEY: Thank you, Mr. Chairman.

21 - - -

22 CROSS-EXAMINATION

23 BY MR. CONLEY:

24 Q. Mr. Cicchinelli, looking at Mr. Okey's  
25 Exhibit 2, that 20-some pages or whatever it is

1 that he said it is, just as a point of  
2 clarification, the earliest signature date on any  
3 of those petitions is May 29, 2015?

4 A. Yes.

5 CHAIRMAN FERRUCCIO: I think it's  
6 April.

7 MR. CONLEY: Did I say May? I meant  
8 April. I'm sorry.

9 THE WITNESS: April 29th, yes.

10 BY MR. CONLEY:

11 Q. April 29th, 2015?

12 A. Yes.

13 Q. By the way, did you ever take a blood  
14 oath -- such as the Nazi Party required in  
15 Germany, did you ever take a blood oath, upon  
16 penalty of death, I will always be a Democrat, by  
17 God?

18 MR. OKEY: Mr. -- Mr. Chairman --

19 BY MR. CONLEY:

20 Q. Did you ever take such an oath?

21 MR. OKEY: Mr. Chairman, I'm going to  
22 object to the scurrilous statements of Mr. Conley  
23 invoking the Nazi Party. I think it's debasing  
24 of these procedures and, quite frankly, a  
25 disgrace.

1 CHAIRMAN FERRUCCIO: Sustained.

2 BY MR. CONLEY:

3 Q. Did you ever take a blood oath -- with or  
4 without the Nazi Party involvement, did you ever  
5 take a blood oath to always be a Democrat?

6 A. No.

7 Q. And you basically changed your mind and  
8 said you're no longer a Democrat?

9 A. Yes.

10 MR. CONLEY: I'll reserve my other  
11 questions for my case in chief, Mr. Chairman.

12 CHAIRMAN FERRUCCIO: Thank you.

13 Mr. Okey.

14 MR. OKEY: No further questions,  
15 Mr. Chairman.

16 CHAIRMAN FERRUCCIO: You can step down.

17 MR. OKEY: Mr. Chairman, we call Joy  
18 Cicchinelli please.

19 - - -

20 JOY M. CICCHINELLI

21 of lawful age, being by me first duly sworn, as  
22 hereinafter certified, testified and said as  
23 follows:

24 DIRECT EXAMINATION

25 BY MR. OKEY:

1 Q. Good morning.

2 A. Good morning.

3 Q. Mrs. Cicchinelli, as you've heard the  
4 introductions, I'm Steve Okey, representing the  
5 protestors in this hearing this morning, and  
6 again, just as I informed your husband, if I ask  
7 a question, as it sometimes happens, if it  
8 doesn't come out right or you're not sure of what  
9 I'm asking, please let me know, ma'am.

10 A. I will.

11 Q. All right. Thank you.

12 Mrs. Cicchinelli, for our record, would  
13 you state your name and address please.

14 A. Joy M. Cicchinelli, 2105 Cyprus Drive,  
15 S.E., Massillon, Ohio 44646.

16 Q. Mrs. Cicchinelli, you are the wife of  
17 Francis Cicchinelli, Jr.; is that correct?

18 A. Yes.

19 Q. And, ma'am, over the years, you've  
20 probably lost count of the number of times that  
21 you've assisted your husband in gathering  
22 signatures on petitions to run for office; is  
23 that right?

24 A. Yes.

25 Q. The vast majority, all except maybe just

1 recently, were all as a Democrat; is that right?

2 A. Yes.

3 Q. Ma'am, you heard me asking some questions  
4 of your husband about when the petition signature  
5 process for running as an Independent first  
6 started, and did you begin gathering some  
7 signatures in late 2014, early 2015 --

8 A. No.

9 Q. -- for him to run as an Independent?

10 A. No.

11 Q. You deny that you did that?

12 A. Yes.

13 Q. And did you receive a subpoena from me,  
14 ma'am, on Friday asking you to bring with you  
15 copies of any previous petitions?

16 A. Yes.

17 Q. And did you bring any previous petitions  
18 with you, ma'am?

19 A. No.

20 Q. In late April 2015, Mrs. Cicchinelli, you  
21 started, for purposes of the -- the current  
22 petitions, to assist your husband in gathering  
23 signatures; is that right?

24 A. Yes.

25 Q. And was that for your husband -- you

1 wanted to help your husband run for mayor again;  
2 is that right?

3 A. Yes.

4 Q. And was it your understanding at that time  
5 that -- well, let me ask you this,  
6 Mrs. Cicchinelli. Did you have an understanding  
7 of when it was that your husband was an  
8 Independent?

9 MR. CONLEY: I would object to the  
10 extent that it involves a spousal privilege and,  
11 in fact, would instruct -- with all due respect,  
12 without waiting for a ruling, would instruct  
13 Mrs. Cicchinelli not to answer any questions that  
14 involve any spousal privilege, communications  
15 between her and her husband. If she otherwise  
16 knows the answer, I, of course, have no  
17 objection.

18 CHAIRMAN FERRUCCIO: Overruled. It is  
19 not -- this is not a criminal proceeding at this  
20 point.

21 MR. CONLEY: It doesn't need to be a  
22 criminal proceeding. Spousal privilege, like  
23 attorney-client and priest-penitent applies to  
24 all proceedings, civil, administrative, and  
25 criminal, and my instruction to my client stands.

1 I instruct you, as counsel, not to  
2 answer any questions involving any spousal  
3 conversations between you and your husband.

4 CHAIRMAN FERRUCCIO: Mr. Okey, do you  
5 want to restate your question?

6 MR. OKEY: Well, perhaps we could have  
7 the court reporter read it back, I guess,  
8 Mr. Chairman. I did not ask regarding a  
9 conversation, and I -- I phrased it quite  
10 carefully, and I'd like the court reporter to  
11 please read it back.

12 (Last question read back.)

13 CHAIRMAN FERRUCCIO: Thank you.

14 MR. OKEY: Mr. Chairman, I -- I believe  
15 the question speaks for itself. I did not ask  
16 regarding a conversation.

17 CHAIRMAN FERRUCCIO: That's correct.

18 THE WITNESS: My husband was an  
19 Independent when he, the day of the primary,  
20 became an Independent.

21 BY MR. OKEY:

22 Q. May 5th, 2015?

23 A. Uh-huh.

24 Q. Is that a yes, ma'am?

25 A. Yes.

1 Q. Okay. Before that, he was a Democrat?

2 A. Yes.

3 MR. OKEY: Mr. Chairman, no further  
4 questions. Thank you.

5 CHAIRMAN FERRUCCIO: Thank you.

6 - - -

7 CROSS-EXAMINATION

8 BY MR. CONLEY:

9 Q. Mrs. Cicchinelli --

10 MR. CONLEY: Again, I reserve the right  
11 to call her in the case in chief.

12 CHAIRMAN FERRUCCIO: So noted.

13 BY MR. CONLEY:

14 Q. Mrs. Cicchinelli, you're not an attorney,  
15 are you?

16 A. No.

17 Q. So when somebody asks you a -- a  
18 legal-based question that's relevant to this  
19 hearing, is your husband a Democrat or an  
20 Independent on such and such a date, you don't  
21 really know, do you?

22 A. I know, yes.

23 Q. Well, you believe that your husband was an  
24 Independent when these signatures were gathered  
25 for his petition --

1 MR. OKEY: I'm going to object, --

2 BY MR. CONLEY:

3 Q. -- is that correct?

4 MR. OKEY: -- Mr. Chairman, for obvious  
5 reasons.

6 CHAIRMAN FERRUCCIO: Right. Sustained.

7 MR. OKEY: He's trying to restate her  
8 testimony.

9 CHAIRMAN FERRUCCIO: Sustained.

10 MR. CONLEY: No further questions.

11 CHAIRMAN FERRUCCIO: You may step down.

12 MR. OKEY: Mr. Chairman, we call  
13 Mr. James Ress.

14 Is Mr. Ress here?

15 MR. RESS: Yes.

16 MR. OKEY: Good morning, sir. If you  
17 would, please step up and the court reporter will  
18 give you the oath.

19 - - -

20 JAMES D. RESS

21 of lawful age, being by me first duly sworn, as  
22 hereinafter certified, testified and said as  
23 follows:

24 DIRECT EXAMINATION

25 BY MR. OKEY:

1 Q. Good morning, sir.

2 A. Mr. Okey.

3 Q. Yes, sir, good morning.

4 Would you please state your full name  
5 and address for our record.

6 A. It's James D. Ress, J. David Ress.

7 Q. I'll call you Mr. Ress.

8 And your address please.

9 A. 1222 Third Street, N.E.

10 Q. And that's Massillon?

11 A. Yes, sir.

12 Q. Mr. Ress, you ran for Mayor of Massillon  
13 in the Democratic primary in 2015; is that  
14 correct?

15 A. Can I make a statement, sir?

16 Q. No, sir. I'm asking you questions. If  
17 any members of this Board wish to give you that  
18 opportunity, they can certainly have that  
19 discussion, but I have questions.

20 CHAIRMAN FERRUCCIO: He'll -- he'll ask  
21 questions, and then you answer them, and then --

22 THE WITNESS: Well, this is actually to  
23 you before we proceed.

24 CHAIRMAN FERRUCCIO: Well, it's --  
25 you're going to have to answer the questions of

1 Mr. Okey at this point.

2 THE WITNESS: This is a question for  
3 them before we proceed.

4 MR. OKEY: My -- my -- it's within the  
5 discretion of the Chairman and the Board, sir.  
6 I'm just here to ask you questions, and I request  
7 that you answer them.

8 CHAIRMAN FERRUCCIO: Yeah. The  
9 procedure is that you -- you'll answer questions  
10 from Mr. Okey first.

11 THE WITNESS: Go ahead.

12 BY MR. OKEY:

13 Q. All right. Sir, I asked you, you ran for  
14 Mayor of Massillon in the Democratic primary of  
15 2015; is that correct, sir?

16 A. That is correct.

17 Q. And you were defeated in that primary; is  
18 that correct?

19 A. Close, but correct.

20 Q. You -- did you and Mr. Cicchinelli, prior  
21 to that primary election, sir, have conversations  
22 with what his plans were in the race for mayor?

23 A. No, sir.

24 Q. At any time, did you have any  
25 conversations with Mr. Cicchinelli --

1           A.     Yes, sir. Two conversations. One was is  
2 he going to run, way before, because I wanted to  
3 see if he was going to run in the primary. He  
4 said no.

5           Q.     All right.

6           A.     And question number two was, Would you  
7 sign my petition or would you know someone that  
8 would sign my petition because I'm unaware of the  
9 election rules, and he said that he would see if  
10 someone would sign or circulate the petition for  
11 me.

