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Counsel for Respondent
Ohio Secretary of State Jon Husted

DATED: August 17, 2015

Respectfully submitted,

TZANGAS | PLAKAS | MANNOS | LTD

THE OHIO DEMOCRATIC PARTY

/s/ Lee E. Plakas

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/s/ Robert S. Peck

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

CERTIFICATE OF SERVICE

A true and accurate copy of the foregoing has been served by email this 17th day of

August, 2015 upon:

Deborah A. Dawson, Esq., Assistant Chief
Stephan P. Babik, Esq., Assistant Prosecutor
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Secretary of State Jon Husted*

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

AFFIDAVIT OF RELATOR EDMOND J. MACK

STARK COUNTY

SS:

STATE OF OHIO

I, EDMOND J. MACK, being duly cautioned and sworn, and competent to testify to the matters set forth in this Affidavit, hereby swear and affirm as follows:

1. I have personal knowledge of the matters stated in this Affidavit, and am competent to testify on the matters set forth herein.

2. I am a Relator in the Original Action for Prohibition captioned as *State ex rel. Morris v. Stark County Board of Elections*, Ohio Sup. Ct. Case No. 2015-1277 (the “Action”). I testified under oath during the hearing on July 6, 2015 before the Stark County Board of Elections that is the subject of this Action (the “Hearing”), and was present during all aspects of the Hearing.

3. I am further an attorney with the law firm Tzangas Plakas Mannos, Ltd., the managing partner of which is Lee E. Plakas, who is counsel for Relators in this Action. Working with Mr. Plakas, I personally participated in all aspects of the preparation for the Hearing.

4. The following documents identified in Relators’ Index of Exhibits, incorporated herein by reference, are true and accurate copies, which I personally gathered from the following sources:

- A. The Ohio Secretary of State: Exhibit A, Apx. Tabs 2, 3, 8, 10, 88-89, 120
- B. The Stark County Board of Elections: Exhibits C-D, Apx. Tabs 16-46, 48, 108-110, 114-116, 121, 127-128, Exhibit E, Resp. Exhs. A-G, Exhibit F, Exhibit G
- C. The Ohio Supreme Court: Apx. Tabs 104, 123

- D. The Summit County Court of Common Pleas: Apx. Tabs 6, 7
- E. The Stark County Court of Common Pleas: Apx. Tab 47
- F. The United States District Court for the Northern District of Ohio: Apx. Tab 9
- G. The Federal Elections Commission: Apx. Tab 87
- H. The Stark County Commissioners' Office: Apx. Tab 99
- I. The Stark County Auditor's Office: Apx. Tab 106
- J. The Stark County Recorder's Office: Apx. Tab 100
- K. The City of Canton: Apx. Tab 101
- L. The Ohio Historical Society: Exhibits H-J
- M. Hill Court Reporting Services: Exhibit B
- N. The Canton Repository: Apx. Tabs 59-77, 79, 84, 102, 130-131
- O. The Alliance Review: Apx. Tabs 78, 80, 81-82, 85, 86
- P. The Massillon Independent: Apx. Tabs 53-58
- Q. Hills Living Magazine: Apx. Tabs 83
- R. Dr. Stephen C. Brooks: Apx. Tabs 132, 134
- S. Dr. Carl E. Klarner: Apx. Tabs 133, 135
- T. The Stark County Democratic Party: Apx. Tabs 91-92, 94, 98, 107, 111
- U. The Jefferson Jackson Democratic Club: Apx. Tab 90
- V. The Alliance Area Democratic Club: Apx. Tabs 112-113
- W. Westlaw: Apx. Tabs 4, 5, 11-15
- X. 1480 WHBC AM Radio Station: Apx. Tabs 50-52, 93, 103
- Y. The Stark County Political Report Internet Website: Apx. Tab 49
- Z. Kristen Guardado for Judge Campaign Website: Apx. Tab 95

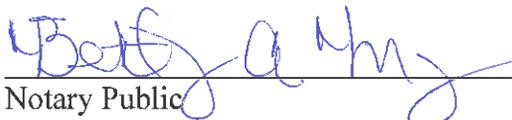
- AA. Chryssa Hartnett for Judge Campaign Website: Apx. Tab 96
- BB. Frank Forchione for Judge Campaign Website: Apx. Tab 97
- CC. Realtor.com Website: Apx. Tab 105
- DD. Dictionary.com Website: Apx. Tab 126
- EE. Zillow.com Website: Apx. Tab 129
- FF. Photographs Personally Taken by the Undersigned: Apx. Tab 124
- GG. Compilation of Information Reflected in the Above Documents Personally
Created by the Undersigned: Apx. Tabs 117-119, 122

5. The documents identified as Apx. Tabs 1-135 and Resp. Exhs. A-G were identified and admitted into evidence at the Hearing.


EDMOND J. MACK

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

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal at Canton, Ohio this 17th day of August 2015.


Notary Public



EXHIBIT

A



Jon Husted
Ohio Secretary of State

180 East Broad Street, 16th Floor
Columbus, Ohio 43215
Tel: (877) 767-6446 Fax: (614) 644-0649
www.OhioSecretaryofState.gov

July 31, 2015

Director Jeffrey Matthews
Deputy Director Jeanette Mullane
Stark County Board of Elections
3525 Regent Ave N.E.
Canton, OH 44705

Re: Tie Votes on the Independent Candidacies of Mr. Thomas M. Bernabei and
Mr. Francis H. Cicchinelli, Jr.

Dear Director Matthews and Deputy Director Mullane:

At the Stark County Board of Elections meeting on July 6, 2015, the board held a protest hearing concerning the independent candidacy and residency of Mr. Thomas M. Bernabei for Mayor of Canton. At the close of the hearing, Chairperson Ferruccio and Board Member Sherer voted to grant the protest and keep Mr. Bernabei off the ballot. Board Members Braden and Cline voted to deny the protest and allow Mr. Bernabei to appear on the ballot.

Additionally, at the Stark County Board of Elections meeting on July 13, 2015, the board held a protest hearing concerning the independent candidacy of Mr. Francis H. Cicchinelli, Jr. for Mayor of Massillon. At the close of the hearing, Chairperson Ferruccio and Board Member Sherer voted to grant the protest and keep Mr. Cicchinelli, Jr. off the ballot. Board Members Braden and Cline voted to deny the protest and allow Mr. Cicchinelli to appear on the ballot.

The board members submitted both tie votes to the Secretary of State for a decision pursuant to R.C. 3501.11(X).

Under Ohio law, an independent candidate is “any candidate who claims not to be affiliated with a political party.”¹ The Sixth Circuit Court of Appeals explained that an independent candidate must actually be unaffiliated or disaffiliated from any political party, and that the claim of unaffiliation or disaffiliation must be made in good faith.²

¹ R.C. 3501.01(I).

² *Morrison v. Colley*, 467 F. 3d 503 (6th Cir. 2006).

MR. BERNABEI

There is little doubt Mr. Bernabei took calculated efforts to disaffiliate from the Democratic Party. Thus, in breaking this tie vote, the determination must be whether Mr. Bernabei's disaffiliation from the Democratic Party was made in good faith. Chairman Ferruccio and Board Member Sherer claim that Mr. Bernabei failed to disaffiliate from the Democratic Party in good faith. I acknowledge that evidence highlighted by Members Ferruccio and Sherer reflects Mr. Bernabei's long-standing affiliation with the Democratic Party. However, the Ohio Supreme Court has noted that "disaffiliation by definition presumes a history of support for or membership in a political party," and if evidence of affiliation "standing alone, could trump a declaration of disaffiliation, then disaffiliation would never be possible."³ Thus, proving that Mr. Bernabei failed to disaffiliate from the Democratic Party in good faith requires more than a recitation of his past political activity. It requires clear and convincing evidence that Mr. Bernabei's declaration was motivated by something other than a sincere change of ideology.

"Clear and convincing" evidence is that measure or degree of proof which will produce in the mind of the trier of facts a firm belief or conviction of the allegations sought to be established.⁴ No evidence in the record before me imparts a firm belief or conviction that Mr. Bernabei's disaffiliation from the Democratic Party was not made in good faith. Instead, the record reflects that Mr. Bernabei expressed a change in ideology leading to his disaffiliation from the Democratic Party, and his actions in furtherance of that change are clear.

His situation is factually distinguishable from Mr. Jolivette's in an important way.⁵ Unlike Mr. Jolivette, Mr. Bernabei did not file a declaration of candidacy and petition for the partisan primary election, and then file a nominating petition for the general election, claiming to be independent, only after becoming aware that his first petition was insufficient and he would not qualify for the ballot. Instead, Mr. Bernabei did not decide to run for office until well after the primary election, and appears to have taken every reasonable step he could have taken to disaffiliate from the Democratic Party before filing his independent candidate nominating petition for the general election. Ohio law provides him no other avenue for disaffiliation than the one he chose.

Protestors also allege that Mr. Bernabei does not have a qualifying voting residence in the city of Canton. However, the record does not support this assertion either. Mr. Bernabei submitted a voter registration update form, signed a lease for the University Avenue apartment, moved belongings into the apartment, and slept there. The fact that he would later move into a home at another address in Canton, that was not available when he signed the apartment lease, is of little significance. The Ohio Supreme Court has noted that a "person's intent is of great import,"⁶ and no evidence in the record before me imparts a firm belief or conviction that Mr. Bernabei's actions exhibited anything but an intent to reside in the city of Canton.

³ *State ex rel. Davis v. Summit Cty. Bd. Of Elections*, 137 Ohio St. 3d 222 (2013).

⁴ *Cross v. Ledford*, 161 Ohio St. 469 (1954).

⁵ *Jolivette v. Husted*, 694 F. 3d 760 (6th Cir. 2012).

⁶ *Stine v. Brown Cty. Bd. Of Elections*, 101 Ohio St.3d 252 (2004).

Without clear and convincing evidence that Mr. Bernabei's disaffiliation from the Democratic Party was not in good faith or that Mr. Bernabei did not intend to reside in Canton, I break the tie in favor of certifying Mr. Bernabei's independent candidacy for Mayor of Canton to the November 3, 2015 General Election ballot.

MR. CICCHINELLI, JR.

Engaging in a similar analysis of the record in Mr. Cicchinelli, Jr.'s case, I arrive at the same conclusion. Once again unlike Mr. Jolivette, Mr. Cicchinelli, Jr. did not seek to run in a party primary election before filing a nominating petition as an independent candidate for the general election, and a recitation of past political activity does not impart a firm belief or conviction that Mr. Cicchinelli, Jr.'s motivation was insincere.

Without clear and convincing evidence that his disaffiliation from the Democratic Party was not in good faith, I also break this tie in favor of certifying Mr. Cicchinelli, Jr.'s independent candidacy for Mayor of Massillon to the November 3, 2015 General Election ballot.

Sincerely,

A handwritten signature in black ink that reads "Jon Husted". The signature is written in a cursive, flowing style with a large initial "J".

Jon Husted

cc: Members of the Stark County Board of Elections

EXHIBIT

B

STARK COUNTY BOARD OF ELECTIONS

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

SPECIAL BOARD MEETING

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

- - - - -

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

Board members:

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

Counsel for Protesters:

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

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

Counsel for Thomas M. Bernabei:

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

Present:

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

I N D E X

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2	EXAMINATION OF:	PAGE	
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21	For the Protesters:	1 through 135	
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24			
25			

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

P R O C E E D I N G S

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

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

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

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

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

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

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

22 MR. FERRUCCIO: Proceed.

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

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

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

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

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

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

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

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

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

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

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

17 Counsel, want to weigh in?

18 Mr. Plakas.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 Guardado's election campaign materials. Throughout,
 2 as required by law to the public, there's a
 3 representation that Mr. Bernabei is part of this
 4 campaign. Not only letters and leaflets, but
 5 there's billboards where it's very clear that Mr.
 6 Bernabei to the public is representing himself as
 7 affiliated with a high-profile Democratic primary
 8 campaign. There is more. And he lends even his
 9 picture. And in each of these, there are many of
 10 these you'll see that he makes a representation that
 11 he is the Stark County Commissioner. So I said that
 12 these campaign materials, whether they are yard
 13 signs, leaflets, or billboards, were circulated and
 14 continue to be circulated up to and through the
 15 election.

16 But even on election day, Mr. Bernabei
 17 continued on the radio and was asking Democrats to
 18 join him in voting in the Democratic primary. The
 19 only way you can join Mr. Bernabei to vote is if
 20 he's a Democrat and you're a Democrat. And, again,
 21 using his own words, so that there won't be any
 22 dispute or lack of clarity as to the facts, I give
 23 you Mr. Bernabei's own words as heard on WHBC and
 24 other stations on the day of the election after he
 25 had made his application claiming he was an

1 Independent.
 2 (Video transcript, Appendix Tab 52.)
 3 MR. PLAKAS: So, again, the point is that
 4 the only way you can join Mr. Bernabei in voting for
 5 Kristen Guardado on the primary election held on May
 6 5th is if you're a Democrat and joining Mr. Bernabei
 7 who claims he's going to be voting for that, in that
 8 same campaign as a Democrat. Because that's the
 9 only way you can vote for Kristen Guardado is in the
 10 primary campaign as a Democrat.
 11 So we will leave now the rules of the
 12 affiliation and jump quickly to the residency
 13 requirements. And, once again, to my right
 14 (indicating), must be a resident of the city, has to
 15 be a permanent, not a temporary resident. And it
 16 will be undisputed that 2118 University Avenue was
 17 not intended nor established as a permanent
 18 residence. This idea of permanent residency, this
 19 isn't a strange or foreign or unfair or unheard of
 20 concept. In fact, in the blank forms that this
 21 Board of Elections and every Board of Elections pass
 22 out, it's very clear and it says "Your voting
 23 residence is the location that you consider to be a
 24 permanent, not a temporary, residence. Your voting
 25 residence is the place in which your habitation is

1 fixed and to which, whenever you are absent, you
 2 intend to return." So that those are the forms that
 3 your Board passes out and everyone is aware of when
 4 they seek to establish voting for when they seek to
 5 run for office. This isn't unusual. This isn't a
 6 statement. This is confirmed by both Ohio State
 7 case law and Ohio State regulations.

8 And the website of the Ohio Secretary of
 9 State repeats this. And it says -- and this is on
 10 the Internet available to anyone in the public and
 11 passed out in hard copy -- and it says that "Your
 12 residence is a location you consider to be your
 13 permanent dwelling." It's not a house where you can
 14 dwell in the basement permanently -- I mean,
 15 temporarily and say "Well, can I crash here for a
 16 couple days." It's not a hotel or a motel. It's a
 17 permanent dwelling.

18 So with regard to the issue by his own
 19 words, did Mr. Bernabei intend this to be a
 20 permanent dwelling. Let's hear from him again.
 21 (Video transcript, Appendix Tab 49, Page 4,
 22 Lines 11 through 21.)

23 MR. PLAKAS: So the Ohio elections law
 24 doesn't encourage or seek to have voters who are
 25 roving voters, wandering voters, nomadic voters,

1 transient voters. They want voters that have
 2 established a permanent residence. Mr. Bernabei by
 3 his own words confirms that it was never intended to
 4 be a permanent residence; and he further clarifies
 5 this and, once again, establishes it.

6 (Video transcript, Appendix Tab 49, Page 3,
 7 Lines 3 through 20.)

8 MR. PLAKAS: So Mr. Bernabei by his own
 9 words recognizes that Ohio elections law to
 10 establish an O.D. residency requires a permanent
 11 residence. He uses those terms of art by saying "my
 12 permanent house is now available." He's not in
 13 there yet. This is after the elections. This is
 14 days after the election. He still is in a temporary
 15 dwelling and telling the interviewer that he is
 16 seeking and waiting to move into what's intended to
 17 be a permanent house. University Avenue, Northwest,
 18 was never intended nor established to be a permanent
 19 house. And, therefore, the application for
 20 candidacy is flawed and should not be granted.

21 So finally then, we've already said this
 22 has never happened in Ohio history before. What set
 23 of facts, not only in terms of disaffiliation but
 24 even in residency with the punitive candidate even
 25 admitting that this was never intended to be a

Page 22

1 permanent residence, what set of facts could be
 2 clearer, a clearer violation of both the letter and
 3 the spirit of the election laws? If, in fact, this
 4 punitive candidate is allowed to circumvent both the
 5 letter and the spirit of the laws, then what this
 6 Board has done and will do by granting him candidacy
 7 is they will establish a new set of laws. It will
 8 be an open season, and everyone on both sides will
 9 soon start to acclimate and start to play fast and
 10 loose with whatever semblance is left of the rules.
 11 So we will provide more detail as we go
 12 along. But thank you for your patience and
 13 attention in giving us the opportunity to present
 14 our protest today. Thank you.
 15 MR. FERRUCCIO: Thank you, Mr. Plakas.
 16 Mr. Vasvari.
 17 MR. VASVARI: Make no mistake. This Board
 18 seeks and receives its guidance from the Office of
 19 the Secretary of State, from the Courts, from the
 20 Supreme Court of the United States, and Supreme
 21 Court of the State of Ohio. Those are the policy
 22 making bodies. The lay down the rules for this
 23 Board and the other 87 Boards of Elections
 24 throughout Ohio's counties. Don't for a minute be
 25 hoodwinked. Don't let the "dyed in the wool" be

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1 pulled over your eyes, that you are somehow setting
 2 a precedence that will shake the foundations of Ohio
 3 election law. You're not for three reasons. First,
 4 those precedences are set by the Courts and by the
 5 Supreme Court. And they have already been set, as
 6 we will argue and we will present throughout this
 7 case, by the Ohio Supreme Court. Each of these
 8 cases is decided on a case-by case and
 9 facts-specific basis.
 10 Yes, this case presents unusual facts. In
 11 the law, we might even call them sui generis:
 12 Things onto themselves. Mr. Plakas has told you so
 13 which means that you're not laying down a broad rule
 14 for all the cases that follow. You're deciding a
 15 specific case on highly unusual, by the protester's
 16 own admissions, and highly specific facts, a case
 17 which might well be limited to its facts. And in
 18 any event, it falls to this Board not to set
 19 precedence with respect to the public policy
 20 determination that govern the way in which this case
 21 is decided. You get that from upstairs, the Ohio
 22 Supreme Court and the General Assembly. It merely
 23 falls to the Board to apply and to interpret the
 24 public policy determinations of those entities as
 25 they have been spelled out.

Page 24

1 Now, we're told that Ohio has an interest
 2 in preventing disharmony, chaos in elections, that
 3 Ohio has an interest, we're told in the Brief, in
 4 the protest, in preserving the system so that there
 5 could be an orderly presentation by the two major
 6 political parties of their respective candidates and
 7 so the people can break off and so that the party
 8 fights don't spill into the streets, confuse the
 9 voters, and leave us with yard signs where Tom
 10 Bernabei shows up as the treasurer. When's the last
 11 time, by the way, any of you stopped in front of a
 12 yard sign in somebody's yard, pulled the car over,
 13 walked up and looked at the ten-point type that said
 14 that who was the treasurer. How many people do you
 15 think are honestly going to be confused by that? My
 16 suspicion is as a practical matter. The answer is
 17 very few.
 18 There's another argument that's, that's at
 19 the heart of all of this. And we'll get there in a
 20 second. But I want to step back first to the
 21 notion, false notion that this Board is making some
 22 precedent that will undermine the stability of
 23 election law. All of the concerns that have been
 24 raised in the Opening Statement of the protesters
 25 have been considered in constitutional First and

Page 25

1 Fourteenth Amendment challenges to the system by
 2 which Independent candidates have and may
 3 disaffiliate themselves from major political parties
 4 and run for office as Independents. The sore losers
 5 statute which is dealt with in our Brief and the
 6 very statute that's in front of us now, .257, which
 7 determines how one goes about declaring one's
 8 disaffiliation and affiliate -- or, running as an
 9 unaffiliated Independent aren't accidents. And they
 10 aren't things that haven't been contested before the
 11 Courts. In fact, they've been contested as high as
 12 the United States Supreme Court, Anderson versus
 13 Celebrezze. And there the Court determined first
 14 the level of scrutiny to apply to the various
 15 interests that Ohio asserted in setting up a
 16 mechanism by people could declare their independence
 17 and whether or not there was a legitimate State
 18 interest that justified the pursuit of those by
 19 writing a limited statute. What were the interests?
 20 The avoidance of confusion, the avoidance of
 21 interested party fights spilling onto the general
 22 election ticket, unorderly primary process. All the
 23 things you just heard articulated, the Supreme Court
 24 found they were legitimate. Great. What did Ohio
 25 do as a public policy matter to ensure that those

1 needs were met? It adopted the very statute that
 2 was later interpreted in the Morrison case by the
 3 Sixth Circuit that formed the basis of Secretary
 4 State Opinion 2705 when Secretary of State Brunner,
 5 taking her guidance the Sixth Circuit, found that
 6 all that is necessary for a candidate to run as an
 7 Independent is for them to declare at least by 4
 8 p.m. on the day prior to the primary their
 9 independence as a candidate in the general election.
 10 All the problems that were articulated, all of those
 11 needs which the Supreme Court in Anderson versus
 12 Celebrezze found to be legitimate State interests,
 13 the answer to those that Ohio adopted was the
 14 mechanism that Tom Bernabei obeyed to the letter.
 15 They had the problem; they prescribed the fix. And
 16 they, the General Assembly, not this Board
 17 respectfully, but the General Assembly are the ones
 18 empowered with enacting those statutes.

19 It isn't a matter of guesswork. If you
 20 look at the disaffiliation statute, its preamble
 21 recites precisely the problems that Mr. Plakas
 22 refers to and states the solution: A clear
 23 disaffiliation and a clear statement of independence
 24 to be made by 4 p.m. the day before the primary
 25 election. And that's what Tom Bernabei did. The

1 state saw this problem. The state solved this
 2 problem. The state prescribed a rule. And that
 3 rule has been followed.

4 Everything else is fluff. Everything else
 5 is inviting you to alter the mechanism that has
 6 already been prescribed by the General Assembly and
 7 approved by the Ohio State Supreme Court, the Sixth
 8 Circuit, and, prior to the statutes being adopted,
 9 prescribed in theory by the United States Supreme
 10 Court.

11 That is the intricate clockwork that you
 12 are being invited today to open up so that Tom
 13 Bernabei can't run for mayor of Canton. I suggest
 14 that you not -- I suggest that as a matter of law
 15 you can't revisit those decisions. That's not the
 16 prerogative of the Board; it's merely to apply them.

17 Estoppel, that's what this is really about.
 18 This is an argument from estoppel. Lawyers will
 19 recognize this term that says somebody who engages
 20 in a course of conduct for such and so and for so
 21 long a time is by virtue of that accumulated conduct
 22 incapable at a point of backing out. He recorded a
 23 radio advertisement for a judicial candidate and
 24 said "join me in voting for her." Way back before,
 25 by the way, he recorded that, he took his decision

1 to run as an Independent. But it was on tape. And
 2 they ran it the next day. And so they say he's
 3 bound to stay out of the race. He's bound to be a
 4 Democrat. He's given all this money to the party.
 5 He's spoken at our events. He belongs to the
 6 Jefferson-Jackson Club. He's held offices as a
 7 Democrat. Run for office as a Democrat. He's
 8 enjoying our largesse. We own him. There's no
 9 getting out now, Tom. You've been in for 40 years.
 10 Just when he tries to get out, they try to drag him
 11 back in. Except estoppel doesn't work because the
 12 Supreme Court has recognized the inalienable right
 13 of a person to affiliate and disaffiliate with a
 14 political party of their choice at will, and
 15 Secretary Brunner wrote that into Ohio law in
 16 Opinion 2007-05 when she says that the wholesome
 17 total of what people did in the past cannot count as
 18 the basis against disaffiliation because an Ohioian
 19 maintains the right at all times to disaffiliate
 20 from their party at will.

21 Everything that they tell you about what
 22 this man did in the past has to be weighed against
 23 that statement: The right to disaffiliate from his
 24 party at any time at will. They bear the burden by
 25 clear and convincing evidence of demonstrating two

1 things, that he didn't take the necessary step --
 2 and there's only one necessary step which is
 3 registering as a candidate, filing those petitions
 4 as an Independent, and stating that he disaffiliated
 5 by 4 p.m. on May 3rd -- which he did; there's no
 6 doubt about that -- and that that statement wasn't
 7 in good faith.

8 Well, how can they show it wasn't in good
 9 faith? The essence of their argument is that 40
 10 years of affiliation means he's got to be telling
 11 something other than the truth. That doesn't count
 12 for a hill of beans. Because he has the right to
 13 disaffiliate from his party for any reason and at
 14 any time.

15 So the sky won't fall, the sky won't fall
 16 if this Board on the specific facts of this case
 17 finds that Tom Bernabei did -- and we will show you
 18 based upon the testimony and not only of this man
 19 but of esteemed political leaders in this
 20 community -- that his actions were in good faith and
 21 he did every single thing he could have done to take
 22 practical action to disaffiliate himself from the
 23 party. He changed his voting address. He moved his
 24 house. He burned 40 years of bridges. He resigned
 25 as the treasurer of three committees. He resigned

1 from the Democratic clubs and the committees to
2 which he belonged. He resigned his office in the
3 Stark County Democratic Party.

4 We asked you in our Brief and we ask you
5 here again -- and I intend to ask every one of their
6 witnesses -- what more could he have done. Should
7 he have thrown a Molotov cocktail through the window
8 of party headquarters? Would that have convinced
9 them that he wanted out? He did everything he could
10 practically do. And you know what? It's not our
11 burden to prove that. Our burden is only to
12 demonstrate that he said he was disaffiliated. They
13 bear the burden of showing that that disaffiliation
14 was in bad faith. They can't carry that burden.

15 We'll pick at the pieces throughout the
16 day; I promise you. But we'll do more than that.
17 We're going to shoulder the burden the law doesn't
18 put on us and that can't be put on us. But we're
19 going to do it voluntarily. We're going to
20 demonstrate that he was in good faith and earnest
21 based on his character and based on his political
22 convictions. We're going to demonstrate that the
23 only moral choice for him, given the conclusions to
24 which he could come about the party and its
25 operation and its failure to provide a candidate for

1 the City of Canton that he could live with, the only
2 moral choice for him was to resign.

3 We'll hear a lot about loyalty. But I'm
4 going to suggest to you today that Tom Bernabei did
5 what he did and he's doing what he's doing in
6 obedience to a higher loyalty which is his duty to
7 the people and his duty to the electors and not his
8 duty to his party which is subordinate. And it is
9 his duty to the party, not the process, not to
10 fairness, not to anything more than political
11 advantage that brings these protesters here today,
12 to engage in a cheap partisan hit job on the
13 character of a man who has served this community for
14 four decades with distinction and honor.

15 Now, about the house. They urge on you a
16 hypertechnical reading of Ohio law. We Briefed
17 this. They suggest that Mr. Bernabei was lying when
18 he said that his permanent place of residence on his
19 ballot, the change of address was the University
20 Avenue address, because he moved into that address
21 knowing full well that he would be moving out. They
22 neglect the second part, that he'd be moving out to
23 another house that he already owned in Canton, that
24 on University Avenue he took a lease -- not as a
25 transient in a hotel -- but over a thousand dollars

1 on a month-to-month lease. There's no one else in
2 this city who because they rented an apartment or
3 rented a house at substantial personal expense on a
4 month-to-month lease, you or they or anyone else,
5 would say it wasn't a permanent resident by virtue
6 of that leasehold. He rented on a month-to-month.
7 He was obligated to be there for at least a month.
8 He paid to be there for at least a month. He had no
9 right to be there for at least a month. And for all
10 he knew, he would be there for at least a month
11 because the Lakecrest house, which was his, was
12 rented to a family with two children and one on the
13 way who were closing on another house; and he didn't
14 exactly want to kick them to the street for his own
15 political convenience. And so he waited.

16 When the Noyes family would leave Lakecrest
17 was not in Tom Bernabei's control. It was not
18 something that he knew. It wasn't something that he
19 could predict. So he took a house and waited. One
20 house in Canton versus another house in Canton. We
21 have cited Supreme Court decisions from the 1950s
22 forward that demonstrate that that sort of intention
23 to make one's permanent residence in a community is
24 what really matters. But you know what? They want
25 to be hypertechnical about it. So let's be

1 hypertechnical about it. Ask yourself not what the
2 form promulgated by this Board says, not a quick
3 summary of what the law is, not a paraphrase of what
4 the law is on both the Secretary of State's website
5 and the materials passed out by the Board, because
6 quick summaries and paraphrases don't govern. What
7 governs is the Ohio Revised Code. And the Ohio
8 Revised Code in Section 3503.02(A) says that a
9 permanent residence is the place to which when you
10 are absent you intend on to return. So ask
11 yourself, after you hear that the last time Tom
12 slept in Jackson Township was in April, where did he
13 intend to return on the 3rd when his change of
14 address was filed? Where did he sleep that night?
15 Where did he intend to return on the 4th when his
16 petitions were filed? Where did he intend to return
17 the next number of days until the Noyse family left
18 the Lakecrest house. The answer to that question,
19 the answer to the hypertechnical question that these
20 people pose is that he intended to return to
21 University Avenue every one of those days and for a
22 number of days going forward and an indeterminate
23 number of days, because he didn't know when the new
24 address would be available.

25 Yeah, Tom Bernabei didn't have a house in

1 Canton when he filed his petitions; he had two. And
2 as a result of that, because he intended to move
3 from one to the other when the next became
4 available, they hypertechnically say "temporary
5 residence." Temporary residence. Permanent
6 residence. Those words, "temporary" and
7 "permanent," they're grafting onto the statute. The
8 statute provides the language, the place to which he
9 intended to return. And as you hear, and as the
10 evidence will bear out, he intended to return to
11 University Avenue on the 3rd when his change of
12 address was filed and on the 4th when his petitions
13 were filed. The heavens are not going to fall.
14 This case is sui generis.

15 I'm very curious to hear what the experts
16 on politics have to say. But I'm more interested in
17 what justice has to say. Because even, even if the
18 heavens were to fall, we go back a lot farther than
19 the law of 1800 to come up with fiat justitia ruat
20 coelum: Let justice be done though the heavens may
21 fall. That's your job.

22 MR. FERRUCCIO: Thank you.

23 Mr. Plakas.

24 MR. PLAKAS: We'd like to call as our first
25 witness, Mr. Bernabei, as upon Cross.

1 MR. BERNABEI: Can I take a note pad with
2 me?

3 MR. FERRUCCIO: Sure.
4 (Thomas M. Bernabei was duly sworn by
5 Notary Public Jocelyn S. Harhay.)

6 CROSS-EXAMINATION

7 BY MR. PLAKAS:

8 **Q. Good morning, Mr. Bernabei?**

9 A. Good morning.

10 **Q. Will you pull up -- you have a book in front of
11 you --**

12 A. Uhm-huhm.

13 **Q. -- with the appendix, both the big -- both books.
14 The small book is a supplement appendix exhibits.
15 The Board has it. But to be more effective in this
16 matter, whenever we refer to an exhibit, we will put
17 it on the screen so you don't have to leaf through
18 it and the Board, if they prefer not to, don't have
19 to leaf through the exhibit ledgers.**

20 MR. PLAKAS: All right. Let's pull up
21 Exhibit 16, please.

22 And with regard to Exhibit 16, let the
23 Record show that that's the Declaration of Candidacy
24 Party Primary Election.

25 **Q. It's signed by you. Well, in the middle, it says "I**

1 **hereby declare that I desire to be a candidate for
2 the nomination of the office of Stark County
3 Commissioner as a member of the Democratic Party."
4 And I'm going down right above your signature. It
5 says "I further declare that if elected to this
6 office or position I will qualify thereof and I will
7 support and abide by the principles enunciated by
8 the Democratic Party." And I have become familiar
9 with your scribble signature. That is, indeed, your
10 scribble signature?**

11 A. I wouldn't call it a scribble. But that is my
12 signature.

13 **Q. I wouldn't call it a work of art either. So you
14 understand -- and actually this form indicates that
15 statements made on election documents are made under
16 the penalty of election falsification. And that's a
17 felony of the fifth degree; correct?**

18 A. Yes.

19 **Q. Okay. So with that said, when you make the
20 representation to the State of Ohio, to the county,
21 to the Board of Elections, that's a serious
22 statement, isn't it?**

23 A. I agree. It's a serious statement. I'm not sure,
24 by the way, that, that disobedience to that last
25 portion would or would not be a felony. But it is a

1 serious statement and should be taken seriously.

2 **Q. So it should be taken seriously when you state to
3 the public and to the Board of Elections "I will
4 support and abide by the principles enunciated by
5 the Democratic Party" as you so stated on November
6 22nd, 2011, for the 2012 general election; correct?**

7 A. Yes.

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

13 A. Yes.

14 **Q. Everything you said in there you desired and
15 intended that the voters believe and rely on; right?**

16 A. To the extent voters read nominated petitions. But,
17 yes.

18 **Q. And then as you went through your candidacy, which
19 started with this declaration --**

20 MR. PLAKAS: Exhibit 108.

21 **Q. -- you were on the primary ballot for county
22 commissioner on March 6th, 2012; correct?**

23 A. If you say so. I'm not certain of the date. But I
24 ran for commissioner this last term.

25 **Q. Okay.**

1 MR. PLAKAS: And if we can pop it out,
2 Beth, so Mr. Bernabei can easier look at that.

3 **Q. So Exhibit 108 reflects that on March 6th, 2012, the**
4 **primary election, you were actually unopposed in the**
5 **primary for county commissioner; and you received**
6 **13,139 votes? Agreed?**

7 A. If that's what the document says, yes.

8 **Q. Then we go to Exhibit No. 109, moving to the general**
9 **election. And the general election was on November**
10 **6th, 2012. And, once again, in this general**
11 **election it indicates Tom Bernabei. And just like**
12 **it did in the primary where it indicated that you**
13 **were a Democrat in the general election --**

14 MR. PLAKAS: If you could pop it out.

15 **Q. -- it says "Thomas Bernabei, Democrat;" and you**
16 **received 116,167 votes? Correct?**

17 A. Yes.

18 **Q. And this procedure -- and we won't take up the**
19 **time -- you actually had gone through a similar**
20 **procedure when you ran in the 2010 election?**

21 A. Yes.

22 **Q. And you, you signed the same kind of form where you**
23 **stated that if elected you would support and abide**
24 **by the principles of the Democratic Party?**

25 A. Yes.

1 **Q. You ran and you won that election; right?**

2 A. Yes.

3 **Q. Okay. And actually three parties were in that**
4 **election, involving a Conservative, Independent,**
5 **that took off, bled off some of the votes; correct?**

6 A. Yes.

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

12 A. Yes.

13 **Q. Your counsel asked the rhetorical question of what**
14 **more you could have done to disaffiliate yourself.**

15 **You ran twice and won with the support of the**
16 **Democratic Party, suggesting and promising that if**
17 **elected you would support and abide by the**
18 **principles of the Democratic Party. One of the**
19 **things you could have done to clarify and make clear**
20 **your disaffiliation, you could have resigned this**
21 **position; correct? You could have done that?**

22 A. Yes.

23 **Q. Okay. Let's go to Exhibit 17, please. Exhibit 17**
24 **is the Declaration of Candidacy of the Party Primary**
25 **Election. And it's for the primary election of May**

1 **6th, 2014. And it's as a member of the Democratic**
2 **County Central Committee. And if you look --**

3 MR. PLAKAS: Beth, could you highlight the
4 heading so that everyone can see that.

5 **Q. This is a declaration, the very top of the page,**
6 **"For member of the County Central Committee." Okay.**

7 **And then if you go about one-third of the way down,**
8 **it identifies as a member of the Democratic Party.**

9 **Right there. Okay. And, thereafter, if you go**
10 **about three-fourths of the way down, it makes again**
11 **the statement that you signed on January 31st, 2014.**

12 **And it states "I further declare that if elected to**
13 **this office I will qualify thereof and I will**
14 **support and abide by the principles enunciated by**
15 **the Democratic Party." And, once again, we find**
16 **your signature which neither one of us need to**
17 **further characterize? Is that correct?**

18 A. Yes.

19 **Q. Okay. So in an effort to clarify your**
20 **disaffiliation, you at least attempted to resign and**
21 **submitted a letter of resignation to the Stark**
22 **County Democratic Central Committee; correct?**

23 A. I think I, I did, in fact, do so, yes.

24 **Q. Okay. And before you did so, and on Exhibit No. 48,**
25 **on the third page, this position that you ran for --**

1 **once again, you were representing your commitment to**
2 **abide by the principles of the Democratic Party --**

3 **you actually, once again, won that election; didn't**
4 **you?**

5 A. Yes.

6 **Q. All right. So making a representation that you're**
7 **going to abide by the principles, running for the**
8 **Democratic Central Committee, you win the election,**
9 **when you made that representation in your filing**
10 **that you were going to abide by the principles, you,**
11 **once again, were promising to the voters that you**
12 **would abide by the principles; and you expected the**
13 **voters to rely upon that promise and commitment?**
14 **Correct?**

15 A. I signed the form as stated.

16 **Q. Well --**

17 A. Again, my --

18 **Q. You signed a serious form under penalties --**

19 A. Yes.

20 **Q. -- of the election law?**

21 A. I signed the form as stated. Again --

22 **Q. That's what the --**

23 A. -- the same issue. As I said before, I don't know
24 that the voters themselves, you know, read that form
25 or are privy to that form.

1 **Q. But the fabric of election law requires and presumes**
 2 **that punitive candidates do read the forms, do**
 3 **understand their seriousness, and agree to abide by**
 4 **the election laws; correct?**
 5 A. I already answered that. Yes.
 6 **Q. Okay. And part of your abiding by the election laws**
 7 **is, you represented as required on this form and on**
 8 **other forms, that if elected to the office -- and**
 9 **this one the Party Central committee -- that you**
 10 **would support and abide by the principles enunciated**
 11 **by the Democratic Party; correct?**
 12 A. I've already answered that. Yes.
 13 **Q. And you won this election based upon that**
 14 **representation and promise in May of 2014; correct?**
 15 MR. VASVARI: Objection.
 16 A. I already answered that question. Yes.
 17 **Q. You making that same representation so there**
 18 **wouldn't be any lack of clarity of your**
 19 **disaffiliation, you actually resigned from the**
 20 **Democratic Central Committee; didn't you?**
 21 A. Yes.
 22 **Q. Although you made the exact same representation**
 23 **throughout the process when you ran for the office**
 24 **of county commissioner, you didn't resign from that?**
 25 **You're still drawing a salary? You're still drawing**

1 **benefits; correct?**
 2 A. Yes.
 3 **Q. You could have resigned from that and you could have**
 4 **given up your county salary; correct?**
 5 A. Could have.
 6 **Q. And you're already receiving a, a retirement benefit**
 7 **for your years of public service, aren't you?**
 8 A. Yes.
 9 **Q. So, in fact, you're what we call a double dipper?**
 10 MR. VASVARI: Objection.
 11 A. (Inaudible), by the way, the meaning of that --
 12 MR. FERRUCCIO: Sustained.
 13 A. -- but, yes.
 14 MR. FERRUCCIO: Stay to the issue, Mr.
 15 Plakas.
 16 MR. PLAKAS: Thank you.
 17 BY MR. PLAKAS:
 18 **Q. Would you agree that the language that I read you,**
 19 **both in your application, your declaration for**
 20 **commissioner, and also for Party Central Committee,**
 21 **were identical in terms of your commitment to**
 22 **support and abide by the principles; correct?**
 23 A. I didn't look at it close enough to agree it's
 24 identical, but very similar. It may have been
 25 identical.

1 **Q. You would agree that in playing by the rules --**
 2 **And you want to play by the rules; don't**
 3 **you?**
 4 A. Absolutely.
 5 **Q. You think elected officials should play by the**
 6 **rules, shouldn't they?**
 7 A. Absolutely.
 8 **Q. They shouldn't attempt to skirt them?**
 9 A. Absolutely.
 10 **Q. They should comply both with the letter and the**
 11 **spirit of the law; correct?**
 12 A. Yes.
 13 **Q. They should be examples?**
 14 A. Yes.
 15 **Q. They should support the integrity of the election**
 16 **system?**
 17 A. Yes.
 18 **Q. Our country, our community depends on that; doesn't**
 19 **it?**
 20 A. Absolutely.
 21 **Q. You've recognized and understood in terms of your**
 22 **efforts that you have to establish complete**
 23 **disaffiliation with your Democratic Party before you**
 24 **begin the process of filing; correct?**
 25 A. Yes.

1 **Q. And you so stated to the general public in various**
 2 **things, Exhibit 49, Page 9, Line 15 through 21.**
 3 **(Video played.)**
 4 **Q. So by your own words, you recognize that properly**
 5 **playing by the rules, meeting the election laws is**
 6 **you have to establish disaffiliation before you**
 7 **file; correct?**
 8 A. I didn't --
 9 **Q. That's what --**
 10 A. I didn't quite all, understand all the words spoken
 11 there. But that is my general comment and general
 12 intent, yes.
 13 **Q. Those words were your words, not mine.**
 14 A. Yes.
 15 **Q. Okay. And in your words, you said, you know,**
 16 **"general standards out there." "There are some**
 17 **general standards. One is establish, you know,**
 18 **disaffiliation before you file." You understood**
 19 **that that was the rule?**
 20 A. Yes.
 21 **Q. Okay. And, No. 2, you have to do that in good**
 22 **faith?**
 23 A. Yes.
 24 **Q. And, No. 3, if you are establishing complete**
 25 **disaffiliation before you file, you cannot continue**

1 to be affiliated up to, through, and including the
 2 election; correct?
 3 A. Yes.
 4 **Q. Let's go to the Democratic primary election of May**
 5 **5th, 2015. Go to Exhibit 116, please.**
 6 A. I'm sorry. What exhibit?
 7 **Q. 116. I believe it's in your supplemental book. And**
 8 **it's on the screen.**
 9 MR. VASVARI: I'm sorry. I don't have a
 10 supplemental book. Will someone give me a
 11 supplemental book? Thank you.
 12 MR. FERRUCCIO: You don't have a basic book
 13 either?
 14 MR. VASVARI: No. But I have their book in
 15 digital.
 16 MR. PLAKAS: For the Record, the basic
 17 exhibit book has been filed for six or seven weeks
 18 now?
 19 MR. VASVARI: I have the basic exhibits. I
 20 just have it on my iPad.
 21 MR. PLAKAS: Exhibit No. 116, let's pop out
 22 the title here, Declaration of Candidacy Party
 23 Primary Election for Judge or Clerk of the Municipal
 24 Court.
 25

1 BY MR. PLAKAS:
 2 **Q. Let's go about a third of the way down where it says**
 3 **"I further declare that I desire to be a candidate**
 4 **for the nomination to the office of judge of the**
 5 **Canton Municipal Court as a member of the Democratic**
 6 **Party." So you're familiar with the Democratic**
 7 **primary election campaign of Kristen Guardado;**
 8 **correct?**
 9 A. Yes.
 10 **Q. Okay. And let's go to Exhibit No. 21. And Exhibit**
 11 **No. 121 says Designation of Treasurer at the top.**
 12 **That's to confirm who's it for?**
 13 A. I'm sorry. 21 or 121?
 14 **Q. 21, please.**
 15 A. 21.
 16 **Q. Okay. And then it shows that you are designated as**
 17 **the treasurer; correct?**
 18 A. Yes.
 19 **Q. Okay. And under Ohio election law, a candidate**
 20 **creating a campaign committee has to designate**
 21 **publicly who the treasurer is; correct?**
 22 A. Yes.
 23 **Q. Okay. And go down to little bit farther where it**
 24 **talks about the Candidate's Campaign Committee. And**
 25 **the party affiliation for that campaign committee is**

1 a Democrat; correct?
 2 A. Yes.
 3 **Q. And go down to the now, now so famous signature.**
 4 **That is apparently your mark we'll call it?**
 5 MR. FERRUCCIO: Mr. Plakas, you must not
 6 like Picasso? I mean that's a great signature.
 7 MR. BERNABEI: Thank you.
 8 MR. PLAKAS: I love Picasso.
 9 BY MR. PLAKAS:
 10 **Q. That is your signature?**
 11 A. Yes.
 12 **Q. And it's dated February 5th, 2015; correct?**
 13 A. Yes.
 14 **Q. Under Ohio election law, the treasurer is to be**
 15 **identified on campaign materials; correct?**
 16 A. Yes.
 17 **Q. Okay. So let's --**
 18 A. I believe the treasurer or chairperson. I'm not
 19 sure if there is a requirement that it only be the
 20 treasurer. I'm not sure.
 21 **Q. That is correct.**
 22 A. I'm --
 23 **Q. That's correct. You made that strategic decision**
 24 **along with candidate Guardado that, because you have**
 25 **had some degree of public notoriety that your name,**

1 **rather than the campaign chairman, would be on these**
 2 **campaign materials; correct?**
 3 A. That is incorrect.
 4 **Q. At any rate, your name is on the campaign materials?**
 5 A. At any rate, it is. But that is incorrect that I
 6 made the strategic decision.
 7 **Q. It could have had another name. But your name**
 8 **appears on that campaign materials?**
 9 A. It was a decision I did not make. It was a decision
 10 that the candidate made.
 11 **Q. Did you object to that decision?**
 12 A. I'm not even sure if I was involved in that
 13 decision. I probably was not.
 14 **Q. Well, you have lived and breathed the air in the**
 15 **cites of Stark County the first half of 2015,**
 16 **haven't you?**
 17 A. Absolutely.
 18 **Q. You have seen dozens of different types of campaign**
 19 **materials for Kristen Guardado, haven't you?**
 20 A. I've seen them. I don't know whether I have ever
 21 bothered to look at the bottom line of them.
 22 **Q. Okay. Well, let's look at the bottom line. Exhibit**
 23 **92, please.**
 24 A. I mean, by the way, to save time here, I'm not
 25 disputing that my name was on them. I'm just

1 indicating to you that you stated that I made the
2 strategic decision. I'm saying that was a decision
3 made by the candidate and not by myself.

4 **Q. But you never --**

5 A. As you can see, as you can see, the address of Tom
6 Bernabei, treasurer, is not my address.

7 **Q. Okay.**

8 A. So, again, it was something that I did not
9 participate in. Otherwise, the address would have
10 been present.

11 **Q. Sure. But you did not object to it either, did you?**

12 A. No.

13 **Q. Okay. And you knew it was being utilized; correct?**

14 A. To some extent, yes.

15 **Q. Okay. You knew not only in yard signs -- you knew
16 it was utilized in yard signs; correct.**

17 A. I don't know that. I never looked at one. But I
18 have no objection to it.

19 **Q. In mailers; correct?**

20 A. Again, the same. But I have no objection to it.

21 **Q. Billboards?**

22 A. The same.

23 **Q. Okay. And in radio spots; correct?**

24 A. Right.

25 **Q. And, in fact, you, as close to the election as April**

1 **29th, the last day that you were in Stark County
2 before you left for Florida, you actually recorded a
3 series of radio spots that played for the next
4 several days? Because I think your counsel may have
5 had those dates wrong. But actually you were
6 recording new radio spots as of April 29th, weren't
7 you?**

8 A. I, No. 1, I believe I only recorded one spot. And
9 that was WHBC. And, secondly, I believe that I on
10 April 27, rather than on April 29th, I recorded a
11 spot. I don't think I did so. But I can't tell you
12 for certain.

13 **Q. We'll get to that. Because we have documentation --**

14 A. Okay.

15 **Q. -- as to actually. So we know what we're talking
16 about...**

17 MR. PLAKAS: ...can you please play 52.
18 (Video transcript, Appendix Tab 52.)

19 **Q. The next-to-the-last sentence where you say "Please
20 join me in voting for Kristen Donohue Guardado for
21 judge," this was a primary, a Democratic primary
22 election that Kristen Donohue Guardado was running
23 in; correct?**

24 A. Yes.

25 **Q. To vote for her in that primary election, you had to**

1 **be a Democrat; correct?**

2 A. Yes. Or registered as one.

3 **Q. Or registered.**

4 A. I think you could be a nonpartisan and take a
5 nonpartisan ballot.

6 **Q. Register as a Democrat. So when you stated "Please
7 join me in voting for Guardado," that was a
8 representation that you were going to vote for her;
9 correct?**

10 A. Well, I hope they didn't join me because, in fact, I
11 did not vote for Guardado. Because I didn't. I
12 voted in the Democratic primary.

13 **Q. Well, that, that's confusing to me. Because the
14 records will reflect that on April 29th you recorded
15 this. The records will reflect that this ran
16 throughout the county on April 30th, May 1st, May
17 2nd, May 3rd, 4, and even May 5th. And it confuses
18 me. Because you're representing to the county that
19 "Please join me in voting for Kristen Donohue
20 Guardado for judge." So is that a false statement
21 that you were making?**

22 A. I think that you misunderstood my previous comment.
23 That statement stands on its own. I said to you I
24 hope that they, in fact, did not ultimately join me
25 because I did not ultimately vote for her.

1 **Q. Well, the message is that you were going to vote for
2 her; right?**

3 A. I anticipated voting for her. Yes.

4 **Q. Okay. And that was on April 29th; correct?**

5 A. I would, again, like to see evidence as to what date
6 that was or was not.

7 **Q. Okay. Well, fortunately we do have the evidence.
8 Let's go to Exhibit 93. With Exhibit 93, there's an
9 invoice from WHBC. Now, you indicated that you
10 didn't think it ran on WHBC but it did.**

11 A. Excuse me. I never said that. I said I made one
12 and only one commercial. You suggested I made
13 multiple commercials. And I made it at WHBC, is
14 what I said.

15 **Q. Okay.**

16 A. And I don't know what radio stations it ran on
17 because I am not involved in that aspect of her
18 campaign. But I would assume that it definitely ran
19 on WHBC.

20 **Q. Good. Then we agree that you made a radio
21 commercial that was to run on at least -- was
22 recorded at WHBC and was intended to run on the
23 radio stations; correct?**

24 A. Yes.

25 **Q. Okay. And on the first page of Exhibit No. 93, it**

1 shows run dates, starting the day after you recorded
2 it, on April 30th through May 5th. And this was
3 News-Talk 1480 WHBC. So that's the series of run
4 dates and the charges. You will note that your
5 radio ads asking voters to join you in voting for
6 Kristen Guardado, the Democratic candidate, they ran
7 Monday, the 4th, Tuesday, the 5th; correct?

8 A. Yes.

9 Q. And if you go to the next page, which shows at the
10 top Mix 94.1, so here's another, by its call
11 numbers, at least another radio show or station.
12 And, once again, it shows the, the ads running from
13 April 30th to and through May 5th; correct?

14 A. Yes.

15 Q. Now, let's go to Exhibit No. 103, please. And
16 Exhibit No. 103 for the record is communications
17 from Rebecca Marchino at WHBC. And this confirms
18 that she e-mailed us the audio file that you just
19 listened to and confirmed the record run dates. Now
20 if there's any serious disagreement or claim that
21 Miss Marchino is, is incorrect, we have subpoenaed
22 her; she's standing by to testify, if necessary. I
23 believe and I suspect that that won't be necessary.

24 But if the Board wants us to actually --
25 she's standing by at WHBC. And she can travel here

1 to confirm that this is, in fact, her e-mail that
2 the run dates are, are those that are indicated in
3 the correspondence that she created and that the
4 radio spot is, in fact, the spot that, that we ran,
5 if there's no objection. And we can call her at the
6 next break and release her.

7 Q. I presume that you would agree, now that you've seen
8 the documentation, that you have no concrete reason
9 to dispute that either that was your voice, No. 1,
10 No. 2, that you recorded it as a communication as
11 indicated on April 29th, and, No. 3, that it ran on
12 those dates indicated in her communications? May we
13 have a stipulation as to that?