12          Q.     Thank you, sir.

13                     In your -- right underneath your left  
14 hand there is a binder with our exhibits in it,  
15 and I'd like to refer you to Exhibit 3, tab 3,  
16 Mr. Ress.

17          A.     His signature is on it.

18          Q.     I'm -- I'm going to ask you about that.  
19 Is that -- do you recognize that to be part of  
20 your petition to run as a Democrat --

21          A.     Yes, sir, I do.

22          Q.     -- for the office of mayor -- let me get  
23 my whole question out because it's difficult for  
24 our court reporter to get us talking at the same  
25 time. Okay? So let me get my whole question

1 out, sir. Okay?

2 A. Okay.

3 Q. Thank you.

4 Do you recognize this as part of your  
5 petition, filed February 3rd, 2015, for you to  
6 run as a Democrat in the City of Massillon for  
7 the office of mayor?

8 A. Yes, sir.

9 Q. And the first person who signed this part  
10 of the petition is Francis H Cicchinelli, Jr.; is  
11 that correct?

12 A. Yes, sir.

13 Q. Did Mr. Cicchinelli's wife, Joy, circulate  
14 this petition part?

15 A. Yes, sir, to my knowledge.

16 Q. Was she present -- did she actually hand  
17 you the petition and you signed it while she was  
18 there?

19 A. To my knowledge.

20 Q. Okay.

21 A. I don't remember everything, but all the  
22 people signed it.

23 Q. I understand. I understand. There's a  
24 lot of -- lot of signatures to gather.

25 A. Yes, sir.

1 Q. And I understand that, sir.

2 But Mrs. Cicchinelli did circulate this  
3 part and --

4 A. To my recollection.

5 Q. Understood. But you probably were not  
6 physically present when Mrs. Cicchinelli got her  
7 husband's signature on that petition part though,  
8 right?

9 A. I don't remember.

10 Q. Okay. Now, you -- you knew, at this  
11 point, Mr. Ress, that Mr. Cicchinelli was a  
12 Democrat, right?

13 A. I don't -- I don't know at that point.  
14 I -- I have no idea.

15 Q. Well --

16 A. At that point --

17 Q. -- Mr. Ress, did you actually bring --

18 A. -- then, when he signed the petition, that  
19 I remember, yeah.

20 Q. Okay.

21 A. I mean, he was a Democrat.

22 Q. Fair enough. When you actually brought --  
23 did you physically bring your petitions to the  
24 Board of Elections and file them yourself?

25 A. Yes, sir.

1 Q. Okay. Before you did that, did you scan  
2 through the petitions, you know, all candidates,  
3 counting the amount that they had and making sure  
4 that --

5 A. I scanned through the addresses.

6 Q. Okay. Did you -- so you saw  
7 Mr. Cicchinelli's signature at some point on your  
8 petition?

9 A. I would imagine, yeah.

10 Q. And you felt comfortable with his  
11 signature on there because you knew he was a  
12 Democrat?

13 A. At that point, to my knowledge, he was a  
14 Democrat.

15 Q. Okay. And so you felt comfortable with  
16 his signature on your petition?

17 A. Yes, sir.

18 Q. All right. And Mr. Cicchinelli's  
19 signature on your petition was one of the  
20 signatures that enabled you to get on the ballot  
21 and run for mayor in the Democratic primary; is  
22 that right?

23 A. At that time, yes, sir.

24 MR. OKEY: All right. Mr. Ress, that's  
25 all I have for you.

1 Thank you, Mr. Chairman.

2 CHAIRMAN FERRUCCIO: Thank you.

3 MR. CONLEY: No questions.

4 THE WITNESS: I have a -- as a citizen,  
5 don't I have the right to address someone --

6 CHAIRMAN FERRUCCIO: No. This is --

7 THE WITNESS: -- as the law of the  
8 Constitution?

9 CHAIRMAN FERRUCCIO: This isn't --

10 THE WITNESS: Are any Members of this  
11 Board supporters of the current candidate or  
12 office holder in Massillon?

13 CHAIRMAN FERRUCCIO: Mr. Ress, I'll  
14 tell you that you're out of line. The questions  
15 are going to be presented from the two lawyers,  
16 and they've done that. You're now excused.  
17 Thank you.

18 THE WITNESS: I can't make a statement?

19 CHAIRMAN FERRUCCIO: No, you cannot.

20 THE WITNESS: I'm not permitted under  
21 law to make a statement?

22 CHAIRMAN FERRUCCIO: This is a hearing  
23 wherein the lawyers ask you questions.

24 THE WITNESS: I can't make a statement?

25 CHAIRMAN FERRUCCIO: You're now

1 excused.

2 THE WITNESS: Can I leave? Am I  
3 allowed to leave?

4 CHAIRMAN FERRUCCIO: You have to ask  
5 the lawyers. If you're under subpoena, he'll  
6 know.

7 MR. OKEY: He's released from the  
8 subpoena following the conclusion of his  
9 testimony, Mr. Chairman.

10 CHAIRMAN FERRUCCIO: Thank you.

11 Yes, you're permitted to leave.

12 THE WITNESS: Thank you.

13 MR. OKEY: Mr. Chairman, if we could,  
14 we would call Mr. Paul Manson.

15 Mr. Manson, are you present? If you  
16 could, please step up, sir, and the court  
17 reporter will administer the oath.

18 - - -

19 PAUL B. MANSON

20 of lawful age, being by me first duly sworn, as  
21 hereinafter certified, testified and said as  
22 follows:

23 DIRECT EXAMINATION

24 BY MR. OKEY:

25 Q. Good morning, sir.

1           A.     Good morning.

2           Q.     Mr. Manson, for our record, could you  
3 please state your full name and your address.

4           A.     My name is Paul Manson, 350 Starbrook,  
5 N.W., Massillon, Ohio. My middle name is Burton,  
6 but I don't use it on my -- my petitions.

7           Q.     It appears on the petition as Paul B.  
8 Manson, right?

9           A.     Uh-huh, I guess. I don't have it in front  
10 of me.

11          Q.     Well, we have it in that folder there as  
12 Exhibit 4, if you'd like to go to that, sir,  
13 because I'll be asking you a couple of questions  
14 about it.

15                   Mr. Manson, you're a Democrat; is that  
16 right?

17          A.     Yes.

18          Q.     And you are a member currently of  
19 Massillon City Council, right?

20          A.     Yes.

21          Q.     And you, sir, are running for reelection  
22 to Massillon City Council in 2015; is that right?

23          A.     Yes.

24          Q.     Referring your attention to Exhibit 4, is  
25 this -- do you recognize this as -- as part of

1 your petition to get on the ballot in 2015 for  
2 Massillon City Council?

3 A. Yes.

4 Q. And, sir, I see, on the first page of  
5 Exhibit 4, a time stamp in the upper right corner  
6 that seems to indicate that this was filed  
7 February 3rd, 2015; is that right?

8 A. Yes.

9 Q. This part of the petition, if you would  
10 look at the second page of that, Mr. Manson,  
11 appears that this was actually circulated by  
12 Francis H. Cicchinelli, Jr.; is that right?

13 A. Yes.

14 Q. Why did you ask Mr. Cicchinelli to  
15 circulate this part of your petition, Mr. Manson?

16 A. I needed signatures, and I asked him if he  
17 would.

18 Q. And you also knew Mr. Cicchinelli was a  
19 Democrat, right?

20 A. At one time, he was, yes.

21 Q. Well, at the time that he circulated your  
22 petition, certainly, he was a Democrat, right?

23 A. If that's what it says, then that's what  
24 he is -- was.

25 Q. Okay. And -- and referring your attention

1 on page 2 to the middle portion of it, it says,  
2 "Circulator Statement"; do you see that, sir? It  
3 says, "I, Francis H. Cicchinelli, Jr., declare  
4 under penalty of election falsification that I  
5 reside at the address appearing below my  
6 signature; that I am a member of the Democratic  
7 Party"; do you see that?

8 A. Yes.

9 Q. Have I read that correctly, sir?

10 A. Yes.

11 Q. Okay. So you were certainly familiar that  
12 Mr. Cicchinelli was a Democrat, and that's one of  
13 the reasons that you were able to get him to  
14 gather signatures for you, right?

15 A. I guess, if that's what it says.

16 Q. And you certainly don't dispute that,  
17 right?

18 A. No.

19 Q. Okay. Referring your attention to  
20 Exhibit 5, Mr. Manson, it's one of the green  
21 tabs. Do you have that in front of you, sir?

22 A. Yes.

23 Q. And do you recognize that as another  
24 portion -- another part of your petition running  
25 for Massillon City Council as a Democrat in 2015?

1 A. Yes.

2 Q. And referring to the second page on  
3 Exhibit 5, and specifically, it looks like line  
4 13, do you see the signature of Francis H  
5 Cicchinelli, Jr., sir?

6 A. Yes.

7 Q. And it looks, Mr. Manson, like you,  
8 yourself, circulated this -- this Exhibit 5, this  
9 part of your petition, right?

10 A. Yes.

11 Q. And did you ask Mr. Cicchinelli to sign  
12 your petition yourself because you knew he was a  
13 Democrat?

14 A. No. I asked people that were either  
15 Democrats or Independents, nonpartisan, to sign  
16 my petition.

17 Q. Well, let's take a look --

18 A. So I didn't ask him what he was, other  
19 than, you know, Are you an Independent? Are you  
20 a Democrat?

21 Q. I'd like to refer you to the first page of  
22 Exhibit 5, and there's some print in bold above  
23 the signature blocks where it says, in the second  
24 sentence, "Signatures on this petition shall be  
25 of persons who are of the same political party as

1       stated above by the candidate"; do you see that,  
2       sir?

3       A.     Yes.

4       Q.     And the -- the political party stated by  
5       you on your petition was Democratic; is that  
6       right?