14 A. It was my voice.

15 Q. Yes.

16 A. I presume that it ran on those dates. I can't know
17 otherwise. But I presume that, that is accurate.
18 The question and the reason you started showing me
19 this exhibit is because I said I was uncertain as to
20 whether or not I recorded it on April 27th or April
21 29th.

22 Q. And if you look at 103 --

23 A. And I'm looking, by the way, at the first exhibit
24 you provided me which is 93 which apparently you
25 indicated is evidence of in some way, shape, or form

1 I did this on the 29th.

2 I look at top of that (indicating) and I
3 see that the invoice -- or, that has an invoice date
4 April -- May 28th. I don't know what date I --
5 again, I tell you --

6 Q. That's what, Mr. Bernabei, we have Exhibit No. 103
7 for. So let's go to 103. First page of 103.

8 A. I've seen 103.

9 Q. And it says "Bernabei came in on April 29th at 9:30
10 a.m. to record." Do you have any legitimate reason
11 to dispute the accuracy of this, recognizing that
12 this was what she gave us?

13 A. I have no reason to dispute the accuracy of what she
14 put on that particular document. I'm telling you
15 that from my own recollection I'm not sure whether
16 it was the 27th or the 29th. And that does not in
17 and of itself convince me that it was still the 29th
18 without my reviewing my own records.

19 Q. So it sounds like we don't have a stipulation on the
20 29th.

21 MR. PLAKAS: So, Beth, at the next break,
22 call Miss Marchino.

23 A. I didn't know it was my job to provide a
24 stipulation. But I would ask my counsel to do
25 so....

1 THE WITNESS: ...if you so desire.

2 MR. VASVARI: I don't.

3 A. I don't know what difference it makes, whether it
4 was the 27th or 29th. I'm just telling you that I
5 don't know that it was the 29th.

6 Q. I think it does make a difference.

7 A. Okay.

8 Q. Would you agree that prior to you leaving for
9 Florida -- and you came back on the afternoon of
10 Sunday, May 3rd -- you prior to that time made no
11 effort to communicate to Kristen Guardado to stop
12 representation that you were supporting her in her
13 Democratic campaign? You made no effort to do that?

14 A. Of course not.

15 Q. Okay. In terms of, again, the rhetorical question
16 that your attorney said, "What else could Mr.
17 Bernabei have done," you at a minimum could have at
18 least called her and told her that you were going to
19 abandon the Democratic principals an disaffiliate?
20 You could have done that; correct?

21 MR. VASVARI: Objection.

22 MR. FERRUCCIO: Sustained.

23 BY MR. PLAKAS:

24 Q. You could have communicated with her; correct?

25 MR. FERRUCCIO: I sustained his objection.

1 MR. PLAKAS: Okay.
 2 BY MR. PLAKAS:
 3 **Q. Let's go to Exhibit No. 84. Under the section**
 4 **"party affiliation," as it was generally -- the**
 5 **third sentence -- as was generally viewed, your name**
 6 **continued to be on campaign signs through the day of**
 7 **the election; correct? You would not disagree with**
 8 **that?**
 9 A. No. I agree with that.
 10 **Q. Okay. And two lines -- three lines farther down,**
 11 **once again the general understanding that you had**
 12 **described yourself as a dyed-in-the-wool Democrat.**
 13 **This is now reported by a second newspaper or media**
 14 **outlet. Those are your words? That's how you**
 15 **described yourself; correct?**
 16 A. I acknowledge that. Yes.
 17 **Q. Okay. Exhibit No. 94.**
 18 A. At least, by the way on that, on Exhibit 84, at
 19 least the Repository finally put a good picture here
 20 of me on that one. Thank you.
 21 **Q. A high school senior picture.**
 22 A. I forget what exhibit number.
 23 **Q. Exhibit 94. During the term of your voting office**
 24 **as a public officeholder, your picture has been on**
 25 **the walls of the Democratic Party headquarters as**

1 **one of the Democratic officeholders; correct?**
 2 A. I don't know that. But I see it, I see it up there.
 3 **Q. You've never been in the Democratic Party**
 4 **headquarters?**
 5 A. Very, very infrequently.
 6 **Q. That's not a surprise to you that they -- that your**
 7 **picture is on the wall of the Democratic Party**
 8 **headquarters, is it?**
 9 A. No.
 10 **Q. Okay. You've never asked them to remove it, have**
 11 **you?**
 12 A. No.
 13 **Q. Okay. You could have; correct?**
 14 A. I wouldn't because it's not my obligation. I didn't
 15 ask them to put it up and I wouldn't ask them to
 16 take it down. It's not my, it's not my business.
 17 It's not my building.
 18 **Q. On Exhibit --**
 19 A. It's the party chairman's business.
 20 **Q. Okay. On Exhibit No. 98 --**
 21 A. I also like that picture, by the way for the Record.
 22 **Q. 94 you like. Let's go to 98. See how you like**
 23 **this.**
 24 A. Okay.
 25 **Q. This is the website of the Stark County Democratic**

1 **Party. And your picture appears there also. Do you**
 2 **like that picture?**
 3 A. That's the same picture I believe.
 4 **Q. And for the Record, you've never asked your picture**
 5 **identifying you as Democratic Party officeholder to**
 6 **be removed, have you?**
 7 A. No. Again, I didn't ask it to be posted. I didn't
 8 ask it to be removed. And it's not my business. I
 9 don't believe I ever looked at the Stark County
 10 Democratic website.
 11 **Q. Let's go to Exhibit 80, please.**
 12 A. I'm sorry.
 13 **Q. Exhibit 80. On the second page at the bottom of**
 14 **Exhibit 80, this is the quote that we've all heard**
 15 **from various sources attributable to you. One of**
 16 **the first times or one of the recent times it**
 17 **appeared was in an Alliance Review article, March**
 18 **17, 2014. And those are your words: "Yes, I'm a**
 19 **dyed-in-the-wool Democrat who serves with two**
 20 **Republicans"; correct? You use this language well;**
 21 **don't you? You try to use the English language**
 22 **well, don't you?**
 23 A. I try to.
 24 **Q. Okay. Let's go to Exhibit No. 126.**
 25 A. As your transcript of my interview with Mr. Olson

1 would indicate, I sometimes stutter and so forth a
 2 lot.
 3 **Q. Okay. Thank you for that --**
 4 A. Thank you.
 5 **Q. -- qualification. You make reference repeatedly to**
 6 **yourself as a dyed-in-the-wool Democrat. So that**
 7 **there's no lack of clarity, you wouldn't disagree**
 8 **with the definition from Merriam-Webster in terms of**
 9 **defining dyed-in-the-wool? You would agree that**
 10 **dyed-in-the-wool means having very strong beliefs,**
 11 **opinions, et cetera, that you are not willing to**
 12 **change? That's a fair definition of**
 13 **dyed-in-the-wool, isn't it?**
 14 A. Yes. I would agree. By the way, I think earlier I
 15 said that I acknowledge that that is my statement.
 16 That statement, by the way, was made in response to
 17 a question from the reporter that initiated that
 18 comment. And I merely repeated that comment. That
 19 is not a, that is not a term of art that I would
 20 normally use. Or I don't know that I have ever used
 21 it. But I live with it, given the fact that I did,
 22 in fact, acknowledge it in response to a question
 23 from her.
 24 **Q. And just to make sure that Merriam-Webster's**
 25 **dictionary didn't get it wrong, we go to the second**

1 page to the Free Dictionary which is a more
2 contemporary dictionary. Dyed-in-the-wool, the
3 first dyed-in-the-wool, it says, [of someone]
4 permanent or extreme." And then the definition
5 below says, dyed-in-the-wool, "If you describe
6 someone as dyed-in-the-wool, you mean they have very
7 strong opinions and will not change." So we can
8 agree that at least the Free Dictionary and
9 Merriam-Webster have the same idea of what
10 dyed-in-the-wool means when it's spoken; correct?

11 A. Yes.

12 **Q. We've talked about your affiliations. And I believe**
13 **it was stated that you recognize that you have to,**
14 **prior to your attempt to become a candidate, make a**
15 **clear disaffiliation, cut off the ties, cut the**
16 **umbilical cord. So let's take a look at the**
17 **affiliations and history of affiliations and what**
18 **has happened since then.**

19 So let's go to Exhibit 119. You
20 probably -- we will go through these rather quickly.
21 And you can scan that. But would you basically
22 agree that Exhibit 119 accurately reflects that you
23 were the Canton law director for 11 years, a
24 Democrat on city council for two years, a Democrat
25 county commissioner from 2011 to the present, a

1 Democratic Canton law director for the -- excuse me.
2 The next section is the appearance on the ballot.
3 And as the law director, you appeared on the primary
4 election ballot in '91, '95, '99; general, '91, '95,
5 '99. Democratic city council, you got 2003,
6 Democratic commissioner, 2010, 2012. Democratic
7 Central Committee 2014. And then employment for
8 other Democratic public officeholders, Massillon Law
9 Department, Canton Law Department, and then employed
10 by the mayor of the City of Canton. Is that a fair
11 summary of your positions as elected Democrat?

12 A. Yes.

13 **Q. Okay. And, in fact, I guess.... We can go now to**
14 **Exhibit 117. We've identified that you were elected**
15 **to the office of Democrat. And although you could**
16 **have resigned, you still hold that office; correct?**

17 A. I'm sorry. You're speaking of as commissioner?

18 **Q. Yes.**

19 A. Yes, I still hold that office.

20 **Q. And, in fact, you've held that office as Democrat**
21 **since 2010; correct?**

22 A. Yes.

23 **Q. And, in fact, when you ran in 2010, you made the**
24 **same representations about abidance and supporting**
25 **the Democratic Party as you did in your election in**

1 **2012 for the commissioner and your election in 2014**
2 **for the Central Committee --**

3 A. Yes.

4 **Q. -- correct?**

5 And when you ran in 2010, you actually
6 solicited financial support and campaign
7 contributions from Democrats; didn't you?

8 A. I'm sorry. Could you repeat that?

9 **Q. In 2010, you solicited financial support and**
10 **campaign contributions from Democrats; correct?**

11 A. From Democrats as well as any other citizen.

12 **Q. You were soliciting those contributions for a**
13 **campaign in which you pledged to abide by and**
14 **support the Democratic principles if you were**
15 **elected; correct?**

16 A. Yes. But I don't solicit merely from Democrats, is
17 what I'm saying.

18 **Q. I understand. But your campaign confirmed that that**
19 **was how you were running, as a Democrat who would**
20 **abide by and support Democratic principles?**

21 MR. VASVARI: Objection. Asked and
22 answered.

23 MR. FERRUCCIO: I think he had answered
24 that quite a few times.

25 MR. PLAKAS: Thank you.

1 BY MR. PLAKAS:

2 **Q. So on Exhibit 117 -- and that's in your supplemental**
3 **book --**

4 This just merely for the Record. I believe
5 can you go through 119, read everything.

6 -- but it identifies that currently you're,
7 for the Record, an officeholder elected as a
8 Democrat. Now, there's some lack of clarity with
9 regard to the Jefferson-Jackson club. You still are
10 indicated on the rolls of the Jefferson-Jackson Club
11 as a member in good standing and fully paid through
12 the end of the year. You recognize that; don't you?

13 A. I think that they need to update their records. I
14 submitted a resignation letter.

15 **Q. Okay. And --**

16 A. Rather, signed a resignation letter.

17 **Q. You signed it?**

18 A. And submitted it to who I thought was the
19 appropriate persons.

20 **Q. As an intelligent officeholder, when you want to**
21 **resign from a club, I would expect that you would**
22 **identify the appropriate person as the president or**
23 **other appropriate current official of that club;**
24 **right?**

25 A. I drafted a letter, if that is your question, either

1 dated April 29th or April 30th --

2 **Q. Sure.**

3 A. -- that was directed to Mr. David Kirven who is the

4 president of that club.

5 **Q. You know Mr. David Kirven; don't you?**

6 A. I do.

7 **Q. So I presume then that you made arrangements and**

8 **handed that letter to Mr. Kirven?**

9 A. I did not.

10 **Q. You did not. I presume that because of the**

11 **seriousness of establishing clarity in your**

12 **disaffiliation you made sure that you personally put**

13 **that letter in the mail to send it to him; correct?**

14 A. I did not.

15 **Q. The truth is, of course, you did not give it to Mr.**

16 **Kirven. You did not take the time to put it in the**

17 **mail to send it to him. You did not in any way make**

18 **sure that the letter that you drafted but you**

19 **decided wasn't necessary to send, you have no way of**

20 **knowing whether they ever got any sort of letter**

21 **like that; do you?**

22 A. I do not know whether Mr. Kirven received that

23 letter or not.

24 **Q. Well, we know that you didn't put in motion anything**

25 **to transmit that letter in the U.S. mail to him;**

1 **right?**

2 A. I did -- again, I already answered that. I did not.

3 **Q. And the same with regard to the Democratic club in**

4 **Alliance? What's the name of that?**

5 A. Correct.

6 **Q. Okay. You --**

7 A. I did not mail that to them.

8 **Q. Okay. And you did not hand it to any of the**

9 **officers of that Democratic club?**

10 A. I did not.

11 **Q. With regard to the rest of 117, this is a summary of**

12 **what we've already covered. So unless you or your**

13 **counsel thinks that any of the statements in there**

14 **are incorrect, we will submit that for the Record.**

15 **Q. Exhibit No. --**

16 MR. VASVARI: Objection. Is he saying that

17 we're stipulating to the truth of the contents in

18 this by virtue of the fact that in the two seconds

19 between his statement and his moving on we didn't

20 say anything? Because that ain't true. The --

21 MR. PLAKAS: Let's talk about this for a

22 second.

23 MR. VASVARI: I --

24 MR. PLAKAS: This has been part of the

25 public record for a number of weeks.

1 MR. FERRUCCIO: Wait.

2 MR. PLAKAS: This morning you told me you

3 were stipulating to our exhibits.

4 MR. VASVARI: Excuse me.

5 MR. PLAKAS: Are you recanting that

6 stipulation?

7 MR. VASVARI: No, sir. I'm stipulating to

8 the authenticity of your exhibits. I'm not

9 stipulating as to the truth of what's contained in

10 them. And I'm not stipulating to an exhibit which

11 you prepared on Power Point which purports to state

12 all of the relevant facts of the case that you then

13 put in front of my client saying "This is true;

14 right? You don't object"; well, let's move on, as

15 if it then proves your case by virtue of the fact

16 that he didn't sit down, taking the time to read the

17 document.

18 I'll advise the witness to read the

19 document and to take exception to any of these

20 conclusory and self-serving statements that you or

21 your law clerk's made, and then we can move on. But

22 if you want to have the document put in his mouth,

23 why don't you wait for him to have the opportunity

24 before you move on.

25 MR. PLAKAS: If you're yearning to go

1 through the documents --

2 MR. VASVARI: I sure do. Nothing would

3 suit me better. Make my day.

4 MR. PLAKAS: Let's satisfy the yearning and

5 make your day.

6 BY MR. PLAKAS:

7 **Q. No. 1, is that a true statement?**

8 A. I was, No. 1, I was elected as a Democrat county

9 commissioner. To this date, I hold that office. I

10 don't know, given all the circumstances that have

11 occurred, as to whether or not I hold it as a

12 Democrat or as a, or as an Independent or something

13 else.

14 **Q. Good. No. 2, would you agree to the truth of that**

15 **statement?**

16 A. No. No. Again, everything that I've discussed

17 previously is that I resigned. I posted a letter.

18 I did not mail it to Mr. Kirven. I don't think I'm

19 a member in good standing because I have resigned

20 from them.

21 **Q. So just so we understand how the world generally**

22 **understands the procedure in resignation, if you**

23 **resign from a job, normally then you go to the**

24 **employer and say "I resign" or you make sure your**

25 **employer gets the resignation letter? Isn't that**

1 **how you resign from a job?**
 2 A. Well, that's not all the way the normal world works.
 3 But go ahead. I may give it to the employer. I may
 4 gave it to the human relations director. I may give
 5 it to somebody else associated with the employer.
 6 **Q. Okay. Someone else that works for the employer?**
 7 A. Would you agree with that?
 8 **Q. I would agree that if you're going to resign from a**
 9 **job you got to give it to your boss or you give it**
 10 **to someone that works for your boss, for example,**
 11 **human relations.**
 12 **You didn't do that either with the Alliance**
 13 **Area Democratic Club or the Jefferson-Jackson**
 14 **Democratic Club, did you?**
 15 A. Those letters were delivered, I think as you are
 16 aware, on April the 30th to Jeanette Mullane,
 17 director of the Board of Elections who, in turn, to
 18 my knowledge and information, delivered them to Phil
 19 Giavasis, the Chairman of the Democratic Party.
 20 **Q. Does she have the responsibility to do your bidding**
 21 **and to do your resignation when you're not able to**
 22 **do it face to face?**
 23 MR. VASVARI: Objection.
 24 Mischaracterization --
 25 MR. FERRUCCIO: Sustained.

1 MR. VASVARI: -- of his testimony.
 2 MR. FERRUCCIO: Sustained.
 3 BY MR. PLAKAS:
 4 **Q. So you could have -- you have heard of the U.S. Post**
 5 **Office?**
 6 MR. VASVARI: Objection. Badgering.
 7 MR. FERRUCCIO: Lee, let's not beat
 8 this.... Ask him whether or not he sent it. And if
 9 so, how. And if he doesn't recall, he doesn't
 10 recall. Somebody else might have that letter. If
 11 they don't, I mean there's nothing we can about it.
 12 However he chose to communicate is how he chose to
 13 communicate that resignation.
 14 MR. PLAKAS: Thank you.
 15 BY MR. PLAKAS:
 16 **Q. For the Record then, you didn't choose to avail**
 17 **yourself of the U.S. Postal Service and send letters**
 18 **of resignation to either the Jefferson-Jackson or**
 19 **Alliance Democratic Clubs; correct?**
 20 A. Actually your statement is also incorrect. I did
 21 not choose to do so. I did what I told you that I
 22 did. They were not sent in the actual mail to the
 23 people because of the crush of the extraordinary
 24 number of events that was occurring on April 30th
 25 and on every day that happened thereafter. They

1 were, in fact, not mailed by omission; although,
 2 they were knowingly delivered to people who I deemed
 3 to be appropriate.
 4 **Q. Your statement is they were not mailed by omission?**
 5 **That's your omission?**
 6 A. Yes.
 7 **Q. You could have found a post office box and deposited**
 8 **the letters in the post office box; correct?**
 9 A. By the crush of events that were occurring, I did
 10 not do so.
 11 **Q. Who created the crush of events? You?**
 12 MR. FERRUCCIO: Mr. Plakas, I think we
 13 understand the point.
 14 MR. PLAKAS: Okay.
 15 BY MR. PLAKAS:
 16 **Q. Item No. 3, would you agree with that?**
 17 A. Are we talking about all Democrat candidates or just
 18 Kristen Guardado with regard to this?
 19 **Q. Kristen Guardado.**
 20 A. This is just with Kristen Guardado?
 21 **Q. Yes. You agree with that?**
 22 A. To the extent I don't know whether there were tens
 23 of thousands, I do not know how many there were.
 24 **Q. All right. No. 4, holding office as a Democrat, you**
 25 **would agree with that?**

1 A. Yes.
 2 **Q. No. 5, Democrat employment, you agree with that?**
 3 A. Yes.
 4 **Q. No. 6, Democrat ballot appearances, would you agree**
 5 **with that?**
 6 A. Generally, again, without doing an account of 14,
 7 but, yes.
 8 **Q. Okay. No. 7, would you agree with that, Democrat**
 9 **donations and fundraising?**
 10 A. Again, the only clarification I would provide for
 11 this, you know, is the, is the dollar amount of
 12 \$30,000. I do want to clarify that. I think a
 13 large portion of that -- and, again, I've not
 14 analyzed those contributions -- were made to the
 15 Ohio Democratic Party I believe. But those
 16 contributions to the Ohio Democratic Party, as
 17 anyone who runs for office understands, when you use
 18 their mailer, you send them a check. You send a
 19 check to pay for your postage payable to the Ohio
 20 Democratic Party.
 21 **Q. Okay.**
 22 A. I don't know that I knowingly or ever actually made
 23 a contribution, for example, to the Ohio Democratic
 24 Party other than related to political mailers.
 25 **Q. I'm just looking at the campaign reports that you**

1 **have filed by Ohio law under penalty of election law**
 2 **falsification. So at least the reports that you**
 3 **have filed -- and I believe actually you swore an**
 4 **oath to when you filed those campaign reports --**
 5 **that's what they reflect; correct?**
 6 A. Yes.
 7 MR. FERRUCCIO: Mr. Plakas, those are going
 8 to speak for themselves.
 9 MR. PLAKAS: Okay.
 10 BY MR. PLAKAS:
 11 **Q. And Item No. 8, Democratic Central Committee**
 12 **membership, you agree with that statement?**
 13 A. Yes.
 14 **Q. And No. 9, Democratic Central Committee appointment?**
 15 A. Again No. 8, by the way, doesn't indicate the start
 16 date. I think I only served of a period of one year
 17 or 18 months. Because I was only elected for one
 18 term. And this is the middle of that one two-year
 19 term. So it's not like I have been on it 40 years
 20 or anything.
 21 **Q. No. I didn't say that.**
 22 A. Well, it's ambiguous otherwise. But go ahead.
 23 **Q. Item No. 10, do you agree with that statement?**
 24 A. What are we speaking of here I guess? What election
 25 are we talking about or generally?

1 **Q. For example, Mr. Martuccio, you lobbied for him?**
 2 A. Oh, this is in reference.... No, not myself but to
 3 Mr. Martuccio.
 4 **Q. To others.**
 5 A. Again, I guess this is why we have the need to go
 6 through this --
 7 **Q. Okay.**
 8 A. -- for clarification. Yes, I did lobby for Mr.
 9 Martuccio. But the Democratic chairperson in that
 10 particular election actually was lobbying for
 11 another candidate in opposition to Mr. Martuccio.
 12 **Q. And Mr. Martuccio, until recent weeks, has been your**
 13 **campaign treasurer; correct?**
 14 A. He was.
 15 **Q. Okay. And No. 11, Democratic event attendance, you**
 16 **have in the last year or two appeared as a speaker,**
 17 **as an advertised speaker for various Democratic**
 18 **organizations and functions; correct?**
 19 A. Again, it's inaccurately stated, inaccurately
 20 worded. Regularly attended Democratic events and
 21 function. Not very much. I'm not a regular
 22 attendee to, to events. I do so on occasion. I was
 23 a guest speaker for the Alliance Area Democratic
 24 Club. I don't know the date. But that's
 25 approximately correct. Actually Mr. Mack's

1 fundraiser, whatever date that may have been. I
 2 think I attended one also for either Mr. Babcock or
 3 somebody. I'm not sure. I think, you know, I mean
 4 generally. But again....
 5 **Q. You agree you were a speaker at the Alliance --**
 6 A. Yes.
 7 **Q. -- Area Democratic Club on February 15th, 2015;**
 8 **correct?**
 9 A. I generally don't regularly attended Democratic
 10 events. The rule, the rule is that I miss, miss
 11 most of them rather than regularly attend them.
 12 **Q. I understand. Let's then quickly go to Exhibit 118.**
 13 **You had asked about -- these are contributions, the**
 14 **records that we were able to pull from recent years**
 15 **from your own filings.**
 16 MR. PLAKAS: And that's the total that we
 17 came up with, is \$30,203.22 for Mr. Bernabei's
 18 Democratic political contributions.
 19 A. Yes, again, I don't dispute that number or the line
 20 items. I think the Ohio Democratic Party, as I
 21 indicated, when you see 10,000, 4,000, 2,000, the
 22 explanation is that they were not contributions to
 23 the party as such but actually in payment of
 24 postage.
 25 **Q. Okay. And No. 22, voting history?**

1 A. I'm sorry. 122 or 22?
 2 **Q. 22.**
 3 A. 22.
 4 **Q. This is a certified record from the Board of**
 5 **Elections. And this reflects that you have in any**
 6 **partisan elections always voted as a Democrat.**
 7 **Nonpartisan election, of course, there's no**
 8 **designation. But you would agree that this, going**
 9 **back to at least 1991, the record that was**
 10 **available, shows that you have voted solely as a**
 11 **Democrat; is that correct?**
 12 A. Yes. And other than the -- again, not looking at
 13 this closely, the election on May the -- or, the
 14 date that I -- May 4th, 2015, I did not vote as a
 15 Democrat. I voted a nonpartisan ticket.
 16 **Q. As a provisional --**
 17 A. Prior to that --
 18 **Q. -- provisional ballot?**
 19 A. Yes. But prior to that, I believe that I voted as a
 20 Democrat and....
 21 **Q. Okay. Let's go to Exhibit 112, please. You joined**
 22 **and were a member and are a member, depending upon**
 23 **your letter, of the Alliance Area Democratic Club.**
 24 **It shows at least your joining the club?**
 25 A. Yes.

1 **Q. And it says right at the top third... that**
 2 **"membership is open to Democrats from Stark County."**
 3 **And then below that, it says "Yes, I would like to**
 4 **be a supporter of the Alliance Area Democratic**
 5 **Club"; and you applied for membership on February**
 6 **6th, 2015? Is that correct?**
 7 A. I completed this on whatever date is the date. That
 8 was probably given to them.
 9 **Q. And then on Exhibit No. 82, the Repository reported**
 10 **on February 1, 2015, a meeting of the Alliance Area**
 11 **Democratic Club. And it said dinner will be**
 12 **starting at 6, followed by the meeting at 7. The**
 13 **guest speaker will be Stark County Commissioner Tom**
 14 **Bernabei. So you were part of that event, weren't**
 15 **you?**
 16 A. Yes. I think we already discussed that.
 17 MR. FERRUCCIO: I think he answered that.
 18 Mr. Plakas, I think we're going to take a short
 19 recess.
 20 MR. PLAKAS: Okay.
 21 MR. FERRUCCIO: And be back here at 11 or
 22 11:05, something like that.
 23 MR. PLAKAS: Thank you.
 24 (A recess was taken.)
 25 MR. FERRUCCIO: Everybody, we're back on

1 the Record. And I would indicate that we're going
 2 to break at noon for lunch. So to let you know....
 3 Mr. Plakas, how much longer do you think
 4 you'll be with Mr. Bernabei?
 5 Everybody, if we could have some quiet.
 6 How much longer do you think you'll be
 7 questioning Mr. Bernabei?
 8 MR. PLAKAS: Depends on the answers. But I
 9 would think about 20 or 25 minutes.
 10 MR. FERRUCCIO: Okay. All right. You
 11 know, just for the Record, I mean there are a number
 12 of exhibits that we've reviewed. And, you know, the
 13 issues are limited to voting residence and the
 14 unaffiliation, so if we could just sort of make sure
 15 our questions are directed to those issues
 16 factually.
 17 And but we'll break at noon if that's all
 18 right with everybody, just to give you some idea of
 19 time.
 20 MR. VASVARI: Mr. Chairman, is there any
 21 possibility we'll go into tomorrow morning? Because
 22 if it would, we would have a conflict.
 23 MR. FERRUCCIO: We don't anticipate that
 24 that I know of. That's up to the two of you.
 25 But, however, we do need to not be

1 duplicitous and deal with the facts. And we plan on
 2 being done today. I hope you do too.
 3 MR. VASVARI: That's my hope.
 4 BY MR. PLAKAS:
 5 **Q. Exhibit 117 had a third page. And just to very**
 6 **quickly finalize that, Item No. 12, it was the**
 7 **confirmation for the treasurer designation of your**
 8 **campaign committee, and it lists you as a Democrat**
 9 **until May 4th, 2015. You'd agree with that?**
 10 A. Yeah, I believe so. I know that there's a place on
 11 the form.
 12 **Q. Okay. And you'd agree that until May 4th you were**
 13 **the treasurer for three other Democratic candidates?**
 14 A. Yes.
 15 **Q. Okay. And that would be Guardado, Hartnett, and**
 16 **Martuccio?**
 17 A. Yes.
 18 **Q. Okay. And speaking of the Democratic candidates,**
 19 **you're familiar with the process in terms of if**
 20 **there's a vacancy in a county commissioner's office**
 21 **how the appointment is made? You've been through**
 22 **that process I think?**
 23 A. As a Democrat, I've seen how the process is made. I
 24 don't know how the process occurs as an Independent.
 25 **Q. So what is your understanding that in the event**

1 **that, hypothetically, that you are permitted on the**
 2 **ballot in the hypothetical event that you would**
 3 **create a, your election results would create a**
 4 **vacancy in the commissioner's office, what is your**
 5 **understanding of how that vacancy would be then**
 6 **filled?**
 7 A. You know, I do not have an understanding as to that.
 8 **Q. Okay. Thank you. And if we would go then to**
 9 **Exhibit No. 81 very quickly, I believe that Exhibit**
 10 **81 confirms that there was a function --**
 11 A. By the way, I don't know. Again, were we
 12 stipulating to what was on there? Was that the
 13 conclusion of --
 14 MR. VASVARI: We hadn't stipulated in as
 15 much as you wanted to go through --
 16 BY MR. PLAKAS:
 17 **Q. We went through each one of those.**
 18 A. What was the last one? I don't know if we ever got
 19 to that or not.
 20 MR. VASVARI: I don't think we reached the
 21 end.
 22 MR. PLAKAS: Go back to 117, please.
 23 A. I'm sorry. No. 14, again, you know, I, I
 24 acknowledge that this term had been utilized in that
 25 article, but then that is not a term of my own

1 choosing or making.

2 **Q. I'm sorry.**

3 A. I was asked the question. It's not a term --

4 because you told me that I'm specific in my

5 terminology.

6 **Q. Sure.**

7 A. It's not a term that I have probably ever used or at

8 least until these events and so forth. The question

9 was posed to me. And under the circumstances of the

10 answer, I answered and acknowledged that, yes, I

11 was.

12 **Q. So just so we understand, that was an accurate**

13 **quote? You were quoted saying say you're a**

14 **dyed-in-the-wool Democrat? Those were your words**

15 **coming out of your mouth; correct?**

16 A. I did not describe himself. I acknowledged myself

17 to be so. It was not a description that I, that I

18 gave myself.

19 **Q. Yeah. My only question is, were those your words**

20 **coming out of your mouth?**

21 MR. FERRUCCIO: Lee, he's answered that.

22 A. I was asked.

23 MR. FERRUCCIO: He answered that.

24

25

1 BY MR. PLAKAS:

2 **Q. Then the last item you are questioned about is**

3 **voting history.**

4 A. Yes.

5 **Q. You've already been through that --**

6 A. Yes.

7 **Q. -- so then let's go to, quickly to Exhibit No. 81.**

8 **And this reflects, from the Repository, that on**

9 **November 18th, 2014, Western Stark Dems had a**

10 **meeting and you were the speaker.**

11 A. Yes.

12 **Q. That occurred; correct?**

13 A. Yes.

14 **Q. Then let's go to Exhibit No. 91, please.**

15 A. 91 or 90?

16 **Q. 91. And the second page of 91 is a notice for the**

17 **2015 Democratic cocktail party. And to become a bar**

18 **sponsor, if you paid \$500, you're acknowledged as a**

19 **bar sponsor. And the scheduled date for that was**

20 **April 30th, 2015. And if we go to the first page,**

21 **we see a check written from you on April 22nd, 2015,**

22 **for \$500 to become a bar sponsor for the annual 2015**

23 **Democratic cocktail party held on April 30th, 2015.**

24 **That's your check and your signature; correct?**

25 A. Yes.

1 **Q. Okay. And on the right-hand margin toward the**

2 **bottom, it says "going out of state, have. Fun."**

3 **And that's your writing; correct?**

4 A. Yes.

5 **Q. Okay.**

6 A. Just, just for a clarification, again, I did not

7 give them \$500 on that occasion to be a bar sponsor.

8 I gave them \$500 as a contribution to the party with

9 no springs attached. I did not ask for five

10 tickets. I did not ask to sign any ad. It was just

11 a contribution that was made to the Democratic

12 Party.

13 **Q. Well, you received the second page on Paragraph 9**

14 **on Exhibit No. 91 which gave notice of the event and**

15 **said for \$500 you can be a bar sponsor. You sent a**

16 **check on April 22nd in the amount of \$500. We can**

17 **agree on that, can't we?**

18 A. I already agreed to that. Yes.

19 **Q. I believe you also then have been recorded, in terms**

20 **of terminating your relationship or ending the**

21 **Democratic Party, you've been quoted in the media as**

22 **leaving on good terms with no problems; correct?**

23 A. Yes.

24 **Q. Okay. And with regard to the primary mayoral**

25 **election, the parties involved were Kim Perez and**

1 **Mayor Healy; correct?**

2 A. I'm sorry. Could you restate that, please?

3 **Q. The last primary election, Democratic primary**

4 **election for the mayor and candidates were Kim Perez**

5 **and Mayor Healey; correct?**

6 A. Yes.

7 **Q. You've known and worked with Kim Perez for years,**

8 **haven't you?**

9 A. Yes. Off and on.

10 **Q. Okay. You know him personally?**

11 A. Yes.

12 **Q. You obviously worked and got to know Mayor Healy;**

13 **correct?**

14 A. Yes.

15 **Q. You were terminated on January 26, 2009; correct?**

16 A. If that is the correct date, yes.

17 **Q. Okay.**

18 MR. PLAKAS: Pull up Exhibit 102, please.

19 **Q. This is Exhibit 102. It's dated January 26 at the**

20 **top, 2009.**

21 MR. PLAKAS: Can you highlight that, Beth.

22 **Q. So that's the date that letter was presented to you?**

23 A. Okay. Yes.

24 **Q. So to terminate that relationship, that letter was**

25 **presented directly to you, wasn't it?**

1 A. Yes.
 2 **Q. Okay. You actually were escorted by the police out**
 3 **of the building?**
 4 A. Yes.
 5 MR. VASVARI: Objection.
 6 A. As he laughed on the way. Yes.
 7 **Q. Excuse me.**
 8 A. As he laughed on the way. Yes.
 9 **Q. Let's identify Exhibit 110, Page 2. This is the**
 10 **Stark County Board of Elections website listing the**
 11 **public officials. And under county commissioner, it**
 12 **identified Thomas Bernabei with your current address**
 13 **and has you designated as D. Have you asked to have**
 14 **that changed?**
 15 A. I'm trying to identify this document.
 16 **Q. Page 2, Exhibit 110.**
 17 A. This is the --
 18 **Q. Stark County website available to the public.**
 19 A. No. I did not ask that to change. And I have not
 20 looked at that and I was not even aware that that
 21 existed.
 22 **Q. You were quoted in the -- by the way, you were here**
 23 **for a Board of Elections meeting on June 17th, 2015?**
 24 A. Yes.
 25 **Q. You saw the agenda?**

1 A. I don't know if I received a copy or picked up a
 2 copy of the agenda. But I sat in this room for that
 3 meeting to ascertain what may or may not become of
 4 the candidacies.
 5 **Q. Let's go to Exhibit No. 115, please, Page 2.**
 6 A. Page 2?
 7 **Q. Yes, Page 2. And next to your name -- have you seen**
 8 **that before?**
 9 A. I do not think so.
 10 **Q. Okay. Let's go to the next discussion. You were**
 11 **asked by the media why you didn't want -- why you**
 12 **didn't make an effort or declare earlier your intent**
 13 **to run for mayor. Do you recall that interview with**
 14 **the Massillon Independent?**
 15 A. I'm not sure about that conversation with the
 16 Massillon Independent. What reporter were you
 17 talking about?
 18 **Q. Okay. I'm interested in your response as to why.**
 19 MR. PLAKAS: If you would play that for us.
 20 (Video played.)
 21 (Transcript of a July 6, 2015, interview:
 22 "REPORTER: Why didn't you run in the
 23 primary? TOM BERNABEI: I didn't run in
 24 the primary because I hadn't contemplated
 25 running for the office of mayor in the

1 primary at that time. That was back in
 2 November or December of last year. And we
 3 were very busy in the commissioner's
 4 office... ummm, you know..., allow the
 5 process in the primaries to take its
 6 place. I was hopeful, of course, that
 7 there would be a Republican candidate as
 8 well as a Democratic candidate to
 9 challenge the various offices. And it
 10 turned out the way it turned out.")
 11 MR. PLAKAS: Can you make that clear? I'm
 12 not sure if that was decipherable or not. Just play
 13 it again. Turn it up.
 14 (The video was replayed.)
 15 **Q. I believe we heard you say that, in effect, you**
 16 **didn't run because you were busy with your duties as**
 17 **a commissioner. And then you went on to say that**
 18 **you decided to allow the primary process to take its**
 19 **place, take it to proceed. Is that what you**
 20 **understood you just said?**
 21 A. I was actually unable to understand that. I give
 22 lousy interviews. And my wife tells me that I
 23 mumble all the time. And I guess that that's
 24 evidence of the same.
 25 **Q. Okay. We'll see what we can do to further clarify**

1 **it. Would you dispute that you had the intention of**
 2 **just kind of sitting back and waiting to see how the**
 3 **primary election would turn out?**
 4 A. Absolutely not. I dispute that.
 5 **Q. All right. So we'll try to clarify your statement.**
 6 **You weren't under any disability when you gave that**
 7 **interview, were you?**
 8 A. Just my normal state of mind.
 9 **Q. Let's go to Exhibit 8, please. And let's turn our**
 10 **attention to the residency issue. And this will be**
 11 **much quicker. You're familiar as a public official**
 12 **with the general form?**
 13 A. I'm sorry. Let me get to -- did you say No. 8?
 14 **Q. Yes. Exhibit 8. And look in the top third, on the**
 15 **right-hand column under "residency requirements."**
 16 MR. PLAKAS: If we can pop out that first
 17 sentence, the first two sentences.
 18 A. I'm not sure where you are. Tell me again where you
 19 are.
 20 **Q. On the right-hand side about the third of the way**
 21 **down. It says in bold "residency requirements."**
 22 A. Yes.
 23 **Q. And it says "Your voting residence is a location**
 24 **that you consider to be a permanent, not a**
 25 **temporary, residence. Your voting residence is the**

1 place in which your habitation is fixed and to which
2 whenever you are absent you intend to return";
3 correct?

4 A. Yes.

5 Q. You've seen this form before because you actually
6 signed these kind of forms to declare your
7 candidacy; correct?

8 A. Yes. Of course, it's a change of address form. Or
9 is this a --

10 Q. Well, the first form --

11 A. Yes.

12 Q. -- is Exhibit 8. And that's entitled a Voter
13 Registration and Information Update Form.

14 A. Yes.

15 Q. Okay.

16 A. Or change of address form. Yes.

17 Q. So when you were embarking on this journey, did you
18 recognize that, at least according to the Secretary
19 of State and the local Board of Elections, the
20 documentation indicated that your voting residence
21 is the location that you consider to be a permanent,
22 not a temporary, residence. Was that in your mind
23 at all?

24 A. Yes.

25 Q. And --

1 A. A general, a general understanding of those terms,
2 yes.

3 Q. Okay. Because you signed actually forms like this,
4 didn't you?

5 A. I believe that is a change of address form. Yes. I
6 think that is a change address form.

7 MR. PLAKAS: And Exhibit No. 1, please.

8 Q. And that's the Nominating Petition and Statement of
9 Candidacy that you made; correct?

10 A. Yes.

11 Q. Okay. You signed that May 3rd, 2015; correct?

12 A. Yes.

13 Q. And you said that "I, the undersigned, declare under
14 penalty of election falsification that my voting
15 residence is 2118 University Avenue, Northwest";
16 correct?

17 A. Yes.

18 Q. Okay. Going back to the prior exhibit, Exhibit No.
19 8, you would agree that 2118 University Avenue was
20 never intended nor established to be your permanent
21 residence; correct. You would agree with that?

22 A. As of May 3, that was my permanent address. That
23 was the only address that I had. I anticipated,
24 with a month-to-month lease, that I would be leaving
25 that premises to move to my other address in Stark

1 -- in Canton, Ohio. But as of May 3, that was my
2 permanent address.

3 Q. Actually -- we can play the clips again. But
4 actually in your mind that was never -- and you so
5 said -- that was never intended to be your permanent
6 address; correct?

7 A. In the common sense of the word, knowing that the
8 residence at 441 Lakecrest would likely become
9 vacant sometime soon within the month of May -- and,
10 in fact, it became vacant on May 6th -- I was
11 committed to staying at 2118 University as long as I
12 needed to stay there. It is no different than me
13 knowing whether or not my next residence will be
14 someplace -- if I were to retire, I may move to
15 South Carolina. It doesn't mean that I don't
16 consider my present residence to be my permanent
17 residence.

18 Q. I understand the argument. But back to the facts.

19 MR. VASVARI: Objection.

20 BY MR. PLAKAS:

21 Q. The facts are that when you signed that temporary
22 lease for University Avenue you knew in your mind
23 and you knew that you never intended that that would
24 become your permanent address; correct?

25 A. I knew that that would not be my permanent address,

1 correct. But as of May 3, it was my permanent
2 address for purposes of voting and residency under
3 the election laws.

4 Q. Why don't you --

5 A. From a common sense perspective, as we would discuss
6 where one lives and where one doesn't live, I, of
7 course, understood that I would not be living
8 forever in a rented house at 2118 University Avenue.

9 Q. And there was absolutely no intention that your wife
10 moved into University Avenue; correct?

11 A. Had I stayed longer, I presume that she very well
12 may have. But the opportunity never presented
13 itself because of the fact that the other house, in
14 fact, became vacant on May 6th. And I took
15 possession on that date.

16 Q. And you spoke with Mrs. Bernabei and you revealed to
17 her that you were going to move into a vacant house
18 that was for sale? And you brought in a cot and a
19 nightstand? You told her that that would not be
20 your permanent address and that you were hoping to
21 ultimately move into Lakecrest; correct?

22 MR. VASVARI: Objection. Assumes facts not
23 in evidence.

24 BY MR. PLAKAS:

25 Q. Isn't that correct?

1 MR. FERRUCCIO: I'll sustain that
 2 objection.
 3 **Q. In addition to reviewing the materials that you just**
 4 **discussed from the Stark County Board of Elections,**
 5 **your analysis of whether or not you could actually**
 6 **become a candidate, did you also get on the website**
 7 **of the Secretary of State?**
 8 A. I may have looked at the website of the Secretary of
 9 State. I cannot tell you for certain. I may have
 10 look at materials printed from it. I'm not sure.
 11 **Q. In regard to this issue, I guess we're having a bit**
 12 **of a disconnect. With regard to what you at the**
 13 **time actually were considering your permanent**
 14 **address, let's go to Exhibit No. 49, Page 3, Lines**
 15 **10 to 20.**
 16 MR. PLAKAS: If you could play that
 17 interview, please.
 18 (Video played. Video transcript, Appendix
 19 Tab 49.)
 20 **Q. So in that interview with Mr. Olson on May 6th, you**
 21 **indicated that your permanent house is now**
 22 **available. So at least at that point you were not**
 23 **considering University the day after the date of**
 24 **election as your permanent house?**
 25 A. But at that point, I believe I had followed election

1 laws. I had two permanent houses.
 2 **Q. Okay. And let's go to Exhibit No. 50, Page 11,**
 3 **Lines 12 to 22.**
 4 (Video played. Video transcript, Appendix
 5 Tab 50.)
 6 A. I'm sorry. What page of the transcript was that?
 7 **Q. That was Page 11. So, once again, in that interview**
 8 **with I believe Mr. Ponder, you indicated that**
 9 **Lakecrest would become your permanent address;**
 10 **correct?**
 11 A. Yes. Again, with the same --
 12 **Q. Residence.**
 13 A. -- again, with the same response as I provided in
 14 the last response without repeating it.
 15 **Q. In regards to the issue in terms of a temporary**
 16 **nature versus permanent, when you moved in to or**
 17 **signed the lease for University, you expected that**
 18 **you were going to stay there a week or less;**
 19 **correct?**
 20 A. At the time, I did not have any certainty. I wish I
 21 had had certainty. At the time that I signed the
 22 lease, the only information that I had with regard
 23 to Lakecrest was that the current tenants, who had
 24 been tenants for approximately 18 months, as had
 25 been discussed, had two small children and a wife

1 who was pregnant, were anticipating to -- were
 2 purchasing a house. The house had not closed. And
 3 they did not know for sure when it was going to
 4 chose or when they would be vacating. There was
 5 uncertainty associated with it. That led me to make
 6 the choice to lease the property at 2118 University.
 7 **Q. Let me remind you of the comments, Exhibit 49, Page**
 8 **4, Lines 5 to 21.**
 9 A. I'm sorry. Page what?
 10 **Q. Exhibit 49, Page 4, Lines 5 through 21.**
 11 (Video played. Video transcript, Appendix
 12 Tab 49.)
 13 **Q. With regard to the University house, you did nothing**
 14 **more than move in a single bed, not a double or a**
 15 **queen or king bed; correct? A single bed for you to**
 16 **fit on; isn't that right?**
 17 A. I moved in a single bed. Yes. Mattress, bed
 18 shaped. Yes.
 19 **Q. Card table, laptop, some clothes, and not much else;**
 20 **correct?**
 21 A. I have a list of the items that I moved in, if you
 22 would like to see it.
 23 **Q. I presume we'll see those during your Direct. You**
 24 **then with this Board, in Exhibit 114, as of May**
 25 **15th, 2015, identified your new address at**

1 **Lakecrest; you would agree with that?**
 2 A. And I do want to clarify. With regard to the
 3 comments that were made in that interview, that the
 4 lease, in fact, was rented for one month with an
 5 extension with a month, with provision for a
 6 month-to-month extension, not knowing, again, how
 7 long Lakecrest would or would not be available.
 8 **Q. Because your vision was always that your permanent**
 9 **house would be Lakecrest; correct?**
 10 A. My vision being that 2118 University was my
 11 permanent house for immediate and current voting
 12 matters and that at some point in time I would be
 13 moving to Lakecrest.
 14 **Q. Just so the Record --**
 15 A. It's the same as I now currently live in Lakecrest.
 16 But I anticipate that if I were to retire and/or my
 17 wife desire to do so, that I may move to, you know,
 18 another house.
 19 **Q. Just so, just so the Record is clear, the University**
 20 **Avenue house was a vacant house that was listed for**
 21 **sale and owned by one of your friends?**
 22 A. Yes.
 23 **Q. You would agree that you left for Florida on**
 24 **Thursday afternoon or evening of April 30th;**
 25 **correct?**

1 A. Mid afternoon. I don't know the exact time that I
 2 left for the airport but probably approximately 1 to
 3 2:00 p.m.
 4 **Q. And you didn't return back to the Canton area until**
 5 **Sunday, May 3rd, sometime in the afternoon; correct?**
 6 A. Yes. Sometime, again, probably 1 to 2:00 p.m.
 7 **Q. Okay. And you would agree that you signed the lease**
 8 **on April 29th with an effective date of May 1st, as**
 9 **I think we just heard you say?**
 10 A. Yes.
 11 **Q. Okay. And currently you still own the home in Hills**
 12 **& Dales?**
 13 A. Yes.
 14 **Q. And you were recently --**
 15 MR. PLAKAS: Exhibit 83, please.
 16 **Q. -- the subject of the Hills & Dales neighborhood**
 17 **magazine talking about you as a neighbor?**
 18 A. Yes.
 19 **Q. And Page 2 makes reference to some of the things you**
 20 **said. So you were aware that -- and that was the**
 21 **May 19, 2015, edition of the Hills & Dales magazine;**
 22 **correct?**
 23 A. Yes. But that interview occurred probably at least
 24 one month or more earlier than that.
 25 **Q. And as we said, the Hills & Dales house is not**

1 **currently listed for sale, is it?**
 2 A. It is not currently listed for sale. I have
 3 discussed with the realtor, I've talked to the
 4 realtor on several occasions. The realtor has
 5 toured the house with my wife. The house will be
 6 listed for sale, 90 percent. We are moving from a
 7 larger house to a smaller house, that we're not
 8 taking all the furniture. So there was minor
 9 amounts of items left in it.
 10 But the big troubling point for the sale of
 11 that house and preparation for the sale is that that
 12 house has a full basement of approximately, you
 13 know, probably 15 hundred square feet I would think
 14 that is jammed packed with tools, files, many many
 15 items from, from renovation, Christmas items, and so
 16 forth, to include a full attic. And I have no place
 17 for those items. And those items have to be removed
 18 from that house, and the basement has to be painted.
 19 And there just hasn't been an opportunity to get
 20 everything done; although, we are absolutely moved
 21 from that house. And, again, there will be
 22 photographs to show you which I will be glad to show
 23 you right now if you question the issue.
 24 **Q. Thank you for the inventory. As a matter of fact,**
 25 **you publicly stated that you intend to delay the**

1 **sale of that Hills & Dales house to November 2015;**
 2 **correct?**
 3 A. I don't know where you get that. But I can tell you
 4 absolutely -- and I am --
 5 **Q. (Inaudible utterance).**
 6 MR. VASVARI: He's answering the question.
 7 A. I am under oath today and I'm answering your
 8 question, that I contemplate selling that house as
 9 soon as possible and that I will list it as soon as
 10 possible. And I've not been able to do so. My wife
 11 is also under the same understanding. We want to
 12 sell that house and we love living at 441 Lakecrest
 13 Street.
 14 **Q. And you told your neighborhood at Hills & Dales that**
 15 **you loved living there also; correct?**
 16 A. Actually I don't know if I have had that
 17 conversation with my neighbors.
 18 **Q. Isn't that the impression that you gave based on the**
 19 **quotes to your article, that you love living at**
 20 **Hills & Dales?**
 21 MR. VASVARI: Objection. Relevance.
 22 MR. FERRUCCIO: Yeah. Sustained.
 23 BY MR. PLAKAS:
 24 **Q. You read the article in the Hills & Dales magazine?**
 25 MR. VASVARI: Again, objection.

1 BY MR. PLAKAS:
 2 **Q. We will read it together if you want to take the**
 3 **time.**
 4 MR. FERRUCCIO: I think that, you know --
 5 BY MR. PLAKAS:
 6 **Q. Why don't you refer to the paragraph you're**
 7 **referring to, if you want to take the time.**
 8 MR. VASVARI: Objection.
 9 MR. FERRUCCIO: Objection sustained.
 10 MR. VASVARI: Thank you.
 11 MR. FERRUCCIO: So let's move on.
 12 **Q. Let's go to Exhibit No. 84, please. Do you have 84**
 13 **there in your book?. So 84 is an interview with the**
 14 **Canton Repository, Alison Matas, on May 5th, 2015.**
 15 **Do you recall that?**
 16 A. Yes.
 17 **Q. And do you recall telling her anything about your**
 18 **putting your Dunkeith house on the market?**
 19 A. I do not have any specific recollection. But I read
 20 the sentence "He's going to put his Dunkeith house
 21 on the market prior to November's election, he
 22 said," which I think is consistent with what I just
 23 told you.
 24 **Q. And have you told anybody else that you're going to**
 25 **wait until November's election?**

1 MR. VASVARI: Objection.
 2 MR. FERRUCCIO: Sustained.
 3 A. Not only that but I don't believe so.
 4 MR. FERRUCCIO: It's sustained. And I
 5 think that the question is where did you live on May
 6 3rd, where did you live on May 4th. Where did your
 7 wife live on May 3rd and May 4th. And we know the
 8 rest of the answer. So I mean I think it's --
 9 MR. PLAKAS: Okay.
 10 MR. FERRUCCIO: -- pretty clear.
 11 BY MR. PLAKAS:
 12 **Q. And you're a licensed attorney in the State of Ohio?**
 13 A. By the way, would you like to buy my mouse? I'll
 14 give you the offering price. Just to let you know
 15 that it's for sale.
 16 **Q. Based, sometimes based upon the residence of the**
 17 **prior residents of the house, there's a discount.**
 18 **So do I get a discount?**
 19 A. I will absolutely give you a discount.
 20 **Q. Well, then we can talk.**
 21 A. I'll knock off the realtor's commission for you and
 22 work with the numbers she gave me.
 23 **Q. I think working with you THE realtor should get a**
 24 **bonus actually.**
 25 VASVARI: Objection.