7       A.     Yes.

8       Q.     All right.  Mr. Manson, did you sign the  
9       petition of Mr. Cicchinelli to run for mayor?

10      A.     I believe I did.

11      Q.     When did you first sign that?

12      A.     I'm not sure.

13                 MR. OKEY:  Nothing further,  
14      Mr. Chairman.  Thank you very much.

15                 CHAIRMAN FERRUCCIO:  Thank you.

16                 MR. CONLEY:  No questions,  
17      Mr. Chairman.

18                 CHAIRMAN FERRUCCIO:  You're excused.

19                 MR. OKEY:  Thank you, Mr. Manson.

20                 THE WITNESS:  Thanks.

21                 MR. OKEY:  Mr. Chairman, we call Jill  
22      Creamer.

23                 Ms. Creamer.

24                 THE WITNESS:  Does that mean I can  
25      leave now?

1 MR. OKEY: Yes, sir. Thank you very  
2 much.

3 - - -

4 JILL E. CREAMER  
5 of lawful age, being by me first duly sworn, as  
6 hereinafter certified, testified and said as  
7 follows:

8 DIRECT EXAMINATION

9 BY MR. OKEY:

10 Q. Good morning, ma'am.

11 A. Good morning.

12 Q. Would you please state your full name and  
13 address for our record.

14 A. Jill Elaine Creamer, 2040 Augusta Drive,  
15 S.E., Massillon, Ohio.

16 Q. Believe it or not, the -- the last name  
17 Okey gets mispronounced all the time, so I want  
18 to make sure I pronounce your name right. Is it  
19 Kraymer or Kreemer?

20 A. Kreemer.

21 Q. Okay. Ms. Creamer, when you and I spoke,  
22 after I served you with a subpoena, I said 10 --  
23 around 10:00 o'clock for your testimony, and we  
24 got pretty close.

25 A. We did.

1 Q. That's rare, believe me.

2 A. Okay.

3 Q. So I appreciate your attendance here this  
4 morning. I'm going to ask you a few questions,  
5 and if I ask you a question that you're unclear  
6 about what I'm asking, please let me know. Okay?

7 A. Okay.

8 Q. All right. Ms. Creamer, you are a  
9 Democrat; is that right?

10 A. Correct.

11 Q. And you are currently a member of the  
12 Massillon City Council; is that right?

13 A. I am not.

14 Q. You are not?

15 A. I am not.

16 Q. Okay. Have you served as a member of  
17 Massillon City Council?

18 A. No, I have not.

19 Q. So this is your first time running?

20 A. Correct.

21 Q. Okay. Good luck.

22 A. Thank you.

23 Q. As a candidate, you have to circulate  
24 petitions to get signatures in order to appear on  
25 the Democratic ballot; is that right?

1           A.     Yes.

2           Q.     Now, ma'am, in that binder there, as  
3 you've seen we've gone through a number of  
4 witnesses with the binder, if you could, take a  
5 look at Exhibit 6, a green tab. Do you have that  
6 in front of you, ma'am?

7           A.     Yes.

8           Q.     Ms. Creamer, do you recognize this as part  
9 of your petition filed January 30th, 2015 to run  
10 as a member of the Democratic Party for the  
11 Massillon City Council?

12          A.     Yes.

13          Q.     And you're running for Ward 4; is that  
14 right?

15          A.     Correct.

16          Q.     Okay. And do you see, in the signature  
17 block, who -- who was the very first person who  
18 signed this part of your petition?

19          A.     Francis Cicchinelli.

20          Q.     All right. And did you ask  
21 Mr. Cicchinelli to sign your petition because you  
22 knew he was a Democrat?

23          A.     I asked residents, citizens, to sign my  
24 petition, those that were listed on my walking  
25 list as Democrat and nonpartisan.

1 Q. All right. And did you see the language  
2 in bold above the signature block where it says  
3 in the second sentence -- and I'll read it --  
4 "Signatures on this petition shall be of persons  
5 who are of the same political party as stated  
6 above by the candidate"? Are you familiar with  
7 that language, ma'am?

8 A. I am.

9 Q. Okay. And the -- the party that you  
10 indicated on your petition was Democratic, right?

11 A. Correct.

12 Q. Is it safe to say, based on that language  
13 and based upon your own statement you're a member  
14 of the Democratic Party, that you expected  
15 Mr. Cicchinelli was a member of the Democratic  
16 Party too?

17 A. If his name was listed on my walking list  
18 as a Democrat, then I would assume that he was  
19 listed under that party.

20 Q. Ms. Creamer, you don't dispute that --  
21 when Mr. Cicchinelli signed your petition for the  
22 Democratic race that you're entering, you don't  
23 dispute that he was a member of the Democratic  
24 Party, do you?

25 A. I do not.

1 Q. Okay. Thank you.

2 Ms. Creamer, did you sign  
3 Mr. Cicchinelli's petition to run as a candidate  
4 for mayor?

5 A. I did.

6 Q. When did you very -- sign the very first  
7 petition of his -- of his to run for Mayor of  
8 Massillon?

9 A. I don't know the date.

10 MR. OKEY: All right. Ms. Creamer,  
11 that's all the questions I have for you, ma'am.  
12 Thank you.

13 Mr. Conley may have some before you get  
14 up, and the Board may as well.

15 MR. CONLEY: No questions.

16 CHAIRMAN FERRUCCIO: Any questions?

17 MEMBER CLINE: No questions.

18 CHAIRMAN FERRUCCIO: Thank you.

19 MEMBER SHERER: Thank you.

20 MR. OKEY: Mr. Chairman, we have some  
21 very short witnesses. I'm -- I'm going to  
22 continue on until we're done here, or I believe  
23 it would be the panel's discretion whether the  
24 panel wanted to take a break or -- but my  
25 witnesses are not going to be long.

1 CHAIRMAN FERRUCCIO: Okay.

2 MEMBER CLINE: 10 or 15 minutes, do you  
3 think?

4 MR. OKEY: Yeah, at most.

5 MEMBER CLINE: All right.

6 MR. OKEY: Do want to keep going then?

7 CHAIRMAN FERRUCCIO: Yes.

8 MR. OKEY: All right, Mr. Chairman.

9 Thank you.

10 We'll call Mr. Al Climer.

11 Mr. Climer.

12 - - -

13 ALAN CLIMER

14 of lawful age, being by me first duly sworn, as  
15 hereinafter certified, testified and said as  
16 follows:

17 DIRECT EXAMINATION

18 BY MR. OKEY:

19 Q. Good morning, sir.

20 A. Good morning.

21 Q. Mr. Climer, could you please state your  
22 name and address for our record.

23 A. My name is Alan Climer. Address is 2039  
24 Lincoln Way, East, Massillon, Ohio 44646.

25 Q. Mr. Climer, in that binder right there

1 that you're just grabbing here, could you go to  
2 Exhibit 2, the orange tab, please. Mr. Climer,  
3 I'm going to ask you to go to the -- and I'm  
4 sorry that the pages are not numbered, but could  
5 you please count to the eighth page of that  
6 document.

7 A. Okay.

8 Q. Do you have that eighth page in front of  
9 you, sir?

10 A. I believe so.

11 Q. Okay. And do you have a signature block  
12 number 14 on that document in front of you, sir?

13 A. Yes.

14 Q. And is that your signature, Alan Climer?

15 A. No. It's the wrong page.

16 Q. You might have the wrong page.

17 A. Page 7.

18 Q. Page 7. Do you have the opportunity to  
19 see a signature block 14 now with your signature  
20 on it?

21 A. I do.

22 Q. Okay. And will you confirm that is --  
23 that is your signature?

24 A. It is.

25 Q. And, Mr. Climer, I'll represent to you

1 we've had testimony already that this Exhibit 2  
2 is the Nominating Petition and Statement of  
3 Candidacy of Mr. Francis H. Cicchinelli, Jr. to  
4 run for the Mayor of Massillon. Were you aware  
5 of whose petition it was that you were signing?

6 A. Yes, sir.

7 Q. All right. Mr. Climer, was -- was this  
8 the first time you ever signed a petition for  
9 Mr. Cicchinelli?

10 A. No, sir.

11 Q. You have done so on previous occasions?

12 A. Yes, sir.

13 Q. Did you do so in 2014 or early 2015, do  
14 you recall?

15 A. 2015, yes.

16 MR. OKEY: Okay. No further questions.  
17 Thank you very much, Mr. Climer.

18 MR. CONLEY: No questions.

19 CHAIRMAN FERRUCCIO: Okay.

20 MR. OKEY: Mr. Chairman, I'm going to  
21 very briefly call the two protestors, just for  
22 purposes of our record.

23 CHAIRMAN FERRUCCIO: Sure.

24 MR. OKEY: And first we'll call Mr. Ted  
25 Schartiger.

1                   Mr. Schartiger.

2                                   - - -

3                   MELVIN T. SCHARTIGER

4       of lawful age, being by me first duly sworn, as  
5       hereinafter certified, testified and said as  
6       follows:

7                   DIRECT EXAMINATION

8       BY MR. OKEY:

9           Q.     Good morning, sir.

10          A.     Good morning, sir.

11          Q.     Sir, could you please state your full name  
12       and address for our record please.

13          A.     Melvin T. Schartiger, the T stands for  
14       Ted, and 337 Sandy Avenue, Massillon, Ohio 44646.

15          Q.     I realize now, sir, that I may have  
16       mispronounced your last name. You pronounced it  
17       Shartiger?

18          A.     Shartiger.

19          Q.     All right. I heard somebody say  
20       Skartiger, and --

21          A.     That's okay.

22          Q.     -- that's my mistake.

23          A.     It's a tough one to -- to get right away.

24          Q.     Fair enough.

25                   Mr. Schartiger, are you a qualified

1 elector, a voter, in the City of Massillon?

2 A. Yes, I am, sir.

3 Q. As a qualified elector, Mr. Schartiger,  
4 are you eligible to vote for the candidates for  
5 Mayor of Massillon in 2015, including  
6 Mr. Cicchinelli if he would be on the ballot?

7 A. Yes, sir.

8 Q. Mr. Schartiger, are you voluntarily  
9 protesting the nominating petition of Francis H.  
10 Cicchinelli, Jr. as an alleged Independent  
11 candidate for the office of Mayor of Massillon?

12 A. Yes, I am, sir.

13 Q. And, Mr. Schartiger, for the reasons that  
14 we've laid out in our brief to this Board and in  
15 the testimony and comments today to the Board, do  
16 you request this Board of Elections to invalidate  
17 Mr. Cicchinelli's petition and disqualify him  
18 from appearing on the ballot for mayor in 2015?

19 A. Yes, I do.

20 MR. OKEY: Mr. Chairman, no further  
21 questions. Thank you.

22 CHAIRMAN FERRUCCIO: Thank you.

23 - - -

24 CROSS-EXAMINATION

25 BY MR. CONLEY:

1           Q.     Mr. Schartiger, my name is Craig Conley,  
2           and I'm the attorney for Mr. Cicchinelli for the  
3           purposes of today's hearing.

4                     I want to hand you a file stamped copy  
5           of the protest, and I would represent to you  
6           that's a true and accurate file stamped copy I  
7           got from the Board itself.