1 MR. FERRUCCIO: So noted.
 2 BY MR. PLAKAS:
 3 **Q. Let's go to 123, please. You're an attorney**
 4 **licensed in the State of Ohio?**
 5 A. I am.
 6 **Q. And as attorneys, we're required to keep our**
 7 **registration and our address current?**
 8 A. Yes.
 9 **Q. Okay. And I will represent to you that this is a --**
 10 A. By the way, I'm not, I was not aware of that
 11 requirement. But I accept it.
 12 **Q. You're not aware that attorneys in the State of Ohio**
 13 **have to register?**
 14 A. Well, of course we have register. I'm not aware of
 15 when there is a change of address that one would,
 16 would file a change of address with them.
 17 MR. VASVARI: Which exhibit is this?
 18 THE WITNESS: 123.
 19 MR. PLAKAS: This is 123.
 20 MR. VASVARI: Thank you.
 21 BY MR. PLAKAS:
 22 **Q. Okay. So that reflects your Dunkeith address.**
 23 **That's Hills & Dales; correct?**
 24 A. That does, yes.
 25 **Q. Okay. And you haven't made any effort to update or**

1 **correct that?**
 2 A. Actually I have updated it for 441 Lakecrest Street,
 3 Northwest.
 4 **Q. On the Ohio Supreme Court website?**
 5 A. Yes.
 6 **Q. And when did you do that?**
 7 A. Yesterday. Which is the first date I became aware
 8 of the obligation to do so.
 9 **Q. And the only way you became aware of that was by**
 10 **reading our Brief that we previously filed?**
 11 A. No. Actually believe it or not, you know, I did not
 12 read your Brief. But my attorney advised me that
 13 that was an obligation.
 14 **Q. He read our Brief. And your, your registration was**
 15 **actually in our original Brief over six or seven**
 16 **weeks ago; correct?**
 17 A. Yes.
 18 **Q. Okay. I have nothing further. Thank you.**
 19 MR. FERRUCCIO: Thank you, Mr. Plakas.
 20 MR. PLAKAS: I would have a very quick
 21 witness, the lady from WHBC coming now. And I'm
 22 sure she will be done in five minutes.
 23 MS. MARCHINO: I'm here.
 24 MR. VASVARI: What about Redirect?
 25 MR. PLAKAS: Well, I called him on Cross.

1 MR. FERRUCCIO: You called him as if on
 2 Cross.
 3 MR. VASVARI: So I'll just..., when I
 4 Direct him. That's fine. There's no need to do it
 5 twice. Sure.
 6 MR. FERRUCCIO: Yeah.
 7 (Thomas M. Bernabei was dismissed.)
 8 MR. PLAKAS: Rebecca.
 9 (Rebecca Marchino was duly sworn by Notary
 10 Public Jocelyn S. Harhay.)
 11 MR. FERRUCCIO: You may be seated.
 12 DIRECT EXAMINATION
 13 BY MR. PLAKAS:
 14 **Q. Welcome.**
 15 A. Thank you.
 16 **Q. Have you ever done this before?**
 17 A. No.
 18 **Q. All right. We're going to try to make this quick**
 19 **and painless. Please identify yourself to the**
 20 **panel, your name, your address, and your occupation.**
 21 A. Rebecca Marchino, 67 Ontario Trail, Malvern, Ohio,
 22 44644. WHBC Radio, sales executive.
 23 **Q. Okay. Did someone from our office contact you to**
 24 **determine whether radio ads were running for Kristen**
 25 **Guardado leading up to and including the date of**

1 election?
 2 A. Yes.
 3 **Q. Did someone from our office ask you for a copy of**
 4 **the actual radio ad?**
 5 A. Yes.
 6 **Q. And did you provide that?**
 7 A. Yes, I did.
 8 **Q. And did someone from our office ask you to put in**
 9 **writing the dates that the radio ad ran and to**
 10 **confirm when that was recorded by Mr. Bernabei?**
 11 A. Yes, you did.
 12 **Q. Okay. Then let's go to Page No. -- you got a big**
 13 **book in front of you. And that's Exhibit 103, if**
 14 **you go to Tab 103. And is on the first page under**
 15 **Tab 103 at the top, does it have your name and the**
 16 **date of May 28th?**
 17 A. Yes, it does.
 18 **Q. Okay. And in the text of the, the text of the**
 19 **e-mail, did you respond to our request to check**
 20 **WHBC's records and determine when Mr. Bernabei came**
 21 **in to record the radio ad that you provided to us?**
 22 A. Yes.
 23 **Q. Okay. And what did your records reveal?**
 24 A. That he was in on April 29th at 9:30 to record a
 25 commercial for Kristen Guardado.

1 **Q. And those records, those are records that the radio**
 2 **station keeps in the ordinary course of its**
 3 **business?**
 4 A. Yes.
 5 **Q. Okay. So in addition to Mr. Bernabei coming in on**
 6 **April 29th at 9:30 to record the, the ad -- and were**
 7 **you present when, when he did this or not?**
 8 A. When he recorded the ad? I was in the building. I
 9 was not there.
 10 **Q. Did you talk to him at all?**
 11 A. I said good morning to him.
 12 **Q. Okay. Because you knew him?**
 13 A. No. I never met him before.
 14 **Q. Okay. All right. In addition to confirming when**
 15 **Mr. Bernabei recorded the ad, did we ask you, then**
 16 **if you look at Tab No. 93, to confirm when Mr.**
 17 **Bernabei's ad played over the airways?**
 18 A. It wasn't his ad. It was an add for Kristen
 19 Guardado.
 20 **Q. That's true. Thank you.**
 21 A. Yes. Those are the invoices stating the times that
 22 those....
 23 **Q. So for the Record, just because we have to do it**
 24 **formally, the first invoice looks like it says**
 25 **Invoice No. IN-115056210?**

1 A. Yes.
 2 **Q. And that shows when the ad played on WHBC Radio?**
 3 A. Correct.
 4 **Q. And does it show that the ad played on Tuesday, May**
 5 **5th, 2015?**
 6 A. Yes. It does.
 7 **Q. And then if we go to the next invoice, do you see an**
 8 **invoice from Mix 94.1?**
 9 A. Yes, I do.
 10 **Q. And the invoice number, for the Record, is IN**
 11 **115056211?**
 12 A. Correct.
 13 **Q. And does that show that the ad played on dates from**
 14 **April 30th, 2015, to May 5th, 2015?**
 15 A. Correct.
 16 **Q. And does it actually show at that ad was playing on**
 17 **Mix 94.1 on Tuesday, May 5th, 2015?**
 18 A. Yes, it does.
 19 **Q. And are these records an accurate depiction of when**
 20 **that radio ad recorded by Mr. Bernabei for Kristen**
 21 **Guardado played?**
 22 A. Yes.
 23 **Q. Thank you. I have nothing further.**
 24 A. Thank you.
 25 MR. VASVARI: Very few.

1 CROSS-EXAMINATION
 2 BY MR. VASVARI:
 3 **Q. Miss Marchino, my name Raymond Vasvari. I'm Tom**
 4 **Bernabei's lawyer. I just have a few follow-up**
 5 **questions. First of all, when you, when you look at**
 6 **Exhibit 103 -- and you said that you had consulted**
 7 **some records -- that e-mail, you're telling Mr.**
 8 **Edmond Mack, right, that you, that you had looked at**
 9 **some records and that Mr. Bernabei had come in on**
 10 **the 9th of April at 9:30. What records did you**
 11 **consult?**
 12 A. What records to show that he came in to record that
 13 day?
 14 **Q. Yes.**
 15 A. We have a recording board with dates and times on
 16 it. And those were scheduled.
 17 **Q. And who scheduled those?**
 18 A. Kristen Guardado scheduled that time.
 19 **Q. Okay. When someone like Kristen Guardado or anybody**
 20 **schedules the recording of a political ad, who makes**
 21 **the arrangements for, for paying for the ad to be**
 22 **recorded?**
 23 A. Paying for the ad?
 24 **Q. Yes.**
 25 A. It was Kristen Guardado.

1 **Q. Who makes the arrangements as to what will happen**
 2 **with the ad after it's recorded?**
 3 A. Kristen Guardado.
 4 **Q. And who owns the advertisement after it's recorded?**
 5 A. Kristen Guardado.
 6 **Q. Okay. Okay. So if somebody were to call you up and**
 7 **say "Stop the press; you can't run that ad anymore,"**
 8 **that would be up to...?**
 9 A. Kristen Guardado.
 10 **Q. Okay. You mentioned two radio stations, one Mix and**
 11 **one with the W. Is there a relationship between**
 12 **those two stations or are they the same?**
 13 A. One is AM, one is FM. They are both owned by the
 14 same company.
 15 **Q. And you serve in the capacity as the sales executive**
 16 **for both of them?**
 17 A. Correct.
 18 **Q. Okay. And did you check the boards any farther back**
 19 **to see if the advertisement could have been recorded**
 20 **earlier than the 29th? How far back did you go?**
 21 A. It was only recorded on the 29th. He only scheduled
 22 one recording with us.
 23 **Q. In that e-mail, it was responsive to yours. In**
 24 **Exhibit 103, there's an e-mail from emack@lawlion.**
 25 **Do you see that?**

1 A. Yes.
 2 **Q. And who is that emack@lawlion?**
 3 A. Edmond, Edmond Mack.
 4 **Q. And he says "perfect" in response to you with an**
 5 **exclamation point or with not. That's not in front**
 6 **of me.**
 7 A. That e-mail does not state that.
 8 **Q. Not your response.**
 9 A. His response, "This is perfect. Can you also e-mail
 10 me the audio file of the commercial and confirm what
 11 day it was that Bernabei came in to record it.
 12 Thank you...."
 13 **Q. Okay. Any sense of why he said that was perfect?**
 14 A. Because that's what he asked for and that what's I
 15 gave him.
 16 **Q. Perfect. And you just did the same for me. Thank**
 17 **you very much.**
 18 A. Okay.
 19 (Rebecca Marchino was dismissed.)
 20 MR. FERRUCCIO: I think we'll now take a
 21 recess and be back here at 1:00.
 22 (A lunch recess was taken.)
 23 MR. FERRUCCIO: We are back on the Record.
 24 It is 1:00.
 25 Mr. Plakas.

1 MR. PLAKAS: Thank you. Mr. West will
 2 follow me.
 3 MR. FERRUCCIO: Okay.
 4 MR. WEST: We'd like to call Steve Okey.
 5 MR. FERRUCCIO: Okay.
 6 (Steve Okey was duly sworn by Notary Public
 7 Jocelyn S. Harhay.)
 8 DIRECT EXAMINATION
 9 BY MR. WEST:
 10 **Q. Can you please state your name and address for the**
 11 **Record?**
 12 A. My name is Steve Okey. My address is 2700 Fairway
 13 Lane, Alliance, Ohio.
 14 **Q. And are you president of the Alliance Democratic**
 15 **Club?**
 16 A. Yes, sir.
 17 **Q. And can you talk about that a bit?**
 18 A. I beg your pardon.
 19 **Q. Can you describe the Alliance Democratic Club**
 20 **briefly?**
 21 A. Sure. The Alliance Area Democratic Club is an
 22 independent organization of Democrats serving the
 23 people in and around Alliance and actually open to
 24 membership to any member of the Democratic Party in
 25 Stark County.

1 **Q. Is Tom Bernabei a member?**
 2 A. Yes, sir,
 3 **Q. And does he pay dues? I mean how does one become a**
 4 **member?**
 5 A. He pays dues. You sign up on a sheet which Mr.
 6 Bernabei did in February of this year. And you're a
 7 member.
 8 MR. WEST: Pull up Exhibit 112, please.
 9 **Q. And you have that in your book as well.**
 10 A. Is that in the original appendix or supplemental?
 11 MR. MACK: Supplemental.
 12 A. Okay. I have that.
 13 **Q. I'm sorry.**
 14 A. I have that. Okay.
 15 **Q. You recognize this form?**
 16 A. Yes, sir, I do.
 17 **Q. Okay. Can you describe it?**
 18 A. This is a membership/volunteer form for 2015 for
 19 Alliance Area Democratic Club member Mr. Thomas M.
 20 Bernabei.
 21 **Q. And did Mr. Bernabei ever resign from the club?**
 22 A. To our knowledge, no.
 23 **Q. You never got a resignation letter?**
 24 A. No, sir, we never did.
 25 **Q. All right. Can you go through Exhibit 113, please.**

1 **And do you recognize this document?**
 2 A. Yes, sir, I do.
 3 **Q. Can you describe it?**
 4 A. This is a letter I wrote dated June 17th, 2015, as
 5 president of Alliance Area Democratic Club
 6 indicating, as the Board of Elections can see here,
 7 where Mr. Bernabei paid his 2015 membership dues;
 8 second, that the club had not received any letter
 9 from Mr. Bernabei indicating that he had resigned;
 10 and that Mr. Bernabei remained a member in good
 11 standing with the club.
 12 **Q. Thank you.**
 13 MR. WEST: I have nothing further.
 14 MR. FERRUCCIO: Okay. Thank you.
 15 Any Cross?
 16 MR. VASVARI: Sure.
 17 CROSS-EXAMINATION
 18 BY MR. VASVARI:
 19 **Q. Mr. Okey, my name is Raymond Vasvari. I'm Tom**
 20 **Bernabei's lawyer. How are you today?**
 21 A. Well, sir. Good afternoon.
 22 **Q. Does the Alliance Democratic Club have a set of**
 23 **rules and bylaws?**
 24 A. Yes, sir, we do.
 25 **Q. Are there procedures in there or mechanism for**

1 **resignation?**
 2 A. Off the top of my head, I do not know.
 3 **Q. Okay.**
 4 A. There may be. There may not be. I've not reviewed
 5 them in relation to that, sir.
 6 **Q. Have you ever had the opportunity in the months of**
 7 **May or June -- I'm sorry -- April or May of this**
 8 **year to discuss with Phil Giavasis --**
 9 **Is that pronounced correctly?**
 10 A. Giavasis.
 11 **Q. Giavasis. I'm sorry. Thank you. Mr. Giavasis,**
 12 **he's head of the Democratic Party for Stark County;**
 13 **right?**
 14 A. That's correct.
 15 **Q. Have you ever discussed with him the question of Mr.**
 16 **Bernabei's membership in your club?**
 17 A. No, sir.
 18 **Q. Okay. Were you aware that Mr. Bernabei at some**
 19 **point penned a letter indicating his intent to**
 20 **resign from the club?**
 21 A. I became aware of that recently. But --
 22 **Q. How recently?**
 23 A. Around the time that I wrote my letter of June 17th,
 24 2015. Because I referenced a letter dated April
 25 30th.

1 **Q. All right. Well, that's pretty interesting.**
 2 **Because in Paragraph 3 of your letter, which is**
 3 **Exhibit 113, dated June 17, 2015, you say according**
 4 **to your records Mr. Bernabei is a member in good**
 5 **standing; right?**
 6 A. Yes, sir.
 7 **Q. Right. But over here in Paragraph 2, just ahead of**
 8 **that, you said that you're aware of a letter dated**
 9 **April 30th by which he resigned.**
 10 A. No. What I state in Paragraph 2 is that we had not
 11 received any letter --
 12 **Q. Right.**
 13 A. -- indicating his resignation.
 14 **Q. Let me read this into the Record just so we're all**
 15 **clear. That says "To date, the Alliance Area**
 16 **Democratic Club has not received any letter,**
 17 **including the letter dated April 30, 2015...." What**
 18 **letter would that be, letter you didn't receive?**
 19 A. A letter that someone showed me that purportedly was
 20 over Mr. Bernabei's signature indicating
 21 resignation.
 22 **Q. Did you have any reason to doubt that it was**
 23 **genuinely over Mr. Bernabei's signature?**
 24 A. I have no reason to know one way or the other, sir.
 25 **Q. Okay. If you had received that letter in the mail,**

1 **would you have assumed that it was over Mr.**
 2 **Bernabei's signature?**
 3 A. If that came from Mr. Bernabei, I would probably so
 4 assume.
 5 **Q. How would you know that?**
 6 A. I may call and confirm it with him. But that's --
 7 since that never happened, I never had an
 8 opportunity to make any assessment of whether it was
 9 genuine.
 10 **Q. What can we make of this disconnect, of the fact**
 11 **that in Paragraph 2 you were obviously aware that**
 12 **there had existed a letter written by Mr. Bernabei**
 13 **on April 30th resigning and yet in Paragraph 3**
 14 **you're saying he's still part of club? Were you not**
 15 **honoring his resignation?**
 16 A. Sir, there is no disconnect unless you would like to
 17 believe one in your own mind. There's -- the only
 18 thing I stated in my letter is that we had not
 19 received any letter of resignation.
 20 **Q. "Including."**
 21 A. I'm not making any statement above and beyond that.
 22 **Q. Except that you do in Exhibit 113 "including the**
 23 **letter dated April 30th." So for you to refer to a**
 24 **letter which such specificity, it's fair to assume**
 25 **that you were aware of its existence?**

1 A. Yeah. I became aware of it obviously. I referred
 2 to it when I became of aware of it because it was
 3 shown to me.
 4 **Q. Okay. And yet as of the date of this letter, which**
 5 **is about six weeks later, you still consider Mr.**
 6 **Bernabei a member of the club?**
 7 A. According to our records, he remains a member in
 8 good standing.
 9 **Q. Okay. And that is despite your current awareness of**
 10 **his resignation letter. Why won't you let him go?**
 11 A. I'm not trying to keep him, sir. If he didn't want,
 12 if he didn't want to be a member, he can send us a
 13 letter.
 14 **Q. Well, Mr. Okey, you have it on my good faith he**
 15 **quits.**
 16 MR. VASVARI: We're all done. Thanks.
 17 MR. FERRUCCIO: Any questions from the
 18 Board?
 19 MR. CLINE: No questions.
 20 MR. BRADEN: No questions.
 21 (Steve Okey was dismissed.)
 22 MR. WEST: We'd like to call Dave Kirven.
 23 (Dave Kirven was duly sworn by Notary
 24 Public Jocelyn S. Harhay.)
 25

1 DIRECT EXAMINATION
 2 BY MR. WEST:
 3 **Q. Can you state your name and address for the Record,**
 4 **please?**
 5 A. Dave Kirven, 926 Wise Avenue, Southwest, North
 6 Canton, Ohio, 44720.
 7 **Q. And are you president of the Jefferson-Jackson**
 8 **Democratic Club?**
 9 A. Yes.
 10 **Q. Can you briefly tell us what the Jefferson-Jackson**
 11 **Democratic Club is?**
 12 A. It's much like the Alliance Club, a democratic club.
 13 We just -- it's a club made up of just local
 14 resident Democrats that are Democrats. We bring in
 15 public officials and folks that talk about issues in
 16 regards to democratic issues we have.
 17 **Q. Is Tom Bernabei a member?**
 18 A. Yes.
 19 **Q. Do you recall when he renewed his membership?**
 20 A. Just the same as everybody else. We send them out
 21 January. They come in January, February.
 22 **Q. Do you remember if Mr. Bernabei has given any**
 23 **contribution above and beyond his membership dues?**
 24 A. He did do a sponsorship for -- we had a fundraiser
 25 on April 24th of this year. And he was a \$200

1 sponsor I believe.
 2 MR. WEST: Can we pull up Exhibit 90,
 3 please.
 4 **Q. Do you recognize this document?**
 5 A. Yes.
 6 **Q. Can you describe -- you also have a copy in your**
 7 **appendix if you don't want to try and read this.**
 8 A. What number.
 9 **Q. It's 90. I think it's in the big book.**
 10 A. All right. Yes. It's a letter that, that was sent
 11 to me. Lee Plakas' office contacted us and wanted
 12 us -- had questions for us about Mr. Bernabei's
 13 membership and his contributions.
 14 **Q. Go to Page 2. And do you recognize this document?**
 15 A. Yes.
 16 **Q. Is that the check he gave for the April 24th**
 17 **fundraiser?**
 18 A. That sure looks like his signature. Yeah, that's
 19 it.
 20 MR. WEST: Nothing further. Thank you.
 21 CROSS-EXAMINATION
 22 BY MR. VASVARI:
 23 **Q. Mr. Kirven, did you ever receive a letter from Mr.**
 24 **Bernabei resigning his membership of the**
 25 **Jefferson-Jackson Club?**

1 A. I did not.
 2 **Q. Okay. Are you aware if anybody ever received a**
 3 **letter resigning his membership of the**
 4 **Jefferson-Jackson Club?**
 5 A. Not to my knowledge.
 6 **Q. Okay. If I would tell you that such a letter was**
 7 **taken in hand by an employee of this Board and given**
 8 **to Mr. Giavasis, would that come as news to you?**
 9 A. Well, I heard it earlier today in, in the remarks.
 10 **Q. Okay. Have you ever discussed his resignation with**
 11 **Mr. Giavasis?**
 12 A. No.
 13 **Q. Have you ever discussed Mr. Bernabei's Independent**
 14 **candidacy with Mr. Giavasis?**
 15 A. No.
 16 **Q. How frequently do you confer with Mr. Giavasis?**
 17 A. Maybe once a month. I mean I'm on the Executive
 18 Board. We get notifications from that sometimes.
 19 He calls us for contributions for Democrat -- I mean
 20 maybe once a month at the most.
 21 **Q. Do you now accept that, in fact, Mr. Bernabei on the**
 22 **30th of April wrote a letter resigning from the**
 23 **Jefferson-Jackson Club?**
 24 MR. PLAKAS: Objection.
 25 MR. FERRUCCIO: What's the question? I'm

1 sorry.

2 BY MR. VASVARI:

3 **Q. Do you now accept that on the 30th of April --**

4 A. I'd have to see the letter I guess. I mean I don't
5 know if it's -- you know, I've never seen it. How
6 can I say if it exists?

7 **Q. You've never seen such a letter. Let me ask you.**

8 **Let's assume for a moment -- and this is not the**
9 **case -- but let's assume that he hadn't resigned**
10 **from the club just yet. How would the club be**
11 **prejudiced by his continued membership?**

12 A. I don't know. This is, this is -- we're treading
13 new water here. It's not too often we get somebody
14 resign from our club really.

15 **Q. So you just sort of considered --**

16 A. I actually I think he's the first.

17 **Q. There is a first for everything. Would any harm**
18 **come to the club if he continued as a member?**

19 A. Well, I, I guess it would be a matter of opinion.

20 **Q. Would he, would he be welcome as an Independent? Or**
21 **does that not count?**

22 A. Well, it's a democratic club. So I mean if you're
23 -- usually Democrats join a democratic club. I
24 guess he has to join the independent arm of
25 Jefferson-Jackson if they have one.

1 **Q. Maybe. The hyphen in between maybe.**

2 A. Something in there.

3 MR. VASVARI: I have no more questions.

4 MR. FERRUCCIO: Thank you.

5 (Dave Kirven was dismissed.)

6 MR. PLAKAS: Thank you. If it please the
7 Panel, at this time we would like to call Doctor
8 Stephen C. Brooks from the Institute of Applied
9 Politics in Akron.

10 MR. CLINE: I would like to address the
11 Chair.

12 Mr. Chairman, I know we don't follow the
13 rules of evidence in these matters. However, as I
14 understand the rule of an expert, an expert is
15 someone who is supposed to present testimony of, has
16 knowledge beyond that of the finder of fact in order
17 to assist the finder of fact in determining a
18 question of fact for the tribunal, whatever, to
19 decide. So I'd like to hear what question of fact
20 this witness is going to assist this Board in
21 determining in order to see whether he meets that
22 particular requirement of rules of evidence.

23 MR. FERRUCCIO: Mr. Plakas, yeah. I would
24 inquire.

25 MR. PLAKAS: Doctor Brooks is a

1 nationally-regarded expert in election laws and the
2 consequences. In terms of the question of fact, the
3 question of fact here is does this kind of conduct
4 violate the spirit and/or the letter of the election
5 laws and does this type of conduct do, does it do
6 harm to the fabric of election laws, the State of
7 Ohio, the Board of Elections.

8 Because you've heard in the Opening remarks
9 by the punitive candidate's attorney that this is no
10 big deal, that these -- this will happen and the
11 system will go on; there's no prejudice or jeopardy
12 to the system; it's not a violation; you should be
13 able to shed your skin at any time you want or
14 change the color of your clothing at any time you
15 want; and it really doesn't matter.

16 And Doctor Brooks has made a lifetime of
17 evaluating the election laws, how behavior does
18 matter and how certain behavior does, in fact,
19 compromise or affect the integrity of the election
20 laws and our whole system of democratic government.

21 MR. FERRUCCIO: Well --

22 MR. CLINE: If I may, because I started
23 this. I believe that the response by Mr. Bernabei's
24 counsel was in Opening remarks. But both you and he
25 agreed with the issues of fact which were framed for

1 this Board at the beginning of this hearing. And
2 none of which you've just described as being the
3 substance of that gentleman's testimony addresses
4 either. So I don't see the point in using our time
5 to listen to this distinguished gentleman -- I'm
6 sure he knows what he is talking -- about address
7 issues that are not before this Board and on things
8 that we're not going to decide. Because we're not a
9 policy-making Board. We have two issues --

10 And you agreed to them, Mr. Plakas.

11 -- neither one of which he's going to
12 address.

13 MR. PLAKAS: And if I may, Mr. Cline.

14 MR. CLINE: You may.

15 MR. PLAKAS: Out of respect for the Board,
16 and Doctor Brooks, maybe Doctor Brooks is, in a very
17 simple statement, is able to relate to you the
18 relevancy of his expertise and his testimony on
19 those two issues that you have just identified.

20 MR. CLINE: With all due respect, that's
21 not is decision as to what's relevant and up to this
22 Board.

23 MR. PLAKAS: You asked me. And because I'm
24 not an expert in the field obviously, I would defer
25 to him. And he I believe can probably articulate

1 better than I the relevancy. And maybe, maybe, as,
2 you know, you're very experienced in, in litigation,
3 maybe the appropriate thing to do is to just conduct
4 a very brief tantamount of a three-minute,
5 five-minute voir dire, asking him the question. If
6 you don't think any of his testimony is going to be
7 relevant, then we invested no more than five
8 minutes.

9 MR. CLINE: I would suggest that the
10 appropriate thing to do would be to proffer his
11 testimony.

12 I'm going to object to the witness's
13 testimony, Mr. Chairman. As a member of the Board,
14 I realize it's your call. You're ruling the
15 hearing. But I don't --

16 MR. FERRUCCIO: I think --
17 Do you want to weigh in?

18 MR. VASVARI: I do want to weigh in. I
19 have the same concerns. It seems to me that there
20 are two factual issues before the Board. The first
21 is whether Mr. Bernabei did what he did in good
22 faith. And the second is whether or not he was a
23 bona fide resident on the date his petitions were
24 filed.

25 As to the second, I cannot imagine an

1 MR. FERRUCCIO: Thank you.

2 MR. PLAKAS: I would respectfully further
3 submit that, as the Panel has already noted, we are
4 not bound precisely by the rules of evidence. And
5 what we, what this Panel, what the charge is is to
6 uphold, specifically to uphold the election laws in
7 the State of Ohio but I think more generally to do
8 what's right and appropriate for the fabric of our
9 community and the fabric of democracy here and
10 throughout the state. And if arguments are being
11 made that it's okay to shed your skin and, and
12 change your colors and it's no big deal, then I
13 think that it can't hurt. And at least I would
14 suggest a, a very brief voir dire. And if, if you
15 aren't persuaded that he can help you in reaching
16 the decision-making process, then, again, we've
17 invested no more than three minutes.

18 MR. FERRUCCIO: Well, I mean I do have a
19 concern with the expert testifying at this point
20 with respect to policy. I mean an expert would --
21 the only time an expert would be helpful is to deal
22 with any factual legal, not even legal, but factual
23 dispute that he could chime in on. But I don't
24 think there's anything here that, that he can help
25 us with as a, as a quasi judicial tribunal in trying

1 expert in political science having anything do say
2 that's relevant. As to the first, all of the public
3 policy considerations undergirding the state of law
4 as it is, as the Sixth District pointed out in the
5 Morrison case, have been embodied into Ohio laws.
6 And the General Assembly has come up with the set of
7 rules that poses the question that the Board is here
8 to answer today, whether this was done in good
9 faith. That is the result of the entire
10 sausage-making process in Columbus. That's what
11 public policy is here in the state. There are only
12 two possibilities. I'm sure the doctor is a
13 knowledgeable political scientist. But if he's here
14 to testify as what the ramifications could or should
15 be, he's here to testify to public policy; and this
16 Board is not a policy-making body. If he's here to
17 testify as to what the legal significance is, we
18 don't allow expert testimony on legal significance.
19 That is for the finders of fact and for the
20 tribunal. That's for the judge. It's not for an
21 expert witness. We don't in litigation under Rule
22 702 invite witnesses in to lecture the Court on what
23 the state of law is. That's your determination.
24 And you don't require his help. It's for the
25 lawyers to argue.

1 to determine good faith and residency.

2 I mean I think that we all understand the
3 ramifications of a decision one way or another. But
4 our job is really one to look at the facts of this
5 particular case and make a decision. And if
6 somebody down the line doesn't like that and they
7 want to appeal it, then that's for that court and on
8 our legislature to make changes to the statutes.

9 So at this point, I would ask that, that
10 his testimony be proffered. And you could put into
11 the Record what you think he would testify to. But
12 I don't believe we would allow his testimony at this
13 point unless something would change with the case in
14 chief of the candidate. So we're not going to allow
15 his testimony. But a proffer would be welcomed.

16 MR. PLAKAS: And to specifically, for the
17 Record, identify the proffer, what we do have is a
18 report from Doctor Brooks. And I would ask then,
19 for it to make the Record, to at least have him
20 sworn in to at least identify his report which we
21 will proffer.

22 MR. FERRUCCIO: Okay.

23 MR. VASVARI: I am just going to object
24 before that happens with respect to a report being
25 offered on the day of trial I've never seen.

1 MR. FERRUCCIO: Understood. I mean your
2 objection is noted. But for purposes of, of our
3 decision making here, your objection will be noted.
4 But we'll allow him to be sworn in to at least
5 verify his report. And we'll give it whatever
6 weight we think we should, if at all.

7 So proffer it at this point.

8 (Doctor Stephen C. Brooks was duly sworn by
9 Notary Public Jocelyn S. Harhay.)

10 DIRECT EXAMINATION

11 BY MR. PLAKAS:

12 **Q. Mr. Brooks, this will be the briefest testimony that**
13 **I've ever conducted. But would you please, for the**
14 **Record, introduce yourself to the Panel and identify**
15 **your occupation and your experience. And then we'll**
16 **ask you to identify the report.**

17 A. I'm Stephen C. Brooks. I live at 36 North Highland
18 Avenue, Akron, Ohio, 44303. I am associate
19 professor of political science and associate
20 director of the Ray C. Bliss Institute of Applied
21 Politics at the University of Akron. My major
22 research and teaching areas deal with local
23 elections, campaigns, and voting behavior.

24 **Q. Okay. And, Doctor, in regard to the issues in this**
25 **case, in addition to receiving the, the records and**

1 **the exhibits and receiving information about this**
2 **situation, have you also had the opportunity to sit**
3 **in and observe the proceedings here this morning**
4 **that provide you with additional factual**
5 **information?**

6 A. Yes. I've been here since 9:00 this morning.

7 **Q. Okay. And, Doctor, based upon your, your training,**
8 **your experience, your expertise, the information**
9 **that you've received previous to today in terms of**
10 **the exhibits and any and all other information and**
11 **in addition the information that you've been able to**
12 **observe and receive this morning, have you formed**
13 **certain opinions with regard to the conduct of this**
14 **case, in this case as described and the relevancy of**
15 **that conduct to election laws and the -- your**
16 **expertise in political science and elections in this**
17 **country? I know it's a long sentence.**

18 A. My main understanding and, and expertise would be in
19 terms of the foundations of these laws and the, not
20 just the formation but the enforcement of them.

21 **Q. Okay. So the formation and enforcement. And in**
22 **regard to this subject, have you created prior to**
23 **today a, a report that you've reduced to writing**
24 **which is, at least the report, based upon the**
25 **information that you received prior to this hearing**

1 **today?**

2 A. Yes.

3 **Q. Okay.**

4 MR. PLAKAS: And if I may approach the
5 witness?

6 MR. FERRUCCIO: Sure.

7 **Q. Is this a copy of your report?**

8 A. Yes, it is.

9 **Q. Okay.**

10 MR. PLAKAS: And with permission of the
11 Board, I'd like to then identify this as Exhibit
12 134.

13 (A nine-page report by Doctor Stephen C.
14 Brooks was marked Protester's Exhibit No.
15 134.)

16 **Q. And, for the Record, Exhibit 134, which is entitled**
17 **"A Political Science Examination of Candidate**
18 **Qualifications and Ballot Access," have you, based**
19 **upon your training and experience, created that**
20 **report?**

21 A. Yes.

22 **Q. And does that report contain opinions that are**
23 **relevant to this hearing?**

24 A. It contains information about the behavior of
25 politics and, and how the formation and enforcement

1 of laws react within the political system.

2 **Q. I understand. And that's Exhibit 134?**

3 A. Yes.

4 **Q. Okay.**

5 MR. FERRUCCIO: We will note the proffer of
6 Exhibit 134.

7 MR. PLAKAS: Thank you.

8 MR. FERRUCCIO: And you will make copies.
9 Thank you.

10 MR. PLAKAS: Thank you, Doctor Brooks.

11 THE WITNESS: Thank you.

12 MR. VASVARI: Do I get to...? Or is it not
13 necessary?

14 MR. FERRUCCIO: I mean it's proffered.

15 MR. CLINE: It's a proffer.

16 MR. VASVARI: I'd like three or four
17 questions if I could.

18 MR. FERRUCCIO: Well --

19 MR. VASVARI: It's just a proffer.

20 MR. PLAKAS: I guess it's like being half
21 pregnant. If I get to -- if he gets to
22 cross-examine on a proffer, that will be the, once
23 again, the first time in Ohio history that a proffer
24 has been cross-examined.

25 MR. FERRUCCIO: Right.

1 MR. VASVARI: Breaking all the rules today.
2 So I'll withdraw the question.

3 MR. PLAKAS: And I agree with that. They
4 are breaking all the rules today.

5 MR. VASVARI: I was simply joking.

6 MR. FERRUCCIO: Next witness.
7 (Doctor Stephen C. Brooks was dismissed.)

8 MR. PLAKAS: We have a similar witness.

9 MR. VASVARI: We have a similar objection.

10 MR. PLAKAS: Doctor Brooks, thank you for
11 coming in and evaluating the situation.

12 Our next witness is Carl E. Klarner, Doctor
13 Carl E. Klarner from Boston, Massachusetts.

14 MR. CLINE: Same issue, Counsel.

15 MR. PLAKAS: Yes. We'll go through the I
16 presume -- well, I guess for the Record --

17 MR. CLINE: This will be --

18 MR. PLAKAS: I'm asking for you to allow
19 him to testify.

20 MR. FERRUCCIO: Which we will not allow him
21 to testify, only for the purposes of identifying his
22 report. I'm assuming that you want to introduce
23 that as a proffer?

24 MR. PLAKAS: Yeah. And what I would just
25 add as the proffer, and just as a predicate to the

1 proffer and to see if it makes a difference in the
2 Board's mind, is that Doctor Klarner has
3 specifically evaluated elections here in Stark
4 County. That's part of his expertise, to make a
5 detailed analysis of elections including the
6 elections involving potential candidate Bernabei.
7 And his opinions are also preliminarily noted in a
8 report that's dated Monday, July 6th. And it's --
9 the title of report is "In re: Bernabei Candidacy A
10 Political Science Perspective."

11 So I would first, as a matter of formality,
12 then ask that Doctor Klarner be permitted to
13 testify. And I would ask also that if there's any
14 question about his ability to testify that we would
15 be able to conduct a voir dire examination so that
16 he can explain for the Record the relevancy of his
17 testimony. And barring that, then I would ask to at
18 least have him sworn in to be able to formally
19 proffer the report. So I have a three-part request.

20 MR. FERRUCCIO: Assuming the same --

21 MR. VASVARI: The same objections as to
22 what the previous witness.... We know, I think, a
23 little bit less about what's contained in this
24 report than we did about the last. But unless I
25 hear otherwise, I'm suggesting that it's rather safe

1 to assume that it contains the same sort of
2 political science analysis that doesn't bear upon
3 the two factual and legal questions before the
4 Board.

5 MR. FERRUCCIO: Right. We would not permit
6 him to testify with respect -- as a witness. But if
7 he wants to validate his report for purposes of a
8 proffer, we'll entertain that.

9 MR. PLAKAS: Okay. Doctor, unless you have
10 something that I've omitted, first thing I'm going
11 to do is have you sworn in.

12 (Doctor Carl E. Klarner was duly sworn by
13 Notary Public Jocelyn S. Harhay.)

14 DIRECT EXAMINATION

15 BY MR. PLAKAS:

16 **Q. Doctor, for the Record, would you please introduce**
17 **yourself to the Board. Tell them what your**
18 **occupation is and what your professional experience**
19 **and history is.**

20 A. My name is Doctor Carl Klarner. I'm a political
21 consultant. I'm a former academic. I was professor
22 for 12 years. And I did election forecasting. And
23 I'm an expert in election reform and elections
24 generally. What did I leave out? Something.

25 **Q. And have you, I guess as part of that, have you in**

1 **your studies evaluated and studied the effect of**
2 **laws similar to the disparition law here and/or**
3 **the residency law that we are talking here about**
4 **today?**

5 A. Yes. I did an analysis of all state legislative
6 elections from 1968 to present in all states that
7 resulted in some statistics that are relevant to
8 this situation and would give insight into the kind
9 of consequences that weakening a disaffiliation
10 requirement would have.

11 MR. PLAKAS: Does that persuade the --

12 MR. FERRUCCIO: And it does not.

13 MR. PLAKAS: Let me approach.

14 MR. FERRUCCIO: Sure.

15 **Q. Doctor, I'm handing you a document that's been**
16 **described as "In Re: Bernabei Candidacy A Political**
17 **Science Perspective" by Doctor Carl Klarner. Is**
18 **that, based upon your experience and training and**
19 **expertise, a report that would at least generally**
20 **outline some of the testimony that you would be --**
21 **you believe is relevant to the issues presented to**
22 **this Board?**

23 A. Yes. That's correct.

24 **Q. Okay.**

25 MR. PLAKAS: And we will mark this as 135 I

1 presume.
 2 MR. FERRUCCIO: That's correct.
 3 (A report by Doctor Carl E. Klarner was
 4 marked Protester's Exhibit No. 135.)
 5 **Q. And, indeed, does Exhibit 135 outline some of the**
 6 **testimony that you believe would be relevant and**
 7 **material to the issue before the Board today?**
 8 A. Yes.
 9 **Q. Okay.**
 10 MR. PLAKAS: Nothing else.
 11 MR. FERRUCCIO: That's it.
 12 DR. KLARNER: Thank you.
 13 MR. PLAKAS: Thank you.
 14 (Doctor Carl E. Klarner was dismissed.)
 15 MR. PLAKAS: Have a great trip back to
 16 Boston.
 17 MR. FERRUCCIO: Again, for the Record, 135
 18 will be proffered.
 19 MR. PLAKAS: Thank you. And the Record
 20 will also reflect that I've already proffered 134?
 21 MR. FERRUCCIO: Yes. Mr. West or Mr.
 22 Plakas, anything further?
 23 MR. PLAKAS: Sure. At this time, subject
 24 to the introduction of all of our exhibits, both
 25 that were presented here and also that were

1 **Q. -- in this matter?**
 2 A. That is true.
 3 **Q. Okay. Are you familiar with the Brief that filed on**
 4 **behalf of the protesters and submitted to the Board?**
 5 A. I am.
 6 **Q. And when did you first become familiar with that**
 7 **Brief?**
 8 A. When the drafting process began.
 9 **Q. Did you draft the protest?**
 10 A. I helped with the drafting. I sure did.
 11 **Q. Who else drafted it?**
 12 A. The attorneys in the firm that were involved.
 13 **Q. Which firm is that?**
 14 A. Tzangas, Plakas, Mannos.
 15 **Q. Is that the firm by which you've employed, by the**
 16 **way?**
 17 A. It is.
 18 **Q. And did you draft the motion and the protest in**
 19 **connection with your employment with that firm?**
 20 A. My firm drafted the protest and researched the
 21 protest in conjunction with the attorneys in my firm
 22 and with the Ohio Democratic Party.
 23 **Q. Okay. So let me ask. Are you an associate or**
 24 **partner with the firm?**
 25 A. I'm an associate there.

1 presented in our binders, I believe the
 2 authenticities of those documents have been
 3 stipulated to. And we won't have to go through each
 4 of the documents.
 5 MR. VASVARI: The admissibility has been
 6 stipulated to.
 7 MR. FERRUCCIO: Right.
 8 MR. CLINE: (Mr. Cline nodded).
 9 MR. PLAKAS: Admissibility has been. And
 10 so subject to them being admitted into evidence, we
 11 will rest our case at this time. And thank you for
 12 your time and attention.
 13 MR. FERRUCCIO: Thank you. Those documents
 14 will be admitted into evidence.
 15 Okay. Mr. Vasvari.
 16 MR. VASVARI: We call Mr. Edmond Mack.
 17 MR. FERRUCCIO: Mr. Mack.
 18 (Edmond J. Mack was duly sworn by Notary
 19 Public Jocelyn S. Harhay.)
 20 CROSS-EXAMINATION
 21 BY MR. VASVARI:
 22 **Q. Sir, would you state your name for the Record?**
 23 A. Edmond Mack.
 24 **Q. You are a protester --**
 25 A. I am a protester.

1 **Q. How long have you been so associated?**
 2 A. I have been there for ten years, thereabout.
 3 **Q. Do you bill your time?**
 4 A. I do.
 5 **Q. Do you bill hourly?**
 6 A. Hourly.
 7 **Q. Do you keep contemporaneous hourly records of your**
 8 **time?**
 9 A. I do.
 10 **Q. Did you bill the work for drafting the Brief?**
 11 A. I did.
 12 **Q. Do you expect to be paid for the business your firm**
 13 **would be charging for that?**
 14 A. I expect that there will be a bill that will be
 15 submitted, if it hasn't been already.
 16 **Q. When was the decision taken for you to participate**
 17 **in this matter as a protester?**
 18 A. That would have been, that would have been when
 19 David Pepper came to Canton and talked to us about
 20 the protest.
 21 **Q. And when was that; do you recall?**
 22 A. That would have been I believe the week after Mr.
 23 Bernabei filed his Independent nominating position.
 24 **Q. So in the second week of May 2015?**
 25 A. I think that's about right. It could have been the

1 same week. But I think that's about right.

2 **Q. Had you been assigned the drafting task at that**

3 **time?**

4 A. No.

5 **Q. Okay. So after you decided to become a protester,**

6 **you were assigned the task of drafting the Brief?**

7 A. I wouldn't say assigned. I was a part of the team

8 of attorneys at the firm that worked on the protest,

9 because I'm obviously intimately involved in Canton

10 City politics. Probably a natural fit that I would

11 participate in that process.

12 **Q. Okay. So after you had elected to become a**

13 **protester, you began the process of working on the**

14 **Brief as an attorney?**

15 A. That's true.

16 **Q. Okay. Did it occur to you that as a protester you**

17 **were signing a declaration under the Brief saying**

18 **that you were advancing the protest based upon the**

19 **allegations contained in the document itself?**

20 A. Yeah.

21 **Q. All right. Did it occur to you that there's a**

22 **disciplinary prohibition in Ohio between entering**

23 **into a matter as counsel wherein one might be called**

24 **as a witness?**

25 A. That's not accurate.

1 **Q. What part is inaccurate?**

2 A. You would only be prohibited from testifying if the

3 interest were adverse. My interests are clearly not

4 adverse to the protesters.

5 **Q. You are a witness in this matter?**

6 A. Sure am.

7 **Q. Did you willingly write the Brief knowing that you**

8 **might be called as a witness in the matter?**

9 A. Yes.

10 **Q. Okay. So as protester and as author, did you**

11 **discuss your legal strategy with the other members**

12 **of your firm?**

13 A. Yes.

14 **Q. Which?**

15 A. All of them.

16 **Q. Both?**

17 A. Wait. Attorneys in my firm?

18 **Q. Yes.**

19 A. Well, there's 15 attorneys. We would have discussed

20 it.

21 **Q. Any of them?**

22 A. Yes. It would have been discussed with the

23 attorneys in the law firm.

24 **Q. Okay. In your capacity as protester?**

25 A. In my capacity as Edmond Mack.

1 **Q. Okay. How many hats does Edmond Mack wear?**

2 A. I'm a protester. I'm a Canton City councilperson.

3 And I'm an attorney at the firm that's prosecuting

4 this proceeding.

5 **Q. What personal knowledge do you have that Mr.**

6 **Bernabei did not subjectively in good faith attempt**

7 **to disaffiliate himself from the Democratic Party?**

8 A. I can't crawl into Mr. Bernabei's head. Right? The

9 only thing we can evaluate is what we have in the

10 objective record. And if we're applying the

11 standard in the advisory opinion, he's not

12 disaffiliated from the Democratic Party. And there

13 is certainly suggestion in the record, in the

14 evidence that the timing and history of Mr.

15 Bernabei's relationship with the mayor suggest that

16 it was --

17 (An interruption occurred.)

18 A. It suggests that his disaffiliation was not in good

19 faith at least as how that's defined by the Ohio

20 Secretary of State.

21 **Q. I'll go back to that in a moment. Can you point to**

22 **any post disaffiliation action on behalf of Mr.**

23 **Bernabei that supports this conclusion?**

24 A. Post disaffiliation? So you're asking what he did

25 to disaffiliate or what he failed to do to

1 disaffiliate since he filed?

2 **Q. Post petition.**

3 A. Post petition. What he failed to do?

4 **Q. Right.**

5 A. Clearly failed to resign as a Democrat county

6 commissioner. And if you look at your own Board's

7 records right now, it shows him as a Democrat county

8 commissioner, even though his address has since been

9 updated to reflect another address.

10 **Q. Okay. Let's run with that for a moment. Where in**

11 **the law does it say he is required to resign as a**

12 **county commissioner in order to disaffiliate himself**

13 **from the party?**

14 A. Well, the advisory opinion says that that's

15 something this Board clearly would look at. And I

16 think that the Board's agenda, that Mr. Mack has

17 looked at, you know, recognized that; that when you

18 look at the factors that show an ongoing

19 relationship, that's a big one. And then you look

20 at other factors: Voting history, contributions,

21 memberships in the democratic clubs, showing up on

22 campaign literature, recording a commercial. I mean

23 I -- you want me to keep going?

24 **Q. No, I don't want you to keep going. What I want you**

25 **to do is answer my question --**

1 A. I'm sorry.

2 **Q. -- which was where in the case law can we find any**

3 **requirement that someone in order to disaffiliate**

4 **himself from a party must resign an office that he**

5 **was elected to during a previous association with**

6 **that party.**

7 A. This is going to be that case. This has never

8 happened before.

9 **Q. So the answer is there, is there no case law. Is**

10 **that the answer?**

11 A. The advisory opinion says that's a factor you look

12 at. But there is not a case where this has

13 happened.

14 **Q. So rather than your telling the Board what they're**

15 **going to do, why don't you tell me that there is no**

16 **case law.**

17 A. There's not.

18 **Q. That's an accurate statement?**

19 A. That's an accurate statement.

20 **Q. Okay. There's no statutory requirement either, is**

21 **there?**

22 A. I mean to the extent he can't be affiliated, there

23 would be. But I mean if you're saying there's

24 something beyond that, there is not.

25 **Q. General Assembly makes laws with respect to running**

1 **for office; correct?**

2 A. True.

3 **Q. General Assembly makes laws with respect to**

4 **retaining one's membership or retaining one's**

5 **incumbency in an office once elected; correct?**

6 A. They've -- the General Assembly said you had to --

7 **Q. That was a simple question.**

8 A. Then the answer would be --

9 MR. VASVARI: Mr. Chairman.

10 A. -- would be no.

11 MR. FERRUCCIO: Just answer the question.

12 Do you want to restate it.

13 THE WITNESS: I'm sorry.

14 **Q. The General Assembly has within its power the**

15 **ability to prescribe when an incumbent might**

16 **resign --**

17 A. Yes.

18 **Q. -- based on a circumstance?**

19 A. That is 100 percent accurate. Yes.

20 **Q. The General Assembly has in some cases prescribed,**

21 **for instance, that a resignation is necessary under**

22 **certain circumstances from public office?**

23 A. That's true.

24 **Q. They have never prescribed that an incumbent must**

25 **resign upon disaffiliating himself from a party?**

1 A. That is not in the statute, that language. You're

2 correct.

3 **Q. They have never done that?**

4 A. That's...

5 **Q. So what you have is that it is one factor among many**

6 **factors that the Board may consider?**

7 A. That's what I said.

8 **Q. Very good. Then we agree. For once, we agree on**

9 **something. You in the Brief and in your testimony**

10 **have made repeated reference to Mr. Bernabei serving**

11 **as the democratic county commissioner. Where in the**

12 **Revised Code would I find the phrase "democratic**

13 **county commissioner"?**

14 A. You will not.

15 **Q. Why won't I find that phrase?**

16 A. Because the fact that he's a democratic public

17 officeholder is based upon the nominating petitions

18 that he circulated which form the basis of his

19 election and the fact that the Democratic Central

20 Committee will appoint his successor should he

21 resign.

22 **Q. In order for Mr. Bernabei to disaffiliate himself**

23 **from the party, are you of the mind that he must**

24 **have a complete ideological break with all its**

25 **tenets?**

1 A. What -- I don't understand the question. What do

2 you mean by that?

3 **Q. Can Mr. Bernabei quit the Democratic Party and still**

4 **hold some fidelity to some of the principles of the**

5 **Democratic Party?**

6 A. Yes. Yes. I think that's fair.

7 **Q. And that wouldn't make his disaffiliation any less**

8 **genuine?**

9 A. I, I think that's right. But that's not what we

10 have here.

11 **Q. That wasn't my question. The answer ended at**

12 **"right." Let me ask you another question. In the**

13 **Brief, it says that not one night did Tom Bernabei**

14 **sleep in University Avenue.**

15 A. That's not what the Brief says.

16 **Q. Brief says that as of the 3rd he had never slept in**

17 **University Avenue?**

18 A. That's what the Brief says.

19 **Q. Okay. Why is that relevant?**

20 A. Because when he signed his nominating petition that

21 day, he's making a representation under penalty of

22 perjury that was the voting address. And another

23 secondary reason as to why it's relevant, we have

24 learned since writing our Brief that he actually

25 signed his change of voting address on April 30th;

1 and that document was forward dated. So the fact
2 that he is not sleeping at that University, that
3 University address May 3rd, I think it's pretty
4 relevant.

5 **Q. Do you know when he formed the intention to begin
6 staying at University Avenue?**

7 A. I am not. Mr. Bernabei, you would have to ask him.

8 **Q. We will ask him. Is it safe to infer that someone
9 doesn't typically spend a thousand dollars to enter
10 a month-to-month lease to rent a residence of which
11 he doesn't intend to stay?**

12 A. I mean people rent hotel rooms all the time. And
13 I'm sure that was, you know, about the same cost.
14 Who knows what's in his mind. You will have to ask
15 him.