8                     MR. CONLEY:    And I'm presuming the  
9           Board has it?

10                    CHAIRMAN FERRUCCIO:    Yes.

11           BY MR. CONLEY:

12           Q.     Mr. Okey asked you if you had voluntarily  
13           joined this protest.  Is that true, you did do it  
14           voluntarily?

15           A.     Yes, sir.

16           Q.     How did you come to voluntarily decide to  
17           do that?

18           A.     Well, actually, my friend, Robert, and I  
19           were on the campaign trail --

20           Q.     I'm sorry.  Robert, who do you mean?

21           A.     Bob Richards.

22           Q.     Okay.

23           A.     Robert Richards.  We were on the campaign  
24           trail, and it had been rumored or stated by  
25           someone that Mr. Cicchinelli was -- had indicated

1 that he was going to run as an Independent,  
2 and -- and Bob and I just had a conver -- general  
3 conversation about it, wondering if that was  
4 legal, wondering if he could do that after being  
5 a -- a Democrat all those years.

6 Q. And so what did you do after your  
7 conversation with Mr. Richards?

8 A. We were approached by the Mayor of  
9 Massillon.

10 Q. That mayor being Kathy Catazaro-Perry?

11 A. That is correct. And we were asked if we  
12 would be interested in attending a meeting to  
13 protest Mr. Cicchinelli's candidacy.

14 Q. And was there such a meeting?

15 A. This -- this is the meeting. No, there  
16 was not a meeting prior to today. She just asked  
17 if we would attend one should she need us in the  
18 future.

19 Q. Should she need you to be a protestor?

20 A. Right.

21 Q. Okay. And what did you do after that to  
22 become a protestor?

23 A. What did I do?

24 Q. Well, if you would look at --

25 MR. CONLEY: Perhaps, Mr. Chairman, I

1 should mark this as some kind of an exhibit,  
2 although it's in the record.

3 CHAIRMAN FERRUCCIO: It's in the  
4 record.

5 MR. OKEY: We stipulate to it.

6 MR. CONLEY: All right. The record  
7 would indicate he's looking at the protest filed  
8 under his name.

9 CHAIRMAN FERRUCCIO: Dated June 15th --  
10 or 16th, filed for record, is what my eyes show.

11 BY MR. CONLEY:

12 Q. This protest document that's in front of  
13 you, have you seen it before today?

14 A. Yes.

15 Q. And when did you first see it?

16 A. At least a week ago, ten days, something  
17 like that.

18 Q. Okay. So you didn't see it before it was  
19 filed on June 16th?

20 A. I was aware of it before it was filed. I  
21 did not see it.

22 Q. Okay. And how did you become aware of it?

23 MR. OKEY: Objection. Mr. Chairman,  
24 he's getting close to attorney-client  
25 communications here.

1                   CHAIRMAN FERRUCCIO: I'll let you have  
2 one more question with respect to that.

3 BY MR. CONLEY:

4           Q.     You say that Mayor Kathy Catazaro-Perry  
5 approached you and asked you if you'd be willing  
6 to protest Mr. Cicchinelli's candidacy.

7           A.     She did not use the word protest, sir.  
8 She asked if we -- Bob Richards and I would  
9 attend a meeting.

10          Q.     Okay. And after you had this conversation  
11 with the current Mayor of Massillon, how did you  
12 come to be a protestor via this document that's  
13 in front of you?

14          A.     I was contacted by Mr. Okey.

15          Q.     So Mr. Okey solicited you --

16          A.     No, he did not.

17          Q.     -- to become a protestor?

18          A.     He did not. He gave me an update on  
19 Mr. Cicchinelli's protest.

20          Q.     Okay. And why did you decide to allow --  
21 did you allow your name to be put on this  
22 document, June -- this protest that was filed on  
23 June 16th?

24          A.     Yes.

25          Q.     Before it was filed, did you allow your

1 name to be put on it?

2 A. Yes, sir.

3 Q. Okay. And it all began with a  
4 conversation with the mayor?

5 MR. OKEY: Objection to --

6 THE WITNESS: Again, it was a  
7 conversation with my friend when we were on the  
8 campaign trail.

9 BY MR. CONLEY:

10 Q. With you and Mr. Richards?

11 A. With me and Mr. Richards, yes.

12 Q. Did you call Mr. Okey and say, Hey, I'd  
13 love to file this protest, or did Mr. Okey --

14 MR. OKEY: Objection.

15 BY MR. CONLEY:

16 Q. -- call you?

17 A. No, sir. He --

18 MR. OKEY: Attorney-client  
19 conversation.

20 MR. CONLEY: It's not attorney-client  
21 privilege before --

22 CHAIRMAN FERRUCCIO: When there's an  
23 objection, we'll wait to hear if we overrule it  
24 or sustain it.

25 THE WITNESS: Pardon, sir?

1                   CHAIRMAN FERRUCCIO:  When -- when  
2                   there's an objection, just wait to hear if we  
3                   overrule or sustain the particular objection, and  
4                   then we can tell you whether you can answer the  
5                   question.

6                   MR. OKEY:  Mr. -- Mr. Chairman, I just  
7                   want to make clear for the record that Mr. Conley  
8                   has asked specifically regarding a -- regarding a  
9                   conversation between the client and the attorney.  
10                  Whether he called up the attorney and spoke to  
11                  the attorney about something, that's  
12                  attorney-client privilege and conversation, and I  
13                  would instruct the witness not to answer.

14                  CHAIRMAN FERRUCCIO:  Yeah, that --  
15                  that's sustained.

16                  Next question, Mr. Conley.

17                  BY MR. CONLEY:

18                  Q.  Mr. Schartiger, looking at the document  
19                  you have in front of you, the protest, I'd call  
20                  your attention to the second paragraph, and if  
21                  you could, just read the first sentence to  
22                  yourself, and I'll read it out loud.

23                  "The grounds for this protest, as  
24                  explained in detail below, are that Cicchinelli  
25                  is not actually independent and that

1 Cicchinelli's claim of being "independent" has  
2 not been made in good faith."

3 Did I read that right?

4 A. Yes, sir.

5 Q. Okay. And those are your words, you know.  
6 This is your protest. Do you understand that?

7 MR. OKEY: Objection. Mr. Chairman,  
8 they aren't his words. They're his attorney's  
9 words.

10 CHAIRMAN FERRUCCIO: Right. And -- and  
11 that's sustained.

12 MR. CONLEY: Well --

13 CHAIRMAN FERRUCCIO: It's like a  
14 complaint, and it's a legal document.

15 BY MR. CONLEY:

16 Q. Well, do you disagree with Mr. Okey's  
17 words? Did Mr. Okey lie on your behalf?

18 MR. OKEY: Objection.

19 MR. CONLEY: Well, it -- it's either  
20 his -- whose words is it? It's -- it's his  
21 words. As a matter of law, I file a complaint.  
22 I put a fact in there. It's my client's fact. I  
23 don't make the facts up as --

24 MR. OKEY: Mr. --

25 MR. CONLEY: -- an attorney.

1 MR. OKEY: Mr. Chairman, Mr. Conley can  
2 ask if he agrees, but he cannot ask whether his  
3 attorney has lied. It's beneath the dignity of  
4 this panel.

5 CHAIRMAN FERRUCCIO: I agree.

6 BY MR. CONLEY:

7 Q. Why did you say in this protest, through  
8 Mr. Okey, that Mr. Chelli -- Cicchinelli's not  
9 made his claim in good faith? Why do you say  
10 that?

11 A. Because of his history as a Democrat, sir.

12 Q. Okay. So is he obliged, in your opinion,  
13 to always be a Democrat? Is it once a Democrat,  
14 always a Democrat? Is that your opinion?

15 A. Not necessarily. It -- it was just a  
16 question.

17 Q. Okay. Well, why do you say Mr. Chell --  
18 Cicchinelli's acted in bad faith when he's  
19 claiming to now be an Independent? What -- let  
20 me rephrase it.

21 What facts do you have to support the  
22 allegation that's made on your behalf in this  
23 exhibit that Mr. Cicchinelli's claim of being  
24 Independent has not been made in good faith?  
25 What facts do you have to support that assertion?

1 MR. OKEY: Objection, Mr. Chairman and  
2 Members of the Board, that the facts have been  
3 deduced through counsel, and it is not this  
4 protestor's obligation or duty to bring all those  
5 facts. He acts through counsel, as every party  
6 to a hearing or a litigation does.

7 MR. CONLEY: If that is really the law,  
8 I guess I can put him on the stand.

9 MR. OKEY: No, you cannot.

10 MR. CONLEY: And that's not the law,  
11 Mr. Chairman. Obviously, he makes a factual  
12 allegation through counsel. I, of course, have  
13 the right to ask him what's the basis for those  
14 facts.

15 CHAIRMAN FERRUCCIO: I think he's  
16 already answered it, in any event.

17 MR. CONLEY: Well, he has not answered.  
18 I just asked him for the first time.

19 CHAIRMAN FERRUCCIO: And I think he  
20 said his years of being a Democrat was the  
21 answer.

22 BY MR. CONLEY:

23 Q. Mr. Ferruccio has asserted that your  
24 answer to that question is Mr. Cicchinelli's  
25 years of being a Democrat. Is that your answer?

1 A. That's correct.

2 Q. Okay. Any other reasons, other than his  
3 history of years of being a Democrat?

4 A. No.

5 MR. CONLEY: Okay. No other questions.  
6 Thank you.

7 MR. OKEY: No follow-up, sir.

8 CHAIRMAN FERRUCCIO: You're excused.

9 MR. OKEY: Thank you, Mr. Schartiger.  
10 The final witness will be Bob Richards.  
11 Mr. Richards.

12 - - -

13 ROBERT L. RICHARDS

14 of lawful age, being by me first duly sworn, as  
15 hereinafter certified, testified and said as  
16 follows:

17 DIRECT EXAMINATION

18 BY MR. OKEY:

19 Q. Good morning, sir.

20 A. Good morning.

21 Q. Mr. Richards, could you please state, for  
22 our record and for the members of this Board,  
23 your full name and address please.

24 A. Yes. It's Robert L. Richards, 1375 Benson  
25 Street, S.W., Massillon 44647.

1 Q. Thank you, sir.

2 Mr. Richards, are you a qualified  
3 elector, a voter, in the City of Massillon?

4 A. Yes, I am.

5 Q. Sir, as a qualified elector, are you  
6 eligible to vote for the candidates for Mayor of  
7 Massillon in 2015, including Mr. Cicchinelli if  
8 he would happen to be on the ballot?

9 A. Yes.

10 Q. And, sir, are you voluntarily protesting  
11 the nominating petition filed by Francis H.  
12 Cicchinelli, Jr. as an alleged Independent  
13 candidate for the office of Mayor of Massillon?

14 A. Yes, I am.

15 Q. Mr. Richards, do you request -- as part of  
16 the evidence we brought to this Board and the  
17 materials that we presented in writing to this  
18 Board, do you request this Board invalidate  
19 Mr. Cicchinelli's petition and disqualify him  
20 from appearing as an alleged Independent on the  
21 ballot for mayor of 2015?

22 A. Yes, I do.

23 MR. OKEY: Thank you, sir.

24 Nothing further, Mr. Chairman.

25 CHAIRMAN FERRUCCIO: Mr. Conley.

1 - - -

2 CROSS-EXAMINATION

3 BY MR. CONLEY:

4 Q. Mr. Richards, we've known each other for a  
5 hundred years, but just for the record, my name  
6 is Craig Conley, and I represent Mr. Cicchinelli  
7 for this purpose.

8 A. Right.

9 Q. Mr. Schartiger, you heard his testimony a  
10 few minutes ago?

11 A. Yes, I did.

12 Q. And he indicated that you and he got  
13 together and talked about this election and this  
14 issue?

15 A. Yeah. We -- we had done some walking  
16 campaigns, and as a matter of fact, we did three  
17 or four of them, and we've had conversations like  
18 that, yes.

19 Q. Okay. And at some point in time, he said  
20 he had discussed it with Mayor Kathy  
21 Catazaro-Perry. I don't recall if he said you  
22 did too. Did you?

23 A. Yes.

24 Q. Okay. And the mayor -- what did you and  
25 the mayor talk about with reference to this

1 matter today?

2 A. Actually, we brought up the subject about  
3 the eligibility and wanted to know if we would  
4 testify on that behalf, you know, in qualified or  
5 not, if we felt that -- and at that time, I felt  
6 we were not -- or Mr. Cicchi -- Cicchinelli was  
7 not qualified.

8 Q. Okay. And other than Mr. Okey, have you  
9 talked about the protest with anybody else  
10 besides the mayor, yourself, and Mr. Schartiger?

11 A. Basically, that would be it, yes.

12 Q. Did you talk to Mr. Townsend or  
13 Mr. Stinson about it?

14 A. Mr. Stinson, no. Mr. Townsend, I don't  
15 think so. I would say no.

16 Q. Okay. And I'd like you to look at the  
17 protest document. It's there somewhere. Did the  
18 other guy take it with him?

19 That's okay. I have another one.

20 MR. OKEY: You can have my copy.

21 MR. CONLEY: That's all right. I have  
22 plenty. He probably needed it as a souvenir.

23 BY MR. CONLEY:

24 Q. When was the first time you've seen this  
25 document? And again, for the record, it's a file

1 stamped copy of the protest filed on June 16,  
2 2015 that we're here for today. When was the  
3 first time you've seen that document, Bob?

4 A. Actually, today, right now.

5 Q. Today?

6 A. Yes.

7 Q. So you had not seen it prior to it getting  
8 filed?

9 A. No.

10 Q. Did you give permission to get it filed  
11 under your name?

12 A. Yes.

13 Q. Did you give permission?

14 A. Yes.

15 Q. If I could call your attention to the  
16 first page, the second paragraph. I'm going to  
17 read out loud the first sentence and would ask  
18 you to follow along.

19 "The grounds for this protest, as  
20 explained in detail below, are that Cicchinelli  
21 is not actually independent and that  
22 Cicchinelli's claim of being "independent" has  
23 not been made in good faith."

24 Did I read that correctly?

25 A. Yes.

1 Q. Do you agree with that statement that  
2 Mr. Okey put in there on your behalf?

3 A. Yes, I do.

4 Q. Okay. And can you tell me what facts you  
5 have to support the allegation made in that  
6 sentence.

7 A. Well, being a longtime resident of  
8 Massillon, over 60 years, I have known  
9 Mr. Cicchinelli as a Democrat, and I feel that he  
10 still is a Democrat, and that's why I protested  
11 this, per se.

12 Q. And why do you feel that he's still a  
13 Democrat?

14 A. It's one of those things that you just  
15 know in your heart that people don't change like  
16 that.

17 Q. So you don't really have any facts. It's  
18 just a feeling?

19 MR. OKEY: Objection.

20 BY MR. CONLEY:

21 Q. Isn't that -- that's your testimony. You  
22 said you feel that, right?

23 MR. OKEY: Objection. It's a  
24 misstatement of his testimony.

25 MR. CONLEY: I'll ask the court

1 reporter to read back his testimony. Can you  
2 read back the testimony about -- I think he used  
3 the word you feel or something like that -- oh,  
4 and the predecessor question too please.

5 (Previous question and answer read back.)

6 BY MR. CONLEY:

7 Q. So -- so you just know in your heart that  
8 Mr. Cicchinelli is still a Democrat?

9 A. Yes.

10 Q. Okay. Other than knowing in your heart,  
11 do you have any facts to present to this Board to  
12 support what's in your heart?

13 MR. OKEY: Objection, form of the  
14 question.

15 CHAIRMAN FERRUCCIO: Sustained.

16 MR. CONLEY: Well, you got me there,  
17 Mr. Chairman. I don't know why in the world --

18 CHAIRMAN FERRUCCIO: Form of the  
19 question.

20 MR. CONLEY: -- I wouldn't be allowed  
21 to ask him --

22 CHAIRMAN FERRUCCIO: Form of the  
23 question.

24 MR. CONLEY: -- to ask him the facts.

25 CHAIRMAN FERRUCCIO: Form of the

1 question.

2 BY MR. CONLEY:

3 Q. Do you have any facts to support the  
4 allegation set forth in the first sentence of the  
5 second paragraph of the protest that I read out  
6 loud?

7 CHAIRMAN FERRUCCIO: Thank you.

8 BY MR. CONLEY:

9 Q. Do you have any facts to support that  
10 allegation?

11 A. No.

12 MR. CONLEY: No.

13 No further questions. Thank you.

14 CHAIRMAN FERRUCCIO: Thank you.

15 Any follow-up?

16 MR. OKEY: Nothing further.

17 CHAIRMAN FERRUCCIO: You can step down.

18 MR. OKEY: Mr. Chairman, with the  
19 admission of the exhibits and materials in  
20 writing, the protestors would rest our  
21 presentation, sir.

22 CHAIRMAN FERRUCCIO: Okay. Any  
23 objection to the admission of the exhibits?

24 MR. CONLEY: No. As Mr. Okey and I  
25 discussed that prior to the hearing commencing, I

1 have no objection, upon the caveat that I am  
2 presuming that these are true and accurate copies  
3 of what's in the record. I know they're not  
4 certified, but I don't care. I can't imagine  
5 Mr. Okey would falsify something. So assuming  
6 they are true and accurate copies, no objection.

7 CHAIRMAN FERRUCCIO: Great. They'll be  
8 admitted.

9 And we'll take a 10- to 15-minute  
10 recess.

11 (Short recess had.)

12 CHAIRMAN FERRUCCIO: We're back on the  
13 record. It is 10:51.

14 Mr. Conley, your case in chief, I  
15 believe.

16 MR. CONLEY: And just a little bit of  
17 bookkeeping, Mr. Chairman. I'm going to give to  
18 the Board, I suppose Mr. Matthews, return of  
19 services that I've filed on subpoenas directed to  
20 Mr. Schartiger, Mr. Stinson, Mr. Richards,  
21 Mr. Townsend, and Mr. Phil Giavasis. They've all  
22 been timely served.

23 I told Mr. Richards and Mr. Schartiger  
24 during the break that, as far as I was concerned,  
25 they're excused from my subpoena because I've

1 already questioned them.

2 CHAIRMAN FERRUCCIO: Thank you.

3 MR. CONLEY: So if I can give the blue  
4 ink return of subpoena forms to the Board, I  
5 would like to call Mr. Townsend, Tony M.  
6 Townsend.

7 CHAIRMAN FERRUCCIO: Mr. Townsend, are  
8 you here?

9 Did you check out in the lobby,  
10 Mr. Conley?

11 MR. CONLEY: Yes. I did not see  
12 Mr. Townsend, but I suppose we should make sure.

13 CHAIRMAN FERRUCCIO: He'll check.  
14 Travis will check.

15 MR. OKEY: Mr. Chairman, for the  
16 record, I would like to object to the former  
17 protestors being called regarding their not --  
18 current noninvolvement in the protest, except to  
19 the extent that they may have testimony that  
20 would be relevant to the remaining protestors or  
21 the remaining issues.

22 CHAIRMAN FERRUCCIO: Thank you.

23 MR. CONLEY: Of course, if Mr. Townsend  
24 doesn't show up, I guess we won't know that, will  
25 we?

1                   CHAIRMAN FERRUCCIO:  And it appears  
2                   Mr. Townsend is not in the building.

3                   MR. CONLEY:  I -- I'm not sure of what  
4                   contempt powers this Court -- this Board has, but  
5                   to the extent this Board has contempt power, I  
6                   would ask that it find Mr. Townsend in contempt  
7                   of this Board for his failure to honor a  
8                   duly-served subpoena.  Surely, he knows better.  
9                   I believe he's President of City Council.

10                  I believe Mr. Townsend would have  
11                  testified that he did not authorize his name to  
12                  this protest and that's why he withdrew.

13                  CHAIRMAN FERRUCCIO:  We'll accept that  
14                  as your proffer of what his testimony -- what --  
15                  what you believe that testimony would be.

16                  MR. CONLEY:  Yes, Mr. Chairman, and in  
17                  support of that, I would submit a -- a news  
18                  article from the Massillon Independent, which is  
19                  the basis for my proffer.  I'll call it Candidate  
20                  Exhibit A and give it to the court reporter, and  
21                  the Board may consider it for whatever it may.

22                  CHAIRMAN FERRUCCIO:  Thank you.

23                  MR. OKEY:  Mr. Chairman, for the  
24                  record, I would certainly have no objection to it  
25                  being proffered; however, we would object to its

1 consideration as much as it is an unverified  
2 statement by someone who is not present.

3 MR. CONLEY: It's proffered,  
4 Mr. Chairman, in lieu of Mr. Townsend's testimony  
5 because, of course, he opted to ignore a valid  
6 subpoena, and again, the Board may take it for  
7 whatever it's worth.

8 I would now call Mr. Giavasis.

9 - - -

10 PHIL G. GIAVASIS

11 of lawful age, being by me first duly sworn, as  
12 hereinafter certified, testified and said as  
13 follows:

14 DIRECT EXAMINATION

15 BY MR. CONLEY:

16 Q. Mr. Giavasis, if you would, state your  
17 full name and your position with the Stark County  
18 Democratic Party.