16 **Q. You rent thousand dollars hotel rooms? You must be
17 doing pretty well at the firm. Is there a formal
18 mechanism for resigning one's membership from the
19 Democratic Party?**

20 A. There is not.

21 **Q. Are you aware of who is funding this litigation on
22 behalf of the Democratic Party?**

23 A. I am.

24 **Q. Who is?**

25 MR. PLAKAS: Objection. We've talked about

1 an internal law firm's finances, et cetera, et
2 cetera. This Board has already indicated that we're
3 to stay with the specific issues already raised.
4 I'd let that go. But that is one fishing
5 expedition, and we're going to go through a number
6 of fishing expeditions.

7 MR. FERRUCCIO: Objection sustained.

8 MR. VASVARI: I'll move on.

9 BY MR. VASVARI:

10 **Q. Were you aware when you wrote the protest to the
11 extent Mr. Bernabei did not intend to remain in
12 University Avenue; it was always his intention to
13 move to another address, the home in Canton?**

14 A. That's what he said.

15 **Q. Were you aware when you wrote the protest that that
16 was the case?**

17 A. Clearly. Because he's saying his address at
18 University is temporary. If he's intending to move
19 somewhere else, that's what makes the address at
20 University temporary.

21 **Q. And the last part of that question was, were you
22 aware that that someplace else was another residence
23 within the same jurisdiction that would equally have
24 qualified the formality?**

25 A. Should have moved there.

1 **Q. I didn't ask that. I asked were you aware.**

2 A. I am aware.

3 **Q. What is the answer? Yes or no?**

4 A. The answer is he intended to make his permanent
5 address the Lakecrest property.

6 **Q. You will agree with me that there are colloquial
7 uses of the word "permanent" and that there are
8 legal uses for the word "permanent" and that they
9 sometimes diverge?**

10 A. I don't agree with that.

11 **Q. You don't agree?**

12 A. No.

13 **Q. So one can talk about a permanent address and one
14 has only one definition of a permanent address. Is
15 Mr. Bernabei now permanently residing at Lakecrest
16 to your, to your knowledge?**

17 A. To my knowledge.

18 **Q. Yeah. So what if two years from now he decides to
19 move? Would that retroactively invalidate the
20 permanency of his present residence?**

21 A. I don't -- no. I don't think that -- I think that
22 the issue in the case is whether living in a house
23 for three days is permanent. If that's the case,
24 then the word "permanent" has no meaning. Staying
25 in hotel for a night is permanent under that theory

1 of what you're articulating. So to answer your
2 question directly, I don't agree that there are two
3 definitions of the word "permanent," a colloquial
4 definition and a legal definition. Permanent is
5 permanent. And the residence at University was not.

6 **Q. But you will agree that the word "permanent" is
7 defined specifically in the statute as the place to
8 which one intends to return when absent therefrom
9 and that the statutory definition, not your
10 characterization of permanent, is governing?**

11 A. No. No, I don't agree with that. The statute says
12 the place of fixed habitation is what determines
13 where you live. Secretary of State, who we have to
14 rely on, says that means it cannot be a temporary
15 residence; it has to be a permanent residence.

16 **Q. The statute does or not, does not define a fixed
17 abode as the place to which one intends to return
18 when absent? Which is it?**

19 A. In summary we're talking that's about -- yes. But
20 that wasn't your original question. But I think
21 that's what the statute says in sum or substance.

22 **Q. Okay. And the statute governs what constitutes
23 one's residence for purpose of --**

24 A. No.

25 **Q. -- of voting in an electoral status?**

1 A. No.

2 **Q. The statute doesn't govern?**

3 A. No. No. No. The General Assembly said the

4 Secretary of State's opinions have to guide the

5 Board's determination. The Secretary of State's

6 interpretation is what the Board should be looking

7 at. I believe the statute -- the General Assembly

8 said the Secretary of State is what should be

9 guiding the Board's determination.

10 **Q. So you are saying that the General Assembly has**

11 **delegated its authority in a regulatory capacity to**

12 **the Secretary of State to make regulations that**

13 **supersede or interpret its own statutes?**

14 A. I'm saying the Secretary of State's charged

15 statutorily with interpreting the election laws.

16 **Q. This Board relies on --**

17 A. The Board relies on the Secretary of State's

18 opinions every day. This not a foreign concept to

19 this Board.

20 **Q. The Board should probably rely on Secretary of State**

21 **Brunner's decision in Opinion No. 2075 where she**

22 **says that Ohio retains -- or, Ohioians retain the**

23 **right to disaffiliate themselves and alter their**

24 **political affiliations at any time. They should**

25 **rely on that too, shouldn't they?**

1 A. They should rely on the entirety of the opinion.

2 **Q. Okay.**

3 MR. VASVARI: We're done. Thank you.

4 Wait. There is one more question.

5 **Q. I have, in all my excitement, forgotten to ask you**

6 **something. It seems to be a very large portion of**

7 **your Brief is given over to the theory that Mr.**

8 **Bernabei is motivated to run for mayor of Canton**

9 **because he harbors some need, some deep-seeded need**

10 **for revenge against Mr. Healey. You remember that;**

11 **don't you?**

12 A. I do.

13 **Q. Okay. You wrote that; didn't you?**

14 A. I did.

15 **Q. Is that your theory?**

16 A. I believe it's, it's supported. I believe it's

17 beyond the theory. I believe --

18 **Q. Beyond theory.**

19 A. -- it's factual.

20 **Q. It's a fact. Okay.**

21 A. At least a portion of his motivation I think is

22 undeniably attributed to his ill will towards the

23 mayor.

24 **Q. I see. And how do you know of this so well?**

25 A. He had told me personally at lunch while sitting at

1 Bender's probably about a year ago.

2 **Q. Tom Bernabei told you that he was going to run for**

3 **mayor because --**

4 A. No. No. No.

5 **Q. What has he told you?**

6 A. He's told me that he very much dislikes the mayor of

7 our city and that -- well, he's used choice words

8 but I won't go into detail. And I think the fact

9 that -- you know, we heard today in Mr. Bernabei's

10 testimony that the determination of being called --

11 hauled out by the cops while he was laughing, I mean

12 human conditions, there's going to be some ill will

13 there. There's only certain things that can explain

14 this bizarre course of conduct leading up to the

15 filing deadline. You know, whether it's ultimately

16 hatred for the mayor, a feeling that only he can

17 save the City of Canton, I can't get in his head;

18 but when you apply the advisory opinion to the facts

19 of this case, I think the conclusion speaks for

20 itself.

21 **Q. You can't get into his head. But you didn't**

22 **hesitate for page after page after page in the Brief**

23 **trying to get into his head in speculating about**

24 **vengeance is the motive. You did speculate about**

25 **vengeance is the motive?**

1 A. Right. I don't know that.

2 **Q. Right. You're not a psychologist, are you?**

3 A. I'm not a psychologist.

4 **Q. You're not a psychiatrist, are you?**

5 A. I'm not a psychiatrist.

6 **Q. You're not a mental health professional?**

7 A. I'm not.

8 **Q. You haven't had the opportunity to discuss with Mr.**

9 **Bernabei his motivations for the present run, have**

10 **you?**

11 A. I have not.

12 **Q. Okay. In fact, how long have you been in politics?**

13 A. Four years.

14 **Q. Oh. How old are you?**

15 A. Thirty-three.

16 **Q. All right. So you've been in politics for four**

17 **years next to Mr. Bernabei's 40. How much history**

18 **do you have with Mr. Healy?**

19 A. I guess it would be four years; right?

20 **Q. How much history does Mr. Bernabei have with Mr.**

21 **Healy?**

22 A. I know of at least one where they worked together.

23 **Q. Right. What do you know about that?**

24 A. I know that Mr. Bernabei said that it was a marriage

25 that wasn't going to last.

1 **Q. I see. When was Mr. Bernabei terminated by Mr.**
 2 **Healy?**
 3 A. January 2009.
 4 **Q. Okay. And are you aware that your own Brief, the**
 5 **one you drafted and for which you assembled the**
 6 **tables, demonstrates that he's given \$26,000 to the**
 7 **Stark County Democratic Party since that**
 8 **termination?**
 9 A. Okay.
 10 **Q. Does that seem to you to be a man who is harboring**
 11 **bitter revenge towards his party?**
 12 A. No. I think you're conflating the two concepts.
 13 It's not -- Mayor Healy is not the Democratic Party.
 14 **Q. Forgive me.**
 15 A. The ill will towards Mayor Healy and his donations
 16 to the Democratic Party as recently as April 26th I
 17 think, you know, doesn't make sense, to say the
 18 least.
 19 **Q. I'm not sure I understood your answer. But I'm not**
 20 **sure that I need to. Have you ever had the**
 21 **opportunity to be present during his six years as**
 22 **commissioner when Mr. Healy and the mayor -- I'm**
 23 **sorry -- when Mr. Bernabei and Mayor Healy worked**
 24 **together on the sorts of issues that urban mayors**
 25 **and county commissioners work on?**

1 A. I think those issues are few.
 2 **Q. You think those issues are few?**
 3 A. I know those issues are few.
 4 **Q. How many meetings have you attended?**
 5 A. Commissioners meetings?
 6 **Q. No. How many meetings have you attended wherein Mr.**
 7 **Bernabei or commissioner Bernabei and Mayor Healy**
 8 **met on city/county business?**
 9 A. I have not attended any of those meetings --
 10 **Q. Okay.**
 11 A. -- if there's been.
 12 **Q. How many, how many interactions between Mr. Bernabei**
 13 **and Mayor Healy have you had the opportunity to**
 14 **witness since 2009?**
 15 A. I've never seen them interact.
 16 **Q. Okay.**
 17 A. I've never seen Mr. Bernabei come to our council.
 18 I've never seen Mr. Bernabei at Canton City Hall.
 19 **Q. Has Mayor Healy ever expressed to you a feeling that**
 20 **Mr. Bernabei was gunning for him politically?**
 21 A. Like with his candidacy?
 22 **Q. In any way.**
 23 A. No. No. I don't think -- I think certainly he's
 24 filed a petition running for mayor; I think he's
 25 gunning politically. But prior to that, no, I don't

1 think so.
 2 **Q. You opine in the Brief that Mr. Bernabei has some**
 3 **sort of messianic complex, that he alone can solve**
 4 **the problems of Canton, and seemed to be suggesting**
 5 **there a certain degree of arrogance. Is that a fair**
 6 **characterization?**
 7 A. I'm not characterizing anything Mr. Bernabei has
 8 said.
 9 **Q. Okay. Except in the Brief that runs on for about**
 10 **12,000 words?**
 11 A. I'm sorry you didn't appreciate it.
 12 **Q. I didn't appreciate it. But I made it through.**
 13 **Now, in that Brief, you speculate as to his**
 14 **motivations.**
 15 A. (Mr. Mack nodded).
 16 **Q. And in that Brief you speculate as to his, his lack**
 17 **of political candor. Do you have any personal**
 18 **knowledge to demonstrate that Mr. Bernabei is a man**
 19 **who undertakes political decisions lightly?**
 20 A. I don't have any knowledge one way or the other.
 21 **Q. Do you have any knowledge to indicate that Mr.**
 22 **Bernabei is a man who doesn't take seriously the**
 23 **ramifications of his actions?**
 24 A. I've no knowledge one way or the other.
 25 **Q. Do you have any knowledge to indicate that Mr.**

1 **Bernabei uses petty grievances as the basis for the**
 2 **motivation for his public actions. Do you or don't**
 3 **you?**
 4 A. I have a lot of respect for Mr. Bernabei.
 5 **Q. Good.**
 6 A. I think this whole -- I think this is out of
 7 character.
 8 **Q. I see. So you formed an opinion as to his**
 9 **character?**
 10 A. Yes.
 11 **Q. And what is that opinion?**
 12 A. I think he has a good character. And I know he has
 13 a general reputation in the community for good
 14 character. And I think that this issue doesn't
 15 match up.
 16 MR. VASVARI: I have no more questions.
 17 MR. FERRUCCIO: Thank you.
 18 REDIRECT EXAMINATION
 19 BY MR. PLAKAS:
 20 **Q. Mr. Mack, I'd like to follow up on some of the**
 21 **questions that you were asked in the subject matter**
 22 **that we've gone into and you weren't permitted to**
 23 **totally answer. The last question, you were asked**
 24 **to talk about Mr. Bernabei's character. And you**
 25 **stated that his conduct in this situation doesn't**

1 **match up. Tell us why.**
 2 A. The reputation that I know of Mr. Bernabei is detail
 3 orientated and studies the law and does things the
 4 correct way. This was clearly not done correctly,
 5 whether failing to send, for instance, the letters
 6 to different democratic clubs. Whether by design or
 7 by mistake, that's not a type of mistake that
 8 someone who's going to do this, make such a serious
 9 decision, would make. When there's the issues of
 10 failing to resign from his county commissioner's
 11 seat, that is something that's fairly obvious to do
 12 in order to satisfy the independent candidate. I am
 13 surprised that Mr. Bernabei would be acting
 14 inconsistent with his character as I understand it
 15 and would have done that.

16 **Q. You just mentioned that it would be appropriate, and**
 17 **surprises you he hasn't resigned, in terms of**
 18 **meeting the qualifications. And you've already been**
 19 **questioned. Is there any statute that says "thou**
 20 **shall resign"?**

21 A. No.

22 **Q. How do you respond then? Why is it so important in**
 23 **your analysis, as you were questioned by Mr.**
 24 **Bernabei's counsel, that a democratic officeholder**
 25 **must resign to, to clearly disassociate himself from**

1 **the Democratic Party?**

2 A. Well, like I said earlier in my remarks, the
 3 advisory opinion clearly will guide this Board's
 4 decision. And that situation is discussed
 5 specifically within the advisory opinion itself.
 6 And if we have democratic officeholders or
 7 republican officeholders -- I'm not limiting it to
 8 one party or another -- allow them to hold elected
 9 office, be affiliated with a political party to
 10 where that political party's Executive Committee is
 11 going to run the -- make the an appointment and then
 12 permit them to run as an independent, affiliation
 13 requirement has no meaning; it would make no sense.
 14 There cannot be a -- I've tried to imagine a set of
 15 facts that demonstrate affiliation as much as this
 16 case does. And I really can't. With the evidence
 17 that's here of the current sitting officeholder, the
 18 fact of the timing of resignation and when the
 19 petitions were filed, this has never happened in
 20 Ohio before.

21 **Q. You were asked about or referred to a 2007 opinion**
 22 **from Jennifer Brunner. And you weren't permitted to**
 23 **explain the entirety of the opinion. With regard to**
 24 **that series of questions that was asked of you,**
 25 **would you please explain the relevancy of the**

1 **entirety of not only that opinion but any other**
 2 **guidelines that have been issued that you think are**
 3 **relevant by both the Secretary of State's office and**
 4 **the court system?**

5 MR. VASVARI: Objection. I don't think my
 6 question opened the door to a second closing
 7 argument.

8 MR. PLAKAS: He asked. He brought up cases
 9 and statutes.

10 MR. FERRUCCIO: I think you can proceed.

11 MR. PLAKAS: Thank you.

12 A. The analysis starts with the Morrison decision. And
 13 that's from the Sixth Circuit. And that's when the
 14 Sixth Circuit first applied the independent
 15 requirement, this affiliation requirement in Ohio
 16 law. It was enacted in the '80s. Jennifer Brunner
 17 then issued an advisory opinion to determine how you
 18 apply Ohio's disaffiliation requirement -- and
 19 Ohio's not unique -- to have a disaffil -- a
 20 requirement that an independent has to be
 21 disaffiliated. Colorado, Oklahoma, California, a
 22 lot of states do that. Because the policy is -- I
 23 don't want to go into the policy; but the Board
 24 knows the policy -- to protect the voter ballots.
 25 The advisory opinion then analyzed its application

1 of the Morrison decision. And the Morrison decision
 2 said in order to fulfill the statutes, two things
 3 have to happen: Have to be disaffiliated, fully
 4 disaffiliated. And then No. 2, the disaffiliation
 5 has to be done in good faith.

6 So the advisory opinion establishes
 7 different factors that this Board may weigh to
 8 assist it in its evaluation. There's two automatic
 9 disqualifiers as this Board is well aware. And a
 10 disqualified candidate is based on the automatic
 11 disqualifiers: Voting in a partisan primary after
 12 you filed your petition or serving on the Executive
 13 Committee after you've filed your petitions.

14 If the auto disqualifiers aren't present
 15 then there are numerous factors that this Board will
 16 examine and weigh to determine affiliation: Voting
 17 history. But voting history alone has to be more
 18 than just voting history by itself. Office as a
 19 current elected official. Political donations.
 20 Membership in organizations. Anything that would
 21 demonstrate a continuing affiliation with the
 22 political party is something that this Board would
 23 look at. Since the advisory opinion, it's been
 24 applied by the Ohio Supreme Court, by the Court of
 25 Appeals, by a lot of Boards of Elections throughout

1 the state.
2 The cases that is closest to this -- well,
3 let me take a step back. In the Supreme Court
4 cases --

5 MR. FERRUCCIO: I sort of lost track of the
6 question. And so I don't know that we need to be
7 lectured on --

8 THE WITNESS: I'm sorry.

9 MR. FERRUCCIO: -- advisory....

10 THE WITNESS: Sorry. Sorry.

11 MR. FERRUCCIO: We understand that. But
12 maybe go back to a particular question.

13 MR. PLAKAS: Sure.

14 BY MR. PLAKAS:

15 **Q. Going back to the suggestion made that you weren't**
16 **permitted to answer, the suggestion was made that**
17 **there's nothing that prohibits in the advisory**
18 **opinions or the statutes or the case law, there's**
19 **nothing that prohibits what Mr. Bernabei has -- is**
20 **attempting to do. And you weren't permitted to give**
21 **a full answer to that. What is your answer to that?**

22 A. The advisory opinion itself absolutely prohibits
23 what he's trying to do.

24 **Q. There was also a line of questioning that you were**
25 **asked regarding the address and the timing and the**

1 **date upon which, which he signed certain**
2 **declarations or applications. And you made a point**
3 **with regard to discovering some statement made in**
4 **the Brief that was con -- that was made in Mr.**
5 **Bernabei's Brief that was contrary to the documents**
6 **or set of facts that appeared before that. What did**
7 **you mean by that? Please explain.**

8 A. Mr. Bernabei changed -- filed, caused to be filed at
9 the Board of Elections on May 3rd a change of voting
10 address form to change his address to the University
11 property. We did not know that that document was
12 actually signed by Mr. Bernabei and provided to the
13 deputy director on April 30th. So when that
14 document was signed, you know, under penalty of
15 election falsification, his lease wasn't even
16 effective for the property.

17 **Q. And, and that reference to that April 30th, that is**
18 **contained at, in a matter of law in this case in Mr.**
19 **Bernabei's Brief, that was filed late Thursday or**
20 **Friday?**

21 A. That's right.

22 **Q. Okay. You were also asked about the nuances between**
23 **a temporary address and permanent address. And the**
24 **suggestion was made that there's really no**
25 **difference colloquially in terms of those terms.**

1 **And you responded and were not permitted to fully**
2 **respond. But, for example, in the case law or in**
3 **the advisory opinions, do they consider the**
4 **difference between temporary and permanent**
5 **meaningless? Is there a colloquial acceptance: Oh,**
6 **yeah, this is permanent or temporary and it means**
7 **the same thing?**

8 A. No. No. They, they clearly do not mean the same
9 thing.

10 **Q. And following up on that question, with regard to**
11 **temporary residences, et cetera, does the case law,**
12 **for example, allow or the advisory opinions allow**
13 **potential perspective voters or candidates to move**
14 **into an area and, and take a hotel room for a period**
15 **of three days or week or a on a month-to-month and**
16 **then be qualified or eligible to be voters or**
17 **candidates?**

18 A. No. In the Brooks case that we cited in our actual
19 Brief, the Third District was very clear a hotel
20 room cannot be a valid voting residence. That was
21 in reference to the Red Roof Inn in that case. And
22 then in our supplemental Bench Brief that we filed
23 today, there's an Ohio Supreme Court citation where
24 they looked at a situation, not as dramatic as this
25 one, but where a candidate moved into a residence

1 with the sole purpose of running for office with the
2 wife and the dog staying at the other house. The
3 Supreme Court said that's not a permanent voting
4 residence.

5 **Q. You were further questioned, and there's a line of**
6 **questioning that made reference, to certain dates**
7 **and even Mr. Bernabei's wife. And you weren't**
8 **permitted to fully respond to that question. And**
9 **the issue in that question was is there any**
10 **relevance, and what's the big deal if, in fact, your**
11 **wife doesn't move when you move. And what was your**
12 **response that you weren't permitted to give in that**
13 **question?**

14 A. No, that's highly relevant. If, for instance, if
15 you look at Exhibit 127 in our supplemental
16 appendix, Mr. Bernabei's wife actually on May 5th
17 voted in person at the Hills & Dales address. In
18 the statute, when you determine someone's residence,
19 it says the residence of the spouse shall be the
20 place of residence.

21 Now, when we have -- when you take into
22 consideration the permanency and temporary
23 components of this case and combine them with the
24 statutory requirement, the location of the person's
25 spouse shall be the determinant place of residence.

1 That's very relevant.

2 **Q. And then at least upon the documentation, there's a**

3 **line of questioning with regard to whether or not**

4 **Mr. Bernabei was actually, had actually been**

5 **sleeping at the premises at the time that he**

6 **actually filed some of the -- or, the petition and**

7 **the declaration. And you weren't permitted to**

8 **answer that. Have you done an analysis and have you**

9 **created, so to speak, any sort of timeline that the**

10 **Board can review to confirm whether or not Mr.**

11 **Bernabei had actually slept there before he**

12 **submitted his petitions on March -- excuse me -- May**

13 **3rd?**

14 A. Yes. At Exhibit 122 in the supplemental appendix,

15 we created a timeline that details when the forms

16 were signed, when the democratic contributions were

17 made in relation to the relevant trigger dates. And

18 the second page of that is the citation in the

19 record to every document that supports every entry.

20 **Q. And with regard to the question and the subject**

21 **matter that was asked of you by Mr. Bernabei's**

22 **attorney, what is the relevancy then of the**

23 **timeline? And what does the timeline show on**

24 **Exhibit 122?**

25 A. Well, it documents everything that would demonstrate

1 a continued affiliation, both after the petitions

2 were signed, after the petitions were filed, and the

3 evidence leading up to these events.

4 **Q. And with regard to the timeline, the questions being**

5 **asked about Mr. Bernabei's sleeping, what is the**

6 **relevancy that you weren't permitted to respond to**

7 **in regard to if someone claims they've established a**

8 **residence? What is the relevancy of whether they**

9 **have slept there at the time they're claiming**

10 **residency and/or whether their wife's with, there**

11 **with him?**

12 A. That goes to both issues. Permanency of the

13 residence in the statutory language indicating that

14 where a person's spouse lives determines residency.

15 When both the -- certainly when the change of voter

16 registration form was signed on April 30th, he

17 didn't have a valid lease for the residence. And

18 when his petitions were signed on May 3rd, he had

19 never slept there until that night.

20 **Q. And why does your -- why did you say and why does**

21 **the timeline confirm that when the petitions were**

22 **signed on May 3rd he had not yet slept there? What**

23 **is the basis and the evidence for that?**

24 A. The statements that Mr. Bernabei made in the Martin

25 Olson interview provide the foundation for that

1 timeline.

2 **Q. And what specific statements are you referring to?**

3 A. When he came back from Florida and contrasted with

4 the dates of the different documents being signed.

5 **Q. Well, specifically, last question, how do you mean**

6 **that? So what date did he come back from Florida?**

7 **How does that compare to the filing of his petition?**

8 **And how does that compare to him for the first time**

9 **sleeping there May 3rd when he came back from**

10 **Florida --**

11 A. Right.

12 **Q. -- in the afternoon of May 3rd?**

13 A. That's it. He came back from Florida on the

14 afternoon of May 3rd. That would have been the

15 first night that he would have been sleeping at 2118

16 University. And that is the date that he signed his

17 petition and he signed his change of voter

18 registration using this as a voting residence four

19 days prior.

20 MR. PLAKAS: I have nothing further. Thank

21 you.

22 MR. FERRUCCIO: Thank you.

23 MR. VASVARI: Nothing.

24 MR. FERRUCCIO: Okay. Thank you.

25 THE WITNESS: Thank you very much.

1 (Edmond J. Mack was dismissed.)

2 MR. CLINE: Don't pass those around. Those

3 are proffered. Just leave them there.

4 MR. PLAKAS: May I have a copy for my files

5 since I gave you...?

6 MR. FERRUCCIO: They're all yours.

7 MR. VASVARI: Are we good?

8 MR. FERRUCCIO: Yes.

9 MR. PLAKAS: They got a copy too. Did you

10 want that to happen too?

11 MR. FERRUCCIO: Yeah.

12 MR. PLAKAS: Thank you. We'll pass these

13 out on the sidewalk to someone.

14 MR. FERRUCCIO: Not at University. I

15 should say only at University.

16 MR. VASVARI: I call Chris Smith.

17 (Chris Smith was duly sworn by Notary

18 Jocelyn S. Harhay.)

19 DIRECT EXAMINATION

20 BY MR. VASVARI:

21 **Q. Miss Smith, good afternoon. I'm Raymond Vasvari,**

22 **Mr. Bernabei's lawyer. I have just a few questions**

23 **for you. The first is that you are one of the**

24 **protesters in this case; correct?**

25 A. Yes, I am.

1 **Q. Did you review the document before signing the**
 2 **attestation?**
 3 A. Yes, I did.
 4 **Q. Okay. And do you have any personal knowledge that**
 5 **Mr. Bernabei was not acting in good faith when he**
 6 **claimed to be disaffiliated from the Democratic**
 7 **Party?**
 8 A. Could you repeat that again, please?
 9 **Q. Sure. Do you have any personal knowledge that would**
 10 **support your allegation that Mr. Bernabei wasn't**
 11 **speaking in good faith when he announced his**
 12 **disaffiliation from the Democratic Party?**
 13 A. Well, I don't feel that he was speaking in dis -- I
 14 just felt that I couldn't understand how he was
 15 signing up for an Independent when I just knew that
 16 he was a Democrat. I had questions about that in
 17 the beginning.
 18 **Q. Okay. Based on what?**
 19 A. Based on the fact that I knew he was a Democrat.
 20 **Q. So had he been a Democrat for a very long time?**
 21 A. Yes.
 22 **Q. And based on that, you doubted the fact that he**
 23 **could change his mind?**
 24 A. Yes. And I questioned as to why and how could that
 25 be.

1 **Q. Did you ever ask him?**
 2 A. No, I didn't.
 3 **Q. Okay. But you filed a protest trying to prevent him**
 4 **from running for mayor?**
 5 A. I did.
 6 **Q. Okay. If you wanted that answer, wouldn't it just**
 7 **have been easier to ask him?**
 8 A. Well, no. But I sort of asked the people around how
 9 can that happen.
 10 **Q. Who did you ask?**
 11 A. Well, I asked Edmond, being that he was an attorney.
 12 **Q. I see.**
 13 A. And I think I called the Board of Elections to see
 14 how could that be.
 15 **Q. Okay. Did they explain to you that somebody could**
 16 **disaffiliate themselves from the party and in a**
 17 **proper time and manner?**
 18 A. Yes.
 19 **Q. Okay. And you weren't satisfied that Mr. Bernabei**
 20 **had done that?**
 21 A. No, I wasn't.
 22 **Q. Okay. What about the way in which things happened**
 23 **didn't satisfy you?**
 24 A. Well, the fact that I didn't feel that he signed up
 25 for an Independent in a timely manner.

1 **Q. Okay. Do you know what the statute requires for**
 2 **declaration of disaffiliation?**
 3 A. Well, I know that it should be done in a timely
 4 manner.
 5 **Q. Okay. And if I told you that the time that the**
 6 **statute provides is by 4 p.m. the day before the**
 7 **primary election proceeding the general election**
 8 **which the candidate hopes to stand for office, would**
 9 **that be an accurate statement?**
 10 A. Well, if you tell me that and if I had seen it, I
 11 probably would have understood it better.
 12 **Q. Okay. You know he did that; right?**
 13 A. Yes.
 14 **Q. Okay. So does that clear everything up for you?**
 15 A. Well, not really. Because I didn't even know that
 16 he had even did it and in a timely manner. I really
 17 didn't know until it had hit the papers that he was
 18 even running for mayor as an Independent. And
 19 that's when I questioned the fact that how could
 20 that be done when, you know, he was a Democrat.
 21 **Q. But now you know he met the guideline; don't you?**
 22 A. Yeah, now that I see that, you know, they're saying
 23 that he did.
 24 **Q. And do you have any question about his having been a**
 25 **resident at the University Avenue house? Any reason**

1 **to believe he wasn't on the 3rd of May?**
 2 A. Well, the only reason that I believe it is because
 3 of what I've been hearing, that he wasn't. I didn't
 4 know personally, no.
 5 **Q. Okay. So you have no personal knowledge about that**
 6 **one way or the other?**
 7 A. No.
 8 **Q. Okay. Do you know Mr. Bernabei by the way?**
 9 A. Yes, I do.
 10 **Q. You think he's a man of high integrity?**
 11 A. Always been.
 12 **Q. Think he's man of his word?**
 13 A. Yes.
 14 **Q. Man you trust?**
 15 A. Yes. Trust him.
 16 **Q. Thank you.**
 17 A. Uhm-huhm.
 18 MR. FERRUCCIO: Lee, do you have any?
 19 MR. PLAKAS: I only have like two or three
 20 hours of questions for you.
 21 THE WITNESS: Okay.
 22 MR. PLAKAS: No questions.
 23 MR. FERRUCCIO: Okay. Thank you.
 24 (Chris Smith was dismissed.)
 25 MR. VASVARI: David Dougherty.

1 MR. FERRUCCIO: David Dougherty.
 2 MS. MULLANE: David Dougherty was not able
 3 to be served.
 4 MR. VASVARI: Oh.
 5 MS. MULLANE: The process server was unable
 6 to serve.
 7 MR. VASVARI: He probably got our subpoena
 8 and ran off to Mexico, Wayne County, some place.
 9 MS. MULLANE: For the Record, we were
 10 unable to serve Kristen Guardado. And we were
 11 unable to serve Mr. Fisher. They were out of the
 12 state.
 13 MR. VASVARI: Is Mr. West here?
 14 MR. WEST: I am.
 15 MR. VASVARI: We'll talk to you then sir,
 16 We'll call Thomas West.
 17 (Thomas E. West was duly sworn by Notary
 18 Public Jocelyn S. Harhay.)
 19 DIRECT EXAMINATION
 20 BY MR. VASVARI:
 21 **Q. Sir, would you state your name for the Record?**
 22 A. Thomas West.
 23 **Q. And are you employed?**
 24 A. I'm sorry.
 25 **Q. Are you employed?**

1 A. I am.
 2 **Q. How are you employed?**
 3 A. I work for Arc of Ohio. And I'm also an elected
 4 official.
 5 **Q. And what elected office do you hold?**
 6 A. City councilman.
 7 **Q. You are a protester in the matter before the Board
 8 today; correct?**
 9 A. I am.
 10 **Q. And have you reviewed the protest?**
 11 A. I have.
 12 **Q. And did you review it before you signed the
 13 attestation that came with it?**
 14 A. Attestation, what is that?
 15 **Q. Well, there is a document at the end that joins your
 16 name to the list of protesters and says that you're
 17 advancing all the arguments in the Brief in front of
 18 the Board in your own name as well. Did you read
 19 the Brief before you signed that?**
 20 A. I signed the day of when David Pepper came down.
 21 And I read that document. Now, if that's the same
 22 document you're referring to, then, yes, I did that.
 23 **Q. Oh, I see. So the document, the document that you
 24 signed was the day that David Pepper came down. And
 25 we have established that was the 3rd or 4th of May?**

1 A. I couldn't tell you the exact date.
 2 **Q. It was the week after. Okay. Very good. Do you
 3 have any personal knowledge that would cause you to
 4 believe that Mr. Bernabei wasn't speaking or acting
 5 in good faith when he said that he didn't want to be
 6 affiliated with the Democratic Party anymore?**
 7 A. No. I can't speak to what he believed.
 8 **Q. Okay. So you have no personal knowledge that would
 9 support the claim that he was acting in bad faith?**
 10 A. No.
 11 **Q. Okay. And have you dealt with Mr. Bernabei in the
 12 past?**
 13 A. Yes. We served together in Canton City Council. I
 14 respect him.
 15 **Q. Would you describe him as a serious man?**
 16 A. Very much so.
 17 **Q. Circumspect man?**
 18 A. Circumspect man?
 19 **Q. Circumspect, thinks carefully through his decisions.**
 20 A. Yeah, I believe so, carefully.
 21 **Q. An honest man?**
 22 A. Yeah, I believe so.
 23 **Q. Okay. You don't think he's given to trickery?**
 24 A. Couldn't speak to that.
 25 **Q. Is he given to fraud?**

1 A. Couldn't speak to that.
 2 **Q. The man takes his obligations seriously?**
 3 A. Yeah, I believe so.
 4 **Q. Have you formed an opinion as to honesty?**
 5 A. Yeah. I believe so.
 6 **Q. Is he an honest man?**
 7 A. From what I know, yeah.
 8 **Q. Do you have any reason to believe that he wasn't
 9 residing in a house at University Avenue on the 3rd,
 10 4th, 5th, 6th, and 7th of May?**
 11 A. I couldn't speak to that because I didn't see that.
 12 But based on the knowledge that was presented,
 13 that's the only knowledge I have.
 14 **Q. So you have nothing to add to what was, was said?**
 15 A. Only thing that really hit me was the fact that I
 16 lived in my residence for 13 years.
 17 **Q. Okay.**
 18 A. And I was questioned by this Board of Elections
 19 after proving, sending documents here and still
 20 questioning whether I still lived at that address.
 21 My kids only knew that address. And in this
 22 particular situation, it seems as if someone rents a
 23 house and now they're a resident.
 24 **Q. Okay.**
 25 A. And history, past history has shown a lot of people

1 come into the city, they move in and out, and they
2 want to take part of the city, run the city; and
3 then when they're done, they leave. I believe in,
4 you know, people who live in the city, who love the
5 city, and stay here and serve the city. Like
6 Richard Watkins, he lived here, grew up here, was
7 raised here I believe from my understanding, served
8 here as a city councilman, mayor, and he actually
9 died here. That's what I like to see in people
10 representing our city.

11 **Q. All right. Well, Mr. Bernabei served your city
12 as --**

13 A. Uhm-huhm.

14 **Q. -- as a law director, didn't he?**

15 A. He did.

16 **Q. As the safety director, as a councilman, and then he
17 moved away?**

18 A. Uhm-huhm.

19 **Q. You think he's a talented man?**

20 A. Oh, very much so. Yeah.

21 **Q. So why aren't you welcoming him back?**

22 A. I, I would have -- if I seen that Tom Bernabei
23 stepped up on a primary, you know, that's the type
24 of man I that I believe is he. He'll take you head
25 -- toe to toe in my mind from my -- from what I see

1 about him. He's a gentleman that he ain't afraid of
2 nobody. Okay. And he will step up in a primary and
3 run against Healy. And that to me would have been a
4 perfect scenario. But that didn't happen. It
5 happened at the 11th hour from what I understand.
6 There was other people circulating petitions. And
7 it did seem like this was some trickery, if you used
8 those words, going on. And it may not have been
9 him. It could have been other political affiliates
10 in my mind. But that has nothing to do with today.

11 From my understanding, this Board of
12 Elections has to decide whether his residency was
13 valid or not and whether his petition was valid,
14 from my understanding.

15 **Q. And you don't have any reason to doubt that the
16 petition was, the disaffiliation was made in good
17 faith?**

18 A. I don't have that knowledge.

19 **Q. And you have no specific knowledge with respect to
20 the residency?**

21 A. From his residency?

22 **Q. You have no specific knowledge with respect to where
23 he was on that day?**

24 A. I don't.

25 **Q. Thank you.**

1 MR. VASVARI: I have no more questions.

2 MR. WEST: I just have one question.

3 CROSS-EXAMINATION

4 BY MR. WEST:

5 **Q. Mr. West, if I told you I was living in a house for
6 a month until I moved into another house, would you
7 say the house I was living in for the month would be
8 permanent or temporary?**

9 A. Temporary.

10 **Q. Thank you.**

11 MR. VASVARI: Quick followup.

12 MR. FERRUCCIO: Sure.

13 REDIRECT EXAMINATION

14 BY MR. VASVARI:

15 **Q. Quite a few people rent in the City of Canton; don't
16 they?**

17 A. Many.

18 **Q. Okay. Some rent houses?**

19 A. Yes.

20 **Q. Different leases have different terms?**

21 A. Correct.

22 **Q. It's not uncommon for somebody to live in a house on
23 a month-to-month lease, is it?**

24 A. No. I believe that happens.

25 **Q. And yet based upon living in a house on a**

1 **month-to-month basis, no one would say that that
2 form of residency made somebody a temporary
3 resident, would they? A commitment of at least a
4 month, is that to your mind the same as staying in a
5 hotel room?**

6 A. No. I mean I think if somebody just leased an
7 apartment I don't think that's permanent in my mind.

8 **Q. So by your reasoning, somebody newly moving into a
9 city could never really run for office, could they?**

10 A. You know, interestingly enough, I've been a social
11 worker in this community for over 20 years.

12 **Q. Okay.**

13 A. And a lot of people are called on their residency.
14 As a matter of fact, a lot of documents are signed
15 based on an individual living at their residence for
16 a certain amount of time before they get government
17 benefits. Like, for example, you have to live in a
18 residence for quite some time before you actually
19 get benefits. So in my stance, from my
20 understanding, permanency means something different
21 than I just got -- I signed a lease and I live here
22 and now I can live at both these two addresses. I
23 don't think that can happen in my mind.

24 **Q. But the law actually specifies what constitutes a
25 residence for elector purposes --**

1 A. Okay.
 2 **Q. -- correct?**
 3 A. I would assume.
 4 **Q. Okay. And different laws may specify different**
 5 **rules for different benefits or different**
 6 **circumstances depending on the way the legislatures**
 7 **decided to write them; correct?**
 8 A. I assume.
 9 **Q. Okay.**
 10 MR. VASVARI: Thank you.
 11 MR. FERRUCCIO: Anything further of this
 12 witness?
 13 Thank you, Mr. West.
 14 (Thomas E. West was dismissed.)
 15 MR. VASVARI: Randy Gonzalez.
 16 (Randy Gonzalez was duly sworn by Notary
 17 Public Jocelyn S. Harhay.)
 18 DIRECT EXAMINATION
 19 BY MR. VASVARI:
 20 **Q. Mr. Gonzalez, would you state your name for the**
 21 **Record, even know I just did?**
 22 A. Randy Gonzalez.
 23 **Q. Okay. And, sir, do you have affiliation with the**
 24 **Stark County Democratic Party?**
 25 A. I do not.

1 **Q. Okay. Do you hold an office with the party?**
 2 A. I do not.
 3 **Q. Did you?**
 4 A. Yes, I did.
 5 **Q. When?**
 6 A. Up until about a year ago. I served as Stark County
 7 Democratic chairman.
 8 **Q. And for how many years were you that?**
 9 A. Five or six.
 10 **Q. Okay. And during the course of that time, did you**
 11 **have the opportunity to work with Mr. Bernabei?**
 12 A. Many occasions.
 13 **Q. Okay. Did you form an opinion as to his integrity?**
 14 A. I would never question his integrity.
 15 **Q. Do you have any doubt that he is an honest man?**
 16 A. No doubt at all.
 17 **Q. Do you have any doubt that if he says he is**
 18 **disaffiliated from the Democratic Party that he**
 19 **means it in good faith?**
 20 A. I believe he means it.
 21 **Q. Do you believe he means it in good faith?**
 22 A. Yes.
 23 **Q. I have no more questions, sir. Thank you.**
 24
 25

1 CROSS-EXAMINATION
 2 BY MR. PLAKAS:
 3 **Q. Mr. Gonzalez, you've been here and heard references**
 4 **by Mr. Bernabei and quotes that he's a**
 5 **dyed-in-the-wool Democrat?**
 6 A. Yes, sir.
 7 **Q. Did you know him as a dyed-in-the-wool Democrat?**
 8 A. Yes, sir.
 9 **Q. And do you think that his conduct in trying to**
 10 **disaffiliate from the party and run at the last**
 11 **minute as an Independent is consistent with your**
 12 **knowledge of Mr. Bernabei as a dyed-in-the-wool**
 13 **Democrat?**
 14 A. It is not.
 15 **Q. Tell us why it's not consistent.**
 16 A. Mr. Bernabei is one of most thorough people I know.
 17 I think he's known, and said over and over, the
 18 devil's in the details. He's very thorough in
 19 everything he's ever done that I have ever worked
 20 with him on. I don't believe this process has been
 21 nearly as thorough as I've known him in the past.
 22 **Q. So how do you square those two, Mr. Gonzalez?**
 23 **You've known Mr. Bernabei how many years now?**
 24 A. Probably 30.
 25 **Q. You've known him for 30 years. You've just**

1 described him as knowing him as a dyed-in-the-wool
 2 Democrat and his thoroughness. How do you square
 3 that with at the 11th hour literally him running
 4 around almost in a frenzy? And I forgot; I'll make
 5 reference to it. But he didn't even have enough
 6 time to put letters in the U.S. Postal Service to,
 7 to resign from certain offices or certain clubs.
 8 How do you square that with your knowledge of Mr.
 9 Bernabei for over 30 years? How would someone who
 10 says the devil's in the details, how would someone
 11 be running around like a chicken with its head off
 12 in the last minutes before the deadline?
 13 A. I would say that I believe most of it was date
 14 driven. I mean he was up against sometime frames.
 15 **Q. Well, Mr. Bernabei has, has known both Mr. Perez and**
 16 **Mayor Healy for a number of years?**
 17 A. Yes.
 18 **Q. Okay. And if he were dissatisfied with their**
 19 **abilities, their characters, their personalities,**
 20 **their performance, that's something that would have**
 21 **been made and known apparent to him prior to the day**
 22 **before the election deadline; correct?**
 23 A. Yes.
 24 **Q. So then how do you square it with a guy whose**
 25 **attention always has a devil in the details, how do**

1 **you square that with at the last minute attempting**
2 **to disassociate and running around trying to cut all**
3 **the ties and make himself clearly disassociated?**
4 **How do you square that?**

5 A. I believe that, from what I read and from the
6 transcripts and from what Mr. Bernabei has said, a
7 lot of this was driven by an article in the Canton
8 Repository, which is this endorsement editorial
9 which came up here today earlier, and also that he
10 listened to the debate in the Ron Ponder show and
11 was totally dissatisfied with both of those
12 candidates which stemmed his wanting to step in.
13 Again, those dates all came after the fact. The
14 time to step in would have been during the primary
15 election.

16 **Q. I understand you've just recited what they've**
17 **represented, both in the media on numerous**
18 **occasions, both in video interviews and written**
19 **interviews and in their Briefs. But that's the**
20 **reason I asked you about Mr. Bernabei's knowledge**
21 **and experience with both Mr. Perez and the mayor.**

22 **If he's known them for years and worked**
23 **with them, then how all of a sudden does he have an**
24 **epiphany after listening apparently on the radio to**
25 **a, to a debate and/or a, a newspaper nonendorsement,**

1 **how does that square with -- how can you have a**
2 **epiphany as to something that you already know? An**
3 **epiphany is about something that you never knew**
4 **before. How does that square with your**
5 **understanding and experience with Mr. Bernabei?**

6 A. I can't speak to what Tom Bernabei was thinking. I
7 don't know what was in his mind. As I said, I, I
8 think that he did it and has done it, went through
9 this whole process thinking that he's done it
10 correctly. Do I agree with that? I do not. But
11 that doesn't mean that -- I said this over and over.
12 And I think that everybody in this room -- and
13 there's a lot of us that are all friends in this
14 room, have tried to remove the personalities out of
15 this issue. This is a legal issue that we're
16 looking at. And I never questioned Tom Bernabei's
17 integrity. Or his trying to do something under the
18 table, I would never question that.

19 **Q. You just said "Do I agree with that? I do not."**
20 **What did you mean by that?**

21 A. I don't agree with the process that he's trying to
22 run as mayor. I do not agree with that.

23 **Q. Why?**

24 A. I believe we have democratic primaries. We have
25 Republican primaries. It is the law of the land.

1 And I'm a big believer that if you don't like the
2 laws you can have them changed, as I have many
3 times. But unfortunately the law is the law. And
4 like I said, we are not sitting here describing
5 personalities. We're describing a process and the
6 law at hand. I think we've gone -- and a lot of
7 people have listened to way more than they needed to
8 hear today.

9 **Q. Has Mr. Bernabei ever suggested to you that the**
10 **laws, the rules of political elections are unfair**
11 **and he wants to change them?**

12 MR. VASVARI: Objection. Beyond the scope.

13 MR. FERRUCCIO: Sustained.

14 MR. PLAKAS: I have nothing further. Thank
15 you.

16 THE WITNESS: Thank you.

17 MR. VASVARI: Just two or three.

18 REDIRECT EXAMINATION

19 BY MR. VASVARI:

20 **Q. Mr. Gonzalez, how old a man are you?**

21 A. Sixty.

22 **Q. You don't look it?**

23 A. Thanks.

24 MR. PLAKAS: Objection. Pandering to the
25 witness. It's a -- I ask for sanctions.

1 BY MR. VASVARI:

2 **Q. Have you in the course of your 60 years ever been**
3 **called upon to make a decision that was really gut**
4 **wrenching to you?**

5 A. Yes.

6 **Q. Is it your experience that when people are faced**
7 **with decisions that are really fundamental that they**
8 **sometimes kick the can down the road to the last**
9 **minute?**

10 A. Yes.

11 **Q. Has it been your experience in 60 years of living**
12 **that when you kick down, kick the can down the road**
13 **to the last minute that things get hasty, sometimes**
14 **process suffers?**

15 A. It's possible.

16 **Q. Thank you.**

17 RECROSS-EXAMINATION

18 BY MR. PLAKAS:

19 **Q. Sometimes process suffers when you don't do things**
20 **the right way in time. I think I just heard you say**
21 **that you believe the political process and the**
22 **election laws and the primary process is important?**

23 A. Yes, sir.

24 **Q. And that's something that regardless of**
25 **personalities we should abide by?**

1 A. Yes, sir.
 2 MR. VASVARI: Objection. Beyond the scope.
 3 MR. FERRUCCIO: That's all right. He's....
 4 Are you done with this witness?
 5 MR. VASVARI: I am.
 6 MR. FERRUCCIO: Okay. Thank you.
 7 THE WITNESS: Thank you.
 8 (Randy Gonzalez was dismissed.)
 9 MR. VASVARI: Can we get a three-minute
 10 break?
 11 MR. FERRUCCIO: Well, actually 15 minutes
 12 might be good. What time is it?
 13 MR. VASVARI: It's 2:35.
 14 MR. FERRUCCIO: Quarter till.
 15 MR. VASVARI: Good. Thanks.
 16 (A recess was taken.)
 17 MR. FERRUCCIO: We are back on the Record.
 18 Mr. Vasvari, next witness.
 19 MR. VASVARI: Ready when you are, sir.
 20 MR. FERRUCCIO: We are ready. Okay.
 21 Everybody, if we could have some order.
 22 MR. MATTHEWS: Can we come to order,
 23 please.
 24 MR. SHERER: Hey.
 25 MR. CLINE: Please have a seat.

1 MR. FERRUCCIO: Mr. Vasvari, your next
 2 witness.
 3 MR. PLAKAS: If I may, judging from the
 4 number of the last several witnesses, it appears
 5 that we're going to be seeing a, a line of people
 6 that like Mr. Bernabei or who are going to attest to
 7 his character. If, in fact, character is an issue,
 8 the only time it would be an issue is obviously if
 9 there's any allegation of criminal wrongdoing.
 10 If Mr. Bernabei wants to suggest that one
 11 of the issues is whether or not an election fraud
 12 occurred, that's a criminal offense and he needs
 13 character witnesses, that's fine. But other than
 14 that, I've been lenient. I thought if he wanted to
 15 listen to people say nice things about him, that's
 16 fine. But I think we have gone above and beyond
 17 what are the issues in this case.
 18 MR. FERRUCCIO: I agree.
 19 I don't know.... How many witnesses do you
 20 have?
 21 MR. VASVARI: I have six more witness. But
 22 I want to convince you to disagree before, before
 23 that.
 24 MR. FERRUCCIO: Go ahead.
 25 MR. VASVARI: You know, they say that

1 character is only but in issue by virtue of the
 2 potential admission of a criminal act. That's
 3 pretty clever. And it's also wrong.
 4 You want to see character? Then look at
 5 this 49-page Brief chock full of words like of
 6 scheme, sham, subterfuge, trick, every word in the
 7 book to impune the reputation of this man and his
 8 good faith. Character and good faith are intimately
 9 intertwined. If somebody is acting in good faith,
 10 they're acting in accordance with and out of a good
 11 and decent character.
 12 They put Mr. Bernabei's character at issue.
 13 They called him every cloth name in the book.
 14 They've effectively written a Brief that calls him a
 15 liar, a cheat, a fraud, if not a legal fraud, then a
 16 fraud in fact. They've done everything they can do
 17 to suggest that he came out as an Independent for
 18 ill motive and as part of a stratagem and a scheme
 19 and an attempt to deceive.
 20 That absolutely puts his character at
 21 issue. The question of good faith puts his
 22 character at issue. And I got three more public
 23 servants who are willing to testify based on their
 24 many decades of experience with Mr. Bernabei that
 25 they have nothing but the greatest faith in his

1 character.
 2 They have made character the central issue
 3 in this case by impugning his honesty. We have a
 4 right to defend his character.
 5 MR. FERRUCCIO: Well, perhaps they
 6 stipulate to his character, those three that you
 7 have.
 8 MR. VASVARI: I would rather you hear them
 9 because I think as pillars of this community, the
 10 two judges and the county commissioner, who are
 11 going to speak for Mr. Bernabei would like to be
 12 heard.
 13 MR. FERRUCCIO: Okay.
 14 MR. PLAKAS: If I may.
 15 MR. FERRUCCIO: Sure.
 16 MR. PLAKAS: In as much as he's making an
 17 argument, I'll makes ours. Clearly the issue is
 18 does the conduct that is objectively proven here and
 19 the circumstances, do they establish the principles
 20 that this court decides on. The fact that he was a
 21 Boy Scout leader, may or may not have been 20 years
 22 ago, isn't relevant. In every case, bar a criminal
 23 case or bar a defamation case, character with regard
 24 to past conduct is not an issue, is not legally
 25 admissible.

1 If he wants to recess and make this case
2 about character and if we by the preponderance of
3 evidence bring more people that don't like his
4 character, is he willing to admit then we win this
5 protest? This protest isn't won or lost on
6 character. This protest is won or lost depending on
7 the objective facts and the conducts as they're
8 applied to the election laws. So I think it's --
9 we've given him free reign.

10 MR. VASVARI: With all do respect, you
11 haven't given me anything.

12 MR. PLAKAS: That's because I have nothing
13 to give.

14 But the Board of Elections has already,
15 with some very relevant information, limited the
16 testimony. Character going back, as he's just said,
17 20 or 30 years, how does that advance the issues
18 here? I would object to that. He got some
19 character in. I think he should be satisfied with
20 that. And we should proceed.

21 MR. VASVARI: I will tell you how it weighs
22 in. First of all, we heard that their entire theory
23 of the case is that Mr. Bernabei entered this
24 Independent candidacy out of revenge and spite and a
25 way to get his revenge on Mayor Healy. That

1 motivation which is central to their theory of the
2 case goes directly to whether or not he's the sort
3 of man who would do such a thing or whether his
4 motives are otherwise.

5 The people who know him and have worked
6 with him can speak directly to those motives. And
7 don't for a minute buy this line from Mr. Plakas
8 that the only thing that matters are his actions.
9 Because here the Supreme Court says the requirement
10 imposed by RC 3513.257 in Morrison versus Colley is
11 that a candidate must declare his lack of
12 affiliation in good faith, not that you should take
13 affirmative action in order to demonstrate good
14 faith. It's about good faith. It's not about acts.
15 It's about good faith intimately intertwined with
16 character. And central to their theory of the case,
17 that this was all an act of vengeance. They can't
18 have it both ways. They can't sit there and say
19 that it was a scheme, a subterfuge, a lie. They
20 can't sit there and say these things and then it was
21 all done out of vengeance and spite and ill will and
22 then prevent the people who know him best and have
23 worked with him as politicians from testifying. It
24 is whether or not that's more likely the truth or
25 not. They can't have it both ways.

1 MR. PLAKAS: If I may. The issue is good
2 faith under these present conditions. The fact that
3 he might have done something in good faith or had a
4 good character with regard to other instances going
5 back 30 years is legally immaterial and irrelevant
6 and never gets in a courtroom and should not get in
7 here. The fact is do these people -- are they
8 inside his head for this conduct that happened on
9 May 3rd, May 4th, and May 5th. If they've known him
10 and loved him or hated him, it doesn't matter.
11 Because then what this case would turn into is we
12 bring in a dozen witnesses that say he's a scoundrel
13 and that he lies to them and they don't believe he
14 has good faith. So that's where that goes. And if
15 you're going to allow that, then we would ask for
16 leave to bring in people who can contradict and
17 rebut now that this issue, which isn't an issue in
18 this case, is good faith or good conduct 20 years
19 ago comes in.

20 MR. VASVARI: Mr. Plakas is inviting error,
21 for the people who are going to testify are going to
22 testify to their working with Mr. Bernabei, having
23 worked with him and observed him on other things,
24 his relationship with Mayor Healy and his
25 motivations in dealing with his responsibility as a

1 public servant.

2 MR. FERRUCCIO: If you want to limit it to
3 the relationship that he had with Mr. Healey -- that
4 has been one of the allegations -- then call your
5 next witness.

6 MR. VASVARI: I would like some
7 clarification. And I would like some leave for
8 people to talk about the underlying motivations of
9 this man as a political animal. They have put that
10 squarely at issue. They have said that he's
11 motivated by vengeance. That is a substantial part
12 of their theory in the case. In fact, Mr. Mack here
13 testified that the only possible, conceivable
14 explanation for any, of all of this was vengeance.
15 It's the only thing that could come to his learned
16 mind, the expert on election law. The only thing he
17 could think of as a motivation is vengeance. Well,
18 if he is going to say vengeance is the motive --

19 MR. FERRUCCIO: Call your next witness.

20 MR. VASVARI: I sure will.

21 MR. FERRUCCIO: We will take it question by
22 question.

23 MR. PLAKAS: Mr. Mack's testimony in that
24 regard was based on questioning from his counsel,
25 not me. I didn't introduce it. He apparently

1 wanted to weigh into that during his adverse
2 questioning.

3 MR. FERRUCCIO: That's correct, so....

4 MR. VASVARI: I sure did. Because it's
5 what they've made the heart of their case which I
6 think is a terrible terrible lie.

7 I would call Mr. Phil Giavasis.
8 (Phil Giavasis was duly sworn by Notary
9 Public Jocelyn S. Harhay.)

10 DIRECT EXAMINATION

11 BY MR. VASVARI:

12 **Q. Sir, you would state your name for the Record?**

13 A. Phil Giavasis.

14 **Q. And are you employed, sir?**

15 A. I am.

16 **Q. And what is that capacity?**

17 A. I'm the clerk of Canton Municipal Court.

18 **Q. And do you hold any other offices in any political
19 parties?**

20 A. I do.

21 **Q. Which is...?**

22 A. I'm chairman of the Stark County Democratic Party.

23 **Q. An how long have you been that?**

24 A. Too long. No. Since last June.

25 **Q. And prior to that, did you hold any offices in the**

1 **party or any of its affiliates?**

2 A. I was an Executive Committee member for several
3 years and a member of our various clubs I would
4 imagine.

5 **Q. Okay. And how long have you been involved in
6 Democrat Party politics?**

7 A. About 29 years.

8 **Q. And over the course of those 29 years, have you had
9 the opportunity to be working with Tom Bernabei, the
10 public servant?**

11 A. I have.

12 **Q. And have you ever seen him act out of vengeance in
13 political activity?**

14 MR. PLAKAS: Objection.

15 MR. FERRUCCIO: Sustained.

16 BY MR. VASVARI:

17 **Q. Have you ever seen Mr. Bernabei -- how could you
18 characterize Mr. Bernabei's motivations in his
19 discharge of public duties?**

20 MR. PLAKAS: Objection.

21 MR. FERRUCCIO: Sustained.

22 BY MR. VASVARI:

23 **Q. Have you had the opportunity to view Mr. Bernabei in
24 his interactions with the mayor of Canton, Mr.
25 Healey?**

1 A. Not that I can recall.

2 **Q. Okay. Do you have any personal knowledge -- you've
3 dealt with Mr. Healey as the Canton mayor, have you
4 not?**

5 A. I have.

6 **Q. Do you have any personal knowledge that would
7 suggest that Mr. Bernabei is motivated to run for
8 mayor of Canton out of a personal grudge with Mr.
9 Healey?**

10 A. I wouldn't know that.

11 **Q. Did Mr. Bernabei ever discuss a personal grudge?**

12 A. No, not a personal grudge.

13 **Q. Ever act in a way that to your mind is consistent
14 with a personal grudge?**

15 A. No.

16 **Q. Okay. Were you a friend of Mr. Bernabei, an
17 associate of Mr. Bernabei when he was fired from the
18 safety director job?**

19 A. I was.

20 **Q. Okay. How did he take it?**

21 A. I, I couldn't say how he took it.

22 **Q. Did he complain about it?**

23 A. Not to me.

24 **Q. Did he grouse about it?**

25 A. I didn't hear him do that.

1 **Q. Did you hear from anyone that he had?**

2 A. I heard some of his friends razzing him about it.
3 But other than that, no.

4 **Q. Did you hear that he went golfing after it happened?**

5 A. I did not.

6 **Q. Did he take that razzing in good nature?**

7 A. Knowing him, he probably responded.

8 **Q. In good fun?**

9 A. Yes, I would say.

10 **Q. Has he discussed with you his decision to
11 disaffiliate with the party?**

12 A. He has.

13 **Q. Did he discuss that decision with you prior to his
14 filing petitions as an independent to run for the
15 mayor of Canton?**

16 A. He did.

17 **Q. When did that discussion take place?**

18 A. I believe it was the 29th of April, if I'm not
19 mistaken, or 30th.

20 **Q. Did you have a discussion of some length?**

21 A. It was half an hour or so.

22 **Q. Had he yet come to a final conclusion about his
23 intentions on the 29th of April?**

24 A. He had not.

25 **Q. Did he seem torn?**

1 A. He explained what he was contemplating. And we
 2 discussed, first of all, the, the debate that had
 3 taken place and how the race was unfolding, that
 4 race and some other ones. And then later that led
 5 into what he was contemplating.

6 **Q. Did the debate seem to have made a great impression**
 7 **on him?**

8 A. The debate?

9 **Q. Yes.**

10 A. He said that it had.

11 **Q. Okay. And to your recollection, what impression had**
 12 **the debate made on him?**

13 A. He was I disappointed in, in the debate. He was,
 14 said he was driving around town listening to it on
 15 his car radio and, you know, was displeased.

16 **Q. And what was the nature of his disappointment?**

17 A. I, I can't remember specifics, as to what, you know,
 18 what specific debate questions caused his
 19 disappointment. But he did relay to me that he was
 20 disappointed.

21 **Q. Fair to say that he expressed being underwhelmed**
 22 **with the quality of the candidates?**

23 A. Yes.

24 **Q. Fair to say that he thought he might be able to do**
 25 **better if he threw his hat in the ring?**

1 A. He didn't put it quite that way. But he was
 2 contemplating doing that and looking at what, what
 3 he would have to do in order for that to happen.

4 **Q. Did it seem like this was something about which he**
 5 **was circumspect?**

6 A. Wasn't sure.

7 **Q. Okay. Was he taking it lightly?**

8 A. He said he was reading. And we were in the midst of
 9 the end of a primary cycle with two Democratic
 10 candidates who were running against each other. And
 11 to hear this was something that, you know, was not
 12 -- I didn't really want to hear at that time.

13 **Q. Does Mr. Bernabei strike you as a man, in your**
 14 **dealings with him, whose political motivations would**
 15 **be based on anything other than public service?**

16 MR. PLAKAS: Objection.
 17 MR. FERRUCCIO: Sustained.

18 BY MR. VASVARI:

19 **Q. Did he discuss with you what steps might be**
 20 **necessary or satisfactory to disaffiliate himself**
 21 **from the party?**

22 A. He mentioned a few things.

23 **Q. What did he mention?**

24 A. Resigning from Democratic associations is one.

25 **Q. Did you give him any advice as to what would be an**

1 **acceptable or proper course of conduct?**

2 A. I don't recall doing that.

3 **Q. Okay. Did he seek your advice?**

4 A. As far as disassociation?

5 **Q. Yes, sir.**

6 A. Not that I recall.

7 **Q. Okay. Did you form an opinion as to whether or not**
 8 **he was trying to figure out what he needed to do in**
 9 **order to properly check the disassociation box?**

10 A. I think he was trying to figure out where -- I mean
 11 it was not a simple process, that it was something
 12 that he had taken very seriously in the past and was
 13 trying to weigh whether or not he wanted to do
 14 something like that.

15 **Q. Did it seem to you that he understood that it would**
 16 **be an irrevocable decision?**

17 A. That was clear.

18 **Q. Okay. And a weighty decision?**

19 A. Yes.

20 **Q. Okay. And did anything in that conversation suggest**
 21 **to you that it was something that he was trying to**
 22 **do as a rouse, as a scheme, in bad faith, anything**
 23 **like that?**

24 A. As a scheme?

25 **Q. Yes, sir. Some sort of a trick, to get out and come**

1 **back.**

2 A. I don't recall anything, any discussion to that
 3 nature.

4 **Q. Thank you, sir.**

5 **CROSS-EXAMINATION**

6 BY MR. PLAKAS:

7 **Q. You've heard or seen the media reports where Mr.**
 8 **Bernabei has described himself as a dyed-in-the-wool**
 9 **Democrat. Do you believe that that was an apt and**
 10 **accurate description based upon your knowledge of**
 11 **him?**

12 A. I do.

13 **Q. And you've just talked and you said that on or about**
 14 **April 30th or so you had a discussion with Mr.**
 15 **Bernabei as to how the race was unfolding. And**
 16 **that's the race between Mr. Perez and Mayor Healy?**

17 A. That race, the judicial race, Kristen Guardado
 18 primary as well.

19 **Q. Okay. And with regard to how the mayor's race was**
 20 **unfolding, what were the comments that Mr. Bernabei**
 21 **made?**

22 A. Direct comments?

23 **Q. Yes.**

24 A. That he was displeased with the debate, I think with
 25 the quality of the, the candidates, with the

1 answers. We talked about the format of the debate.
2 It was not a difficult -- it was a difficult format
3 to, to listen to over the radio because of the
4 commercials, lengthy commercials. They would ask a
5 question and come back. So we talked a little bit
6 about that as well.

7 **Q. Okay. And with regard to the race unfolding, did**
8 **you and he discuss who apparently you thought or he**
9 **thought was going to win the mayor's primary race?**

10 A. No. Well, not directly. I mean we both had
11 opinions as to who would, who would win and why and
12 mistakes that were made in the campaign and so
13 forth. But it was -- that was leading up to our
14 discussion.

15 **Q. Okay. And what was the opinion of Mr. Bernabei with**
16 **regard to who he thought was going to win the**
17 **mayor's primary race?**

18 A. Well, I think he thought whoever won was a loss, is,
19 is -- I don't know if that's a direct quote but I'm
20 paraphrasing.

21 **Q. Okay. And you state that based upon his**
22 **disappointment with the debate?**

23 A. Correct.

24 **Q. And you would agree that Mr. Bernabei has known and**
25 **worked with Mr. Perez and Mayor Healy for a number**

1 **of years?**

2 A. Oh, yeah.

3 **Q. Knows them both well?**

4 A. Yeah.

5 **Q. You know them both well?**

6 A. Yes.

7 **Q. You listened to the debate?**

8 A. (The witness nodded).

9 **Q. Did anything about that debate startle or surprise**
10 **you or cause you to think differently of Mr. Perez**
11 **or Mayor Healy?**

12 A. No. No. I don't think differently of them, no.
13 They were both -- did not engage each other during
14 the debate.

15 **Q. Okay. So after listening to that debate, you didn't**
16 **change your opinion of the competency of either Mr.**
17 **Perez or Mr. Healy?**

18 A. No.

19 **Q. Okay. Did you see anything in that debate that**
20 **would cause a, a serious person, serious politician**
21 **who knew Mr. Healy and Mr. Perez for years or**
22 **decades to say, "Uh-huh. This has changed my whole**
23 **opinion on them. I can't continence them being a**
24 **mayor," anything like that happen as you listened to**
25 **it?**

1 A. No.

2 MR. PLAKAS: I have nothing further.

3 MR. VASVARI: Just a few.

4 REDIRECT EXAMINATION

5 BY MR. VASVARI:

6 **Q. Mr. Giavasis, Mr. Plakas just asked you some**
7 **questions about handicapping the mayorial primary**
8 **between Mr. Perez and Mayor Healy. As party**
9 **chairman and somebody who as been involved in party**
10 **politics for 30 years, you do form opinions as to**
11 **what a given candidate's chances are in the primary**
12 **and the general election? That comes with the**
13 **territory; doesn't it?**

14 A. It does.

15 **Q. Okay. Let me ask you this. In your opinion, would**
16 **Tom Bernabei have stood a better chance of being**
17 **elected mayor if he had gone through the primary**
18 **process or if he ran as an Independent?**

19 MR. PLAKAS: Objection.

20 MR. VASVARI: You opened the door to horse
21 races. I want to hear what the horse says.

22 MR. PLAKAS: Objection.

23 MR. FERRUCCIO: Overruled.

24 THE WITNESS: Wow.

25 A. Can you rephrase?

1 **Q. Sure. You handicap races.**

2 A. Right.

3 **Q. Mr. Bernabei is running as an Independence -- as an**
4 **Independent. Do you like his odds better as an**
5 **Independent of ending up as the mayor? Had he run**
6 **in the primary, would, what do you think would have**
7 **been the surer route to the mayoralty?**

8 MR. PLAKAS: Objection. Again,
9 speculation.

10 MR. FERRUCCIO: Overruled.

11 A. That's hard to say simply because of turnout. And
12 that's part of what we talked about. The turnout in
13 Canton was abysmal. It was 10 percent I think
14 ultimately. And that was prior to the fact that we
15 knew it was going to be low. So it's hard for me to
16 speculate as to whether he would have done better in
17 the primary or the general election. I can tell you
18 that his, the opponent, the unsuccessful opponent to
19 Mayor Healy, Mr. Perez, feels as though he would
20 have been a better candidate in the general election
21 as opposed to the primary and is upset over the fact
22 that, that, you know, somebody not doing it that way
23 and being able to do it that way.

24 **Q. So let me ask you this question. Would you agree**
25 **with me that a candidate who runs on the ticket of a**

1 **major political party enjoys advantages that an**
 2 **Independent does not?**
 3 A. Well, in a primary?
 4 **Q. No. In the general election.**
 5 A. I, I guess it depends on the circumstance. But,
 6 yes, that's fair to say.
 7 **Q. They have apparatus and a machine and an**
 8 **infrastructure behind them that an Independent**
 9 **doesn't usually have?**
 10 A. Correct. That's correct.
 11 **Q. You would also agree with me that Tom Bernabei, who**
 12 **has been active in politics here for 40 years, stood**
 13 **a fair chance of winning the primary if he had**
 14 **thrown his hat in --**
 15 A. He's --
 16 **Q. -- credible candidate?**
 17 A. He's a credible candidate.
 18 MR. PLAKAS: Objection.
 19 MR. FERRUCCIO: Sustained.
 20 BY MR. VASVARI:
 21 **Q. One last thing. You didn't hear anything in the**
 22 **Perez/Healy debate that pushed you over the edge and**
 23 **said "I can't continence this"? You've already**
 24 **testified to that; right?**
 25 A. I'm sorry.

1 **Q. Mr. Plakas threw up his hands and said "I can't**
 2 **continence these men running for mayor." You didn't**
 3 **hear anything that pushed you past your tipping**
 4 **point?**
 5 A. No. They were just non -- they just did not engage
 6 each other.
 7 **Q. But you will agree with me that the decision of when**
 8 **somebody's had enough in matters personal and**
 9 **matters political is a subjective decision that**
 10 **every man makes for himself?**
 11 A. I guess in any subject that would hold true.
 12 **Q. And that different men have different tipping points**
 13 **when it comes to the point where they're no longer**
 14 **willing to stand the status quo and feel the need to**
 15 **do something about it?**
 16 A. That's fair to say.
 17 **Q. And Tom Bernabei has his own?**
 18 A. As everyone does I guess.
 19 MR. VASVARI: Thank you.
 20 RE-CROSS-EXAMINATION
 21 BY MR. PLAKAS:
 22 **Q. You were just asked questions with regard to the**
 23 **advantages that a candidate from a political party**
 24 **has as opposed to an Independent candidate. And**
 25 **that door was opened by this counselor here.**

1 **To the Panel, I would respectfully suggest**
 2 **that part of the analysis and the testimony --**
 3 MR. VASVARI: Objection. Is this a
 4 question on Recross or is this a speech?
 5 MR. FERRUCCIO: I haven't heard it yet.
 6 MR. PLAKAS: I'm asking it at this point to
 7 the panel, that Doctor Klarnar was specifically
 8 going to address the issue that was raised by
 9 counsel with regard to the effect of spoilers, the
 10 effect of candidates who declared as Independents,
 11 who had previously been part of a major campaign.
 12 There's study, there's empirical data. Apparently
 13 counsel over my objection elicited, thought this was
 14 relevant. I would ask that at the conclusion of
 15 their case that we be permitted to call Doctor
 16 Klarnar to testify from an expert's perspective
 17 rather than the speculation of a nonexpert as to the
 18 effect of this. Because this is critical. They
 19 opened the door and over my objection.
 20 So I will go on with the Cross-Examination,
 21 with the Cross of Mr. Giavasis. But I wanted to
 22 make that now in the context of his testimony which
 23 was elicited by counsel.
 24 MR. FERRUCCIO: We'll reserve judgment at
 25 that point.

1 MR. VASVARI: May I speak to that just
 2 momentarily?
 3 MR. FERRUCCIO: No. Not right now.
 4 MR. VASVARI: Okay. Later?
 5 MR. FERRUCCIO: Sure.
 6 MR. VASVARI: Thanks.
 7 BY MR. PLAKAS:
 8 **Q. With regard to your discussions with Mr. Bernabei,**
 9 **and now they've been further detailed, would it be**
 10 **fair to say that you were shocked by this man that**
 11 **you knew to be a dyed-in-the-wool Democrat; you were**
 12 **shocked by the things that he was starting to tell**
 13 **you?**
 14 A. Shocked? I had heard some I guess people saying
 15 that he was contemplating it. So I wasn't
 16 completely taken by surprise.
 17 **Q. Okay. Had you not heard that from whatever other**
 18 **source, you would have been shocked?**
 19 A. Coming from him, yes. He's been a Democrat for
 20 quite a long time. He and I were appointed by the
 21 same individual. And he's been, you know, a
 22 long-standing Democrat for years.
 23 **Q. Do you agree with what Mr. Bernabei is attempting to**
 24 **do?**
 25 A. I do not.

1 **Q. Why?**
 2 A. Because I believe that he is a -- I question the
 3 timing of the debate. If the same debate would have
 4 been heard early on when he still had time to file
 5 as a Democrat, would we be sitting here? That would
 6 be my only question.
 7 **Q. You've told him you disagree?**
 8 A. Not at that initial meeting. I told him that I
 9 disagreed on the telephone afterwards.
 10 **Q. Do you believe that what Mr. Bernabei is trying to**
 11 **do harms the electoral process in this community,**
 12 **not only for Democrats but for Republicans?**
 13 MR. VASVARI: Objection. Relevance.
 14 MR. FERRUCCIO: Sustained.
 15 MR. PLAKAS: I have nothing further. Thank
 16 you.
 17 MR. VASVARI: Nor do I.
 18 MR. FERRUCCIO: I'm sorry.
 19 MR. VASVARI: I've nothing.
 20 MR. FERRUCCIO: Thank you. Next witness.
 21 (Phil Giavasis was dismissed.)
 22 MR. VASVARI: Tom Bernabei.
 23 THE COURT REPORTER: Mr. Bernabei, you've
 24 been sworn.
 25

1 DIRECT EXAMINATION
 2 BY MR. VASVARI:
 3 **Q. Sir, would you state your name for the Record again?**
 4 A. Tom, Thomas M. Bernabei.
 5 **Q. Mr. Bernabei, are you a Democrat?**
 6 A. I am not. Excuse me. I am -- I'm having a hard
 7 time speaking. I am not a Democrat. I was a
 8 Democrat for 40 years or so.
 9 **Q. When did you --**
 10 A. But I am no longer a Democrat. I have disaffiliated
 11 from the Democratic Party.
 12 **Q. When did you become a Democrat?**
 13 A. I was reviewing that. I was born in 1946. I think
 14 that you in those days, in the '60s, you didn't vote
 15 until you were 21. So probably I was in the middle
 16 of my college years, probably in 1967. I don't know
 17 if I voted then. I do not have that recollection as
 18 to whether I voted in '67, or I may have voted in
 19 the '68 presidential race. I suspect I may have.
 20 But probably approximately in the very late 1960s
 21 by, just simply by my age.
 22 **Q. And have you continued or did you continue in that**
 23 **affiliation until late April of this year?**
 24 A. Yes.
 25 **Q. We have heard correctly that you have served as an**

1 **appointed official under Democratic elected**
 2 **officials; correct?**
 3 A. Yes.
 4 **Q. You have served as a councilman --**
 5 A. Yes.
 6 **Q. -- as a Democrat.**
 7 **You have served as a safety director under**
 8 **a Democratic mayor?**
 9 A. As service director, not as safety director.
 10 **Q. As service director. You have held elective office**
 11 **as a Democrat?**
 12 A. Yes.
 13 **Q. Including most recently you were elected to the**
 14 **Board of Commissioners of --**
 15 A. Yes.
 16 **Q. -- Stark County and you ran on the Democratic**
 17 **ticket?**
 18 A. Yes. I ran in November of 2010 and was elected for
 19 a year term. And I ran again in I believe 2012,
 20 November of 2012 and was elected to a four-year
 21 term.
 22 **Q. You have spoken to Democrat groups?**
 23 A. I have.
 24 **Q. You have been involved with, till your resignation,**
 25 **Democrat clubs?**

1 A. I have.
 2 **Q. You have served on the committee of the Stark County**
 3 **Democratic Party which won?**
 4 A. I've never been a member of the Democratic Executive
 5 Committee in 40 years I do not believe. I was
 6 elected as a Democratic precinct person. So I'm an
 7 elected precinct representative. And I was part of
 8 the Democratic Central Committee possibly.
 9 **Q. That is the Democratic Central Committee?**
 10 A. And that was for one term. I would be I think in a
 11 year or a year-and-half term since that election.
 12 **Q. And is it fair to say that these were heartfelt**
 13 **connections for you?**
 14 A. Absolutely. I had an excellent relationship with
 15 the Democratic Party and with the other Democratic
 16 elected officials and with members of the Democratic
 17 party.
 18 **Q. Do you count those people among your friends?**
 19 A. Absolutely.
 20 **Q. Do you count those people among your colleagues?**
 21 A. Absolutely.
 22 **Q. Do you wish them well?**
 23 A. Absolutely.
 24 **Q. Do you agree with many of the principles for which**
 25 **they stand?**

1 A. I believe even as an Independent I have to choose
2 precepts or principles in which I will choose. Some
3 of them may be conservative. Some may be middle of
4 the road. Some of them may be liberal. Some of
5 them are Democratic. And some of them are probably
6 republican to some extent.

7 **Q. You have served as a county commissioner for how
8 long?**

9 A. Approximately four and one half years I believe.

10 **Q. Okay. I have been told by others, and I would ask
11 what you would say to those who say, that you've not
12 been particularly a Democratic partisan in the
13 exercise of your duties as county commissioner. How
14 would you answer that allegation?**

15 A. I think that that is correct. Again, I have been,
16 as discussed, I've been a Democratic member of the
17 Democratic Party and an officeholder for 40 years.
18 As indicated, I've not been a member of the
19 Committee which means that no party chairperson has
20 chosen ever to, you know, appoint me to that
21 committee. I am not necessarily a loyalist to the
22 Democratic Party as it exists. My conduct in
23 office, I think in all offices, has been more a
24 middle of the road.

25 I believe that we are here first to serve

1 stead with the party at all times. Again, as I have
2 indicated, I have not been appointed, for example,
3 to the Executive Committee. I don't know what that
4 does or does not indicate. I have not always been
5 endorsed; and, in fact, in the most recent election
6 for county commissioner I was, for example, not
7 endorsed by the AFL-CIO because of stances that we
8 took in the commission's office with regard to
9 collective bargaining issues.

10 **Q. How has it been for you, the process of coming to
11 the decision that you were no longer a Democrat?
12 How emotionally has that process impacted you?**

13 A. Well, it was particularly -- when I began
14 considering this and when, when -- and we can cover
15 the timetable with a different question -- but in my
16 consideration, it was a very difficult issue. I
17 hold myself to the high standards and attempt to
18 hold myself to the same high standards that I tend
19 to hold other people to. Honesty and integrity is
20 one. Loyalty is also an important characteristic.

21 And I felt that possibly -- or, I felt, you
22 know, some questioning of myself with regard to the
23 loyalty issue in making the decision I was making.
24 So that was a difficult aspect of this decision.
25 Because it would affect my own feeling toward myself

1 the public rather than the party. I believe
2 strongly that we are here to, when appointing
3 persons to work for us, that we select the best.
4 And, as I described it, whether one or two people --
5 by the way, I don't necessarily mean the best out of
6 one or two. If there are one or two people and they
7 do not satisfy the standard that is a prerequisite
8 for the job, we go back and we re-advertise and we
9 hire.

10 I believe the government is for the people.
11 And then we hold them to the highest agree of
12 service.

13 MR. PLAKAS: This is like a campaign speech
14 rather than testimony that's germane to the
15 attending issues.

16 MR. FERRUCCIO: I think he's trying to
17 establish his good faith argument. But --

18 MR. VASVARI: It is good faith.

19 MR. FERRUCCIO: But move it along.

20 MR. VASVARI: I got only two points here,
21 good faith and residency. This goes to good faith.

22 BY MR. VASVARI:

23 **Q. Mr. Bernabei, has that stood you in good stead with
24 the party at all times?**

25 A. I don't know that it's necessarily stood me in good

1 with regard to that issue. But it would also affect
2 my relationship with some other, again, friends
3 and/or colleagues and acquaintances who are in the
4 Democratic Party who may judge me or think of me
5 differently because of my decision.

6 **Q. And so is it fair -- so that I summarize what you
7 just said, that when you made the decision or
8 contemplated the decision to disaffiliate you
9 realized that there would be personal and political
10 costs to that decision?**

11 A. Yes.

12 **Q. And what were those costs as you saw them?**

13 A. Well, again, the costs were, you know, I looked to a
14 certain extent to my own view of myself, that I was
15 questioning the loyalty that I may potentially owe
16 to the party that had treated me well. I think I
17 treated the party well also for 40 years. There
18 were issues associated with my future candidacy.

19 MR. PLAKAS: I would renew my objection.

20 MR. FERRUCCIO: Well --

21 MR. PLAKAS: Going far afield.

22 MR. FERRUCCIO: -- it's their case in
23 chief. And we've been really liberal in allowing
24 both sides to put on their case. And I think that
25 at this point with the candidate's testimony I'll

1 allow him to proceed.

2 A. This is an irrevocable decision for me. I've made

3 an election. I have disaffiliated. And I'm not

4 going back. That has an effect that I am a

5 Democratic officeholder -- or, strike that -- I was

6 a Democratic officeholder. Had I stayed being a

7 Democrat, I would have been eligible because I, in

8 two or one and one half years if I so choose, to run

9 for office as commissioner again. I have been

10 elected twice. The second time I was uncontested.

11 You know, the potential probably existed based upon

12 my reputation in the work of the commissioners

13 office and the good standing that we have in the

14 community, that had I remained a Democrat in one or

15 two years had I chosen to go forward and run again I

16 would have been able to run uncontested for four

17 more years in office if I so chose. I never make

18 that choice until I get to the day when it's

19 necessary to make those kind of choices.

20 But I think by making this choice I have,

21 again, irrevocably chosen to disaffiliate. I have

22 disaffiliated. That means that I don't think that

23 there's any realistic possibly that I run as an

24 Independent for county commissioner, particular in a

25 presidential year. So I anticipate or believe

1 that part of the consequence of making the decision

2 that I made, in addition to the loyalty issue and

3 that aspect, is that I have probably foreclosed, you

4 know, another term in that office. Had I chosen to

5 take that, that is another matter.

6 **Q. Do you enjoy serving as county commissioner?**

7 A. Yes. Absolutely.

8 **Q. Foregoing the opportunity to do that to serve the**

9 **people of Canton, was this an easy decision?**

10 A. That was not an easy decision, no.

11 **Q. Was it an decision you made at all once?**

12 A. No.

13 **Q. One of the questions that's been posed rhetorically**

14 **all day long is why didn't Bernabei run in the**

15 **primary. And we got Bernabei on the witness stand.**

16 **What's the answer? Why didn't you run in the**

17 **primary?**

18 A. That's a great question. Why didn't Bernabei run in

19 the primary?

20 **Q. Yes, sir.**

21 A. You know, again hindsight says that Bernabei

22 probably should have chosen to run in the primary.

23 The answer is that during the primary season I was

24 not focused on the issue of the mayoral race in the

25 City of Canton. My focus at that time was with

1 regard to county government which was always my

2 primary function or focus, whatever office may be

3 involved.

4 It was a determination. At the time prior

5 to filing, I did not know who may or who may not

6 file. I did not know that a Republican was not

7 going to file. Those all became issues later on.

8 The straight answer is that that was not my

9 focus at the time. And either I chose -- and I did

10 not make a choice because it was conscious decision;

11 it was just an item that I did not contemplate at

12 the time. It was a choice that I did not

13 contemplate at the time.

14 **Q. Two followups on that theme. All of this has been**

15 **talked about as a fight within the Democratic house.**

16 **Why did it matter to you? Why is it significant**

17 **that the Republicans didn't put up a mayorial**

18 **candidate?**

19 A. It's significant to me because the issue of what all

20 of us who are elected officials, appointed officials

21 do every day is that we are to provide good

22 government, the best government possible to the

23 people that we serve. And it matters whether or not

24 you have candidates. Issues need to be debated.

25 You need to have candidates with different views on

1 things. And you need to give the public electoral a

2 choice with regard to elected office. So it did

3 matter. The Republican Party failed us in my mind

4 as much as the Democratic Party failed us in not

5 providing the quality candidates.

6 **Q. Two party system failed us in your mind?**

7 A. In my mind in this particular instance, it did, yes.

8 **Q. Did there come a time when you began to think**

9 **seriously, not in passing, but seriously about the**

10 **prospect of seeking the mayoralty as an Independent?**

11 A. I was aware during the primary election season, of

12 course; you know, received some literature, reading

13 the newspapers, gossip, conversations, you know, as

14 to the quality and the nature of the campaign. But,

15 again, that's discussed not to belabor the point.

16 Two focal points or galvanizing points

17 occurred. They occurred late. One I believe was on

18 April 22. This was a Wednesday. That was the day

19 of the debate. Normally I would never have heard

20 the debate and was -- I like to say no good deed

21 goes unpunished. Wednesdays I deliver Meals On

22 Wheels. And as a result, I was in my car with the

23 radio on with the Ron Ponder show on. And that was

24 the date that I heard that debate. And I was

25 disillusioned by the nature, quality, and responses

1 of both candidates. In short follow up to that,
2 immediately following Sunday, which was April the
3 26th I believe -- that was the date of the
4 Repository editorial -- I had already contemplated
5 in my own mind; I thought that the Repository
6 probably would not and could not endorse either
7 candidate based upon everything that I had
8 personally seen. When the editorial came out and
9 did not do so and was critical as to the choice and
10 made a call to an Independent, that was the second
11 galvanizing point.

12 **Q. What was in the debate that you found lacking or**
13 **troubling?**

14 A. Again, I'm sure I'll be asked that again further. I
15 did know both candidates. I know both candidates
16 well. I worked with William Healy for one and a
17 half years in very very close daily proximity. And
18 I have had continuing relationships with him since
19 then, you know, as a county commissioner and he as
20 the mayor. Also sit on, for example, the Stark
21 Council of Governments together. So we see each
22 other with regard to business matters that are
23 matters between county and city that occur and
24 continue to occur.

25 So I was aware of him. I'm aware of his

1 character. I'm aware of issues involved in the city
2 in which there is some successes and which there
3 have been many things I feel have failed to have
4 been properly handled.

5 And I'm also aware of Kim Perez. I knew
6 Kim a long time ago. I was a city law director for
7 a long time. Kim was initially a councilman. Later
8 on he became the auditor for the City of Canton
9 auditorship and actually was elected county auditor.
10 So in my first term as commissioner, Kim was a
11 county auditor for the first two years or one and a
12 half years of that period of time. So I have known
13 him for a long time.

14 It was my hope that Kim, you know, would
15 mature and grow. He had been out of the auditor's
16 office for about three years because he lost that
17 election there. He ran, was elected as treasurer.

18 It was my hope that he would have, you know, grown
19 and matured. And I determined primarily from that
20 particular debate that he had not done so.

21 **Q. So the debate added something to your analysis? It**
22 **gave you a new look at Kim Perez that you hadn't had**
23 **in a while?**

24 A. Yes.

25 **Q. Okay. So Mr. Plakas asked earlier today why the**

1 **epiphany. Why suddenly then. You didn't have the**
2 **opportunity to answer that question. But you do**
3 **now. Why the epiphany?**

4 A. Well, the epiphany, again, two events triggered it.
5 But I think that the, the underlying or the
6 overdriving issue for me I guess is the fact that I
7 am 68, 69 years of age. I am very very close to my
8 family, to my grandchildren. I'm insistent in
9 telling them and teaching them and telling my
10 children, telling my wife that you always accept
11 challenges and you go forward and you do what you
12 believe is good and what is necessary. I believe
13 that we all should hopefully have that same
14 obligation. I appreciate more as I get older.

15 But it was the culmination of that feeling
16 that has been flowing on me in the last, you know,
17 one year or one or two years as I grow older and so
18 forth that I need to do more. I think that,
19 probably by way of my elected office that I had
20 hold, that I have done many things. I think that
21 other things I have done I've done well. But I
22 believe that I could do more and that I owe the
23 community more.

24 And it was a combination or convergence of
25 that state of mind with the, again, the debate and

1 the editorial that led me to seriously undertake
2 this decision and to ultimately make it. I know
3 that sounds hokey. But it was made for reasons of
4 what I believe to be good government and our
5 obligations as citizens to participate in good
6 government.

7 **Q. So when did it occur to you at last that you were**
8 **going to really do this? When did you firmly in**
9 **your mind decide to disaffiliate from the party and**
10 **seek the mayoral?**

11 A. I ultimately firmly made the decision in, when I was
12 in Clearwater Beach on probably Saturday, May 2nd,
13 2015.

14 **Q. And up to then, your consideration had been**
15 **contingent?**

16 A. It had been contingent. But it was leaning, leaning
17 in the direction of doing it.

18 **Q. Now, while you were moving toward that decision, the**
19 **decision you took in Florida -- by the way, you had**
20 **planned this trip to Florida sometime in advance,**
21 **had you not?**

22 A. Yes. Or my wife had planned it for me.

23 **Q. And you had determined to return early from Florida**
24 **to put all of this business in play; correct?**

25 A. My wife had not planned that for me. On Saturday.

1 **Q. Perhaps another disadvantage.**
 2 A. I believe on Saturday when the decision was made I
 3 asked my wife to please change the plane
 4 reservations and get us back to Canton as early as
 5 possible.
 6 **Q. But before you left for Florida, you did some things**
 7 **to set the wheels of disaffiliation, at least in a**
 8 **contingent way, in motion, did you not?**
 9 A. Yes.
 10 **Q. You lined up your ducks in case you decided to pull**
 11 **the trigger in Florida?**
 12 A. Yes.
 13 **Q. What did you do?**
 14 A. Without great detail, the first time I talked to an
 15 elections law lawyer was on Monday, the day after
 16 the Repository editorial which would have been
 17 Monday, I believe April 27, if that is the correct
 18 date.
 19 **Q. Just so we're clear, that lawyer was not me?**
 20 A. That lawyer was not you. That lawyer was Mr.
 21 McTigue who is a very well-established elections
 22 lawyer. I had a lengthy conversation with him for
 23 the first time.
 24 **Q. Okay. And without going too much into what Mr.**
 25 **McTigue told you, why did you feel the need to**

1 **consult a lawyer? What advice were you seeking?**
 2 A. I was seeking information with regard to the issue
 3 of becoming an Independent. I really was not
 4 familiar with either the issue of residency in great
 5 detail because I had never dis -- had the necessity
 6 of understanding all of the details associated with
 7 residency. And I also had no understanding or
 8 knowledge with regard to any rules that may be
 9 associated with, you know, becoming an Independent.
 10 I'm not sure the word "disaffiliation" as
 11 we're using it today, disaffiliating from the
 12 Democratic Party was a word that was known to me in
 13 that type of usage as of that date until I had the
 14 conversation with him.
 15 **Q. So that's something you learned from counsel. Did**
 16 **you seek out, did you receive any information about**
 17 **the practical mechanics of going about the business**
 18 **of disaffiliation?**
 19 A. Yes. Again --
 20 **Q. What did you learn?**
 21 A. And that's where I learned from that source
 22 primarily that disaffiliation means you're cutting
 23 the ties with any and all Democratic associations
 24 that you have. I had explained to him -- I think
 25 our first conversation was probably half an hour or

1 so. And it was a telephone conversation. I had one
 2 -- I'd have to look at a log to understand, to know
 3 when I talked to him subsequently but again that
 4 week on several occasions. But one was to resign
 5 from Democratic clubs. One was to resign from the
 6 Democratic Central Committee. One was to resign
 7 from any associations with the candidates.
 8 And I was the treasurer of three campaigns.
 9 And there were also discussions in the course of
 10 that week with him with regard to I believe change
 11 of designation of treasurer which had some
 12 implications. Changing addresses as soon as that
 13 was identified. Possibly voting a, a provisional,
 14 you know, nonpartisan ballot. And I may be
 15 forgetting something. But it covered all of those
 16 types of areas.
 17 **Q. So you were very interested in the concrete steps**
 18 **that had to be taken. Remind us again when that**
 19 **conversation with Mr. McTigue took place.**
 20 A. I believe the first conversation I had with him was
 21 Monday afternoon, April 27.
 22 **Q. Okay. So the Monday before the Monday when you**
 23 **actually filed --**
 24 A. Yes.
 25 **Q. -- petitions?**

1 **Okay. What steps did you then begin to**
 2 **take during the week of Monday April 7th to put that**
 3 **plan in action?**
 4 A. I talked to, you know, various friends and advisors,
 5 people that I talked to before about political
 6 issues as they may have arisen in the past, whose
 7 opinions I valued as to contemplate the steps that I
 8 was taking.
 9 I looked and -- when I understood what the
 10 issue of residency was, I was living in Jackson
 11 Township and had been living there for approximately
 12 11 or 12 years on Dunkeith Drive, Northwest. I
 13 understood that I needed to obtain a residence in
 14 the City of Canton.
 15 And to that end, and I will focus for a
 16 moment on residency, I am the owner -- or, rather I
 17 believe the house is actually titled in my wife's
 18 name. Everything, by the way, is titled in my
 19 wife's name. I wonder why that is. But we had
 20 owned the house I think since about 1986. I had
 21 never sold it. It was a house I actually enjoyed
 22 living in. We moved from that house I believe in
 23 approximately 2004. I could be off by a year with
 24 regard to that. But that house had been rented by
 25 me ever since 1986. It was presently being leased

1 to a doctor and his family. That lease started
2 about 18 months prior to that date.

3 They had advised me in early April that
4 they were looking for a house and were planning to
5 move because they needed a bigger house for an
6 expanding family. I talked to them as to when that
7 might happen. They anticipated that closing was
8 going to happen sometime at the end of April, but
9 they were unable to identify it.

10 And this is -- now I get to the date of
11 approximately April, April 28th which would have
12 been Wednesday. I'm leaving for Florida on
13 Thursday. I need to make a decision with regard to
14 having a place to live. Their house was not
15 available to me because they were continuing to live
16 in it.

17 And it had not closed. And, in fact, it
18 did not close until the afternoon of April the 29th
19 which is the date that I went to Florida.

20 **Q. Let me just stop you. When you say you did not**
21 **close, the family hadn't closed on the new home that**
22 **would permit them --**

23 A. Yes.

24 **Q. -- to move out of Lakecrest; correct?**

25 A. Correct. I, in fact, I believe I received an e-mail

1 On that particular date, I asked her, I
2 said, without providing any details, I said "I'm
3 considering running for office in the City of
4 Canton. Would you consider allowing me to live in
5 the house in the back bedroom, for example, on a
6 Wednesday night and stay there for this purpose?"
7 Her answer at that time was no. And understandably
8 no.

9 I think subsequently her husband and she
10 had a conversation. Because then later on I
11 received a text saying "Tom, it would be okay if you
12 want to stay here." And I realized, however,
13 because I had a conversation with her husband, that
14 I did not want to create any marital discord for
15 them. And I didn't think it was appropriate. I
16 also wasn't sure whether there was better living in
17 the back room of a house in which they were in
18 possession for establishing residency as opposed to
19 getting my own house by way of a lease.

20 So I made the decision to on that occasion,
21 on a Wednesday night, to lease the house at 2118
22 University Avenue from Bob Johns who is a very
23 long-standing friend. That house has been in his
24 family for 50 years. He grew up in that house.
25 I've been in that house many times. His parents

1 or text from them about 6:00 p.m. on Thursday night
2 in Florida saying "we closed." But they were still
3 occupying the house because, again, now they had to
4 engage movers to move and so forth.

5 **Q. So during the time -- let's just visit this. I**
6 **thought we might talk about this later. We might.**
7 **But we're here. And so while we're on the subject,**
8 **the family had not yet moved. In that last week of**
9 **April, you really didn't know when they would**
10 **finally be out, did you?**

11 A. No. Neither did they.

12 **Q. And was it under your control in any way?**

13 A. It was not under my control.

14 **Q. Did you visit the issue of potentially moving in or**
15 **the family while they were still there?**

16 A. Approximately -- and I believe that the date was
17 approximately that Tuesday, April 28th -- again,
18 when I realized that I had to consider
19 re-establishing, you know, residency in the City of
20 Canton to be a qualified elector, I approached Mrs.
21 Noyse. I was working in the yard and she was
22 outside. Again, she had two very small children. I
23 would say that they're 3 and 5 maybe. And in that
24 conversation she told me she was seven months
25 pregnant.

1 have passed away. He leased it for a period of
2 time. I actually was in the house to write a lease
3 for him. So I was very familiar with the house. I
4 knew it was empty. I knew it was available. And I
5 discussed with him. And he said that he would lease
6 it to me. And I prepared a lease. And that lease
7 was signed on April 29.

8 **Q. Do we have that lease here?**

9 A. Look in one file. I'm not sure if we made copies.

10 MR. VASVARI: Mr. Chairman, it looks like
11 the most efficient way to do this is just hand
12 everybody the pile. Because they've been collated
13 as a group rather than as individual documents. May
14 I approach?

15 MR. FERRUCCIO: Sure. Is there an exhibit?

16 MR. VASVARI: Well, we haven't put
17 stickers. So I guess we are going to call it A.

18 MR. FERRUCCIO: A. Okay.

19 MR. FERRUCCIO: This whole pile is A?

20 MR. VASVARI: No. Call the lease A.

21 MR. FERRUCCIO: So we'll mark the lease
22 agreement as Candidate's Exhibit A.

23 (A lease agreement was marked Candidate's
24 Exhibit A.)
25

1 BY MR. VASVARI:
 2 **Q. Mr. Bernabei, you've been handed what's been marked**
 3 **for purposes of identification Exhibit A to your**
 4 **testimony today. Do you recognize it?**
 5 A. Yes.
 6 **Q. And, sir, what is it?**
 7 A. This is the lease agreement which I prepared. This
 8 is the lease agreement which I executed with Mr.
 9 Johns on April 30th. That would have been a
 10 Thursday morning, early in the morning on Thursday
 11 morning, the day that I went to Florida later on in
 12 that day.
 13 **Q. And the document -- while it speaks for itself, a**
 14 **couple of quick highlights by way of exposition --**
 15 **this gave you a month-to month tenancy; correct?**
 16 A. This gave me a tenancy for one month commencing May
 17 1, ending May 31 with a provision that I may renew
 18 this lease on a month-to-month basis.
 19 **Q. You did pay a thousand dollars for the month?**
 20 A. I did pay a thousand dollars on that date. And
 21 attached to the -- at the back of this item -- I
 22 guess there's some other things in here. But the
 23 back of this item is the check which I gave to
 24 Robert G. Johns dated May 1, 2015, for \$1,000. And
 25 I know that that check -- the bottom of that, that

1 is from my bank account -- I know that that check
 2 has been cashed.
 3 **Q. Never sought your money back from Mr. Johns?**
 4 A. I have not.
 5 **Q. Never sought any sort of proration back?**
 6 A. I have not.
 7 **Q. Okay. Got a security deposit back?**
 8 A. He did not cash the security deposit. I never
 9 received the check back from him. To my knowledge,
 10 he just held it and/or destroyed it. I don't know
 11 what he did with it. I also received from him at
 12 the time of signing the lease a garage door opener
 13 and the security -- you know, keys and security code
 14 to the house.
 15 **Q. You prepared this lease so that you would have a**
 16 **place to go to be a resident in Canton; correct?**
 17 A. Yes.
 18 **Q. Pending your move to the house which you also owned**
 19 **in Canton; correct?**
 20 A. Yes.
 21 **Q. Okay. Why did you make the lease out for a month?**
 22 A. Because I did not know as of April 30th, 2015, how
 23 long or how short of duration the tenants in the
 24 house at 441 Lakecrest would remain. They had been
 25 waiting for closing. The closing had not happened.

1 I didn't know whether this was going to be
 2 day-to-day or week to week. And, you know, I think
 3 that we've experienced an area of law with regard to
 4 real estate closings that the laws have changed and
 5 closings have been backed up since the changing in
 6 banking laws and so forth. So it was uncertain to
 7 me as to when it may happen. I was hopeful it would
 8 happen quick. I wish it happened on April the 29th.
 9 I wouldn't be here today at least discussing the
 10 issue of residency if I had been able to move
 11 directly into the Lakecrest house, because it was
 12 not available. So I made it a one-month lease with
 13 a month-to-month thereafter.
 14 **Q. Did it happen sooner than you expected, the ultimate**
 15 **vacation the by Motts -- by the Noyse?**
 16 A. It ultimately happened, you know, within the time
 17 frame that I speculated. Again, I wish it would
 18 have happened on April the 28th. It probably would
 19 have all been resolved. As I said, I received a
 20 text from them. And I subsequently looked on at the
 21 recorder's site. The house actually closed, their
 22 new purchase closed on Thursday afternoon, April
 23 30th. I'm sorry. Which day? Yeah, Thursday is on
 24 April 30th. Correct me with my dates if I keep
 25 making that mistake.

1 **Q. But we know in April?**
 2 A. It was in April when it closed.
 3 **Q. Okay. On April 30th you signed this lease?**
 4 A. Yes.
 5 **Q. That was a Thursday?**
 6 A. Yes.
 7 **Q. Okay. What else did you do that week to prepare for**
 8 **the eventuality that you might disaffiliate?**
 9 A. Well, I had the discussion that Mr. Giavasis has
 10 alluded to in which we discussed certain aspects of
 11 this, as to what I needed to do. One thing
 12 associated with it was filing mailing of the letters
 13 of resignation from the three clubs, the three
 14 Democratic clubs and the filing of the letter of
 15 resignation from the Democratic Central Committee
 16 which I was a member.
 17 And in anticipation of doing, of making a
 18 decision -- and I had not made that decision -- I
 19 prepared those letters, signed those letters. And
 20 on the morning or sometime possibly closer to the
 21 noon hour on April the 30th, I actually had intended
 22 to deliver those directly to Mr. Giavasis as party
 23 chairperson.
 24 Thursday, April 30th, was actually the date
 25 of the Democratic cocktail party at 5:00. I tried

1 to call him several times. He was, you know,
2 running around, preparing for that. I was told by
3 one of his associates that he was unavailable
4 because he was running around. I talked to Jeanette
5 Mullane with another issue at the Board of
6 Elections. And we met and I handed her those
7 letters with the request that they be delivered, you
8 know, to Mr. Giavasis.

9 **Q. Okay. Let's take this a piece at a time. Where did**
10 **you meet Miss Mullane and when?**

11 A. I met Miss, Jeanette Mullane at the, I believe the
12 Chase Bank on 30th Street, Northwest. I believe
13 that I had called her with regard to coming out.
14 Because, again, I was racing on Thursday morning
15 because I had to go to the airport. So I was
16 racing, doing many different things. But to come
17 out and either deliver them to, deliver them to her
18 at the Board.

19 I believe that when I talked to her, she
20 had already left the Board or was running personal
21 errands. She indicated to me that it would be just
22 as easy for her and for me if it was the same
23 distance for me to go to the 30th Street bank. And
24 so I drove up Cleveland Avenue. She came, I don't
25 know, from the Board or whether she came from home.

1 I'm not sure where she was. I don't know that we
2 discussed whether she was at the Board or not. But
3 I met her at the bank.

4 **Q. Okay. And you handed her -- you met her expressly**
5 **for the purpose of handing her the resignation**
6 **letters?**

7 A. Yes.

8 **Q. Okay.**

9 MR. FERRUCCIO: Are those marked?

10 MR. VASVARI: They are in the package.

11 MR. FERRUCCIO: All right. So we can
12 identify those.

13 THE WITNESS: Yeah. I don't have any
14 either by the way for myself.

15 MR. FERRUCCIO: We have one dated May 4th
16 regarding I guess all three.

17 MR. VASVARI: Right. There's a packet of
18 three. That are dated May 4th.

19 MR. FERRUCCIO: But all three are in one
20 letter. So --

21 MR. VASVARI: Correct.

22 MR. FERRUCCIO: -- is that the letter that
23 we're talking about being delivered?

24 MR. VASVARI: Yes. They look --

25 MR. FERRUCCIO: We will mark that as

1 Exhibit B.

2 MR. VASVARI: Let's call that B. There
3 should be three attached with an overleaf half
4 sheet.

5 MR. CLINE: Says "receipt number" and then
6 it's got --

7 MR. FERRUCCIO: So the letter that is
8 addressed to the Board regarding Donohue, Hartnett
9 and Martuccio, is that what we're referring to?