19 A. My name is Phil G. Giavasis. I am  
20 Chairman of the Stark County Democratic Party.

21 Q. And were you Chairman on May 21, 2015?

22 A. I don't believe I was.

23 Q. Who was chairman on May 21, 2015?

24 A. Randy Gonzalez -- I'm sorry. I was  
25 Chairman in 2015.

1 Q. I was just --

2 A. I was dating back a year.

3 Q. Okay. Well, it's easy to do when you get  
4 our age.

5 A. I know.

6 Q. All right. So you were Chairman on  
7 May 21, 2015?

8 A. Yes, I was.

9 Q. Okay. And was there a meeting of the  
10 Executive Session on that date?

11 A. I believe there was -- there was a meeting  
12 that date.

13 MR. CONLEY: I apologize. I only have  
14 the copy that he provided me under subpoena.  
15 I'll let counsel look at it, and then I'll hand  
16 it to Mr. Giavasis to refresh his recollection.

17 BY MR. CONLEY:

18 Q. Before I hand you the agenda and minutes  
19 that you provided me this morning, is Mr. Okey,  
20 sitting to my right, a member of the Stark County  
21 Democratic Executive Committee?

22 A. He is.

23 Q. He is?

24 A. Yes.

25 Q. How about his wife?

1           A.     I believe she is.

2           Q.     And how about two Board members,  
3     Mr. Ferruccio and Mr. Sherer, are they members of  
4     that same committee?

5           A.     They are.

6                     MR. CONLEY:   Okay.  I'm going to mark  
7     this as Candidate's Exhibit B, and I guess I  
8     better describe it, since I only have one copy.  
9     I did show it to Mr. Okey.  It's encaptioned  
10    Minutes of Stark County Democrat Executive  
11    Committee Meeting, Thursday May 21, 2015.

12           BY MR. CONLEY:

13           Q.     Handing you, Mr. Giavasis, what's been  
14     marked as Candidate's Exhibit B, as in boy, and  
15     first of all, is that a true and accurate copy of  
16     a record that's maintained by the Stark County  
17     Democratic Party?

18           A.     If these are the documents that I handed  
19     you this morning, they were prepared by the staff  
20     at the Party based on your request.

21           Q.     And so they are true and accurate copies  
22     of your Party's records?

23           A.     Yes, if they are the same.

24           Q.     Okay.  And if you could read, there was a  
25     meeting of the Executive Committee on the date

1 that's on the front page. What's that date? The  
2 front page of the exhibit.

3 A. Oh, sorry.

4 Q. The May 21 or --

5 A. May 21st, 2015.

6 Q. Okay. And there's a meeting of the  
7 Executive Committee on that date?

8 A. Correct.

9 Q. Okay. And if you could flip a few pages  
10 forward, there's a summary of the minutes of what  
11 happened at that meeting, and I've highlighted  
12 some things. Could you read those out loud.

13 A. Kody Gonzalez moved that the Executive  
14 Committee Democratic Party oppose the  
15 certification of Tom Bernabei and Francis H.  
16 Cicchinelli, Jr. to the ballot as a nonpartisan  
17 or Independent candidate for Mayor of the City of  
18 Massillon.

19 And I'm skipping forward here to your  
20 other highlighted part. As part of the same  
21 motion, Kody Gonzalez further moved that we  
22 authorize Chairman Phil Giavasis to enjoin any  
23 protests of these candidates on behalf of the  
24 Stark County Democratic Executive Committee and  
25 authorize him to take any steps necessary to

1       oppose these prospective candidates and to fully  
2       support our incumbent Democrats, Canton Mayor  
3       William J. Healy, II, and Massillon Mayor Kathy  
4       Catazaro-Perry.

5       Q.     And I see the minutes use the word enjoin.  
6       I presume what was meant there was join in a  
7       protest, rather than enjoin. Do you see that? I  
8       think it's in the second highlighted portion.  
9       The word enjoin, E-N-J-O-I-N, is used. Is it  
10      fair to say --

11      A.     I'm sorry, Mr. Conley. You're saying the  
12      second part?

13      Q.     I think so. Maybe the first part.

14      A.     Enjoin, E-N --

15      Q.     All right.

16      A.     -- J-O-I-N.

17      Q.     Is it fair to say that should be join?

18      A.     I -- I didn't make the motion. I'm sure  
19      that -- I -- I think it was actually written and  
20      submitted to our secretary.

21      Q.     Okay. Did the Party join this particular  
22      protest?

23      A.     It did not.

24      Q.     And it joined the Bernabei protest, at  
25      least initially?

1 A. Correct.

2 Q. Okay. And the motion that was passed by  
3 the Executive Committee refers to doing anything  
4 necessary to assist or something like that; do  
5 you see that language?

6 A. Yes.

7 Q. What did -- and authorized you to do  
8 something, right?

9 A. Yes.

10 Q. Okay. What did you do to assist with this  
11 protest?

12 A. I spoke with counsel from both -- both  
13 protests and was submitted drafts by the -- the  
14 Bernabei protest counsel.

15 Q. I -- I'm sorry. I'm not asking you about  
16 Bernabei. I apologize.

17 A. Okay.

18 Q. It was too broad a question.

19 A. Okay.

20 Q. The document you have in front of you  
21 authorizes you to do something to get involved  
22 with both the Bernabei and the Cicchinelli  
23 matter. I'm asking you, what did you do to get  
24 involved or to do anything with the Cicchinelli  
25 protest?

1 A. Discussions only.

2 Q. With whom?

3 A. Mr. Okey.

4 Q. And when you're talking to Mr. Okey, does  
5 he represent the Executive Committee?

6 A. He has in the past.

7 Q. Well, when you talked to him, was he  
8 representing the Executive Committee?

9 A. No.

10 Q. Why did you talk to him? Why didn't you  
11 call me?

12 A. Well, actually, he called me. If you  
13 would have called me, I would have spoken to you  
14 too.

15 Q. Okay. So he -- so he called you?

16 A. I believe so.

17 Q. What did you all talk about?

18 A. We talked about the protest.

19 Q. And again, I'm limiting this to  
20 Cicchinelli. I don't care about Bernabei.

21 A. Just -- I -- I can't remember exactly what  
22 it -- what it was that we talked about.

23 Q. Did he asked you to gather up some  
24 protestors?

25 A. No, no, he did not.

1 Q. Did he mention the name of any of the  
2 original four protestors when you talked to him?

3 A. He may have. I don't recall.

4 Q. Did you talk to any of the original four  
5 protestors, Townsend, Stinson, Richards, or  
6 Schartiger, at any time after that Executive  
7 Committee meeting?

8 A. I did.

9 Q. And who did you talk to?

10 A. I talked with Mr. Stinson.

11 Q. And he's in the room, isn't he?

12 A. He is.

13 Q. Good looking guy sitting behind me?

14 A. Yes.

15 Q. Okay.

16 A. There's only two guys, but yes.

17 Q. All right. And what did you and  
18 Mr. Stinson talk about?

19 A. He was asking me questions about the  
20 protest, and I directed him to speak with  
21 Mr. Okey.

22 Q. And he was asking you questions because he  
23 was surprised he was a protestor?

24 A. That wasn't clear. He was just asking me  
25 questions, and I -- that were beyond my realm, so

1 I directed him to contact Mr. Okey. The next  
2 time I saw Mr. Okey, he had said that they had  
3 been trying to reach each other.

4 Q. The them being Mr. Okey and Mr. --

5 A. Stinson.

6 Q. Stinson. And Mr. Stinson asked you about  
7 the protest after it was filed?

8 A. I --

9 Q. It was filed on June 16th.

10 A. I believe it -- it was after it was filed.

11 Q. What else have you done consistent with  
12 the Executive Committee's direction for you to  
13 assist in this protest?

14 A. I believe that's it.

15 Q. Did you write any checks to Mr. Okey, for  
16 instance?

17 A. I did not.

18 Q. Is the Party paying Mr. Okey's bill?

19 A. We are not.

20 Q. Do you know who is?

21 A. I do not.

22 Q. You're saying Mr. Okey's represented the  
23 Party in the past. Do you mean in a formal  
24 manner?

25 A. I believe he was involved in the Sheriff

1 protest, if I'm not mistaken.

2 Q. George Maier?

3 A. I believe. I could be mistaken, but I  
4 believe so. I was not the Chairman at the time.

5 Q. But the Party and you as a representative  
6 of the Party, you're -- and by Party, I mean the  
7 Stark County Democratic Party -- you're not a  
8 party to this protest?

9 A. We are not.

10 MR. CONLEY: Okay. No other questions.  
11 Thank you, Mr. Chairman.

12 CHAIRMAN FERRUCCIO: Thank you.

13 Mr. Okey.

14 MR. OKEY: Nothing, Mr. Chairman.

15 CHAIRMAN FERRUCCIO: Thank you. You  
16 may step down.

17 THE WITNESS: Thank you.

18 MR. CONLEY: And at least from my  
19 standpoint, you may leave.

20 THE WITNESS: Thank you, Mr. Conley.

21 MR. CONLEY: I'm going to leave that  
22 with the court reporter.

23 Okay. Mr. Shadrack Stinson please.

24 MR. OKEY: Mr. Chairman, I -- I renew  
25 my objection as to reasons why Mr. Stinson is a

1 nonparty to this because it's no longer relevant.

2 MR. CONLEY: He called a half a dozen  
3 nonparties, as I recall. Is there some sort of a  
4 requirement that a witness must be a party? I --  
5 I'm not familiar with that.

6 CHAIRMAN FERRUCCIO: You -- you --  
7 you've subpoenaed Mr. Stinson. Let's have  
8 Mr. Stinson come up to the --

9 MR. CONLEY: Thank you.

10 CHAIRMAN FERRUCCIO: -- witness chair  
11 please.

12 - - -

13 SHADDRICK STINSON

14 of lawful age, being by me first duly sworn, as  
15 hereinafter certified, testified and said as  
16 follows:

17 DIRECT EXAMINATION

18 BY MR. CONLEY:

19 Q. Mr. Stinson, my name is Craig Conley, and  
20 I represent Mr. Cicchinelli for purposes of  
21 today's protest hearing, and I believe I've seen  
22 you sitting in the audience from the start of  
23 this hearing.

24 A. 9:00 o'clock this morning, yes.

25 Q. And you've been here the whole time?

1           A.     Yes.

2           Q.     All right.  And so unless somebody like me  
3 was mumbling, you pretty much heard what was  
4 going on, didn't you?