10 MR. BERNABEI: That is a different letter.
11 That letter occurred on March -- May the 4th.

12 MR. FERRUCCIO: So the letters that we're--

13 MR. BERNABEI: We should take these apart.

14 MR. VASVARI: Should be Receipt No. 6611.

15 MR. FERRUCCIO: All right.

16 MR. BERNABEI: Those are the four letters
17 that were delivered.

18 MR. FERRUCCIO: All right. So that will
19 make that B.

20 MR. VASVARI: That should be B. Yes, sir.

21 MR. FERRUCCIO: All right. Thank you.

22 (A receipt coversheet and four resignation
23 letters were marked Candidate's Exhibit
24 B.)

25 A. The originals of those four letters were then

1 delivered to Jeanette under that understanding.
2 Originals were delivered to her. I had copies, the
3 reason that they have file stamps on them.

4 **Q. Let's back up just a second because we have the**
5 **boring business of this. You have been handed what**
6 **has been marked for purposes of identification as**
7 **Exhibit B to your testimony. Do you recognize it?**

8 A. Yes.

9 **Q. And what is it?**

10 A. These are four letters which I prepared resigning
11 from the Democratic Central Committee and the three
12 Democratic clubs in Canton, Massillon, and Alliance.

13 **Q. When were the letters prepared?**

14 A. Those would have been prepared the morning of April
15 30th or the evening of April 29th. Probably the
16 morning I believe.

17 **Q. Fair to say that when the letters were prepared you**
18 **were very much leaning toward disaffiliation but you**
19 **had yet to reach a final decision?**

20 A. That is correct.

21 **Q. Okay. So you prepared the letters in the**
22 **eventuality that while in Florida you would come to**
23 **the conclusion that you would disaffiliate?**

24 A. Yes.

25 **Q. And you gave them to Jeanette Mullane?**

1 A. Yes.

2 **Q. Why to Jeanette Mullane?**

3 A. Jeanette was, No. 1, the deputy director of the

4 Board of Elections. No. 2, Phil in my conversation

5 with him -- that he referenced of our meeting -- had

6 indicated that I could use Jeanette with regard to a

7 contact person on these issues.

8 **Q. So just so that I'm clear, you and Phil Giavasis had**

9 **a previous conversation which he said that if you**

10 **needed to get him things Jeanette could be a proper**

11 **conduit by which to do that?**

12 A. I can't say that that was specific with regard to if

13 I needed to get him things. Because Jeanette does

14 not work for Phil. She works for the Board of

15 Elections. My conversation with him was that

16 Jeanette was a contact person with regard to

17 questions dealing with the affiliation and/or

18 residency.

19 **Q. I see. And so you expected when you gave them to**

20 **Jeanette Mullane that she would communicate this**

21 **then to Mr. Giavasis?**

22 A. Well, I asked her when I saw her and met her. Yes.

23 **Q. And did you she tell you what she would to?**

24 A. That she would do so.

25 MR. FERRUCCIO: Counsel, may I interject.

1 This Exhibit B then dated April 30th,

2 received in our office May 4th, was a conditional

3 receipt; right? Basically she was not to do

4 anything with these unless you told her you were

5 going to disassociate.

6 MR. BERNABEI: She was -- my conversation

7 with her to my best recollection was that she was to

8 give those to Phil. And I anticipated that she

9 would probably give them to him that night. Because

10 that was the night of the Democratic cocktail party.

11 She was going to meet with him.

12 My conversation with Phil had been I'm

13 going to prepare this, these resignations and on a

14 conditional basis. And if I make a final decision

15 to go, then, then please deliver them.

16 MR. FERRUCCIO: Okay. Thank you.

17 BY MR. VASVARI:

18 **Q. So you have a loaded chamber but you've not yet**

19 **decided to pull the trigger?**

20 A. That is correct.

21 **Q. Okay. Any other ways in which you have set the**

22 **machinery up to go into motion when you decide to**

23 **pull the trigger?**

24 A. One other aspect in my meeting with Jeanette -- and

25 this, again, would be Thursday, approximately noon,

1 April the 30th, was the need to file with the Board

2 of Elections the voter registration change of

3 address form.

4 **Q. Okay. Where did you do that?**

5 A. I also filled that out in the Chase Bank parking

6 lot.

7 **Q. Okay.**

8 A. Jeanette had with her a large file, not a file

9 folder, a three-leaf binder I think of just, in her

10 car, of different Board of Elections forms. One of

11 them was that form.

12 MR. FERRUCCIO: Counsel, do you want to

13 mark what he's referring to? Because we have two

14 different ones.

15 MR. VASVARI: We do have two.

16 MR. BERNABEI: One is dated May 3. One is

17 dated May 15th. One is indicated for my change of

18 address from Dunkeith Avenue to 21 --

19 MR. VASVARI: Let's call C the one that's

20 dated in the lower left corner 5/3/2015.

21 MR. FERRUCCIO: All right. Is this the one

22 that you're talking about in this testimony right

23 now?

24 MR. VASVARI: Right. This is relevant to

25 the testimony that's going on.

1 MR. FERRUCCIO: All right.

2 (A May 3, 2015, Voter Registration Form was

3 marked Candidate's Exhibit C.)

4 BY MR. VASVARI:

5 **Q. So tell us about that.**

6 A. May I have a copy?

7 **Q. You should have a copy.**

8 A. I don't have a copy.

9 **Q. Mr. Bernabei, you've been handed what has been**

10 **marked for purposes of identification as Exhibit C**

11 **to your testimony. Do you recognize it?**

12 A. Yes, I do. This is a Voter Registration Form for

13 the purposes of changing my voter address. The

14 change is to provide a change from my previous

15 address of 2745 Dunkeith Drive, Northwest, to my

16 address, to my new address at 2118 University

17 Avenue, Northwest.

18 **Q. Okay. When did you complete that document?**

19 A. Completed this document on Thursday, April 30th,

20 2015.

21 **Q. The document says May 3rd. Why does the document**

22 **say May 3rd?**

23 A. I dated this document May 3 because Jeanette

24 indicated that she would be working at the Board on

25 May 3 and that she could take the document and file

1 it. That discussion was, again, the same as the
2 discussion with regard to the letters of
3 resignation: I need to make a final decision on
4 this. I've not made a final decision. I will be
5 making the final decision this weekend. And I will
6 have conversation with you, when that decision is
7 made, to file or not to file this document.

8 **Q. Fair to say then that you lodged this document with**
9 **Jeanette and told her that instructions with respect**
10 **to filing would come later?**

11 A. Yes.

12 **Q. And you filled out the date on it contemplating the**
13 **future filing date based on her saying she would**
14 **have been in the office on the 3rd?**

15 A. That is correct.

16 **Q. Not unlike lawyers; they prepare a Brief in advance**
17 **and leave it for an associate to file it on a given**
18 **day at the end of the week dated appropriately?**

19 A. Yes.

20 **Q. Is there any intent to deceive?**

21 A. None.

22 **Q. Did you already have a leasehold at University**
23 **Avenue?**

24 A. Yes. I had signed a lease that morning.

25 **Q. And was this clear in your mind if you pulled the**

1 **trigger and told her to file the change of address,**
2 **did you understand that that would affect where you**
3 **would have to begin living?**

4 A. Yes.

5 **Q. Okay. What did you understand in that regard?**

6 A. I understood that with regard to becoming an elector
7 and with regard to becoming -- maintaining the
8 consistency as the Voter Registration Form requires
9 and as -- as is required, that my address, you know,
10 for voting purposes and for residency purposes would
11 be 2118 University Avenue, Northwest.

12 **Q. If you said "file the form," that meant you were**
13 **moving house?**

14 A. Yes.

15 **Q. Okay. You did say "file the form"?**

16 A. Yes.

17 **Q. When?**

18 A. That phone call happened either sometime on
19 Saturday, May 2, on or Sunday morning, May 3. I
20 cannot recall specifically.

21 **Q. What was the business you were telling us about**
22 **earlier about deciding to return against your wife's**
23 **wishes from Florida early?**

24 A. We had reservations that took us to Florida from
25 Thursday night until Sunday night. I think that --

1 I'm not sure what time the return ticket was, but it
2 was sometime after probably 6:00 in the evening or
3 something of that time.

4 **Q. And when did you come back in fact?**

5 A. We, in fact, caught an earlier flight I think at 11,
6 10 or 11:00 in the morning and returned
7 approximately 12 to 1:00 p.m. on Sunday.

8 **Q. Okay. What did you begin to do? What did you do**
9 **with the rest of Sunday that you got from having**
10 **shortened your vacation?**

11 A. The first thing that I did was to prepare the,
12 petition the nominating petition.

13 **Q. And that nominating petition is the nominating**
14 **petition that we have --**

15 A. Yes.

16 **Q. -- seen in the exhibits prepared by the protesters**
17 **was the one that would announce your candidacy or**
18 **propose your candidacy as --**

19 A. Yes.

20 **Q. -- an Independent?**

21 A. Yes.

22 **Q. Okay. And WHAT did you do after you prepared that?**

23 A. I prepared that petition. I went to OfficeMax, ran
24 40 copies of it, signed 40 copies as originals, and
25 then began the process of circulating them to, you

1 know, a list of names that I had worked on Saturday
2 night and Sunday morning as the people that I
3 thought potentially, you know, would or could
4 circulate them for me.

5 **Q. And the people who circulated your part-petitions,**
6 **some were Democrats?**

7 A. Yes.

8 **Q. Some Independents?**

9 A. I'm not -- yes, some Independents.

10 **Q. Some Republicans?**

11 A. Yes.

12 **Q. All flavors?**

13 A. Yes.

14 **Q. Okay. And when did you get back what you considered**
15 **to be a sufficient number of signatures on the**
16 **part-petitions that you were satisfied you could**
17 **file?**

18 A. Not until probably Monday, May 4, late, you know. I
19 mean they began to come in morning late, noon, you
20 know, late morning, none time.

21 **Q. What else did you do on Sunday to advance your**
22 **status as a potential mayoral candidate?**

23 A. That took a significant amount of time. Because in
24 the course of distributing petitions it involved,
25 you know, conversations with people. I actually

1 personally went to four or five houses in one area,
2 obtained signatures. And that involved talking to
3 people and so forth. But I know I went to see five
4 or ten different people in different parts of the
5 county. And that essentially took probably, you
6 know, three- or four-hour blocks of time.

7 **Q. Did you move on Sunday night?**

8 A. Yes.

9 **Q. Tell me about the move. What steps did you take to**
10 **move?**

11 A. I had stuff that I took to move. I actually made a
12 list of it. And it ended up on this exhibit which
13 really isn't a part of Exhibit A. But it is the
14 fifth page of Exhibit A. Those are the items that I
15 took with me to 2118 University Avenue on the night
16 of Sunday, May 3. And those are the same items that
17 I then removed on late afternoon of Thursday, May
18 the 7th, back to 441 Lakecrest Street.

19 **Q. You took a relatively minimal kit to University.**
20 **Was it sufficient for your purposes?**

21 A. It was more than sufficient for my purposes.

22 **Q. And if you had stayed there a month, would you have**
23 **moved any more in?**

24 A. I probably would not have moved any more substantive
25 items. I would have, you know, brought in clean

1 underwear as opposed to wearing dirty underwear for
2 a month. But other than that, no, this was
3 sufficient.

4 **Q. All the testimony about your character is true then,**
5 **clean underwear?**

6 A. I, I --

7 **Q. Did you sleep --**

8 A. I, and I think people are aware I, I live in a nice
9 house at 441 Lakecrest. It's a beautiful home. I
10 had a beautiful home, you know, at Dunkeith. But
11 really the living standard that I have, I think my
12 wife actually met me living in what she called, I
13 guess what I call, the cave in my days, as far as
14 that continued to this day. I mean I can live very
15 very simply. And this was more than sufficient.
16 And that was very comfortable at 2118 University.

17 **Q. Where did you sleep on the night of Sunday, May 3rd?**

18 A. Night of Sunday, May 3, 2118 University, Northwest.

19 **Q. And did you sleep there every subsequent night until**
20 **you left?**

21 A. Absolutely.

22 **Q. And what night was the last time that you slept**
23 **there?**

24 A. The last night would have been Wednesday, May the
25 6th. On I believe on Wednesday, May 6th, I met with

1 the tenant, Doctor Noyse, at my house at 441
2 Lakecrest. I think we met at 4:00 in the afternoon.
3 He said "Come on." You know, "We are out of here."
4 Gave me a quick tour of it. I wrote a check for him
5 on that particular date to return his security
6 deposit of 22 hundred dollars. And that check was
7 cashed within one or two days.

8 Received the keys and the garage door
9 opener back to 441 Lakecrest. I took possession on
10 Wednesday afternoon late. I was unable to move,
11 however. That was the evening of the Italian
12 American Scholarship Foundation Committee that I sit
13 on. And I have to sit on that. I wasn't able to
14 move, so I moved the next day.

15 **Q. So when was the first time you slept in Lakecrest?**

16 A. The first time I slept in Lakecrest would have been
17 Thursday night, May the 7th.

18 **Q. And when was the last time you spent at your**
19 **residence at Dunkeith?**

20 A. My last night would have been Wednesday night, April
21 the 29th.

22 **Q. Then Florida. And then University. And since you**
23 **moved into University, you have lived and slept and**
24 **lived continuously in the City of Canton?**

25 A. Did you say since I moved into University or

1 Lakecrest?

2 A. Since you first moved to University on May 3rd, you
3 have slept, lived, and had your place of residence
4 in the City of Canton?

5 A. Absolutely. Yes.

6 **Q. Do you intend to move back in Hills & Dales?**

7 A. No.

8 **Q. Has that house been listed for sale?**

9 A. That house has not been listed for sale. Again, so
10 that there's no issues associated with it by way of
11 timing, one of the very first things that happened
12 with regard to the house at 441 Lakecrest was my, my
13 wife BeBe came in with her girlfriend who I believe
14 is an interior decorator on May 8th and said there
15 will be some changes made to this house. And part
16 of that was carpeting, part was changing all of the
17 fixtures in the bathrooms, in two bathrooms,
18 changing all of the plumbing and electrical fixtures
19 to a more modern update. There was a lengthy list
20 of items I believe that was actually constructed on
21 May 8th.

22 They, thereafter, went shopping for items.
23 Another item was to order carpet. Mike Kanam Carpe
24 came out. He gave me an estimate to recarpet the
25 entire house for eight or nine thousand dollars.

1 There was a debate about whether the whole house
2 needed recarpeting or not. We concluded four rooms
3 did and the master bedroom did not. That carpet was
4 ordered.

5 The house needed painting. We actually --
6 I believe BeBe helped to paint the bedroom and that
7 left the four other rooms which had to be repainted.
8 And those were repainted. So there was work to be
9 done. But I did make a list of that work. And I
10 also made a list expenditures with regard to the
11 money put in that house through today's date. So
12 that's the status really of Lakecrest.

13 **Q. And approximately how much have you put into**
14 **revising Lakecrest?**

15 A. I think we ran a tape on this.

16 MR. PLAKAS: I have an objection. Is this
17 like a home and garden stroke?

18 MR. FERRUCCIO: Maybe we could speed this
19 up and --

20 A. \$17,000.

21 MR. FERRUCCIO: -- respond to his
22 questions.

23 MR. VASVARI: What's that?

24 MR. FERRUCCIO: Maybe we can have some
25 direct questions that he can respond to.

1 MR. VASVARI: I'll try not to lead.

2 MR. FERRUCCIO: Well, you're not.

3 MR. BERNABEI: By the way, I talk a lot.
4 And you should cut me off and go ahead.

5 MR. FERRUCCIO: We may start doing that.

6 BY MR. VASVARI:

7 **Q. Quick question. Then your wife never moved to**
8 **University; did she?**

9 A. No.

10 **Q. Okay. And so she moved directly from Hills & Dales**
11 **to Lakecrest?**

12 A. Yes.

13 **Q. But was she in Ohio for the time that you lived in**
14 **University?**

15 A. Yes.

16 **Q. For how many days?**

17 A. I lived at University from May 3 through, again as
18 stated, the last evening would have been May the
19 6th. I went to Lakecrest on May the 7th. My wife
20 actually went to Hilton Head on May the 10th and
21 stayed there I believe until May the 18th. So she
22 did not make a move to Lakecrest also until she
23 returned from Hilton Head.

24 **Q. Okay. That was a pre-existing annual trip that she**
25 **makes with friends?**

1 A. Yes.

2 **Q. Okay. Let's go back now to your trip to the Board**
3 **of Elections. In fact, there's more than one. You**
4 **went to the Board of Elections twice on Monday, May**
5 **4th; correct?**

6 A. Yes.

7 **Q. Can you tell me what transpired the first time?**

8 A. The first trip to the Board of Elections was that
9 provisional balloting was closing I believe at 2:00
10 p.m. I did not have the petitions yet prepared and,
11 in similar, did not have all of them back in order
12 to file them at 2:00 p.m. And, therefore, I went to
13 the Board of Elections about approximately 20
14 minutes before that and to cast a provisional
15 ballot.

16 **Q. Okay. Did you return to the Board of Elections**
17 **later that day?**

18 A. Then I think we may have done some filing. I have
19 to look at some of the documents that were or were
20 not filed.

21 **Q. Let's start with the receipt that's No. 6610.**

22 MR. VASVARI: And we'll call that D.
23 (A receipt coversheet, Receipt No. 6610,
24 and a Designation of Treasurer form were
25 marked Candidate's Exhibit D.)

1 **Q. Mr. Bernabei, you've been handed Exhibit D. Do you**
2 **recognize it? And if so, what is it?**

3 A. There's another part to this Exhibit D. But Exhibit
4 D, when I was there at 2:00 after completing the
5 provisional ballot, I also wanted to file the
6 Designation of Treasurer. That was another item I
7 had mentioned earlier.

8 I had earlier in that day spoken with
9 Michael E. Hanke and asked him whether he would
10 consent to being my treasurer. He indicated that he
11 would. So I initially filed this form when I was
12 there at, at 2:00 for the provisional ballot. And
13 this was filed at 2:02 p.m.

14 **Q. I hand you what will now be marked as E. If you**
15 **look at that document, that has Mr. Hanke's name**
16 **filled in in handwriting, time stamped 2:02 in the**
17 **upper right corner. That's what we're calling E.**

18 (A Designation of Treasurer by Michael E.
19 Hanke was marked Candidate's Exhibit E.)

20 A. This is E, Exhibit E. Exhibit D, the same document
21 as Exhibit E, contains Michael Hanke's signature.
22 He was not available to come to the Board I believe
23 at 2:00 p.m. And I had left. And, therefore, when
24 he returned, he signed this document. And it was
25 then refiled again at 3:29 p.m. That was when I

1 would have been there for the filing of the
2 petitions.

3 **Q. Okay. And also at 2:02 that day, you filed what we**
4 **will call F. Also time stamped marked 2:02. We'll**
5 **designate that F.**

6 MR. FERRUCCIO: Which one is that?

7 MR. BERNABEI: Exhibit F is the letter
8 dated May 4, 2015, to the Board of Elections in
9 which I resigned as treasurer of the Guardado,
10 Hartnett, and Martuccio committees.

11 MR. FERRUCCIO: All right.

12 MR. SHERER: That is Exhibit F?

13 MR. BERNABEI: That is now F. And that was
14 filed at the same time as the original Designation
15 Of Treasurer.

16 BY MR. VASVARI:

17 **Q. So the Designation of Treasurer, the resignation as**
18 **treasurer from the three campaigns, what was the**
19 **purpose of that?**

20 A. Those were requirements as previously discussed both
21 with legal counsel -- not yourself -- but first with
22 legal counsel as well as my understanding in my
23 conversations with different people that part of the
24 disaffiliation process was to disaffiliate and
25 resign from committees and/or campaign committees.

1 MR. VASVARI: And I think I estimate those
2 at five minutes, five minutes, seven, seven, and
3 seven.

4 MR. FERRUCCIO: All right. Okay. Let's
5 get started.

6 MR. PLAKAS: I have a follow-up question.
7 During the course of Mr. Giavasis' testimony, I
8 raised the issue that the door had been opened as to
9 the subject matter for Doctor Klarner. Has the
10 panel had any further ability to review that
11 request?

12 MR. FERRUCCIO: Really haven't. I don't
13 anticipate that we will have him testify. But I
14 mean I think we understand, you know, the issue
15 that's raised. But, you know, the speculation with
16 respect to the political process, I think we can all
17 grasp that issue. I think I'm not inclined to have
18 him testify. I'll reserve the decision until later.
19 But I think that's where we're leaning.

20 MR. VASVARI: If I could just for 30
21 seconds.... Our position on that, Mr. Chairman, is
22 that there -- these are different horses and
23 different barns with respect to the doors that have
24 been opened. They have brought in the social
25 scientist to talk about national data over a

1 **Q. And you tendered those to...?**

2 A. Those were tendered to the clerk, may have been
3 Jeanette. Different people helped me. Because it
4 was somewhat busy I think about 2:00 on that
5 particular day. Someone else helped me with the,
6 with the provisional ballot. I think one of the
7 volunteers helped me do that. And that took about
8 20 minutes. This was then filed with Jeanette
9 and/or with someone else at the desk.

10 **Q. Okay.**

11 MR. VASVARI: If I may have a minute just
12 to see how far I've come so I know how far I have to
13 go.

14 (The court reporter requested a break.)

15 (A recess was taken.)

16 MR. FERRUCCIO: Back on the Record. It is
17 4:24. Just out of sort of a point of order, how
18 many witnesses are left? Is this your last witness?

19 MR. VASVARI: I can't hear you.

20 MR. FERRUCCIO: Everybody.

21 MR. SHERER: Hey.

22 MR. FERRUCCIO: Is this your last witness?
23 I'm trying to get sort of an idea.

24 MR. VASVARI: No. I have a handful more.

25 MR. FERRUCCIO: Okay.

1 long-series survey about what sort of effect an
2 Independent candidate has on chances in a general
3 election. We're not -- that's not us. I was asking
4 Tom, and we intend to ask Tom, "Do you think you
5 made your life easier by making this choice?"
6 Different issue.

7 MR. FERRUCCIO: Please proceed.

8 BY MR. VASVARI:

9 **Q. Mr. Bernabei, it has been alleged that you are**
10 **running for mayor to slake your thirst for vengeance**
11 **against Mr. Healy. What do you say that to?**

12 A. I guess my comment would be that that is probably
13 the craziest part of this entire protest process. I
14 can only indicate that my relationship with Mayor
15 Healy, despite the fact that he, in fact, did fire
16 me eight years ago approximately, has been
17 professional, cordial, and on many occasions
18 laughing. He's the elected mayor of the City of
19 Canton. I am a sitting county commissioner and have
20 been the president of Board of Commissioners for
21 four years.

22 But we have many transactions between us.
23 There is the need for us to work, he on behalf of
24 the city, myself on behalf of the county as a whole
25 -- this includes the city -- to attempt to get work

1 done. So we have had a cordial and good-working
2 relationship.

3 As far as the termination of me, there were
4 many issues that led to that termination. I don't
5 need to get into those today. But my comment with
6 regard to that termination has been, and always has
7 been, he is the mayor; he had the right to fire me.

8 **Q. Are you over it?**

9 A. I've been over it forever.

10 **Q. Is that what's motivated your desire to run for
11 mayor?**

12 A. That has nothing whatsoever to do with this. And
13 speculations as that being the only motive or the
14 motive that they come up with to justify my actions
15 is bizarre. I mean we have a group of people that
16 forget that someone could actually have good
17 motivation, which I would testify to myself that I
18 do have; and that is my concern, is over good
19 government and the future of all of us, including my
20 grandchildren.

21 **Q. Why are you running for mayor?**

22 A. And may I clarify one thing. And I did bring some
23 notes on a file just so you understand the
24 relationship between the mayor and I. And this
25 concerns the Building Department merger issues which

1 had been an issue in the newspaper back in, back in
2 2013.

3 MR. PLAKAS: I would object again. This is
4 really far afield again.

5 MR. FERRUCCIO: I mean I think you've
6 answered the question with respect to it's not the
7 burning desire because of the firing. So I mean I
8 think we can move on.

9 MR. BERNABEI: As long as that eliminates
10 the question as to speculation being accepted in
11 lieu of my direct testimony as to what, in fact, was
12 and what, in fact, has been.

13 MR. FERRUCCIO: I don't know what you're
14 trying to add with respect to the answers, that
15 you're just adding to a question that wasn't asked.
16 So I'm just trying to --

17 BY MR. VASVARI:

18 **Q. Let's call this horse dead. It isn't vengeance, is
19 it?**

20 A. It is not vengeance.

21 **Q. All right. Horse killed. You don't contemplate
22 ever going back and rejoining the Democratic Party,
23 do you?**

24 A. I do not contemplate going back to the Democratic
25 Party. That is final and irrevocable. That is my

1 decision. It was my decision, that I believe I'm
2 entitled to withdrawal from the Democratic Party and
3 disaffiliate under law and under the Constitution.
4 And I don't think that the Democratic Party wants me
5 back anyways.

6 **Q. All right. You recorded a radio ad for a candidate
7 for judge. Her name?**

8 A. Kristen Guardado.

9 **Q. And when did you record that advertisement?**

10 A. Apparently it happened on the 29th. I wasn't sure
11 earlier as to whether it happened on the 27th or the
12 29th. I don't find anything to indicate either date
13 in any of my own records. I'll accept the WHBC
14 records it was the 29th.

15 **Q. And that was sort of in the thick of the tumuli in
16 your own mind --**

17 A. Yes.

18 **Q. -- over "do I stay" or "do I go"?**

19 A. Yes.

20 **Q. All right. You promised to do that earlier?**

21 A. Yes. And that ad was prepared by Kody Gonzalez who
22 was her ad campaign manager. He had sent me a draft
23 in an e-mail earlier in the week -- and that may be
24 the date that I'm getting confused with -- with
25 draft language. I re-edited it back and reworked it

1 and went to the, went to WHBC to record at her
2 request.

3 **Q. Given all your angst, given all the trouble that was
4 in your heart about whether this was the right thing
5 to do, why did you go ahead and record this ad for a
6 Democrat?**

7 A. Well, for anyone on, of course, everybody on, on
8 this side of the podium who is involved in politics,
9 anyone who is involved in election -- and I think
10 that this is certainly an election for a very hotly
11 contested, very hotly contested race for the
12 Democratic primary candidate for municipal court
13 judge, Kristen Guardado and anybody in that
14 position, it is a life and death matter that exceeds
15 any and all other concerns. She asked me for my
16 assistance in that. I have known her for a long
17 time. Originally hired her to the Law Department.
18 I knew her prior to that. And she was in need. She
19 asked and I agreed.

20 **Q. By the way, when you recorded the advertisement,
21 were you earnest? Did you think she'd be a good
22 judge?**

23 A. Yes. Absolutely would not have done so otherwise.

24 **Q. Okay. And can you say sitting here as an
25 Independent today you still think she would be a**

1 good judge?

2 A. Yes.

3 **Q. And that really doesn't depend on her party**

4 **affiliation?**

5 A. No, it does not.

6 **Q. Much has been made of loyalty, Mr. Bernabei.**

7 **Rounding near the end. You signed some statements,**

8 **and we saw them in evidence, that you would be**

9 **faithful to the principles of the Democratic Party**

10 **if elected. Why have you not resigned as**

11 **commissioner?**

12 A. Initially -- and, again, I guess I'm getting into

13 attorney/client discussion that I had with, the

14 initial conversation that I had with Don McTigue

15 which would have been back on Monday, April 28th --

16 again, I reviewed... -- the first thing I told him

17 was I was a sitting commissioner. Because that was

18 the most immediate issue. But then I reviewed my

19 past history briefly and other issues and so forth.

20 We discussed that specifically, as to whether or not

21 there was a need for me to resign from office as a

22 part of the disaffiliation process. And he

23 instructed me that it was not, that I, although I

24 may have been elected as a Democrat, as an

25 officeholder itself, you know, I, I don't act in the

1 capacity as a Democrat in holding that office. And

2 that my duty is to the public at large, not to the

3 Democratic Party, and that it was not an issue

4 associated with disaffiliation.

5 **Q. So unlike the Board members who statutorily are**

6 **appointed based on party affiliation, county**

7 **commissioner isn't a Democrat commissioner or a**

8 **Republican commissioner? It's plain ol'**

9 **commissioner?**

10 A. Yes.

11 **Q. And that's what you are?**

12 A. Yes.

13 **Q. Okay.**

14 A. That was my understanding. That is still my

15 understanding today. And that is why that issue was

16 really never discussed after, you know, the first or

17 second time.

18 **Q. Okay. The other side responds when they're asking**

19 **the questions of saying character matters, I'll ask**

20 **this. You signed a statement that said you would be**

21 **true to the principles of the Democratic Party.**

22 **When you signed those statements, when you signed**

23 **those pledges, in your heart did you intend to honor**

24 **them?**

25 A. Yes.

1 **Q. Whether you understood then, what are the principles**

2 **of the Democratic Party?**

3 A. I am not familiar with what the specifically written

4 cannons or tenants of the Democratic Party are. I

5 associate my understanding and adherence to the

6 Democratic Party, primarily probably larger on

7 national and state issues with regard to fiscal

8 matters. With regard to the social policy, I think

9 I am a liberal on social policy. Whereas I think

10 the Republicans are reasonably conservative on that,

11 I am conservative probably on fiscal matters;

12 although, I believe that people should pay taxes.

13 We should pay higher income taxes in order to obtain

14 the necessary services and infrastructure that we

15 need.

16 But from a local perspective, I never had a

17 particular perspective on that as to the Democratic

18 Party versus the Republican party. Only because we

19 don't print money, therefore, there's no loss to be

20 attached to our spending of money. Our goal is to,

21 to have balanced budgets and spend the money in

22 order to deliver services efficiently.

23 **Q. You never signed an oath that said you would remain**

24 **in the Democratic Party; did you?**

25 A. To my knowledge, no.

1 **Q. Have the principles by which you speak to be a**

2 **public servant changed since you signed that oath?**

3 A. No.

4 **Q. Are you still guided by the same principles of**

5 **public service as when you signed that oath?**

6 A. Yes.

7 **Q. Those principles are what?**

8 A. Those I'm not sure. Well, the primary principle is

9 that we are here all elected officials regardless of

10 party; we're here to serve the public at large, the

11 good of the people, and not the party.

12 MR. VASVARI: One second, Mr. Chairman.

13 (A pause was taken.)

14 MR. VASVARI: I'm done.

15 MR. BERNABEI: Pardon? You want to talk to

16 me.

17 (A recess was taken.)

18 MR. VASVARI: I think that's all. And it

19 is, Mr. Chairman, all I have for direct on Mr.

20 Bernabei. Thank you for your patience.

21 MR. FERRUCCIO: Thank you.

22 Mr. Plakas.

23 MR. PLAKAS: Thank you.

24 MR. BERNABEI: Now, there's one thing that

25 I did forget to clarify, if I may.

1 MR. FERRUCCIO: Sure.

2 MR. PLAKAS: Probably not a question on

3 the, on the floor.

4 MR. FERRUCCIO: Well, that's all right. Go

5 ahead.

6 MR. BERNABEI: That was -- you know, one

7 thing when I was answering the question, and that

8 was why I gave the letters of resignation to

9 Jeanette, and I was thinking about that.

10 I had called Jeanette with regard to how

11 one completed the petition for nomination. I think

12 that she had sent me a copy of the petition that Mr.

13 Cicchinelli had filed in Massillon. But she also

14 then was going to provide to me a petition on that

15 date, again, that, that we're talking about, on

16 April the 30th, for my potential use.

17 MR. FERRUCCIO: Okay.

18 MR. BERNABEI: That was the purpose of I

19 believe either my call to her or her call to me.

20 And then turns out I was unable to find Phil

21 Giavasis with regard to the delivery of the letters

22 of resignation, so I gave them to Jeanette.

23 MR. FERRUCCIO: Okay.

24 MR. BERNABEI: She was going to see him

25 that evening. I wanted to clarify. In my own mind

1 it didn't make sense because I had forgotten about

2 the petition issue.

3 MR. FERRUCCIO: Okay.

4 Mr. Plakas.

5 CROSS-EXAMINATION

6 BY MR. PLAKAS:

7 **Q. Mr. Bernabei, I think we had a Freudian moment in**

8 **the first three minutes of your Direct Examination.**

9 **And actually I wrote it down and quoted you because**

10 **within the first three minutes you stated under**

11 **oath, quote, I am a Democratic officeholder. And**

12 **then you said "Strike that. I was." So it's not**

13 **difficult, if you are, in fact, confused, that the**

14 **potential voter can be confused.**

15 **So let's look at Exhibit 16. And 16 is the**

16 **promise or the oath that you just --**

17 A. By the way, Mr. Plakas, I am not confused about that

18 whatsoever. But go ahead.

19 **Q. I'm just taking your words under oath.**

20 A. And it was a --

21 **Q. You said, I quote, "I am a Democratic officer." Did**

22 **you not say that under oath?**

23 A. What did I say right after that, sir?

24 **Q. You said "Strike that. I was."**

25 A. Have you ever heard that term before? Have you ever

1 done that?

2 **Q. Actually not with the regularity that you contradict**

3 **yourself.**

4 MR. FERRUCCIO: All right. Let's not --

5 MR. VASVARI: Objection.

6 MR. FERRUCCIO: We are not going to have

7 any argument, Guys. Just stick to the facts.

8 BY MR. PLAKAS:

9 **Q. So Exhibit 16. And that oath that you will support**

10 **and abide by the principles of the Democratic Party,**

11 **that was one of the vehicles that allowed you to**

12 **become a Democratic officeholder. Now, with regard**

13 **to that --**

14 MR. PLAKAS: And if you would pop that out.

15 I will support and abide by the principles of the

16 Democratic -- about three-fourths of the way down.

17 **Q. -- with regard to that representation to the public**

18 **and under the election laws of Ohio, tell me. I**

19 **don't seem to see an expiration date on that**

20 **promise. Is there one? Is there an expiration date**

21 **on that promise?**

22 A. No.

23 **Q. And when you made that promise under the election**

24 **laws of Ohio, you intended the office which you were**

25 **receiving, obtaining with the support of the**

1 **Democratic Party, that that oath, that statement,**

2 **that promise would continue during the term of your**

3 **position as a Democratic county commissioner; right?**

4 MR. VASVARI: Objection. There is no such

5 thing as a Democratic county commissioner.

6 BY MR. PLAKAS:

7 **Q. Isn't that true, sir? When you made that promise,**

8 **you intended to fulfill that promise; didn't you?**

9 A. I intended to fulfill the promise. Or I don't know

10 that it's a promise or not. I intended to fulfill

11 the statement as written on the petition.

12 **Q. Well, and that was the -- the promise on Exhibit 16**

13 **for the Democratic commissioner, you made the**

14 **identical promise on Exhibit 17 for the position of**

15 **the Central Committee of the Democratic Party in**

16 **Stark County; correct?**

17 A. 17. Let me see. That is the same, same statement.

18 **Q. Exact same statement?**

19 A. I believe, yes.

20 **Q. And because you felt that you could no longer**

21 **fulfill the promise on Exhibit 17 as a Democratic**

22 **Central Committee member, you resigned; correct?**

23 A. I resigned because I was told that that was an issue

24 that had to be completed in order to officiate

25 disaffiliation.

1 **Q. You were told that by your attorney, Donald McTigue,**
 2 **right?**
 3 A. Yes.
 4 **Q. You talked at length about your grandchildren and**
 5 **good government here in your Direct Examination. I**
 6 **presume that you teach your grandchildren to play by**
 7 **the rules; right?**
 8 A. Yes.
 9 **Q. To comply with the spirit and letter of rules or**
 10 **regulations or the law --**
 11 A. Yes.
 12 **Q. -- right?**
 13 **You talk to your grandchildren about good**
 14 **government; correct?**
 15 A. Yes.
 16 **Q. You tell them that good government encompasses the**
 17 **rule of law, the rule of law versus the rule of**
 18 **personalities; correct?**
 19 A. I don't know that I've had that conversation with my
 20 grandchildren. But --
 21 **Q. If you have the opportunity?**
 22 A. I understand. I understand the principle.
 23 **Q. And you agree with the principle; don't you?**
 24 A. Yes.
 25 **Q. You also agree with the principle that no man is**

1 **above the law, as we quoted Teddy Roosevelt earlier;**
 2 **correct?**
 3 A. Generally.
 4 **Q. We've heard testimony that you're a man that's noted**
 5 **as believing that the devil is in the details;**
 6 **correct?**
 7 A. Yes.
 8 **Q. Your Exhibit C is the voter registration form that**
 9 **you have signed under "I declare under penalty of**
 10 **election falsification," et cetera. Exhibit C,**
 11 **right to the left of your signature, is dated May**
 12 **3rd, 2015; correct?**
 13 A. Yes.
 14 **Q. You wrote in that date; correct?**
 15 A. Yes.
 16 **Q. That date is false, isn't it?**
 17 A. No. The date is May the -- date that I wrote it on
 18 was not May 3rd.
 19 **Q. Okay.**
 20 A. I don't know if that makes the date false.
 21 **Q. Well, when you sign any legal or important document**
 22 **and they ask you for the date next to your**
 23 **signature, isn't it customarily recognized if not**
 24 **universally recognized that that's the date that you**
 25 **sign the document?**

1 A. On occasion you can write a document with a date to
 2 be prospective. And that was the purpose of dating
 3 it May the 3rd.
 4 **Q. Well, why didn't you write then under the date that**
 5 **this is just a prospective or conditional date?**
 6 **This isn't really the accurate, true date that you**
 7 **signed this document? You knew that there was a**
 8 **deadline involved in this situation; didn't you?**
 9 A. I knew that the deadline was May 4.
 10 **Q. You could have written "conditional" or**
 11 **"prospective" or "I may not really mean this";**
 12 **correct?**
 13 A. I could have.
 14 **Q. And that's what you told Jeanette Mullane, that you**
 15 **weren't sure if you really meant it or not; correct?**
 16 MR. VASVARI: Objection.
 17 MR. FERRUCCIO: Overruled.
 18 BY MR. PLAKAS:
 19 **Q. In substance that's what you told her, is it not?**
 20 A. Not if I really meant it or not, that I would make a
 21 decision as to whether or not that document should
 22 be filed.
 23 **Q. Well, if the document was not going to be filed,**
 24 **that means you didn't really mean to dis -- attempt**
 25 **to disaffiliate from the Democratic Party; correct?**

1 A. I don't know what this has to do with
 2 disaffiliation.
 3 **Q. Isn't this part of the process?**
 4 A. For someone reading the voter registration form?
 5 **Q. So would you have disaffiliated but still moved to**
 6 **the vacant home at 4118 University Avenue? Was that**
 7 **an option? "I'm no longer a Democrat but I'm**
 8 **thinking maybe I'll just go ahead and move into this**
 9 **vacant home"? Was that Option B or C or D?**
 10 A. No. The two were combined. I had two steps to
 11 take, one dealing with this disaffiliation, one
 12 dealing with voter registration and residency. This
 13 form deals with residency, not disaffiliation.
 14 **Q. But the steps were intertwined, weren't they?**
 15 **Disaffiliation and residency were a package in your**
 16 **mind? You weren't going to do one without the**
 17 **other, were you?**
 18 A. They are two separate issues. And I think that you
 19 frame them for the court very well as two separate
 20 issues. I don't know why you're now trying to
 21 intertwine them.
 22 MR. PLAKAS: Can I ask the Panel to please
 23 have him answer the questions.
 24 MR. FERRUCCIO: Well, I think he is trying
 25 to answer your question. Want to restate it?

1 MR. PLAKAS: Sure.

2 BY MR. PLAKAS:

3 **Q. The issue of you moving and you disaffiliating or**

4 **attempting to do both were intertwined, weren't**

5 **they? You wouldn't have done one without the other?**

6 A. Intertwined with regard to my desire to run as mayor

7 for the City of Canton.

8 **Q. Thank you for answering. Now, you've talked at,**

9 **you've talked at length about Jeanette Mullane and**

10 **how you gave her these conditional documents or**

11 **whatever you're calling them. When did you tell her**

12 **to actually file them?**

13 A. When did I tell her to actually file them?

14 **Q. Sure.**

15 A. My conversation was.

16 **Q. With the Board of Elections. When did you --**

17 A. Sometime Saturday or Sunday.

18 **Q. Well, that's what I'm asking.**

19 A. May 2 or May 3.

20 **Q. Since we are dealing with some specific and critical**

21 **dates, can we do better than sometime Saturday or**

22 **sometime Sunday?**

23 A. No.

24 **Q. No. On this critical, important decision, you don't**

25 **recall the circumstances by which you told her "Yes,**

1 **I'm pulling the trigger I'm going to do this" or**

2 **not? You don't remember the circumstances?**

3 A. No. Because I had wall-to-wall conversations with

4 multiple people over this weekend. And, no, I don't

5 remember which conversation that was with Jeanette

6 Mullane.

7 **Q. So let's drill down a little bit to maybe help**

8 **refresh your recollection so there won't be**

9 **confusion. When you gave Jeanette Mullane the final**

10 **instructions to go ahead and file this with the**

11 **Board of Elections, was that in person? Were you in**

12 **person with her when you told her that?**

13 A. The only in-person meeting that I had with Jeanette

14 Mullane was on Thursday, April the 30th, when I

15 completed this form, when I received the petitions,

16 and when I gave her the four letters.

17 **Q. Okay. So I take it --**

18 A. That was the in-person.

19 **Q. I take it that your answer to my question is "No, it**

20 **wasn't in person when I told her that I made my**

21 **final decision"? Is that your answer?**

22 A. Well, you are aware that I was in Florida. So I

23 didn't know that you were asking me that question.

24 **Q. So when you gave her the final directions that you**

25 **made your decision, it was not in person; so,**

1 **therefore, was it by telephone?**

2 A. It would have been by telephone.

3 **Q. Okay. And where were you when you made that**

4 **telephone call?**

5 A. I would have been in Clearwater Beach I believe.

6 **Q. Okay. And what time during the day?**

7 A. I cannot tell you what time of day, as I previously

8 testified.

9 **Q. And you previously testified you didn't know whether**

10 **it was May 2nd or May 3rd; correct?**

11 A. Correct.

12 **Q. And you still don't know whether it was May 2nd or**

13 **May 3rd?**

14 A. I do not.

15 **Q. And then that tells me that you still don't know**

16 **what finally triggered your final decision to say**

17 **"I'm going to go ahead and try to do this," because**

18 **it would seem to me that one of the first steps you**

19 **would take would be to actually call Jeanette**

20 **Mullane who was holding these conditional or "maybe"**

21 **documents and tell her "Go ahead and file." So you**

22 **don't remember what triggered then that final**

23 **decision or which day it was, 2nd or 3rd; correct?**

24 A. That is correct.

25 **Q. And with regard to the interaction you had with**

1 **Jeanette Mullane, that was on April 30th; correct?**

2 A. That would be Thursday, the day that I left for the

3 airport.

4 **Q. And what time during the day was that interaction?**

5 A. About, approximately I believe 12 to 1

6 approximately.

7 **Q. And at that time, was Jeanette Mullane working here**

8 **at the Board of Elections?**

9 A. That was the meeting that was held at Chase Bank.

10 **Q. Sure. But that, that Thursday, April 30th, is a**

11 **regular work day, isn't it?**

12 A. Yes. But I'm not her employer. I don't know

13 whether she was working at the Board of Elections or

14 not.

15 **Q. You could have come down to the Board of Elections.**

16 **But you chose not to and you chose to see if she**

17 **would come and meet you somewhere; correct?**

18 A. No. That's incorrect. And that's not what I

19 testified to.

20 **Q. You don't know whether she was on the job or on the**

21 **clock on April 30th, but you assumed she was;**

22 **correct?**

23 A. I assumed that she was. But she may not have been.

24 **Q. But you didn't ask her?**

25 A. No.

1 **Q. You've gone also into great detail about the**
2 **discussions you had with Don McTigue. And you've**
3 **relayed to us the advice that he's given you on a**
4 **number of matters. You also had previously in the**
5 **community relayed to others what Don McTigue had**
6 **told you; correct?**

7 A. I'm not sure what those items would be. If you
8 wanted to tell me about that.

9 **Q. Let me try to remind you of the things he told you**
10 **and the things you relayed in the community. Mr.**
11 **McTigue told you that this is the most difficult**
12 **case he had ever seen with regard to these issues,**
13 **that it was a loser because there were bad facts and**
14 **you only had a 30 percent chance of success; isn't**
15 **that true?**

16 A. Please tell me to whom or to where I made those
17 statements.

18 **Q. Well, the good thing about you being under oath is**
19 **you got to answer the questions. So let's break**
20 **them down. Mr. McTigue told you that this was --**
21 **would be a very difficult case; correct?**

22 A. I don't believe that I discussed those issues with
23 anyone.

24 MR. PLAKAS: Well, once again, I would ask
25 the Board to please require the witness to answer

1 the question.

2 **Q. The question is, Mr. McTigue told you that this was**
3 **a very difficult case, in fact, the most difficult**
4 **case he had ever seen on these issues; correct?**

5 MR. VASVARI: I'm going to object.
6 Relevance. Mr. McTigue's prognostication is not
7 relevant.

8 MR. FERRUCCIO: That's --

9 MR. VASVARI: It's a decision for the
10 Board, not Don McTigue.

11 MR. FERRUCCIO: That's sustained.

12 MR. PLAKAS: And the reason I went there
13 is, of course, we've heard about two dozen questions
14 about the advice that Mr. McTigue has given to Mr.
15 Bernabei and that how Mr. Bernabei acted in reliance
16 upon that. So the implications that this is somehow
17 blessed by Don McTigue and he told him what he was
18 doing was appropriate, that is not the fact and that
19 that's not what happened.

20 MR. VASVARI: The implication?

21 MR. FERRUCCIO: We understand that. And I
22 understand that the attorney/client privilege has
23 been waived. But we have the ability as a Board to
24 assess those statements, and that's what our job is.

25 MR. VASVARI: We only offered McTigue, Mr.

1 Chairman, for the following: He sought counsel, he
2 got advice from counsel, he acted in compliance with
3 that advice.

4 MR. FERRUCCIO: Yeah. And we understand
5 that. And it may not have been the right advice.
6 But the point is that it was advice that he got.
7 And we understand that. We'll give it the proper
8 weight.

9 BY MR. PLAKAS:

10 **Q. You've talked, you've spoken in your testimony here**
11 **this afternoon about the candidacy of Kristen**
12 **Guardado. And the fact is that you did not tell her**
13 **until May 4th, the day before the election, that you**
14 **were resigning; correct?**

15 A. That is correct. I told her after I had resigned.

16 **Q. And you didn't give her any kind of heads up before?**

17 A. I do not believe that I had any prior conversation.
18 No.

19 **Q. You've talked about your claim that you slept at the**
20 **University Avenue address from May 3rd through May**
21 **6th. During that period that you claimed you were**
22 **living or sleeping there, your wife was actually**
23 **living and sleeping at the home, at your Hills &**
24 **Dales home; correct?**

25 MR. VASVARI: Asked and answered.

1 MR. FERRUCCIO: That's correct.

2 BY MR. PLAKAS:

3 **Q. Is that correct?**

4 MR. FERRUCCIO: No. That's been asked and
5 answered but....

6 A. My answer would be I hope so but....

7 **Q. When you --**

8 A. Because she wasn't with me.

9 **Q. That would open up a whole new barn door. You know**
10 **that your wife, when you voted for provisionally in**
11 **the City of Canton, at the same time on the same day**
12 **she voted at your regular precinct in Hills & Dales;**
13 **correct?**

14 A. Yes.

15 **Q. She is a long-time Democrat also; correct?**

16 A. I believe. That's not why I married her.

17 **Q. You in the last several days received a subpoena**
18 **requesting all communications including text**
19 **messages, e-mails, any circulars, signatory**
20 **petitions, et cetera, et cetera, et cetera. Do you**
21 **recall receiving this?**

22 A. That's the subpoena that the -- subpoena that was
23 served by the process server. I received a subpoena
24 from the process server I believe on --

25 **Q. Let me just --**

1 A. -- Monday morning.
2 **Q. Let me just give it to you.**

3 MR. VASVARI: I've never seen this, not
4 from you.

5 MR. PLAKAS: Not from me. But you've seen
6 it from --

7 MR. VASVARI: I've seen it from my client.

8 MR. PLAKAS: Okay.

9 MR. VASVARI: But I haven't seen it, like
10 the other subpoenas that I've seen from the Board.

11 BY MR. PLAKAS:

12 **Q. Based upon that, your counsel just indicated that**
13 **he's seen it from his client. So you've received**
14 **this subpoena, haven't you?**

15 A. This subpoena, yes. This is not the subpoena that I
16 received from the process server. I received --
17 actually I didn't receive. My wife signed for a
18 second document from your office I believe on
19 Friday.

20 **Q. And have you complied with the subpoena? Have you**
21 **brought the documents that we've requested in the**
22 **subpoena?**

23 A. No.

24 **Q. And the reason that you haven't complied with the**
25 **subpoena is what?**

1 A. I gave the subpoena to my counsel.

2 **Q. Your counsel told you not to comply with the rule of**
3 **law and to provide the information in the subpoena;**
4 **is that right?**

5 MR. VASVARI: Objection. Communications
6 with me are none of your business. I'll be willing
7 to tell the Board why he hasn't complied with the
8 subpoena.

9 MR. FERRUCCIO: That's true.
10 Attorney/client communication.

11 BY MR. PLAKAS:

12 **Q. Finally then we, we've talked about these. In**
13 **addition to the forms, the conditional forms, we've**
14 **talked about these resignation letters that you**
15 **weren't sure that you were going to pull the trigger**
16 **on in terms of resigning from the various Democratic**
17 **committees. It's clear that when you drafted those**
18 **you weren't sure that you wanted them delivered;**
19 **correct?**

20 A. Yes.

21 **Q. And even though you indicate that you apparently**
22 **gave originals or some originals to Jeanette, you,**
23 **of course, retained copies; didn't you?**

24 A. Yes.

25 **Q. And you could have, if you had so chosen to do so,**

1 **you could have mailed either the original, if you**
2 **had more than one, or you could have mailed copies**
3 **when you went to the airport on Thursday on your way**
4 **to Florida? If you wanted to ensure that delivery**
5 **was made, you could have flipped them in the mailbox**
6 **at the airport?**

7 A. Yes.

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

9 A. It was not an issue. I think we covered this
10 before. It was not an issue of choice. It was an
11 issue of omission.

12 **Q. An issue of omission?**

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

19 **Q. So thank you. Finally then, once again quoting you,**
20 **you say you wish you had mailed them or delivered**
21 **them and you wish you had run in the Democratic**
22 **primary. And earlier I wrote down your quote in**
23 **your earlier testimony. You said in hindsight you**
24 **should have chosen to run in the Democratic primary?**

25 A. The purpose of both of those statements is that that

1 would have eliminated all of today's hearing and
2 everything else that has occurred since May the 3rd.

3 **Q. Thank you.**

4 MR. VASVARI: Just a few, very few.

5 MR. FERRUCCIO: All right.

6 MR. VASVARI: Conscious of the time.

7 REDIRECT EXAMINATION

8 BY MR. VASVARI:

9 **Q. It would have been better if you mailed the letters,**
10 **wouldn't it?**

11 A. I think that was my answer. Yes. I wish I had done
12 so. This would have been better. Would have
13 eliminated the issue of whether or not they were, in
14 fact, delivered or whether, in fact, they constitute
15 resignation or not.

16 **Q. When they weren't busy characterizing you as a snake**
17 **that shed its skin, they were busy characterizing**
18 **you as a chicken running around without a head. You**
19 **were very busy that week?**

20 A. Many many many things were happening and many many
21 things had to be put together in order to make the
22 filing date of 4:00 p.m. on Monday, May the 4th.

23 **Q. You gave the letters to Jeanette with the full**
24 **expectation that she would deliver them for you?**

25 A. Yes.

1 MR. PLAKAS: Objection.
 2 BY MR. VASVARI:
 3 **Q. You didn't do that as some sort of subterfuge or**
 4 **some trick?**
 5 A. No.
 6 **Q. Your intention was if you released them then they**
 7 **would go and they would be delivered and that was**
 8 **your expectation?**
 9 A. Yes.
 10 **Q. All right. By the way, you say you wish you --**
 11 A. My expectation was that I was completing, you know,
 12 a resignation when delivered.
 13 **Q. All right. Now you said you wish you would have run**
 14 **in the Democratic primary. But before that comes**
 15 **back at you twisted into a different ball of rubber**
 16 **bands, let's just be clear. Do you mean that your**
 17 **decision to run for mayor was basically an "Oops, I**
 18 **missed the primary. I better do this thing as an**
 19 **Independent"? Is that why you ran as an**
 20 **Independent?**
 21 A. No. We've already covered that. But, no. I had no
 22 contemplation of running as a, as a Democrat in that
 23 primary. I had no contemplation of running for
 24 mayor at the time of filing for the primary.
 25 **Q. So this is not something you were doing because you**

1 **missed the deadline for the primary filing?**
 2 A. That is correct.
 3 **Q. Something you're doing because you came to the**
 4 **decision afterward that somebody ought to run as an**
 5 **independent?**
 6 A. That is correct.
 7 **Q. Finally, we heard that there's no expiration date on**
 8 **your oath of loyalty to the Democratic Party. When**
 9 **you signed that, did you intend yourself to be bound**
 10 **by some blood oath for life?**
 11 A. No.
 12 **Q. That would be silly, wouldn't it?**
 13 A. I would not anticipate that I am obligated to remain
 14 in the Democratic Party for life.
 15 **Q. Because that would be inconsistent with your First**
 16 **Amendment freedom of association, wouldn't it?**
 17 MR. PLAKAS: Objection. Move to strike.
 18 MR. FERRUCCIO: Sustained.
 19 MR. VASVARI: Withdrawn.
 20 MR. PLAKAS: One question.
 21 RE-CROSS-EXAMINATION
 22 BY MR. PLAKAS:
 23 **Q. You do expect to be bound by people being able to**
 24 **rely upon "you will say what you do and do what you**
 25 **say"; correct?**

1 A. That is an important thing.
 2 MR. PLAKAS: Nothing further.
 3 MR. FERRUCCIO: Thank you. Any questions
 4 from any of the Board members?
 5 MR. SHERER: (Mr. Sherer moved his head
 6 from side to side).
 7 MR. FERRUCCIO: No. Okay.
 8 Mr. Bernabei, you can be excused from the
 9 chair.
 10 (Thomas M. Bernabei was dismissed.)
 11 MR. FERRUCCIO: Although you know what?
 12 Actually there is one other.... Was there a mark
 13 for the signature of 5/15/2015, the voter
 14 registration?
 15 MR. VASVARI: There is. And we should
 16 just -- I mean if it's at all relevant, we don't
 17 intend to offer it. It is what it is.
 18 MR. FERRUCCIO: All right. So we won't
 19 mark it.
 20 MR. VASVARI: There's no need to mark it.
 21 I don't think it adds anything.
 22 MR. PLAKAS: It's in our package.
 23 MR. FERRUCCIO: Okay.
 24 MR. VASVARI: It is in theirs.
 25 MR. FERRUCCIO: So we'll make it G.

1 (A 5/15/2015 Voter Registration and
 2 Information Update Form was marked
 3 Candidate's Exhibit G.)
 4 MR. VASVARI: Before we depart Mr.
 5 Bernabei's testimony, I wanted to respond to the
 6 allegation that he was somehow deficient in not
 7 answering the subpoena. When I requested subpoenas
 8 be issued by the Board -- and I understand that the
 9 Board met and decided issues of subpoenas -- it was
 10 our understanding that in this matter subpoenas and
 11 compulsory testimony would be required by the Board.
 12 I was sent by Ms. Mullane subpoena forms in
 13 blank which had two signature lines on them, one for
 14 her and one for the director, no signature line for
 15 counsel. I said "Ought not I to add a signature
 16 line for counsel as the person requesting," and she
 17 said that would be okay. But what was present on
 18 those documents and what is absent from this one is
 19 any signature by any member of the Board and the
 20 entity issuing the subpoena. So we are playing by
 21 two different sets of rules. I get my subpoenas
 22 from you; he gets his subpoenas wherever. That's
 23 why we haven't answered the subpoena. We don't
 24 consider it to have been issued in due course to the
 25 same sense that the other subpoenas have been

1 issued. That's all on that.
2 MR. FERRUCCIO: Thank you.
3 MR. PLAKAS: To respond pursuant to
4 statutory case law, we have the absolute right to
5 issue supplemental subpoenas when we understood and
6 knew that the Board was swamped with a number of
7 subpoenas and we wanted to ensure that the subpoena
8 that we have a legal right to issue was actually
9 served. And it was.

10 MR. FERRUCCIO: Thank you. So noted.
11 MR. VASVARI: I didn't know about the
12 "swamped" clause. But okay.
13 Jeanette Mullane, please.
14 (Jeanette Mullane was duly sworn by Notary
15 Public Jocelyn S. Harhay.)

16 DIRECT EXAMINATION

17 BY MR. VASVARI:

18 **Q. Ms. Mullane --**

19 A. Yes

20 **Q. -- I'm going to try and make this the quickest
21 examination of my whole life. You sat here today
22 and you heard Tom Bernabei testify for hours;
23 correct?**

24 A. Yes.

25 **Q. You heard him testify to interactions between the**

1 **Q. You have been listening very carefully to what Mr.
2 Bernabei has said; because in some way, it weighs
3 upon your station in the party and your job?**

4 A. Yes.

5 **Q. And if Mr. Bernabei said something with which you
6 disagreed or you felt he mischaracterized something,
7 that would certainly jump out at you? Because you
8 have a vested interest in the truth being told;
9 right?**

10 A. That's correct.

11 **Q. Anything jump out at you?**

12 MR. PLAKAS: Same objection. Anything jump
13 out at you after several hours of testimony?

14 MR. VASVARI: We just established that
15 she's been sitting here on the edge of her seat
16 watching Tom Bernabei testify and is deeply invested
17 in making sure he gets it right and that she would
18 notice any instance in which he got it wrong.

19 MR. PLAKAS: I would like to think that the
20 audience is sitting on the edge of their seat to
21 what we have to say. But I sense that that's not
22 right. This is totally inappropriate. Never going
23 to happen and never has.

24 MR. FERRUCCIO: You have the opportunity to
25 ask her the questions that you want.

1 **two of you on the 30th of April and then over the
2 weekend of May 2nd and 3rd and then again in two
3 meetings of the Board of Elections on the 4th of
4 May; correct?**

5 A. Yes.

6 **Q. Has he said anything to your knowledge inaccurate or
7 incorrect?**

8 A. No.

9 MR. PLAKAS: Objection. Mr. Bernabei has
10 testified for several hours. For her to answer that
11 question, she needs a transcript. I think if he
12 wants to put a question to her as to whatever he
13 thinks is relevant or important he can. But to ask
14 for a summary of another witness's testimony and say
15 "What do you think of that testimony," I mean
16 that's, that's a first in Ohio also. The --

17 MR. FERRUCCIO: Well, maybe you can ask
18 whether or not she has anything to add.

19 MR. VASVARI: Just give me three for
20 foundation and I'll fix all that.

21 MR. FERRUCCIO: All right.

22 BY MR. VASVARI:

23 **Q. This is a matter of grave importance to you, isn't
24 it?**

25 A. Yes.

1 BY MR. VASVARI:

2 **Q. Is there anything that you heard Mr. Bernabei
3 testify to today that you marked as something to
4 which you would like to object, correct, add,
5 clarify?**

6 A. Only thing I would say, he, he was unclear whether
7 he had contacted me on Saturday or Sunday. And he
8 had contacted me on Sunday.

9 **Q. That's the only thing?**

10 A. Yes.

11 **Q. Other than that, what you heard today doesn't strike
12 you as inaccurate?**

13 A. No.

14 **Q. Thank you.**

15 MR. VASVARI: I'm done.

16 MR. PLAKAS: I guess I'm not sure really
17 how to respond to a summary.

18 CROSS-EXAMINATION

19 BY MR. PLAKAS:

20 **Q. On April 30th, were you working here at the Board of
21 Elections?**

22 A. Yes.

23 **Q. You were on the job?**

24 A. Yes.

25 **Q. You went out, you left the job and went out to Chase**

1 **Bank?**
 2 A. Yes. I went out for lunch and was doing some
 3 errands during my lunchtime.
 4 **Q. All right. When Mr. Bernabei gave you the**
 5 **documents, whether they were the letters or the**
 6 **Board of Elections forms, at that point, he told**
 7 **you, as he testified here today, that he hadn't made**
 8 **a final decision, that these were conditional or**
 9 **"maybe"; correct?**
 10 A. The letters, he had, had asked me if I was attending
 11 the Democratic cocktail party that evening and if I
 12 would give them to Phil Giavasis. And I agreed to
 13 do that for him.
 14 **Q. Okay. And did he tell you that he had not yet made**
 15 **up his mind?**
 16 A. He didn't say that.
 17 **Q. What did he say?**
 18 A. He, he was still -- I mean he had -- he was still
 19 going through and thinking about everything. But I
 20 would say he didn't tell me that he didn't make up
 21 his mind yet. He just said "Would you please" --
 22 you know, asked me to give those letters to Mr.
 23 Giavasis which I did. And, and then he had filled
 24 out the registration form. And I was going to file
 25 it on Sunday, you know, after I heard from him.

1 **Q. Did you notice when he filled out the Voter**
 2 **Registration Form, Bernabei Exhibit C, that it was**
 3 **not dated the date that he actually signed the**
 4 **document?**
 5 A. I didn't really notice at first. Because he filled
 6 it out and I went through the drive-through of the
 7 bank while he was filling that out. And I mean I
 8 did notice it later.
 9 **Q. When did you notice it later?**
 10 A. I don't really know. I don't remember exactly when.
 11 MR. PLAKAS: One second.
 12 (A pause was taken.)
 13 MR. PLAKAS: I have nothing further. Thank
 14 you.
 15 MR. FERRUCCIO: Do you have any questions?
 16 MR. SHERER: No.
 17 MR. BRADEN: I have no questions.
 18 MR. CLINE: I have no questions for this
 19 witness.
 20 MS. MULLANE: Thank you.
 21 (Jeanette Mullane was dismissed.)
 22 MR. VASVARI: We're just ascertaining the
 23 presence of our witnesses. We think they're here.
 24 And I promise I'll be as quick as I can.
 25 MR. FERRUCCIO: No problem.

1 MR. VASVARI: We call Judge Frank
 2 Forchione.
 3 (Frank G. Forchione was duly sworn by
 4 Notary Public Jocelyn S. Harhay.)
 5 DIRECT EXAMINATION
 6 BY MR. VASVARI:
 7 **Q. Your Honor, would you state your name and title for**
 8 **the Record, please?**
 9 A. My name is Frank Forchione. And I am a judge at
 10 Stark County Common Pleas Court. If I can put on
 11 the Record, I am here under subpoena today.
 12 **Q. You can certainly put that on the Record.**
 13 A. Yes.
 14 **Q. And so you are.**
 15 A. Yes, sir, I am.
 16 **Q. Judge Forchione, do you know Tom Bernabei?**
 17 A. Yes, I do.
 18 **Q. And how long have you known him?**
 19 A. About 30 years.
 20 **Q. And what sort of associations have you had with him?**
 21 A. Well, I worked with Mr. Bernabei in the Law
 22 Department. He appointed me as the Canton City
 23 prosecutor where I was for about 14 years. I worked
 24 with him as a county commissioner. And Tom's a
 25 friend of mine.

1 **Q. Okay. And have you over the course of the years had**
 2 **the opportunity to discuss politics with him?**
 3 A. Yes.
 4 **Q. Okay. And did there come a time when you learned**
 5 **that Mr. Bernabei was contemplating disassociating**
 6 **himself from the Democratic Party?**
 7 A. Yes.
 8 **Q. And when was that, sir?**
 9 A. It was shortly before he, you know, filed his
 10 petitions. Generally came right after he heard the
 11 mayoral debate and the Repository wrote an editorial
 12 that didn't endorse candidates. And I think that is
 13 when he first started talking about that. He had
 14 made other expressions of disillusionment with some
 15 things along the way.
 16 **Q. Things such as...?**
 17 A. The direction and vision and things like that,
 18 especially for the City of Canton.
 19 **Q. Okay. You mentioned two events. The candidates'**
 20 **debate, that would have been between Mr. Healy and**
 21 **Mr. Perez?**
 22 A. Yes.
 23 **Q. And the Repository editorial that would have run on**
 24 **the last Sunday in April if I'm not mistaken?**
 25 A. I believe that was the date. Yes.

1 **Q. Why did those jump to mind?**
 2 A. Well, they jumped to my mind. I had never seen an
 3 editor for a race like that not endorse either
 4 candidate. So I mean that triggered I think a lot
 5 of people. And when Tom talked to me about that,
 6 and also the debate, there were some people that
 7 were unhappy with both candidates. And then there
 8 was low turnout. So I mean it certainly was out
 9 there.
 10 **Q. Did it seem to make a great impression on him, those**
 11 **two events?**
 12 A. Mr. Bernabei, absolutely. They seemed to be the
 13 focus. And I think he also, you know, talked about
 14 leaving a legacy. I mean if you look at his
 15 history, you know, he's rescued SARTA. He took over
 16 Canton Law Department and redirected that. He
 17 redirected the county commissioners office and the
 18 county, got them on the right path. He expressed an
 19 interest in leaving, you know, somewhat of a legacy
 20 for the City of Canton and turning it around.
 21 **Q. Did you have any doubt that, that this was a**
 22 **difficult decision for him?**
 23 A. Yeah, I think it was a difficult decision. And I
 24 explained some of that to him, that, you know, to
 25 make sure that it's what he wanted to do. But in

1 the end, one thing I learned working for Tom, he's
 2 always said "I'm going to do the right thing."
 3 **Q. So when you say you sort of apprised him of the**
 4 **difficulty, did you sort of test his conviction with**
 5 **respect to this?**
 6 A. Yeah. I think it's an important thing. Because I'm
 7 a member of the Democratic Party. And that's quite
 8 a leap. I mean historically we've seen people do
 9 it. But, you know, there was no question in my mind
 10 his sincerity of it, that he was disillusioned with
 11 what was going on, and that that was a decision that
 12 he wanted to make. And just as he's given me advice
 13 in the past, I gave him, you know, that advice to
 14 think about these things.
 15 **Q. Fair to say that he took the decision seriously?**
 16 A. Very seriously. When it comes to politics and
 17 what's best for the county and the City of Canton,
 18 he takes everything very seriously. I learned that
 19 by working with him.
 20 **Q. You had no doubt then as to his sincerity. Do you**
 21 **have a general sense of, of his reputation for**
 22 **honesty?**
 23 MR. PLAKAS: Objection for the same
 24 reasons.
 25 MR. FERRUCCIO: Sustained.

1 BY MR. VASVARI:
 2 **Q. Okay. Judge, Mr. Bernabei has served in various**
 3 **forms within the Democratic Party. We also learned**
 4 **that he has served as a treasurer for three**
 5 **campaigns in the course of recent years. Is that**
 6 **true?**
 7 A. Yeah. He was the treasurer -- I guess the best way
 8 to define Mr. Bernabei, he was the treasurer of
 9 Judge Hartnett, Chryssa Hartnett, the treasurer of
 10 the campaign of Kristen Guardado, and he was I
 11 believe my chairman. And I think that tells you the
 12 most about Tom Bernabei. I don't think any one
 13 picked him because of his accounting skills.
 14 **Q. And what did they pick him for?**
 15 A. His character, his integrity that I've seen
 16 throughout, I mean whether --
 17 MR. PLAKAS: Objection. Move to strike.
 18 MR. FERRUCCIO: Sustained.
 19 BY MR. VASVARI:
 20 **Q. Do you have any doubt about his good faith in taking**
 21 **a step of this significance?**
 22 MR. PLAKAS: Objection.
 23 MR. VASVARI: Good faith nature is the
 24 standard, Mr. Chairman.
 25 MR. FERRUCCIO: I understand. He can

1 answer.
 2 A. Could you give me the question again? I'm sorry.
 3 **Q. Do you have any doubt that Mr. Bernabei took the**
 4 **step of disassociating himself with the party, based**
 5 **on your 30 years of knowing him, do you have any**
 6 **doubt that he took that step in good faith?**
 7 A. He did --
 8 MR. PLAKAS: Objection.
 9 A. -- in good faith. He had always told me to do the
 10 right thing. And he's the public official I try to
 11 pattern myself off of ethically.
 12 **Q. Your Honor, I have no more questions. Thank you for**
 13 **your time today.**
 14 **CROSS-EXAMINATION**
 15 BY MR. PLAKAS:
 16 **Q. So probably the most risky and dangerous thing to do**
 17 **in the career of a trial lawyer is to cross-examine**
 18 **a judge.**
 19 A. I'm not a judge here today. I'm Frank Forchione.
 20 **Q. You're a well-respected judge and we respect you.**
 21 A. Sure.
 22 **Q. You were aware of the firing of Mr. Bernabei by**
 23 **Mayor Healy; correct?**
 24 A. Yes, sir.
 25 **Q. And you discussed that and heard Mr. Bernabei talk**

1 **about that issue; correct?**
 2 A. A little bit.
 3 **Q. Okay. Not much?**
 4 A. I've never heard him say a disparaging word about
 5 the mayor.
 6 **Q. Okay. Ultimately when Mr. Bernabei characterizes**
 7 **himself in the media as a dyed-in-the-wool Democrat,**
 8 **prior to the last few weeks, do you think that's an**
 9 **accurate characterization?**
 10 A. Oh, I believe for that period, yes, sir.
 11 **Q. Thank you. I have nothing further.**
 12 A. Okay. Thank you.
 13 MR. VASVARI: Nor I.
 14 MR. FERRUCCIO: Thank you, Judge.
 15 (Frank G. Forchione was dismissed.)
 16 MR. VASVARI: Janet Creighton.
 17 (Janet Weir Creighton was duly sworn by
 18 Notary Public Jocelyn S. Harhay.)
 19 DIRECT EXAMINATION
 20 BY MR. VASVARI:
 21 **Q. Ma'am, would you state your name and your job**
 22 **description for the Record, please?**
 23 A. Sure. Good afternoon. I'm Janet Weir Creighton,
 24 Stark County commissioner.
 25 **Q. Commissioner Creighton, do you know Tom Bernabei?**

1 A. Yes, I do.
 2 **Q. And for how long have you known Tom?**
 3 A. I knew of Tom Bernabei back in the '80s. But we
 4 really didn't have the opportunity to work together.
 5 I got to know him a lot better when I became the
 6 mayor and he was a councilman at large for the first
 7 two years of my four-year term. Then in 2010, we
 8 both ran for the office of county commissioner. And
 9 since then, I've worked with him on the Board.
 10 **Q. Have you had the opportunity to work with him on**
 11 **issues that involve city/county, relations between**
 12 **the county and the City of Canton?**
 13 A. Some. He has basically taken the lead on that. I
 14 have more or less stayed away. And he is the
 15 president of the Board. Really we defer those
 16 things to the president of the Board. So he's had
 17 the most involvement with that.
 18 **Q. And so the Board has there entrusted him that with**
 19 **aspect of its business?**
 20 A. Oh, absolutely.
 21 **Q. And in that regard, the Board has entrusted him in**
 22 **dealing on a, on a routine basis, to the extent that**
 23 **the commission does, with Mayor Healy?**
 24 A. That is correct.
 25 **Q. Do you have any reason to believe that the Board has**

1 **made a mistake in entrusting relationships between**
 2 **the commission and Mr. Healy to Mr. Bernabei?**
 3 A. We have not made that mistake. In fact, we elected
 4 Tom Bernabei the president of the Board of County
 5 Commissioners which is unprecedented. Normally it
 6 changes every year. But because of his ability and
 7 his leadership skills and his honesty and his
 8 truthfulness --
 9 MR. PLAKAS: Objection. Move to strike.
 10 A. -- and integrity --
 11 MR. PLAKAS: Move to strike. That's
 12 clearly leading.
 13 MR. FERRUCCIO: Sustained.
 14 MS. CREIGHTON: Thank you. I'm a
 15 cheerleader and I always will be, Lee. Thank you.
 16 MR. PLAKAS: That's why I made the
 17 objection because I knew it was coming.
 18 MS. CREIGHTON: Thank you.
 19 BY MR. VASVARI:
 20 **Q. Let me ask you this. The Board elected Mr. Bernabei**
 21 **president in part because the president deals with**
 22 **the City of Canton, and the Board had confidence**
 23 **that Mr. Bernabei would discharge those duties well?**
 24 MR. PLAKAS: Objection.
 25 A. That is correct.

1 MR. FERRUCCIO: Sustained.
 2 BY MR. VASVARI:
 3 **Q. Are you aware of any reason to believe that Mr.**
 4 **Bernabei is harboring a grudge or seeking vengeance**
 5 **against Mayor Healy over his termination years and**
 6 **years ago?**
 7 A. No, I do not. And he could have run four years ago
 8 if he wanted to. But he close not to.
 9 **Q. If you knew or you believed that Mr. Bernabei was**
 10 **harboring some sort of grudge against Mayor Healy,**
 11 **would the commission have put him in the position of**
 12 **being its point man with Mayor Healy?**
 13 A. No, we would not have put him in that position.
 14 **Q. Have you formed an opinion as to his ability to**
 15 **discharge his duties in a civic-minded spirit comes**
 16 **from vengeance?**
 17 MR. PLAKAS: Objection.
 18 MR. FERRUCCIO: Sustained.
 19 BY MR. VASVARI:
 20 **Q. By the way, would you say that Mr. Bernabei is a**
 21 **particularly partisan commissioner?**
 22 MR. PLAKAS: Objection. Relevancy.
 23 MR. FERRUCCIO: I agree.
 24 MR. VASVARI: Well, I'm only suggesting to
 25 the notion of him being such a dyed-in-the-wool

1 Democrat that he could not possibly have done this
 2 in good faith. We heard that for eight hours.
 3 MR. FERRUCCIO: Yeah. Well, I mean I think
 4 we've heard a lot in eight hours. So we need --
 5 sustained. His objection is sustained.
 6 MR. VASVARI: All right.
 7 MR. FERRUCCIO: This is, you know -- well,
 8 just go ahead. Next question.
 9 BY MR. VASVARI:
 10 **Q. How has he been to work with as a bipartisan --**
 11 MR. PLAKAS: Objection.
 12 BY MR. VASVARI:
 13 **Q. -- participant?**
 14 MR. FERRUCCIO: Sustained. Relevance.
 15 BY MR. VASVARI:
 16 **Q. Did Mr. Bernabei discuss the potential of**
 17 **disaffiliating himself from the Democratic Party**
 18 **with you?**
 19 A. Yes, he did.
 20 **Q. And when did that discussion take place?**
 21 A. Monday, April the 27th, I think.
 22 **Q. And do you remember the substance of that**
 23 **discussion?**
 24 A. That he was considering disaffiliating. And that
 25 was his -- that's his choice, just as I have a

1 choice to do what I do.
 2 MR. PLAKAS: Objection. Move to strike.
 3 Editorializing.
 4 MR. FERRUCCIO: Overruled. Overruled.
 5 MR. VASVARI: Thank you, Mr. Chairman. I'm
 6 very near the end. But character and intent are key
 7 here.
 8 BY MR. VASVARI:
 9 **Q. Did you give him any advice with regard to**
 10 **disassociation?**
 11 A. My only advice to Tom Bernabei is to always to do
 12 what is right, just as we all agree on our Board of
 13 Commissioners, and whatever was in his heart. No
 14 one else can make that decision but Tom.
 15 **Q. Did you form an opinion as to whether in seeking to**
 16 **disassociate himself with the party he was acting**
 17 **from his heart?**
 18 MR. PLAKAS: Objection.
 19 MR. VASVARI: Goes to good faith at motive.
 20 MR. FERRUCCIO: Yeah. Sustained.
 21 BY MR. VASVARI:
 22 **Q. You over the course of...**
 23 **How many years of politics?**
 24 A. Over 30 years.
 25 **Q. ...have had you opportunity to deal with many**

1 **politicians I imagine?**
 2 A. Yes.
 3 **Q. You've have the opportunity to weigh the public**
 4 **mindedness or the pettiness and vindictiveness of**
 5 **many politicians, have you not?**
 6 A. Yes.
 7 **Q. I imagine that one does not rise to become a county**
 8 **commissioner without being skilled in that regard.**
 9 A. (Ms. Creighton nodded).
 10 **Q. Did you take Tom Bernabei's temperature as to his**
 11 **sincerity when he told you he was going to**
 12 **disaffiliate?**
 13 MR. PLAKAS: Objection.
 14 MR. FERRUCCIO: Sustained.
 15 MR. VASVARI: I'm not sure, Mr. Chairman;
 16 if I can't ask about the good faith of his action
 17 which is the central statutory test, respectfully, I
 18 don't know what else I can ask.
 19 I can only thank you, Ms. Creighton, for
 20 your testimony.
 21 MR. FERRUCCIO: For the Record, I would say
 22 that we've had witness after witness talk about his
 23 good faith --
 24 MR. VASVARI: I understand, Mr. Chairman.
 25 MR. FERRUCCIO: -- that it was good faith.

1 So we understand.
 2 MR. VASVARI: My client is on trial for his
 3 political life. I have a duty to be zealous.
 4 BY MR. VASVARI:
 5 **Q. You were a circulator of Mr. Bernabei's petition for**
 6 **mayor?**
 7 A. Yes. And proud of it.
 8 **Q. Thank you. And you are a member of the Republican**
 9 **Party Executive and Central Committee?**
 10 A. Central Committee, not the Executive.
 11 **Q. Central Committee?**
 12 A. And a proud member of the Republican Party.
 13 **Q. Good. That's two prouds; right?**
 14 A. That's correct.
 15 **Q. Okay. And you were proud to be the mayor of Canton**
 16 **for a number of terms; correct?**
 17 A. Yes. One term.
 18 **Q. Okay. And the reason that you only had one term of**
 19 **prideful service is because Mayor Healy beat you as**
 20 **you tried to get to your second term; correct?**
 21 A. That is correct.
 22 MR. VASVARI: I have no further questions.
 23 MS. CREIGHTON: Thank you.
 24 MR. VASVARI: Nothing further.
 25 MR. FERRUCCIO: Thank you.

1 (Janet Weir Creighton was dismissed.)
2 MR. VASVARI: We have two more and they
3 won't take more than two minutes each.

4 Michael Hanke.
5 (Michael E. Hanke was duly sworn by Notary
6 Public Jocelyn S. Harhay.)

7 DIRECT EXAMINATION

8 BY MR. VASVARI:
9 **Q. Mr. Hanke, it's been a long day. You've waited a
10 long time. And I'm afraid you waited a long time
11 for short.**

12 A. It's been fascinating, so...

13 **Q. You know Tom Bernabei; don't you?**

14 A. I do.

15 **Q. And you work for Tom Bernabei?**

16 A. I did.

17 **Q. In what capacity?**

18 A. I was the Stark County administrator.

19 **Q. Can you tell me what the administrator does?**

20 A. They administer, run day-to-day operations of
21 county-commissioner related departments for the
22 Board of Commissioners. The administrator prepares
23 an annual general fund budget, presents it to the
24 Board, and monitors it during the year. The
25 administrator does basically anything else the Board

1 of County Commissioners wants. The county
2 administrator is somewhat related to a city service
3 director except a service director has more power by
4 nature of having one boss in a more statutory system
5 of, of executive government.

6 **Q. And, again, how long did you serve in this position?**

7 A. December 18th, 2007 to March 5th, 2012.

8 **Q. And during that time, did you have the opportunity
9 to, to liaise with Mr. Bernabei in his meetings with
10 Mayor Healy in the City of Canton?**

11 A. Regularly. It was, it was, and probably still is,
12 Commissioner Bernabei's way of working that he has a
13 member of the office, usually the county
14 administrator, sit in on meetings, whether they be
15 with other elected officials or whether they be a
16 sheriff or prosecutor or whatever, with the mayor,
17 with the city service director, in negotiations over
18 the largest public capital improvement project in
19 the history of Stark County, the Canton Sewer
20 Department, on central dispatching, all over
21 collective bargaining. I had some particular
22 interest and experience in that.

23 **Q. And during the course of those meetings, you would
24 be present when Mr. Mayor Healy and Commissioner
25 Bernabei were doing what they did to liaise?**

1 A. Yes. Both in the commissioners' office and in the
2 mayor's conference room and in the mayor's office.

3 **Q. How would you characterize their meetings?**

4 A. They were business meetings. Generally I'd say half
5 the time, at least half the time the mayor would
6 call and ask Commissioner Bernabei to meet about
7 some particular issue. And I'd go along with the
8 commissioner, and when we'd go over there. Or vice
9 versa, he came over to our place.

10 **Q. Were those meetings ever vitriolic?**

11 A. No.

12 **Q. Would you call them cordial?**

13 A. I'd call them business-like.

14 **Q. Professional?**

15 A. Yes, professional.

16 **Q. Did Mayor -- I'm sorry -- Commissioner Bernabei ever
17 have any distaste or personal dislike for Mayor
18 Healy?**

19 A. No.

20 **Q. Did he ever tell you in private of any distaste or
21 dislike for the mayor?**

22 A. No. I think he questioned some of his decisions in
23 the city as they related to Canton in our
24 negotiations.

25 **Q. So he may not have agreed with everything he did but**

1 **never disparaged the man?**

2 A. No. In fact, my second-to-the-last day of work, he
3 sent me out to the Canton Water Department to
4 negotiate this split in, in the capital project
5 funding for the sewer plant. I call it the sewer
6 plant. There is a much more modern, fancy name for
7 it, but it's a sewer plant. And I did those
8 negotiations with Service Director Warren Price,
9 came back, reported to Commissioner Bernabei.
10 Fortunately I was leaving the next day so didn't
11 have to do any of the details. But, of course, I
12 knew he would because that's the way he is. And
13 it's being built.

14 **Q. Were you aware that at one point Mayor Healy fired
15 Tom Bernabei?**

16 A. Oh, yes. Well, before I was county administrator, I
17 was a newspaper man for 35 years. So....

18 **Q. Did you ever in either capacity hear Tom Bernabei
19 grouse about that?**

20 A. No. Actually kind of amazed me. No, I didn't.

21 **Q. Okay. Do you have any doubt if Mr. Bernabei said
22 that his disaffiliation from the Democratic Party
23 was made in good faith, knowing him and having
24 worked with him, that it wasn't made in good faith?**

25 A. I absolutely believe that he's done it in good

1 faith. I have never known him to do anything --
 2 MR. PLAKAS: Objection.
 3 A. -- that he didn't --
 4 MR. PLAKAS: Move to strike.
 5 A. -- do in good faith.
 6 MR. FERRUCCIO: Overruled.
 7 MR. VASVARI: Thank you.
 8 CROSS-EXAMINATION
 9 BY MR. PLAKAS:
 10 **Q. Mr. Hanke --**
 11 A. Yes, sir.
 12 **Q. -- you read the nonendorsement editorial in the**
 13 **Repository; correct?**
 14 A. I did.
 15 **Q. Before reading that in print, you knew or had**
 16 **learned that the Repository was not going to endorse**
 17 **either candidate; correct?**
 18 A. I probably knew that.
 19 **Q. Okay.**
 20 A. Because I know the newspaper guys.
 21 **Q. Okay. And you also shared that advanced knowledge**
 22 **with Mr. Bernabei; didn't you?**
 23 A. No.
 24 **Q. How far in advance did you know that the Repository**
 25 **was not going to endorse either party?**

1 MR. VASVARI: This is beyond the scope.
 2 MR. FERRUCCIO: Well, he can answer.
 3 A. I can give you my best guess.
 4 **Q. Thank you.**
 5 A. It was the week before, late in the week before I
 6 think.
 7 **Q. And when did you learn that Mr. Bernabei caught wind**
 8 **of the fact there would be a nonendorsement?**
 9 A. He and I had breakfast April 28th. And I guess
 10 that's -- well, it had already run by then.
 11 **Q. Did you -- and you, of course, on April 28th**
 12 **discussed the nonendorsement?**
 13 A. Yes. To a point. Because of having run the
 14 editorial board for a member of years --
 15 **Q. Sure.**
 16 A. -- we never didn't endorse a mayor's race. But we
 17 certainly did in other races at times.
 18 **Q. Prior to April 28th, had you and Mr. Bernabei ever**
 19 **spoken about the potential nonendorsement?**
 20 A. No.
 21 MR. PLAKAS: I have nothing further. Thank
 22 you.
 23 MR. VASVARI: Nor do I.
 24 (Michael E. Hanke was dismissed.)
 25 MR. VASVARI: Which leaves me with my last

1 witness, Judge Richard Reinbold.
 2 (Richard D. Reinbold, Jr., was duly sworn
 3 by Notary Public Jocelyn S. Harhay.)
 4 DIRECT EXAMINATION
 5 BY MR. VASVARI:
 6 **Q. Your Honor, would you state your name for the**
 7 **Record, please?**
 8 A. Dick Reinbold.
 9 **Q. If you've been here for a while, you know everyone**
 10 **is at the end of their patience, so I'll try to be**
 11 **quick. Judge Reinbold, you have served as judge?**
 12 A. Yes.
 13 **Q. In what capacity?**
 14 A. Municipal court six years and common pleas court for
 15 12 years, and a visiting judge for six years.
 16 **Q. You are currently here under subpoena, are you not?**
 17 A. I am.
 18 **Q. Okay. Do you know Tom Bernabei?**
 19 A. I do.
 20 **Q. And how long have you known Tom Bernabei?**
 21 A. Oh, you know, probably 1980ish, somewhere in there,
 22 maybe a little bit before.
 23 **Q. And he's someone that you've known in a political**
 24 **capacity?**
 25 A. Yes.

1 **Q. In what way?**
 2 A. Well, I, I guess starting out, I knew he was one of
 3 the assistant Canton law directors in Massillon.
 4 And then he came over to, to Canton Law Department
 5 and ran, helped run the Law Department. And then at
 6 some point in time, Judge Gwin, Scott Gwin resigned
 7 from that position and Tom and I vied to be law
 8 director. And I have no idea what time of year that
 9 was, like '88 or something along those lines. So
 10 I've known him as a political ally. I've known him
 11 as a political opponent. Sadly the people of Canton
 12 made a mistake and elected Tom but....
 13 **Q. As opposed to you?**
 14 A. As opposed to me.
 15 **Q. Have you known him as a man of integrity I imagine?**
 16 A. Yes.
 17 MR. PLAKAS: Objection. Move to strike.
 18 MR. FERRUCCIO: Overruled.
 19 BY MR. VASVARI:
 20 **Q. You also know at a certain point Mr. Bernabei**
 21 **wrestled with the question of whether or not to**
 22 **continue as to disaffiliate himself from the**
 23 **Democratic Party?**
 24 A. Yes.
 25 **Q. Okay. Did he discuss that with you?**

1 A. Yes.
 2 **Q. Did he seek your advice?**
 3 A. Yes.
 4 **Q. And when did he seek your advice?**
 5 A. Actually the advice that he sought was subsequent to
 6 him I believe making, making a decision, at least
 7 making it known. It would have been the Friday
 8 night before the period of time that we circulated
 9 the petitions. So that would have been that
 10 Saturday, that Friday night, that Saturday and that
 11 Sunday when the, the petitions were circulated.
 12 And we discussed the reasons why he was
 13 doing it. I was probably of the most skeptical of
 14 his close friends. And then throughout that week,
 15 when there was still the opportunity to say "let's
 16 put a halt to this," we had a number of discussions
 17 about it, the pros and cons. And I gave him my
 18 opinions and he gave me his.
 19 **Q. What was his, his tenor or character during the**
 20 **course of those discussions?**
 21 A. Well, you know, he -- you have to go -- as everybody
 22 said here, you know, Tom is a unique individual, and
 23 he makes decisions. And then it's difficult to have
 24 him change his mind about anything. And so his --
 25 he's always positive about what he's doing. He'll

1 always say something to you and he ends it with
 2 "right." He'll say something like the "Indians need
 3 a first base man. Right." Or "You know you're an
 4 idiot. Right." And so he always ends it saying
 5 he's right. So you got to deal with Tom in that
 6 sense.
 7 So the conversations are that he's correct
 8 and you tell him why he shouldn't do it. And so
 9 those were the tenors of things. But also the
 10 philosophy, the reason why. And I, I would add to
 11 Judge Forchione. I think one of the, one of the
 12 things that struck me -- and Tom's point was that
 13 the City of Canton -- and that's where I'm focusing
 14 my discussions, because that's what we focused --
 15 was that the City of Canton is a one-party city.
 16 The Republican Party has effectively abandoned any
 17 loyal opposition and doesn't put up a candidate for
 18 mayor. They don't put up a mandate for city
 19 council. And so we have a one-party city.
 20 And I think that is an issue that is of
 21 significance here. Because you should have two
 22 parties. You can't change if you are just a
 23 monolithic city. And I think that was part of Tom's
 24 thinking, that in order to change, you have to come
 25 at it as an Independent individual to do what's

1 right for the city. And that was part of his
 2 decision-making process. It was more positive than
 3 it was a negative.
 4 **Q. Did it seem to be a decision with which he wrestled?**
 5 A. Well, as you know, Tom had another life outside the
 6 city. And to give up that life to do what he wants
 7 to do, you, anybody, would be an idiot not to
 8 wrestle with that decision. In fact, that was one
 9 of the ways I challenged him. And so he wrestled
 10 with it. But I don't think he wrestled with the
 11 philosophical part of it. I don't think he wrestled
 12 with that. He wrestled with the consequences to his
 13 family, to his way of life.
 14 You may have noticed that Tom's getting old
 15 in the tooth. So it's a life-changing thing. And
 16 you don't make a decision to do this without
 17 thinking of the consequences, and not political
 18 consequences, not personal consequences. You know,
 19 his wife, his grandkids, his daughter, his friends;
 20 you know, it hasn't been easy. So when he said "I'm
 21 going to do it," I tell you it's good faith.
 22 MR. VASVARI: I have nothing further. Oh,
 23 I do have something further.
 24 **Q. You visited him at the University Avenue house;**
 25 **didn't you?**

1 A. I did.
 2 **Q. And what did you, what did you do then?**
 3 A. Well, we have to talk about.... You know, he
 4 invited me over. I went in. There was a room that
 5 had the bed in it and it had the clothing in it.
 6 You know, it was obvious that he was in that place
 7 to live.
 8 **Q. Okay.**
 9 MR. VASVARI: I have no further questions.
 10 Thank you, Judge.
 11 MR. REINBOLD: Thank you.
 12 CROSS-EXAMINATION
 13 BY MR. PLAKAS:
 14 **Q. So I will continue upon my perilous travel of**
 15 **cross-examining judges.**
 16 A. You only get this chance once in a while. I'd take
 17 advantage of it.
 18 **Q. I'm going to go for it. While you visited**
 19 **University Avenue, the only room with any signs of**
 20 **habitation was the bedroom; right?**
 21 A. And the kitchen and the garage.
 22 **Q. The garage had his car in it?**
 23 A. That's a sign of habitation.
 24 **Q. If you live in a car, it is.**
 25 A. Some of us have lived in cars. No. But I'm saying

1 he had things in the garage. The kitchen had all
2 the, you know, accoutrements and things, and then he
3 had the bedroom and the bathroom.

4 **Q. There was toilet paper in the bathroom.**

5 A. There was a toothbrush, brushes. I don't know why
6 but...

7 **Q. Your wife Nancy was a circulator for your friend
8 Tom's petitions?**

9 A. She was.

10 **Q. Okay. And it's accurate to say that both you and
11 Nancy are close friends of Tom Bernabei?**

12 A. It is accurate to say.

13 **Q. Did you listen to the debate between Mr. Perez and
14 Mr. Healy?**

15 A. I did not.

16 **Q. Okay. Did Nancy?**

17 A. I don't believe she did.

18 **Q. Okay. I think everyone knows Mr. Bernabei would
19 agree with what you said, that once he makes up his
20 mind there's -- it is very difficult to dislodge
21 that belief; correct?**

22 A. I believe so.

23 **Q. Okay. You thought that there were issues on both
24 sides as, as to whether or not he should
25 disaffiliate or not; correct?**

1 A. On the issue of disaffiliation, I don't think there
2 was a change -- there was a difference of opinion in
3 our discussions. The difference of opinion was the
4 consequences. What is he willing to give up and
5 what would I have been willing to give up in his
6 place. I would not have been willing to give up
7 anything that Mr. Bernabei did. And so that's where
8 the disagreement came, the personal consequences of
9 his making the decision to disaffiliate. It was
10 never a discussion that it wasn't a philosophical
11 intellectual decision that he made. That was never
12 an issue.

13 **Q. In his mind?**

14 A. In my mind and in his mind.

15 **Q. Okay.**

16 A. Well, in my mind, sure. I can't read his mind. But
17 in our discussions, that was never the debate.

18 **Q. I understand. And did he tell you that he had
19 written or signed some documents conditionally and
20 told certain people to told them and maybe and maybe
21 not file them?**

22 A. I know that he had -- that he talked to me that
23 Friday night kind of about the status of where
24 things were. I don't want to say chronologically
25 but legally. And, yes, he indicated that he had

1 done some things with checks. He had done some
2 things. He had resigned as, I think, the treasurer
3 for some of the other candidates. So, yes, Mr.
4 Plakas, he had told me that he had done a couple of
5 things in preparation to make this final decision
6 that he was legally bound to. But I can't remember
7 individually what each thing was.

8 **Q. Okay. So now having just about completed my
9 Cross-Examination of two judges, if I sign a letter
10 resigning as a trial attorney but I'm not sure
11 exactly if I'm going to resign or not, who do you
12 suggest that I give that letter to to deliver it to
13 the rest of the county?**

14 MR. VASVARI: Objection.

15 BY MR. PLAKAS:

16 **Q. This is a softball for you.**

17 A. Yeah. Well, I was going to say I don't know if
18 there's a grand trial lawyer in the sky.

19 **Q. I think there is. And I thank you for your
20 testimony.**

21 A. Thank you, sir.

22 REDIRECT EXAMINATION

23 BY MR. VASVARI:

24 **Q. One quick question, Your Honor. Your experience as
25 a judge, lawyers do from time to time lodge with**

1 **clerks of courts documents to be filed at a later
2 date, do they not?**

3 MR. PLAKAS: Objection.

4 A. That -- my wife can better answer that question than
5 I can do.

6 **Q. I'll take that back. I'm done. Thank you, sir.**

7 A. Thank you.

8 (Richard D. Reinbold, Jr., was dismissed.)

9 MR. VASVARI: Subject to moving the
10 admission of our exhibits, which I now do --

11 MR. FERRUCCIO: Okay.

12 MR. VASVARI: -- we rest.

13 MR. FERRUCCIO: All right. And those will
14 be admitted.

15 How long do you each think that you want to
16 give a Closing Argument? And then we'll weigh in
17 whether we think that's going to be sufficient.

18 MR. PLAKAS: How long we think is probably
19 much different than what the Panel thinks.

20 MR. FERRUCCIO: I think so.

21 MR. PLAKAS: Why don't you just tell us.

22 MR. VASVARI: I would have said half an
23 hour if you'd asked me this morning. But I sure
24 wouldn't say half an hour now.

25 MR. FERRUCCIO: How about ten minutes from

1 each of you.
 2 MR. VASVARI: Could we have five to catch
 3 our breath?
 4 MR. FERRUCCIO: Absolutely.
 5 MR. PLAKAS: And can we divide our time
 6 between Mr. West and myself?
 7 MR. FERRUCCIO: Yeah. That's fine.
 8 MR. PLAKAS: And can we ask for seven and a
 9 half minutes for each of us? That makes 15.
 10 MR. FERRUCCIO: Well, we will do 15 each.
 11 All right.
 12 MR. PLAKAS: I don't think -- that's fine,
 13 ten. Ten is fine. Ten is fine.
 14 MR. FERRUCCIO: Can you do it in ten?
 15 MR. PLAKAS: Five and five. We're good
 16 with ten.
 17 MR. FERRUCCIO: And your arguments really
 18 should be directed to the facts and how it relates
 19 to the law with respect to two issues. So I mean
 20 that's what I would like to see, the bullet points.
 21 Thanks.
 22 (A recess was taken.)
 23 MR. FERRUCCIO: If I could have everybody's
 24 attention. We're back on the Record.
 25 Okay. Mr. Plakas.

1 MR. PLAKAS: Since we are the proponent, do
 2 we get to open and close five an five with the
 3 Defendant in between? Not Defendant.
 4 MR. FERRUCCIO: We hadn't discussed that.
 5 But we can do that if you'd like.
 6 MR. PLAKAS: We'd like.
 7 So, Mr. Vasvari --
 8 MR. VASVARI: Five and five? I thought it
 9 was seven and a half. But it's up to you guys.
 10 MR. PLAKAS: Ten minutes total.
 11 So we will start with our five, then they
 12 go, and we finish with five.
 13 MR. FERRUCCIO: That's fine. Great.
 14 MR. WEST: Mr. Chairman, members of the
 15 Board, I'll be brief. There are a couple of things
 16 I want to clarify from earlier this afternoon and
 17 this morning. One of the questions raised was if
 18 Mr. Bernabei's commissioner's office became vacant
 19 for whatever reason at this point who would appoint
 20 his replacement. And statute is clear is on that.
 21 It would be the Stark County Democratic Party.
 22 305.02(B) says that once a person is elected as a
 23 Democrat, if there is a vacancy after the next
 24 mid-term elections or if there's not a yearly
 25 election between the time of the office vacancy and

1 the time the term expires, the Party would fill that
 2 office whether or not they did try to disaffiliate
 3 during their term in office. It's only somebody
 4 elected as an Independent that the Independent would
 5 be filled.
 6 I also want to touch on the residency
 7 issue. Mr. Bernabei at one point said that "I had
 8 two permanent voting residences in Canton during --
 9 in May." He had the University Heights address and
 10 he had the Lakeview address. It should be noted at
 11 the outset those are different wards and different
 12 school districts. There is a lot of talk about how
 13 Canton is Canton and no harm no foul; he's still in
 14 the same city. But he was voting for different
 15 wards in the primary and general and in different
 16 school districts in the primary and general. That's
 17 something we want to make sure is also on the
 18 Record.
 19 Moreover, he actually didn't have any
 20 permanent residence in Canton in May. Again,
 21 looking at the statute, the plain text of the Ohio
 22 Revised Code, 3503.02(D) says that unless the
 23 spouses are separated, not just moving and then you
 24 come back later once we get the house renovated, but
 25 actually going through a divorce or legal

1 separation, the family's residence controls where
 2 the voting residence is. And that makes sense.
 3 Your family is theoretically where you tend to go
 4 back to from when you're absent. It's not, "Oh, I'm
 5 moving into here for a week. I go to file my
 6 petitions. This is now my permanent residence." It
 7 is your permanent residence, the one you're absent
 8 from for a sustained period of time or number of
 9 short periods of time. You always intend to go back
 10 to that place. And that's your family.
 11 A few more points I'd like to address to
 12 the claim that the Board cannot look at past
 13 conduct; it only looks from the moment forward as to
 14 how Mr. Bernabei behaved as to whether he
 15 disaffiliated or not. The protesters [sic] will
 16 have you believe that he's born again when he files
 17 his petition, that all of his prior conduct is
 18 washed away, and the Board can't consider that.
 19 In fact, their own response Brief on Page
 20 11 where they quote Morrison makes clear that the
 21 past factors are relevant to the Board's analysis.
 22 And we discussed that more fully in our Bench Brief
 23 which was filed this morning, specifically with
 24 "Jolivette" and "In Re: Boyle" I believe, yes, "In
 25 Re: Edna Boyle." I will spare you going through

1 those cases. You already have them in front of you.

2 MR. FERRUCCIO: Thank you.

3 MR. WEST: I'll give the balance of my time
4 to Mr. Plakas.

5 MR. FERRUCCIO: Thank you.

6 Mr. Vasvari.

7 MR. VASVARI: Thank you. Mr. Chairman,
8 members of the Board. Snakes shed their skin.

9 Traitors change their colors. But free citizens in
10 democracies sometimes exercise the sacred
11 constitutional right to alter or amend their
12 political affiliations. Sometimes they do that
13 after a short affiliation, maybe having signed up in
14 youth. Sometimes it takes 40 years and a lifetime
15 of experience. But the Fourteenth and the First
16 Amendment gave to each of us the right to change our
17 minds.

18 And the Ohio Revised Code contemplates the
19 sort of mischief that that might create, spilling
20 intransigent party politics onto the general ballot,
21 affording somebody by trickery an advantage that
22 they might not have had had they stood for election
23 in the primary. All of that is permissible. The
24 State may take cognizance of those concerns, and it
25 may regulate at less than strict scrutiny to address

1 them. That's the holding of Celebreeze, that's the
2 holding of Jolivette, and that's the holding of
3 Morrison.

4 But in the text of the statute that
5 requires a declaration of independence from a
6 candidate is a recitation by the General Assembly
7 that having considered all of those factors the
8 medicine prescribed for that malady is that there
9 must be a clearly articulated statement of
10 disassociation from one party no later than 4 p.m.
11 on the date before the primary. That is the fix.
12 That is the box which needs to be checked which,
13 satisfactory to the General Assembly, remedies the
14 problem.

15 Tom Bernabei checked that box. The only
16 question's whether or not he did this in good faith.
17 Now, two things bear on this coming forward. The
18 first because we were told today by Mr. Mack that
19 we're going to make new law, which I suggest is not
20 your prerogative and at this late hour not your
21 burden.

22 Two things bear in mind going forward. The
23 first is that they bear the burden by clear and
24 convincing evidence to show you that that man's
25 disassociation was not in good faith. He says he is

1 disassociated and that's all he's required to do, to
2 say it at a certain place, in a certain way, on a
3 certain date. He met all of those requirements. He
4 said it. He's not required -- and this is fully
5 Briefed -- to do anything to prove his sincerity.
6 He is not required to take any act. Rather, they
7 bear the burden to demonstrate by acts, past and
8 present, collectively taken, that he's done it in
9 bad faith.

10 So let's be clear about the landscape of
11 what we seen today. They have picked at the actions
12 that he took. He disaffiliated himself him from
13 three Democratic clubs. They don't like the fact
14 that he didn't put the letters in the mail in the
15 rush of ballot. He gave them to Ms. Mullane. He
16 resigned as the treasurer of the three Democratic
17 campaigns. He resigned from his party position. He
18 changed his own treasurer. He burnt his bridges; he
19 consulted with counsel, found what was necessary,
20 and acted upon the advice of counsel.

21 Now, it may be, as has been suggested, that
22 the advice of counsel was incomplete or wrong. But
23 that's not the point. Because he's not required to
24 take any affirmative actions in support of his
25 declaration of independence. He's required to

1 declare his independence and, thereafter, not act
2 inconsistently with it. And they have demonstrated
3 no subsequent inconsistent action. They may say
4 that what he did after declaring wasn't enough to
5 convince them. But that's not the standard.
6 Subsequent acts go to show bad faith. They are not
7 required to show good faith.

8 It's in our Brief, the Mahoning County case
9 dealing with the mayoral race there. And there's
10 absolutely no contrary law. That is black letter
11 law from the Ohio Supreme Court. So don't be lulled
12 into this notion of he didn't establish his bona
13 fides. He issued his declaration. And that was
14 enough. It falls to them to show his lack of bona
15 fides.