5           A.     Yes.

6           Q.     Okay.  To your left is a copy of the  
7 protest.

8           A.     Yes.

9           Q.     And it indicates that you're one of the  
10 protestors; is that correct?

11          A.     Yes.

12          Q.     I -- I realize you've withdrawn since.

13          A.     Uh-huh.

14          Q.     And it's file stamped June 16, 2015.  When  
15 did you first realize you were a named protestor?

16          A.     Was June 16th a Monday?

17          Q.     I -- I don't know.

18          A.     I don't know off the top of my head, but I  
19 found out that I was listed as a protestor when I  
20 was on my way to a council meeting, I think it  
21 was a work session, so it was a Monday, and  
22 people was -- were telling me that it was in the  
23 paper that the protest was listed.

24          Q.     So you didn't know you were a protestor  
25 until after somebody told you they read it in the

1 paper?

2 A. Yes and no. I was asked to be a part of a  
3 protest, and then like Bob had said earlier, that  
4 there was going to be a meeting, and I never  
5 heard of the meeting or never got invited to the  
6 meeting, and then next thing I know, my name was  
7 on this protest.

8 Q. Okay. And you subsequently withdrew from  
9 the protest that you didn't even know you were  
10 on?

11 A. I found out this morning, once I got here,  
12 that I was withdrawn from the protest, but when I  
13 went back into my e-mail, I found a message from  
14 Mr. Okey saying that my name was withdrawn as of  
15 Saturday.

16 Q. So somebody put you on the protest, and  
17 you don't know about it, and then Mr. Okey  
18 withdraws you from the protest, and you don't  
19 even know that?

20 A. Yes.

21 Q. Okay. Did you discuss this protest with  
22 Mr. Townsend?

23 A. Yes, I did.

24 Q. Mr. Townsend, he didn't know he was a  
25 protestor either, did he?

1           A.     Like I said, we were all -- we were -- we  
2           were -- we were approached and asked to  
3           participate in the protest, a meeting would  
4           follow, and then we would get the grounds for the  
5           protest, and then we would go from there. The  
6           meeting never happened. The protest came out.  
7           My name's on it. So I was a little pissed.

8           Q.     And you were a little pissed, is that what  
9           you said?

10          A.     Yes.

11          Q.     Okay. And -- and then Mr. Okey doesn't  
12          ask you, but he withdraws your protest?

13          A.     Like I said, I found out this morning  
14          because I could have been at the university  
15          working, except for your subpoena.

16          Q.     You talked about there was going to be a  
17          meeting that didn't occur before the protest.  
18          Who informed you or talked to you about such a  
19          meeting? Was that Mayor Kathy Catazaro-Perry  
20          or --

21          A.     Yes, it was.

22          Q.     Okay. And how did you communicate with  
23          the Mayor about that? Was it telephone, or did  
24          she see you in person?

25          A.     About --

1 Q. About the meeting that never happened.

2 A. It was during one of our council meetings.  
3 She was sitting in the back part of the council  
4 chamber, and we were taking a break because I  
5 think we were getting ready to go into talking  
6 about the fiscal emergency plan, and it was like  
7 after the regular session, so there was a little  
8 bit of time in between, and she approached me and  
9 asked me if I would like to be part of a protest,  
10 I asked her what was the grounds, and she said  
11 all that would be explained at this meeting that  
12 never occurred.

13 Q. And the meeting never -- okay. The  
14 meeting never occurred?

15 A. Right.

16 Q. Okay. Did you talk about this protest  
17 with anybody else besides Mr. Townsend and  
18 Mayor Kathy Catazaro-Perry?

19 A. Yes.

20 Q. Who else?

21 A. I think I had mentioned it during --  
22 during -- well, some of the fellow council people  
23 because, when I was approached, I was told that  
24 there would be several council people and several  
25 citizens involved, and then when I see a copy of

1 this, there's only two council members and two  
2 citizens. That does not count as several to me,  
3 so I voiced my opinion to some of my fellow  
4 council members, and they asked me what was I  
5 going to say if I got called in to testify. I  
6 said I didn't know, but I'm here now, so -- oh,  
7 and then also, I did -- like Mr. Giavasis said, I  
8 contacted him because I was concerned about, you  
9 know, what was going to happen today, like the  
10 process. I've never been in one of these  
11 hearings before, so --

12 MR. CONLEY: Okay. Well, at least from  
13 my perspective, I appreciate you honoring the  
14 subpoena, and I'm sure the Board does. It's  
15 important to follow the rule of law, even when we  
16 sometimes don't like it, so I thank you for your  
17 appearance.

18 THE WITNESS: Uh-huh.

19 MR. CONLEY: Thank you for your  
20 testimony. I have no further questions. Perhaps  
21 Mr. Okey or the Board will.

22 CHAIRMAN FERRUCCIO: Mr. Okey.

23 MR. OKEY: No questions for this  
24 gentleman, Mr. Chairman.

25 CHAIRMAN FERRUCCIO: You're excused.

1 THE WITNESS: All right. Thank you.

2 MR. CONLEY: Mr. Chairman, noting that  
3 we do not have the burden of proof, we have no  
4 further witnesses to call, and would ask the  
5 Court to permit us to make closing statements as  
6 the Chair may deem appropriate and when, and I  
7 would ask for admission of my client's -- I think  
8 it's only two exhibits --

9 CHAIRMAN FERRUCCIO: Yeah. I think --

10 MR. CONLEY: -- A & B.

11 CHAIRMAN FERRUCCIO: -- A was  
12 considered a proffer, was it not, and B was part  
13 of the evidence?

14 MR. CONLEY: And B was what  
15 Mr. Giavasis spoke about.

16 CHAIRMAN FERRUCCIO: Okay. So  
17 admitted -- or any objections? I'm sorry.

18 MR. OKEY: No objection. Exhibit A,  
19 recognizing it solely as a proffer, we do not  
20 object to its being proffered.

21 CHAIRMAN FERRUCCIO: Thank you.

22 Closing.

23 MR. OKEY: Yes, sir.

24 CHAIRMAN FERRUCCIO: And I think what  
25 we'll do is maybe limit it to ten minutes each at

1 the most.

2 MR. OKEY: We'll try to keep it moving  
3 along.

4 CHAIRMAN FERRUCCIO: You did a great  
5 job, both of you, keeping it moving. I  
6 appreciate that.

7 MR. OKEY: Taking mercy upon the Board  
8 after a marathon session before.

9 CHAIRMAN FERRUCCIO: This is true.

10 MR. OKEY: Mr. Chairman, Members of the  
11 Board, we appreciate the time that the Board has  
12 devoted to this protest, and I think the --  
13 the -- the key evidence -- and quite frankly, I'm  
14 shocked that Mr. Conley did not have  
15 Mr. Cicchinelli or his wife testify because the  
16 key evidence is, when I asked Mr. Cicchinelli,  
17 the candidate, When were you an Independent,  
18 Mr. Cicchinelli's answer was, The day of the  
19 primary. And I asked Mrs. Cicchinelli, What was  
20 your understanding of when your husband was an  
21 Independent, and she said, The day of the  
22 primary.

23 Now the reason that -- that is so  
24 critical is that the date of the primary is  
25 May 5th. That's the day after he filed his

1 petitions to run for mayor, supposedly as an  
2 Independent. He was not an Independent by his  
3 own and now irrefuted testimony. It's -- it's --  
4 it's unrefuted testimony. It's their own  
5 testimony. So it -- there's -- there's nothing  
6 to counterbalance it. He was not an Independent  
7 until the day after he filed his petitions.

8 The law is that -- the standard for  
9 this hearing for our burden of proof is clear and  
10 convincing, and, gentlemen, that's beyond clear  
11 and convincing. That is conclusive evidence that  
12 he was not an Independent when he filed the  
13 petitions to this Board. That's beyond clear and  
14 convincing. That's fatal to his claim that he  
15 was an Independent when he filed his petitions.  
16 By his own testimony, he was not an Independent  
17 when he filed the petitions to run supposedly as  
18 an Independent, and it's been corroborated by his  
19 wife. It is fatal to his claim. There's no  
20 rescuing an Independent candidacy when the  
21 candidate themselves says that I was not an  
22 Independent until the date after I filed my  
23 petitions. It cannot be rescued.

24 And that's above and beyond our other  
25 strongest fact, which stands on its own legs as

1 an independent clear and convincing reason why  
2 this alleged Independent candidacy cannot stand,  
3 and that other independent fact is that  
4 Mr. Cicchinelli inserted himself into the race in  
5 2015 for Mayor of Massillon as a Democrat by  
6 signing the petition for a Democrat to run as  
7 mayor, and then he turns around and wants to say  
8 that, for the same race and in the same election  
9 cycle, he's not a Democrat; he's an Independent.  
10 That's not in good faith. You can't be both for  
11 the same race in the same cycle.

12 And, gentlemen, for him to then come  
13 into this hearing, and both he and -- and  
14 corroborated by his wife that he was not an  
15 Independent until the day after he filed his  
16 petition, and -- and certainly not at the time  
17 that he was gathering the signatures, he was not  
18 an Independent then by his own testimony, it's  
19 fatal, and I would respectfully submit -- I'm not  
20 telling this Board, of course, what it must do,  
21 but I would respectfully submit to this Board  
22 that the decision was made, by Mr. Cicchinelli's  
23 testimony; and, therefore, we believe that it is  
24 beyond -- it is beyond a reasonable doubt that  
25 this petition should be invalidated by this Board

1 of Elections, and he must be disqualified from  
2 appearing on the ballot as an alleged Independent  
3 candidate for Mayor of Massillon.

4 Gentlemen, thank you very much.

5 CHAIRMAN FERRUCCIO: Thank you,  
6 Mr. Okey.

7 Mr. Conley.

8 MR. CONLEY: I have a considerably  
9 different recollection of the testimony that he  
10 has described, but it's in the record, and what  
11 it is it is.

12 Mrs. Cicchinelli did say she's not an  
13 attorney. I don't know that she understood the  
14 question. Mr. Chelli -- Cicchinelli doesn't have  
15 to prove he's an Independent. They have to  
16 disprove it.

17 But I think, in the protest, it refers  
18 to his petition as a sham. I'll tell you what  
19 the sham was, Mr. Okey putting people on a  
20 protest that didn't even know they were on the  
21 protest and withdrew because they were never on  
22 the protest. That's the sham, and that's a  
23 breach of the ethics rules that all attorneys are  
24 bound by. The sham before this Board is  
25 Mr. Okey's efforts to create protestors who never

1 even knew they were protestors. That's the sham.

2 Mr. Cicchinelli doesn't have to  
3 disprove a damn thing, and the record would  
4 indicate, of course, he was a Democrat for a  
5 thousand years, but he didn't take a blood oath.  
6 There's no requirement for him to -- as I believe  
7 the attorney said in the Bernabei, he doesn't  
8 have to throw a bomb into the headquarters to  
9 disassociate. He simply has to behave as though  
10 he's disassociated.

11 And on and after the day that he filed  
12 his petition, there's not a shred of evidence  
13 before this Board that he remained a Democrat.  
14 He cut the umbilical cord, and I don't have to  
15 prove the contrary. Mr. Okey, who apparently  
16 represents the Mayor -- you heard the testimony.  
17 Mayor Kathy Catazaro's fingers are all over this.  
18 She's the ghost protestor. This is a political  
19 thing, pure and simple. It doesn't have a darn  
20 thing to do with the law.

21 And I would renew my objection to Board  
22 Member Sherer and Mr. Ferruccio participating,  
23 particularly based on the testimony we've heard  
24 today, including that of Mr. Giavasis.

25 And then we find out that two of the

1 protestors never agreed to be protestors. Even  
2 the other two protestors, who did not withdrawal,  
3 I believe the one said he didn't even see the  
4 protest until today, and the other one testified  
5 he hadn't seen it until after it was filed. The  
6 whole thing is a sham created by somebody in the  
7 Democratic Party acting improperly and with the  
8 participation of Mr. Okey representing people  
9 that didn't agree to be represented. I've been  
10 an attorney for a long time. I never saw  
11 anything like it. It's outrageous.

12 This petition is obviously valid and  
13 should be certified by this Board. Not  
14 withstanding party loyalties, not withstanding  
15 whether or not the two Democratic members  
16 continue to recuse themselves, do the right  
17 thing, gentlemen, follow the law, certify this  
18 petition, and to repeat the George Maier mantra,  
19 let the people choose. Let the people vote.

20 Thank you.

21 CHAIRMAN FERRUCCIO: Thank you,  
22 Mr. Conley.

23 We'll take a 10- or 15-minute recess.  
24 The process now is that we independently, as  
25 Republicans and Democrats, go back and caucus,

1 and then we'll come back with -- with each  
2 person's decision with respect to the issue  
3 before us.

4 Thank you.

5 (Short recess had.)

6 CHAIRMAN FERRUCCIO: Okay. We're back  
7 on the record. It is 11:43.

8 And after each side has conducted their  
9 caucus, are there any motions with respect to  
10 this matter?

11 MEMBER CLINE: Mr. Chairman, I would --  
12 I would move that the -- the protest of the  
13 candidacy of Mr. Cicchinelli for Mayor of the  
14 City of Massillon be rejected, denied, rejected.

15 CHAIRMAN FERRUCCIO: Okay.

16 MEMBER CLINE: Take your pick on  
17 terminology for that, but to have the protest  
18 denied.

19 CHAIRMAN FERRUCCIO: The protestors  
20 have met their burden?

21 MEMBER CLINE: Have not met their  
22 burden.

23 CHAIRMAN FERRUCCIO: Okay.

24 MEMBER BRADEN: I'll second.

25 CHAIRMAN FERRUCCIO: Okay. Discussion?

1           MEMBER CLINE: Well, for purposes of  
2 explaining why I made the motion as I just did is  
3 that -- first of all, I'd say that the issue here  
4 is, as it was at the last -- at least one of the  
5 issues at the last hearing is -- is whether the  
6 candidate made a declaration of independence and,  
7 when they did so, whether that was made in bad  
8 faith, and we are without any definition of what  
9 bad faith may mean.

10           But I think we have to look at the time  
11 of the petition and the activities afterwards,  
12 and we are told, by the Secretary of State, that  
13 the directive that applies here is that some  
14 pre-petition activities are -- can be regarded as  
15 relevant, that they are not dispositive, but may  
16 be considered. In this particular case, I don't  
17 see or heard no evidence to -- that was  
18 post-petition activity which was inconsistent  
19 with the claim of Independent status by  
20 Mr. Cicchinelli.

21           The burden is on the protestors and not  
22 the petitioner, and it's a high one, I believe,  
23 because it's challenging the Constitutional right  
24 that we have to disassociate. We have a right to  
25 associate, and we have a Constitutional right to

1 disassociate, and I think that's an extremely  
2 important individual right that we have as  
3 citizens of this country and this state.

4           There was a reference to no blood  
5 oaths -- oaths being taken for political parties,  
6 and that's a bit melodramatic, but -- but the  
7 point is still well-taken. It's not a bond for  
8 life. The point is still that one has a right to  
9 disassociate, and the law doesn't say to us  
10 whether that means for one week or one day, one  
11 hour. There's no guidance there as to the timing  
12 of when one says whether one wants to associate  
13 with a party anymore or not.

14           Some may doubt the candidate's  
15 sincerity, but we have to look at the facts.  
16 We're not going to do a psychoanalysis of  
17 Mr. Cicchinelli or any other candidate who claims  
18 they're Independent, and without objective  
19 proof -- objective proof of bad faith by clear  
20 and convincing evidence, then I believe it is  
21 our -- it is our duty under the law to allow the  
22 candidate to run as an Independent.

23           Now, much was made in closing  
24 arguments, and I picked up on the point myself  
25 during the testimony by Mr. Cicchinelli that he

1 didn't -- he was -- I think he was asked, Well,  
2 when did you become an Independent, and he said,  
3 It was the day of -- of the primary. I'd like to  
4 have had more clarity on what that answer meant  
5 or the -- or the context of it or what his  
6 understanding of the question was, but we don't  
7 have that.

8           So we have an ambiguity in the evidence  
9 because that is inconsistent with filing the  
10 petition on the 4th claiming to be an  
11 Independent, but an ambiguity doesn't prove  
12 things one way or another. It just raises a  
13 question, and I don't think the question was  
14 answered, and I would prefer to err on the side  
15 of valid access and the right to disassociate  
16 than to give that much import to one answer to  
17 one question.

18           And so that is the reason,  
19 Mr. Chairman, that I moved to deny the protest  
20 and determine that they didn't -- the protestors  
21 did not meet their burden of proof by clear and  
22 convincing evidence that Mr. Cicchinelli's  
23 declaration of being Independent was made in bad  
24 faith.

25           CHAIRMAN FERRUCCIO: Member Braden.

1 MEMBER BRADEN: Sure.

2 I thank everybody for being here today  
3 and the witnesses that had to attend and give  
4 testimony.

5 Mr. Cicchinelli has filed petitions for  
6 office many times, all in good faith as a  
7 Democrat. He decided to run as an Independent  
8 and, under penalty of law, filed a petition in  
9 good faith that he claimed no party affiliation  
10 as an Independent.

11 I heard no one testify today, nor  
12 convincing evidence, that Mr. Cicchinelli did not  
13 act in good faith in filing his petition for  
14 mayor as an Independent, so I support acceptance  
15 of the petition.

16 CHAIRMAN FERRUCCIO: Thank you. Well,  
17 first, I think that the evidence is clear and  
18 convincing that Francis Cicchinelli is desirous  
19 of running for mayor, not as an Independent  
20 candidate, but just because he wants to be mayor  
21 again, and did not disassociate himself or  
22 unaffiliate himself as a Democrat in good faith.

23 You know, based on his own testimony,  
24 he was not an Independent candidate at the time  
25 that the petitions were circulated, at the time

1 that they were signed, April 29th, 2015, and  
2 filed, May 4th, 2015. He himself did not  
3 consider himself an Independent candidate until  
4 the day of the primary. This is fatal to his  
5 candidacy, and I -- I believe that carries over  
6 into the good faith argument that he was not an  
7 Independent candidate on the date that he filed.

8 Obviously -- and we've been through  
9 this in -- in the last hearing -- you know, good  
10 intentions really don't equate with good faith,  
11 but I think in this case, quite frankly, there's  
12 more of -- of politics being played by the  
13 candidates lawyer's statements as opposed to what  
14 he was trying to put on our Board.

15 I mean, this is clearly somebody that  
16 wanted to take advantage of an opportunity in the  
17 law to run for mayor, and I don't believe it was  
18 done in good faith; so therefore, I would oppose  
19 the motion and indicate that the protestors have  
20 met their burden.

21 Mr. Sherer.

22 MEMBER SHERER: I also want to thank  
23 everybody for coming today, and I also want to  
24 thank everybody for trying to expedite this  
25 process compared to the marathon that we had last

1 week.

2 I do agree with Mr. Chairman Ferruccio  
3 that good intentions -- you know, good intentions  
4 doesn't qualify as good faith, and the question  
5 was, Did Frank Cicchinelli have good faith when  
6 he circulated and filed.

7 I believe that, you know, when  
8 Mr. Cicchinelli's testimony clearly demonstrates  
9 that his intentions were not -- were not in good  
10 faith because he publicly stated that he doesn't  
11 consider himself an Independent until the day of  
12 the primary. The day after his petitions were  
13 filed. You know, I would also defer that, you  
14 know, Mr. Cicchinelli circulated and signed  
15 petitions as a Democrat up to that point in time,  
16 and with that, I would agree with  
17 Chairman Ferruccio.

18 CHAIRMAN FERRUCCIO: Thank you.

19 Any other comments?

20 Roll call.

21 DIRECTOR MATTHEWS: Chairman Ferruccio.

22 CHAIRMAN FERRUCCIO: I would vote no, I  
23 believe is the proper based on the motion.

24 DIRECTOR MATTHEWS: Member Braden.

25 MEMBER BRADEN: Yes.

1                   DIRECTOR MATTHEWS: Member Cline.  
2                   MEMBER CLINE: Yes.  
3                   DIRECTOR MATTHEWS: Member Sherer.  
4                   MEMBER SHERER: No.  
5                   DIRECTOR MATTHEWS: Chairman Ferruccio.  
6                   CHAIRMAN FERRUCCIO: No.  
7                   DIRECTOR MATTHEWS: Member Braden.  
8                   MEMBER BRADEN: Yes.  
9                   DIRECTOR MATTHEWS: Member Cline.  
10                  MEMBER CLINE: Yes.  
11                  DIRECTOR MATTHEWS: Member Sherer.  
12                  MEMBER SHERER: No.  
13                  CHAIRMAN FERRUCCIO: Okay. So we do  
14                  have a tie vote, and this matter will be referred  
15                  to the Secretary of State. We have 14 days to  
16                  prepare position statements and -- and submit  
17                  this to the Secretary of State, and -- and I want  
18                  to thank everybody for their patience and  
19                  attendance here today and for their work.

20                                 Thank you.

21   - - -

22                                 (Thereupon, the hearing in the  
23                                 above-captioned matter was concluded.)

24   - - -

25



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