16 We point out, by the way, that in no case
17 since Opinion 2007-05, in no case since Morrison was
18 decided, in no case has predeclaration activity ever
19 been found sufficient in and of itself to constitute
20 an affirmative disproof, an affirmative proof of bad
21 faith. Never once. Oh, yes, Secretary Brunner has
22 reserved, and the courts have subsequently held,
23 that there may some day arise a fact pattern in
24 which, based on predeclaration activity alone, a
25 candidate might be found to be in bad faith. But it

1 ain't ever happened.
 2 And if we ask rhetorically, then we ask
 3 rhetorically now, what would those predeclaration
 4 statements have to look like in what would be so
 5 severe, so binding that it would eradicate all
 6 future possibility of changing his mind, bind him to
 7 the Democratic Party for life? It would be as if we
 8 were here retrying the "Devil and Daniel Webster"
 9 and say we were appearing from the sulphurous mist
 10 to claim the soul of this man to pledge for all
 11 eternity. Except the First Amendment doesn't let
 12 him make that bargain. He has the right to change
 13 his mind.

14 Then he moved house. He moved to
 15 University. We are told that this was a temporary
 16 residence and that he was just passing through. I
 17 remind you the second prescription that the Ohio
 18 Supreme Court has articulated which governs
 19 decisions here is that the laws governing a
 20 candidate's access to the ballot are to be liberally
 21 construed to allow ballot access to provide the
 22 greatest possible choice for the voters.

23 So when it comes time for construction,
 24 when it comes time to ask is this case of no harm/no
 25 foul, let us consider that Mr. Bernabei wasn't some

1 sort of carpet bagger, a paid political circulator
 2 in Cincinnati from Irvine, California, living in a
 3 Red Roof Inn, the only case that they can cite about
 4 temporariness of residency.

5 He was a man who owned a house in Canton,
 6 who rented another house in Canton, belt and
 7 suspenders, to be that sure he had a residence in
 8 Canton when he declared for mayor of Canton. What's
 9 the trick? There's no trick. There's no artifice.
 10 There is no fraud. What is the place to which his
 11 habitation was fixed? Well, it turns out that for
 12 about four or five days at the beginning of May it
 13 was University Avenue. But that's as it happened.
 14 He prepared for the eventually that for as long as a
 15 month it might be University Avenue. He wrote a
 16 lease with a month-to-month renewal contract. He
 17 paid a thousand dollars. He moved in his things.
 18 He was there for long or short. He was there until
 19 his tenants moved because he didn't want to impose
 20 on them because he's a decent man. Ultimately --

21 How much time do I have? I have no sense
 22 of how much time.

23 MR. FERRUCCIO: About a minute.

24 MR. VASVARI: Ultimately --

25 MR. FERRUCCIO: Two minutes.

1 MR. VASVARI: -- good faith asks that
 2 we...

3 So with respect to residency, I think it's
 4 fairly clear for a number of days -- which when he
 5 went to University, he did not know the number -- he
 6 intended to return and did return there nightly as
 7 his place of residence until he had someplace else
 8 to go in the City of Canton, not in California.

9 Good faith asks that you plumb the heart.
 10 Not one of the witnesses of the protesters who were
 11 called could come up with anything that suggested
 12 that this man disassociated himself from the
 13 Democratic Party in bad faith. The best thing we
 14 had was the amateur psychoanalysis of Mr. Mack.
 15 That's nothing.

16 Person after person, respected elected
 17 officials and countywide officeholders testified
 18 this man's integrity is impeccable and if he said it
 19 he said it in good faith.

20 They tell you a loyal and worthy person can
 21 never disassociate from their party. Abraham
 22 Lincoln became a Republican after a lifetime as a
 23 Whig. Winston Churchill famously crossed the aisle
 24 to become a conservative prime minister after having
 25 served years as an M.P. for labor. Hillary

1 Clinton's first term in politics was working for the
 2 Goldwater campaign. And Ronald Reagan said that the
 3 Democratic Party left him; he didn't leave the
 4 Democratic Party which is maybe the place to end it.

5 Tom Bernabei never signed a lifetime blood
 6 oath with the Democratic Party. He served it well.
 7 And this is how it thanks him. He's moved on. They
 8 have no choice but to let him go. And we implore
 9 you to grant him his freedom.

10 MR. FERRUCCIO: Thank you, Counselor.

11 MR. PLAKAS: First of all, thank all of you
 12 for your time and attention in this hearing. We can
 13 appreciate it. We understand it's an imposition on
 14 your normal schedule.

15 No one in Ohio's legal history has
 16 attempted to do what Tom Bernabei is attempting to
 17 do. And the rule of law doesn't allow it. This is
 18 not a Democrat or Republican issue. This is a unity
 19 issue. This is an issue for the integrity of
 20 elections. There are rules. Let him play by the
 21 rules. He chose not to or was not able to. There
 22 is no rule of law exception for having an epiphany
 23 and deciding to do something that you weren't going
 24 to decide to do. There's no epiphany exception.

25 Counsel refers to the rush of ballot in

1 terms of explaining why all the details weren't
2 correctly complied with. There is no rush of ballot
3 exception. This is the rule of law. And you've got
4 to play by the rules and live by the rules.

5 At the beginning, counsel indicated, well,
6 what more could he have done. And the answer is
7 plenty. The law requires a clear and complete
8 disaffiliation before filing. And it also requires
9 a "good faith" element. Counsel suggests that all
10 you have to do is say you're disaffiliated. That's
11 not what the law is. It's saying and doing. What
12 more could he have done? He could have done what
13 anyone would expect of someone who disaffiliates.
14 If you run for and become a Democratic officeholder
15 and you are going to abandon the Democratic Party
16 and the principles, then you should have the courage
17 of your convictions to give up that position. And
18 if you want to run as an Independent, do it.

19 If you're going to comply with the law and
20 clearly completely disaffiliate yourself from the
21 organizations like the Jefferson-Jackson and the
22 Alliance Democratic organizations, you've got to do
23 it. You just can't give a conditional, "maybe"
24 letter of termination to someone who has no duty to
25 deliver it to anyone and say, "Well, I tried. It

1 was in the heat of ballot and I did all I could."

2 With radio ads, you can't be on the radio
3 on the day of the election saying "Join with me in
4 the Democratic primary of voting for this Democratic
5 candidate." Sure it's difficult to stop those
6 things going on. But the law doesn't have these
7 epiphany and difficulty exceptions. The law is the
8 law. You got to play by the rules. The devil is in
9 the details as Mr. Bernabei has apparently said many
10 times to many people. He failed on the details.

11 When you get to residency, you know, I am
12 sorry that he just had the epiphany and had to run
13 around at the last minute. But the law doesn't
14 allow temporary voting residencies. Because if it
15 did, people would be busing in a lot of temporary
16 voters in the elections, especially municipal
17 elections that are won or lost by a few hundred
18 votes. You could get three, four, six, seven bus
19 loads of people, put them in a motel, have them
20 vote, and, and affect election.

21 In the timeline, you'll see that he's
22 failed by his own standard of the devil's in the
23 detail. I suggest to you, look at Exhibit 122 which
24 is the timeline. And you will see that although he
25 claims to have established a residence, he may be

1 the only person in history that establishes a
2 residence before he ever sleeps there or attempts to
3 sleep there. He filed his, all his petitions May
4 3rd, dated them that day, he had never slept there
5 on May 3rd when he had filed his petitions.

6 So where does that leave us? And it leaves
7 us, where we tried to suggest at the beginning,
8 where we tried to have the two political science
9 experts, it leaves us with the responsibility and
10 this Board with the responsibility of conducting a
11 higher-level evaluation than maybe would be called
12 upon in many situations.

13 Ronald Reagan said, I quote, "It has been
14 said that politics is the second oldest profession."
15 He continues: "I have learned that it bears a
16 striking resemblance to the first." And I think
17 what, what he means by that is just because we're an
18 R or a D we are expected to do certain things. And
19 if you look at what the community really expects, I
20 think....

21 If you pull up 47.

22 That's the oath of office for all of the
23 Board of Elections members. And 47 confirms that
24 you are going to uphold the election laws of the
25 United States. We don't see 47 up on the screen.

1 But I know the Board members know their, their oath.

2 Additionally, I'd like to indicate that
3 Board members know something when they see it. And
4 if you go to Exhibit No. 70, you will see that a
5 number of years ago Mr. Braden had a situation again
6 involving Mr. Bernabei. Says, as to Mr. Bernabei's
7 efforts, "'This crass political ploy with its
8 partisan motives is not the will of the people,'
9 said Curt Braden, Republican Party chairman. 'It is
10 a transparent scheme that robs the voters of their
11 right to elect representative government.'"

12 And if you go to the next quote from Mr.
13 Braden -- and that is in the public domain, in the
14 media -- he goes on to say "'It's wrong to take this
15 selection process away from the voters and place it
16 into the hands of two candidates that are simply
17 trying to cover their bets,' Braden said in a press
18 release."

19 We've heard a lot of things about Mr.
20 Bernabei. I suspect he's, he's smart, he's
21 strategic --

22 Thirty seconds?

23 MR. FERRUCCIO: Yeah.

24 MR. PLAKAS: I will suggest to you that
25 this is an attempt to circumvent the election laws.

1 I can't imagine, and I don't think any of us can
2 imagine, a factual situation before this Board that
3 represents such a clear violation of both the letter
4 and the spirit of law. Mr. Braden recognized it
5 when Mr. Bernabei tried to do that a number of years
6 ago, as quoted in the paper. It's in your materials
7 in, in Exhibit No. 70.

8 So I would ask you that in this case it's
9 not an issue of Democrats or Republicans; it's an
10 issue of the integrity of election laws and the
11 election process. And finally then, if I may quote
12 Ronald Reagan again, he says, quote, "There are no
13 easy answers. But there are simple answers." We
14 must have the courage to do what we know is morally
15 right. He continues, "Don't be afraid to see what
16 you see."

17 So, Gentlemen, what you see is an attempt
18 to pervert the election laws which, you see, is an
19 attempt that has never been tried in Ohio before. I
20 would ask that we listen to Mr. Reagan and we must
21 have the courage to do what is morally right. Don't
22 be afraid to see what you see. What you see and
23 what the facts are are very clear. Thank you.

24 MR. FERRUCCIO: Thank you.

25 At this stage of the proceedings, we will

1 caucus individually, member Sherer and myself and
2 separately member Cline and Mr. Braden. And we'll
3 be back here in probably 15 minutes to, to come up
4 with a decision.

5 So in the meantime, let's make sure you got
6 all your exhibits and everything in order. And
7 we'll be back.

8 (The proceedings adjourned at 6:23 p.m.)

9 (The proceedings reconvened at 6:42 p.m.)

10 MR. FERRUCCIO: On the Record. Okay. We
11 are back on the Record after a caucus. First of
12 all, I want to thank both of the lawyers, all the
13 lawyers I should say, that were here today and done
14 an excellent job of presenting the facts of this
15 case.

16 I know, you know, sometimes it's
17 frustrating because we're a quasi judicial Board;
18 and we are trying to get as much information into
19 the Record as we can to benefit all, all parties.

20 That being said, I would entertain a
21 motion.

22 MR. SHERER: I would move uphold the
23 protest an not certify the nominating petition of
24 the candidacy of Thomas M. Bernabei as mayor of the
25 City of Canton.

1 MR. FERRUCCIO: Is there a second? I'll
2 second that.

3 Discussion. Member Braden.

4 MR. BRADEN: Sure. Well, I thank everybody
5 for their time today. It was quite a long day.
6 Based on past legal precedent and common sense, Mr.
7 Bernabei, like any other citizen, has the right to
8 leave a political party and fulfill all the
9 requirements of the Ohio Revised Code and the Ohio
10 Supreme Court decisions which are necessary to
11 accomplish that. He's fulfilled his disaffiliation
12 issues through his aggressive efforts to notify
13 members of the Democratic Party of his exit. He is
14 an attorney. He's filed many candidate petitions in
15 the past, all in good faith and with the full energy
16 and understanding that if otherwise he would be
17 committing a felony.

18 Concerning residency and voting
19 registration, again, he has filed many candidate
20 petitions and the past, all in good faith. He's
21 fulfilled his residency by claiming in good faith
22 his fixed address to be in Canton and completed his
23 voter registration and then voted in the primary
24 claiming the same. Then he moved to another address
25 sometime after he filed his petition. And this has

1 no bearing; he remained a Canton resident. In all
2 of this Mr. Bernabei is exercising his freedom of
3 speech and freedom of association which are
4 guaranteed side by side, I might add, in the First
5 Amendment to the Constitution of the United States.

6 The U.S. Constitution and Ohio law do not
7 lock someone into a political party for life. They
8 give all citizens a right to change their mind and
9 express their opinions as they wish.

10 Given the law and the facts in this case,
11 the legal requirements they fulfill, I have
12 determined that Mr. Bernabei has qualified for the
13 mayoral candidate for the City of Canton, and the
14 protesters have not reached the level of burden of
15 proof. Also I choose error on the side of ballot
16 access and the protest against Mr. Bernabei's
17 petition for the mayoral ballot for the City of
18 Canton. And that's my position.

19 MR. FERRUCCIO: Member Cline.

20 MR. CLINE: Yes. Thank you, Mr. Chairman.
21 I'll apologize if I sound a bit disjointed. There's
22 been a lot to go through here today and to address
23 and a lot of good arguments made, a lot of cases
24 thrown at us. But I would say that I don't find any
25 of this case law directly on point. There's just

1 nothing on all fours which matches the circumstances
2 of the facts of this case. And so I don't think we
3 have guidance in that regard.

4 I think it is significant, though, that the
5 protesters have a burden of proof that's stated as
6 clear and convincing evidence. And as the lawyers
7 in the room know, that's no small burden.
8 Preponderance of the evidence, for those of you who
9 are laypeople in the audience, is what you normally
10 do in a civil trial. But this a much higher
11 standard of proof that they have to meet. And
12 there's a presumption based upon the way his
13 candidacy petition was filed that it was, it was a
14 legitimate petition for candidacy. It was their
15 burden to prove that it's not.

16 Having said that, and I won't respond to
17 all of the arguments because I don't want to waste
18 anymore time -- or, using more time rather on this
19 issue -- the first issue on the residency I think
20 was framed as was he lawfully a resident of the City
21 of Canton when he filed his petitions. If you look
22 at the code section that controls this, it refers to
23 a fixed place to which a person intends to return
24 when absent. There's been no testimony to the
25 contrary that that's not where Mr. Bernabei intended

1 to return after he moved into the first Canton
2 property. The reference to permanency is not in the
3 code and quite frankly couldn't be because there's
4 no way that an individual, strictly individuals who
5 routinely rent properties, can be prohibited from
6 moving their residence and, therefore, losing their
7 rights as voters. That's just not the way the law
8 reads, as I understand it anyway.

9 That he had a second property when he moved
10 into the first property and had some longer term,
11 albeit not terribly long-term plan, to move into
12 that one I don't think really negates the place of
13 residency at the time that he filed this petition.
14 If you look at the code section 3503.02, you read
15 Section (A) of that, it's a question of intent.
16 It's, it's the person's intent as to where they
17 intend to return. And I think we have testimony, as
18 I said before, to that effect. It's not
19 contradicted.

20 There's been some mention made of where Mr.
21 Bernabei's wife may have spent a night or two
22 between her trips to, was it, Florida and Hilton
23 Head. I'm not sure exactly where she was going or
24 where she had been but on family vacation. I don't
25 believe that that's controlling here because it

1 refers to the family of a married person. And the
2 candidate, I assume, has adult children. His
3 "family" does not reside in the residence with him.
4 And I don't think that that's controlling here.

5 And I would agree with member Braden that
6 we need to liberally construe these statutory
7 provisions to allow ballot access. So with respect
8 to the residency determination, I think he met it.

9 With respect to the question of whether his
10 disaffiliation from the Democratic Party was made in
11 good faith, I didn't hear any testimony to the
12 effect that it wasn't. Not one witness, including
13 the protesters, came up with a factual basis to
14 determine that it wasn't made in good faith. It was
15 obviously a very difficult decision that he made and
16 one that he considered at some length and, indeed,
17 confirmed with some political allies on the
18 Democratic side of the ballot so to speak.

19 If you look then at the Secretary of
20 State's advisory, Jennifer Brunner's, Secretary
21 Brunner's advisory opinion, whichever one has been
22 referred to for the past going on ten hours I guess
23 it is, and you look at the factors that are
24 referenced there, the first two bullet points of
25 this directive are not on point. They don't apply

1 to the situation at all.

2 If you look at past history, voting history
3 and conduct as a, as a member of the political
4 party, it says in that directive that -- put my
5 glasses on; excuse me -- such evidence may serve as
6 evidence, though not necessarily conclusive
7 evidence, of whether it was a good faith decision to
8 disassociate from a political party for purposes of
9 complying with, with Ohio law.

10 So, yes, I agree that you can consider that
11 behavior. But I think if you look at what the
12 candidate or the punitive candidate did it was
13 significant. And he considered his decision and he
14 knew the consequences and he did, indeed, burn his
15 bridges behind him. And that's no small matter. I
16 don't think he was trying to gain the system in any
17 way. I think his motives were good motives, as he
18 expressed them, and they were not contradicted by
19 any testimony here today.

20 So for that reason, I will not be
21 supporting a motion that member Sherer has
22 presented, and I would be in favor of certifying the
23 candidacy and rejecting the protest.

24 MR. FERRUCCIO: Thank you, member Cline.
25 I'll just go down the line. You know, it's

1 difficult for me because Tom is a friend of mine.
2 And it's a difficult decision. And I know he's
3 sincere. And I know his motivation is good
4 government. I don't think anybody disagrees with
5 that, no matter what was said here today.

6 But after careful review of the testimony,
7 the exhibits, the protesters' statements, and the
8 advisories and case law in this matter, I do believe
9 that the protesters have met their burden. Good
10 intentions do not equate to good faith under the
11 case law and the facts of this case regarding the
12 Independent candidate. Being an Independent is
13 fine, and he has said that's what he is now. And
14 nobody takes issue with that. But can you be an
15 Independent and be an Independent candidate under
16 the case law as it exists at this point. And I
17 don't think that, that he is able to do that.

18 I think that there's a number of issues
19 that we look at, you know, the whether or not he's a
20 member of the Alliance Democratic Club at the time
21 the petitions were passed out, whether or not he was
22 a member of the Jefferson-Jackson Club at the time
23 that the petitions were passed out. He's still a
24 sitting Democrat in office. And I think that that,
25 that plays a big part in, in this decision.

1 Everybody's talking about whether there's
2 no case on point. Well, there's going to be a case
3 on point now one way or another. This is the
4 situation that there is a sitting Democrat who is
5 trying to disassociate himself with the party and
6 didn't, didn't click all gears, didn't make
7 everything happen in the short period of time that
8 he had to do it. In his mind view, he was an
9 Independent and is an Independent, and that's not
10 the issue. The issue is was there a sufficient
11 disassociation with the party. And as he sits here
12 today as a sitting Democrat, there's not.

13 So you do have to look at the past as well
14 as the future and where, where we're at today. And,
15 again, good intentions don't equate to good faith.

16 You know, the living residence situation, I
17 think temporary residence is an issue. And it's a
18 problem. I mean -- and, again, it's not that he was
19 trying to do it wrong; he was trying to abide by
20 what he believed and what his lawyer indicated were
21 what he needed to do in order to disassociate
22 himself from the party. A lot to do in five days.
23 It just didn't get it done.

24 You know, we've been involved in these, in
25 a big protest recently, as everybody knows, with the

1 sheriff. And I indicated that there should be a
2 legislative remedy. And I'll indicate that again
3 today for the Record.

4 I think there should be a legislative
5 remedy. We have Democrats that can be a Republican
6 and fill out a 10-Y form. And then they can't go
7 back for ten years. That's a candidate. You can
8 switch every primary what you are. But to be a
9 candidate, there are certain rules. And I think
10 that there need to be legislative needs to look at
11 that so that it's specific and we're not here trying
12 to base a decision on was it good faith or not, good
13 intention or not, and did it happen.

14 I mean, again, Tom was trying to do what he
15 thought he had to do in order to disassociate
16 himself. The conditional resignations I think are
17 an issue as well. You know, "I may do this; I may
18 not do it." At what point does he disassociate
19 himself and does he do everything necessary to
20 disassociate himself from all the different entities
21 that he's been involved in.

22 So again, in his mind, yes; and to the
23 public, he can be an Independent. But it doesn't
24 rise to him being qualified to be an Independent
25 candidate. The, you know, being mayor, good

1 government, all the right reasons were
2 disassociated, well, the evidence I think is clear
3 and convincing; anyone can be mayor. And because of
4 good intentions.

5 So, again, it's tough. It's not a
6 personality contest. But I think that there's clear
7 and convincing evidence to show that there is a
8 problem with the good faith and to be a valid
9 candidate. And also the, the Jolivette case I think
10 is very instructive in this particular case as well
11 -- and, you know, I relied on that case to come up
12 with my decision, and that is that I would uphold
13 the protest on both the grounds by clear and
14 convincing evidence.

15 MR. SHERER: This is probably one of the
16 hardest decisions I have ever had to make.

17 Because, Tom, you've been a dear friend of
18 my family way before I was probably even thought of.

19 And, you know, I want to thank everybody
20 for giving their testimony today. And I'm sure
21 everybody's had a very very long day.

22 The biggest question and biggest issue that
23 I have is the clear separation from the party, you
24 know. And I understand and I do agree with Chairman
25 Ferruccio that I understand that everything was a

1 last-minute decision. But with the evidence that
 2 was basically presented today, that's basically how
 3 I came up with my decision.
 4 MR. FERRUCCIO: Okay. Anything further?
 5 No further discussion, then I would do a role call
 6 vote.
 7 MR. MATTHEWS: Reask your question, Mr.
 8 Chairman.
 9 MR. FERRUCCIO: Repeat it, your motion
 10 again.
 11 MR. SHERER: The motion was to move to
 12 uphold the protest and not certify the nominating
 13 petition of the candidacy of Thomas M. Bernabei as
 14 mayor for the City of Canton.
 15 MR. FERRUCCIO: Role call.
 16 MR. MATTHEWS: Chairman Ferruccio.
 17 MR. FERRUCCIO: I would vote to uphold the
 18 motion.
 19 MR. MATTHEWS: Member Braden.
 20 MR. BRADEN: No.
 21 MR. MATTHEWS: Member Cline. Cline.
 22 MR. CLINE: No.
 23 MR. MATTHEWS: Member Sherer.
 24 MR. SHERER: Yes.
 25 MR. MATTHEWS: Chairman Ferruccio, once

1 MR. FERRUCCIO: Yeah. Okay. Any questions
 2 from of the candidate?
 3 MR. MACK: Thank you.
 4 MR. BRADEN: Motion to adjourn.
 5 MR. FERRUCCIO: Is there a second.
 6 MR. SHERER: Second.
 7 MR. FERRUCCIO: All in favor signify by
 8 saying "aye."
 9 (Simultaneous "aye.")
 10 MR. FERRUCCIO: We are adjourned. Thank
 11 you, everybody.
 12
 13 (The proceeding concluded at 7:00 p.m.)
 14
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 25

1 again.
 2 MR. FERRUCCIO: Yes.
 3 MR. MATTHEWS: Member Braden.
 4 MR. BRADEN: No.
 5 MR. MATTHEWS: Member Cline.
 6 MR. CLINE. no.
 7 MR. MATTHEWS: Member Sherer.
 8 MR. SHERER: Yes.
 9 MR. MATTHEWS: We have a tied vote.
 10 MR. FERRUCCIO: Okay. Since we do have a
 11 tied vote on this matter, we have 14 days to put
 12 together position statements, one from the Democrats
 13 and one from the Republicans and transmit the entire
 14 Record down to the Secretary of State with our
 15 position. And then the Secretary of State will go
 16 in and break the tie vote.
 17 MR. MATTHEWS: For the Record, because the
 18 motion was stated in support of the protest, so that
 19 it's clear, the Secretary of State will determine
 20 whether the candidacy is sufficient or not, because
 21 otherwise on its face it was, but with respect to
 22 these two issues, what was being argued on. So it
 23 won't come back, is what I'm trying to say. He is
 24 going to decide whether the candidate's on the
 25 ballot or not.

C E R T I F I C A T E

STATE OF OHIO

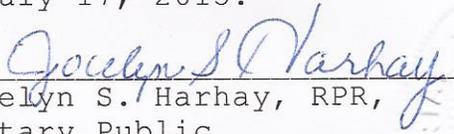
COUNTY OF STARK

I, Jocelyn S. Harhay, RPR, Notary Public in and for the State of Ohio, do hereby certify that the Special Meeting of the Stark County Board of Elections was to the best of my ability reduced to machine shorthand, afterwards transcribed under my direction by means of computer, and that to the best of my ability the foregoing is a true and correct transcript of the deposition.

I further certify that this proceeding was taken at the time and place in the foregoing caption specified.

I further certify that I am not a relative or employee of an attorney of any of the parties in the above-captioned action and that I am not, nor is the court reporting firm with which I am affiliated, under a contract as defined in Ohio Civil Rule 28(D).

IN WITNESS WHEREOF, I have hereunto set my hand at Hartville, Ohio, on July 17, 2015.



Jocelyn S. Harhay, RPR,
Notary Public



My Commission expires: June 15, 2018.

EXHIBIT

C

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APPENDIX

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

Stark County Board of Elections

-May 29, 2015-



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VIA HAND DELIVERY

May 29, 2015

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

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

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

Dear Director Matthews:

Please find the following appendix submitted in support of the written protest against the nominating petitions and candidacy of Thomas M. Bernabei as an independent candidate for the Office of Mayor of the City of Canton, Ohio, pursuant to R.C. §§ 3513.262 and 3501.39(A), contemporaneously submitted herewith.

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Phil Giavasis, Chairman
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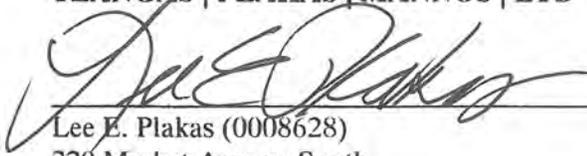
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DATED: May 29, 2015

Respectfully submitted,

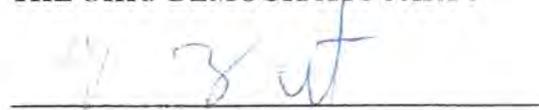
TZANGAS | PLAKAS | MANNOS | LTD



Lee E. Plakas (0008628)
220 Market Avenue South
Eighth Floor
Canton, Ohio 44702
Telephone: (330) 455-6112
Facsimile: (330) 455-2108
Email: lplakas@lawlion.com

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

THE OHIO DEMOCRATIC PARTY



N. Zachary West (0087805)
General Counsel
340 East Fulton Street
Columbus, Ohio 43215
Telephone: (614) 221-6563
Facsimile: (614) 221-0721
Email: zwest@ohiodems.org

*Counsel for Protestor
The Ohio Democratic Party*

APPX. TAB

1

A True Certified Copy

JEFFREY A. MATTHEWS, Director
Stark County Board of Elections

By Holly Sichenos
Date 5-15-15

Form No. 3-N Prescribed by Secretary of State (03-09)

**NOMINATING PETITION AND STATEMENT OF CANDIDACY
FOR MUNICIPAL OFFICE**

For Use in Cities or Any Village with a Population of 2,000 or more

To be filed with the Board of Elections not later than 4 p.m. the day before the primary election.
Revised Code 3501.38, 3513.261, 3513.262

**NOTE - THE CANDIDATE MUST FILL IN, SIGN AND DATE THIS STATEMENT OF CANDIDACY
BEFORE PETITIONS ARE CIRCULATED.**

STATEMENT OF CANDIDACY

I, Thomas M. Bernabei, the undersigned, hereby declare under penalty of election
(Name of Candidate)
falsification that my voting residence address is 2118 University Ave. N.W.
(Street and Number, if any, or Rural Route Number)
Canton, Ohio 44709; and I am a qualified elector.
(City or Village) (Zip Code)

I further declare that I desire to be a candidate for election to the office of Mayor
in the Municipality of City of Canton
for the: (check one) full term, or unexpired term ending _____, in
(Fill in the appropriate date)
Stark County, Ohio at the general election to be held on the 3rd day
of November, 2015.

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

Dated this 3rd day of May, 2015

[Signature]
(Signature of Candidate)

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

I, Thomas M. Bernabei, hereby designate the persons named below as a committee to
(Name of Candidate)
represent me:

NAME	RESIDENCE

2015 MAY -4 PM 3:23
RECEIVED
STARK COUNTY
BOARD OF ELECTIONS

NOMINATING PETITION

We, the undersigned, qualified electors of the State of Ohio, whose voting residence is in the county, city, village, or township set opposite our names, hereby nominate Thomas M. Bernabei as a candidate for election to the office of Mayor in the municipality of City of Canton, for the: (check one) full term, or unexpired term ending _____, to be voted for at the next general election, and certify said person is, in our opinion, well qualified to perform, the duties of the office or position to which the person desires to be elected.

Signatures on this petition must be from only one county and must be written in ink.

	SIGNATURE	VOTING RESIDENCE ADDRESS STREET AND NUMBER	CITY, VILLAGE OR TOWNSHIP	COUNTY	DATE OF SIGNING
1.	<u>Richard D. Smyglen Jr.</u>	<u>332 22nd St. NW</u>	<u>Canton</u>	<u>Stark</u>	<u>5/14/15</u>
2.					
3.					
4.					

	SIGNATURE	VOTING RESIDENCE ADDRESS STREET AND NUMBER	CITY, VILLAGE OR TOWNSHIP	COUNTY	DATE OF SIGNING
5.					
6.					
7.					
8.					
9.					
10.					
11.					
12.					
13.					
14.					
15.					
16.					
17.					
18.					

CIRCULATOR STATEMENT – Must be completed and signed by circulator.

I, Michael Hanke, declare under penalty of election falsification that I
(Printed Name of Circulator)
 reside at the address appearing below my signature; that I am the circulator of the foregoing petition
 containing 2 signatures; that I witnessed the affixing of every signature; that all signers were to
(Number)
 the best of my knowledge and belief qualified to sign; and that every signature is to the best of my
 knowledge and belief the signature of the person whose signature it purports to be or of an attorney in fact
 acting pursuant to section 3501.382 of the Revised Code.

Michael E. Hanke
(Signature of Circulator)

1812 Southpoint Cir. NE
(Permanent residence address)

Canton, Oh. 44714
(City or Village, State and Zip Code)

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

County Board of Elections
 Form 3-N Nominating Petition
 For Municipal Office

Statement of Candidacy of _____
 Candidate for _____

Filed _____

Certificate of Validity
 REVISED CODE 3501.11

We, the undersigned members of the Board of
 Elections of this county, certify that we have
 reviewed and examined the foregoing petition and
 find it to be sufficient and valid, and caused our
 signatures and official seal to be
 affixed at _____, Ohio,
 This _____ day of _____
 Chairperson _____
 Member _____
 Member _____
 Member _____
 Member _____
 Director _____ (seal)

**NOMINATING PETITION AND STATEMENT OF CANDIDACY
FOR MUNICIPAL OFFICE**

For Use in Cities or Any Village with a Population of 2,000 or more

To be filed with the Board of Elections not later than 4 p.m. the day before the primary election.
Revised Code 3501.38, 3513.261, 3513.262

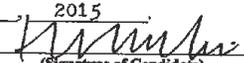
**NOTE - THE CANDIDATE MUST FILL IN, SIGN AND DATE THIS STATEMENT OF CANDIDACY
BEFORE PETITIONS ARE CIRCULATED.**

STATEMENT OF CANDIDACY

I, Thomas M. Bernabei, the undersigned, hereby declare under penalty of election
(Name of Candidate)
falsification that my voting residence address is 2118 University Ave. N.W.
(Street and Number, if any, or Rural Route Number)
Canton, Ohio 44709; and I am a qualified elector.
(City or Village) (Zip Code)

I further declare that I desire to be a candidate for election to the office of Mayor
in the Municipality of City of Canton,
for the: (check one) full term, or unexpired term ending _____, in
Stark County, Ohio at the general election to be held on the 3rd day
(Fill in the appropriate date)
of November, 2015.

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

Dated this 3rd day of May, 2015

(Signature of Candidate)

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

I, Thomas M. Bernabei, hereby designate the persons named below as a committee to
(Name of Candidate)
represent me:

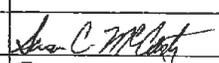
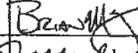
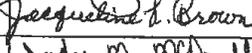
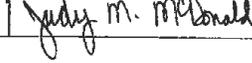
NAME	RESIDENCE

RECEIVED
2015 MAY 14 PM 3:28
STARK COUNTY
BOARD OF ELECTION

NOMINATING PETITION

We, the undersigned, qualified electors of the State of Ohio, whose voting residence is in the county, city, village, or township set opposite our names, hereby nominate Thomas M. Bernabei as a candidate for election to the office of Mayor in the municipality of City of Canton, for the: (check one) full term, or unexpired term ending _____, to be voted for at the next general election, and certify said person is, in (Fill in the appropriate date) our opinion, well qualified to perform, the duties of the office or position to which the person desires to be elected.

Signatures on this petition must be from only one county and must be written in ink.

	SIGNATURE	VOTING RESIDENCE ADDRESS STREET AND NUMBER	CITY, VILLAGE OR TOWNSHIP	COUNTY	DATE OF SIGNING
1.		1533 Cottage Pl NW	Canton	44703	5/3/2015
2.		1533 Cottage Pl NW	Canton	44703	5/3/15
3.		1521 Ridge Rd NW	Canton	44703	5-3-15
4.		5885 Quarry Lk Dr	Canton	44703	5-3-15

	SIGNATURE	VOTING RESIDENCE ADDRESS STREET AND NUMBER	CITY, VILLAGE OR TOWNSHIP	COUNTY	DATE OF SIGNING
5.	<i>Bradley McDonald</i>	5885 Quarry Lake Drive	Canton	Stark	5/3/15
6.	<i>Shirley Spence</i>	5886 QUARRY LAKE DR SE	E. CANTON	STARK	5-3-15
7.	<i>Don Brasler</i>	5886 Quarry Lake	E. CANTON	STARK	05/03/15
8.	<i>William E. Price</i>	5914 QUARRY LAKE DR	CANTON	STARK	05/03/15
9.	<i>James M. Carman Jr.</i>	5923 Quarry Lake Drive	Canton	Stark	5/3/15
10.	<i>Julie Carman</i>	5923 Quarry Lake Dr. SE	Canton	Stark	5/3/15
11.	<i>Maureen Antun</i>	5937 Quarry Lake Dr. SE	Canton	Stark	5/3/15
12.	<i>Carol Smith</i>	6065 Quarry Lake Dr.	Canton	Stark	5/3/15
13.	<i>Jamie Ketter</i>	645 Smith Ave. SW	Canton	Stark	5/3/15
14.	<i>David Ketter</i>	645 Smith Ave. SW	Canton	Stark	5/3/15
15.	<i>Charles Kinard</i>	1417-47th St. NW	Canton	Stark	5-3-15
16.	<i>Dean E. Smithley</i>	709 Browline NW	Canton	Stark	5/3/15
17.	<i>Bonnie Jean Carmichael</i>	205 Brown Ave. NW	Canton	Stark	5/3/15
18.	<i>Linda Rockford</i>	1703 21st N.W	Canton	Stark	5/3/15

CIRCULATOR STATEMENT – Must be completed and signed by circulator.

I, JAMES M. CARMAN JR., declare under penalty of election falsification that I
 (Printed Name of Circulator)
 reside at the address appearing below my signature; that I am the circulator of the foregoing petition
 containing 18 signatures; that I witnessed the affixing of every signature; that all signers were to
 (Number)
 the best of my knowledge and belief qualified to sign; and that every signature is to the best of my
 knowledge and belief the signature of the person whose signature it purports to be or of an attorney in fact
 acting pursuant to section 3501.382 of the Revised Code.

James M. Carman Jr.
 (Signature of Circulator)
5923 Quarry Lake Dr SE
 (Permanent residence address)
CANTON, OH 44720
 (City or Village, State and Zip Code)

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

County Board of Elections
 Form 3-N Nominating Petition
 For Municipal Office
 Statement of Candidacy of
 Candidate for _____
 Filed _____
 Certificate of Validity
 REVISED CODE 3501.11
 We, the undersigned members of the Board of
 Elections of this county, certify that we have
 reviewed and examined the foregoing petition and
 find it to be sufficient and valid, and caused our
 signatures and official seal to be
 affixed at _____, Ohio,
 This _____ day of _____,
 Chairperson _____
 Member _____
 Member _____
 Member _____
 Member _____
 Director _____ (seal)

**NOMINATING PETITION AND STATEMENT OF CANDIDACY
FOR MUNICIPAL OFFICE**

For Use in Cities or Any Village with a Population of 2,000 or more

To be filed with the Board of Elections not later than 4 p.m. the day before the primary election.
Revised Code 3501.38, 3513.261, 3513.262

**NOTE - THE CANDIDATE MUST FILL IN, SIGN AND DATE THIS STATEMENT OF CANDIDACY
BEFORE PETITIONS ARE CIRCULATED.**

STATEMENT OF CANDIDACY

I, Thomas M. Bernabei, the undersigned, hereby declare under penalty of election
(Name of Candidate)
falsification that my voting residence address is 2118 University Ave. N.W.
(Street and Number, if any, or Rural Route Number)
Canton, Ohio 44709; and I am a qualified elector.
(City or Village) (Zip Code)

I further declare that I desire to be a candidate for election to the office of Mayor
in the Municipality of City of Canton
for the: (check one) full term, or unexpired term ending _____ in
_____ Stark _____ County, Ohio at the general election to be held on the 3rd day
(Fill in the appropriate date)
of November, 2015.

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

Dated this 3rd day of May, 2015

Thomas M. Bernabei
(Signature of Candidate)

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

I, Thomas M. Bernabei, hereby designate the persons named below as a committee to
(Name of Candidate)
represent me:

NAME	RESIDENCE

2015 MAY -4 PM 3:23
 RECEIVED
 STARK COUNTY
 BOARD OF ELECTIONS

NOMINATING PETITION

We, the undersigned, qualified electors of the State of Ohio, whose voting residence is in the county, city, village, or township set opposite our names, hereby nominate Thomas M. Bernabei as a candidate for election to the office of Mayor in the municipality of City of Canton, for the: (check one) full term, or unexpired term ending _____, to be voted for at the next general election, and certify said person is, in our opinion, well qualified to perform, the duties of the office or position to which the person desires to be elected.
(Fill in the appropriate date)

Signatures on this petition must be from only one county and must be written in ink.

	SIGNATURE	VOTING RESIDENCE ADDRESS STREET AND NUMBER	CITY, VILLAGE OR TOWNSHIP	COUNTY	DATE OF SIGNING
1.	<i>Laura M. Wynne</i>	4020 Shanabrock Ave	Canton Ohio	Stark	5/3/15
2.	<i>Harley D. Wynne</i>	4020 SHANABROCK AVE.	CANTON OHIO	STARK	5/3/15
3.	<i>Tom M. Cate</i>	1225 4th St. N.W.	CANTON	STARK	5-3-15
4.	<i>Michael T. Allen</i>	4002 Shanabrock Ave	CANTON	Stark	5-3-15

	SIGNATURE	VOTING RESIDENCE ADDRESS STREET AND NUMBER	CITY, VILLAGE OR TOWNSHIP	COUNTY	DATE OF SIGNING
5.	Judith A. Branch	5017 5017	CANTON	STARK	5/3/15
6.	Kelly Collins	4002 Shonabuck	Canton	Stark	5/3/15
7.	Paul Fawcett	4097 Cranberry	Canton	Stark	5/3/15
8.	Alice Hall	3502 Edgemoor	Canton	Stark	5-3-15
9.	Kevin Hall	3022 Edgemoor	Canton	Stark	5-3-15
10.	Bonnie King	1025 41st St	Canton	Stark	5-3-15
11.	TED PERKINS	1010 41st St	Canton	Stark	5-3-15
12.	Amanda Perkins	1010 41st NW	Canton	Stark	5-3-15
13.	Beth McClung	4003 Arnold Ave	Canton	Stark	5-3-15
14.	Scott McClung	4003 Arnold Ave	CANTON	Stark	5-3-15
15.	Janice	3027 Glen Place NW	CANTON	Stark	5-3-15
16.	Kelly Appleton	3027 Glen Place NW	Canton	Stark	5-3-15
17.	Diane Dagen	1214 37th St. NW	CANTON	Stark	5-3-15
18.	Paul George	1314 37th St NW	Canton	Stark	5-3-15

CIRCULATOR STATEMENT – Must be completed and signed by circulator.

I, ALICE M. SARVER, declare under penalty of election falsification that I
(Printed Name of Circulator)
 reside at the address appearing below my signature; that I am the circulator of the foregoing petition
 containing 18 signatures; that I witnessed the affixing of every signature; that all signers were to
(Number)
 the best of my knowledge and belief qualified to sign; and that every signature is to the best of my
 knowledge and belief the signature of the person whose signature it purports to be or of an attorney in fact
 acting pursuant to section 3501.382 of the Revised Code.

Alice M. Sarver
(Signature of Circulator)
1225 Hat Street N.W.
(Permanent residence address)
Canton Oh. 44709
(City or Village, State and Zip Code)

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

<p>County Board of Elections Form 3-N Nominating Petition For Municipal Office</p> <p>Statement of Candidacy of Candidate for _____</p> <p>Filed _____</p> <p>Certificate of Validity REVISED CODE 3501.11</p> <p>We, the undersigned members of the Board of Elections of this county, certify that we have reviewed and examined the foregoing petition and find it to be sufficient and valid, and caused our signatures and official seal to be affixed at _____ Ohio, This _____ day of _____ Chairperson _____ Member _____ Member _____ Member _____ Member _____ Director _____ (seal)</p>	
--	--

**NOMINATING PETITION AND STATEMENT OF CANDIDACY
FOR MUNICIPAL OFFICE**

For Use in Cities or Any Village with a Population of 2,000 or more

To be filed with the Board of Elections not later than 4 p.m. the day before the primary election.
Revised Code 3501.38, 3513.261, 3513.262

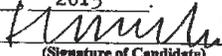
**NOTE – THE CANDIDATE MUST FILL IN, SIGN AND DATE THIS STATEMENT OF CANDIDACY
BEFORE PETITIONS ARE CIRCULATED.**

STATEMENT OF CANDIDACY

I, Thomas M. Bernabei, the undersigned, hereby declare under penalty of election
(Name of Candidate)
falsification that my voting residence address is 2118 University Ave. N.W.
(Street and Number, if any, or Rural Route Number)
Canton, Ohio 44709; and I am a qualified elector.
(City or Village) (Zip Code)

I further declare that I desire to be a candidate for election to the office of Mayor
in the Municipality of City of Canton
for the: (check one) full term, or unexpired term ending _____, in
(Fill in the appropriate date)
Stark County, Ohio at the general election to be held on the 3rd day
of November, 2015.

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

Dated this 3rd day of May, 2015

(Signature of Candidate)

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

I, Thomas M. Bernabei, hereby designate the persons named below as a committee to
(Name of Candidate)
represent me:

NAME	RESIDENCE

RECEIVED
 2015 MAY 14 PM 3:23
 STARK COUNTY
 BOARD OF ELECTION

NOMINATING PETITION

We, the undersigned, qualified electors of the State of Ohio, whose voting residence is in the county, city, village, or township set opposite our names, hereby nominate Thomas M. Bernabei as a candidate for election to the office of Mayor in the municipality of City of Canton, for the: (check one) full term, or unexpired term ending _____, to be voted for at the next general election, and certify said person is, in (Fill in the appropriate date) our opinion, well qualified to perform, the duties of the office or position to which the person desires to be elected.

Signatures on this petition must be from only one county and must be written in ink.

	SIGNATURE	VOTING RESIDENCE ADDRESS STREET AND NUMBER	CITY, VILLAGE OR TOWNSHIP	COUNTY	DATE OF SIGNING
1.	<u>Clare Addressi</u>	<u>2213 FRAZER AVENUE NW</u>	<u>CANTON</u>	<u>STARK</u>	<u>5/3/15</u>
2.	<u>Walter Addressi</u>	<u>2213 Frazer Ave NW</u>	<u>Canton</u>	<u>Stark</u>	<u>5/3/15</u>
3.	<u>Caren Addressi</u>	<u>2213 Frazer Ave NW</u>	<u>Canton</u>	<u>Stark</u>	<u>5/3/15</u>
4.	<u>Pat Addressi</u>	<u>2213 FRAZER AVENUE</u>	<u>CANTON</u>	<u>STARK</u>	<u>5/3/15</u>

	SIGNATURE	VOTING RESIDENCE ADDRESS STREET AND NUMBER	CITY, VILLAGE OR TOWNSHIP	COUNTY	DATE OF SIGNING
5.	<i>Danny Coletti</i>	5200 Grandendale Rd	Canton	Stark	5-4-15
6.	<i>Sam Coletti</i>	5200 GRANDENDALE	N.E. CANTON	STARK	5-4-15
7.	<i>Pauline Minella</i>	1125 Bienen Vista	N.E. CANTON	STARK	5-4-15
8.	<i>Stephen A. Minella</i>	1125 Bienen Vista	N.E. CANTON	STARK	5-4-15
9.					
10.					
11.					
12.					
13.					
14.					
15.					
16.					
17.					
18.					

CIRCULATOR STATEMENT – Must be completed and signed by circulator.

I, Joseph J. Concatto, declare under penalty of election falsification that I
(Printed Name of Circulator)
 reside at the address appearing below my signature; that I am the circulator of the foregoing petition
 containing 8 signatures; that I witnessed the affixing of every signature; that all signers were to
(Number)
 the best of my knowledge and belief qualified to sign; and that every signature is to the best of my
 knowledge and belief the signature of the person whose signature it purports to be or of an attorney in fact
 acting pursuant to section 3501.382 of the Revised Code.

Joseph J. Concatto
(Signature of Circulator)

1328 Granddale Cir. N.E.
(Permanent residence address)

North Canton, Ohio 44720
(City or Village, State and Zip Code)

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

County Board of Elections
 Form 3-N Nominating Petition
 For Municipal Office

Statement of Candidacy of _____
 Candidate for _____

Filed _____

Certificate of Validity
 REVISED CODE 3501.11

We, the undersigned members of the Board of Elections of this county, certify that we have reviewed and examined the foregoing petition and find it to be sufficient and valid, and caused our signatures and official seal to be affixed at _____, Ohio, This _____ day of _____

Chairperson _____
 Member _____
 Member _____
 Member _____
 Member _____
 Director _____ (seal)

**NOMINATING PETITION AND STATEMENT OF CANDIDACY
FOR MUNICIPAL OFFICE**

For Use in Cities or Any Village with a Population of 2,000 or more

To be filed with the Board of Elections not later than 4 p.m. the day before the primary election.
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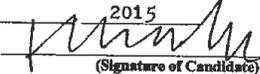
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STATEMENT OF CANDIDACY

I, Thomas M. Bernabei, the undersigned, hereby declare under penalty of election
(Name of Candidate)
falsification that my voting residence address is 2118 University Ave. N.W.
(Street and Number, if any, or Rural Route Number)
Canton, Ohio 44709; and I am a qualified elector.
(City or Village) (Zip Code)

I further declare that I desire to be a candidate for election to the office of Mayor
in the Municipality of City of Canton
for the: (check one) full term, or unexpired term ending _____, in
(Fill in the appropriate date)
Stark County, Ohio at the general election to be held on the 3rd day
of November, 2015.

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

Dated this 3rd day of May, 2015

(Signature of Candidate)

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

I, Thomas M. Bernabei, hereby designate the persons named below as a committee to
(Name of Candidate)
represent me:

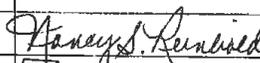
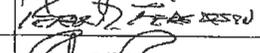
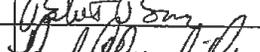
NAME	RESIDENCE

2015 MAY -4 PM 3:23
RECEIVED
STARK COUNTY
BOARD OF ELECTION

NOMINATING PETITION

We, the undersigned, qualified electors of the State of Ohio, whose voting residence is in the county, city, village, or township set opposite our names, hereby nominate Thomas M. Bernabei as a candidate for election to the office of Mayor in the municipality of City of Canton, for the: (check one) full term, or unexpired term ending _____, to be voted for at the next general election, and certify said person is, in (Fill in the appropriate date) our opinion, well qualified to perform, the duties of the office or position to which the person desires to be elected.

Signatures on this petition must be from only one county and must be written in ink.

	SIGNATURE	VOTING RESIDENCE ADDRESS STREET AND NUMBER	CITY, VILLAGE OR TOWNSHIP	COUNTY	DATE OF SIGNING
1.		4633 Kingsrow	CANTON	STARK	05/03/15
2.		5226 MARRET AVE	CANTON	STARK	5/3/15
3.		212 36th ST NW	CANTON	STARK	5/3/15
4.		212 36th ST NW	CANTON	STARK	5/3/15

	SIGNATURE	VOTING RESIDENCE ADDRESS STREET AND NUMBER	CITY, VILLAGE OR TOWNSHIP	COUNTY	DATE OF SIGNING
5.	<i>Eraine Barkan</i>	6030 Quaker Lake Dr.	Canton	Stark	5-3-15
6.	<i>Richard Barkan</i>	6030 Quaker Lake Dr.	Canton	Stark	5-3-15
7.	<i>Suzanne Aytha Amick</i>	5949 Quaker Lake Dr.	Canton	Stark	5/3/15
8.	<i>Matthew Smith</i>	5949 Quaker Lake Dr.	Canton	Stark	5/3/15
9.	<i>Quinn Ann</i>	2632 Spanish Bay St SE	CANTON	STARK	5/3/15
10.	<i>James M. Bernard</i>	5632 SPANISH BAY ST SE	CANTON	STARK	5/3/15
11.	<i>Ellen (Liz) Schmidt</i>	605-17th St NW	CANTON	STARK	5/4/15
12.	<i>Mildred E. Harboe</i>	1812 Southpointe Cir NE CANTON, OHIO	CANTON	STARK	5/4/15
13.	<i>Marilyn F. Harboe</i>	1812 Southpointe Cir NE	Canton	Stark	5/4/15
14.					
15.					
16.					
17.					
18.					

CIRCULATOR STATEMENT - Must be completed and signed by circulator.

I, THOMAS M. BERZABE, declare under penalty of election falsification that I
(Printed Name of Circulator)
 reside at the address appearing below my signature; that I am the circulator of the foregoing petition
 containing 13 signatures; that I witnessed the affixing of every signature; that all signers were to
(Number)
 the best of my knowledge and belief qualified to sign; and that every signature is to the best of my
 knowledge and belief the signature of the person whose signature it purports to be or of an attorney in fact
 acting pursuant to section 3501.382 of the Revised Code.

Thomas M. Berzabe
(Signature of Circulator)

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

2118 University Ave NW
(Permanent residence address)
Canton OH 44709
(City or Village, State and Zip Code)

County Board of Elections
 Form 3-N Nominating Petition
 For Municipal Office

Statement of Candidacy of _____
 Candidate for _____

Filed _____

Certificate of Validity
 REVISED CODE 3501.11

We, the undersigned members of the Board of
 Elections of this county, certify that we have
 reviewed and examined the foregoing petition and
 find it to be sufficient and valid, and caused our
 signatures and official seal to be
 affixed at _____, Ohio,
 This _____ day of _____

Chairperson _____
 Member _____
 Member _____
 Member _____
 Member _____
 Director _____ (seal)

**NOMINATING PETITION AND STATEMENT OF CANDIDACY
FOR MUNICIPAL OFFICE**

For Use in Cities or Any Village with a Population of 2,000 or more

To be filed with the Board of Elections not later than 4 p.m. the day before the primary election.
Revised Code 3501.38, 3513.261, 3513.262

**NOTE - THE CANDIDATE MUST FILL IN, SIGN AND DATE THIS STATEMENT OF CANDIDACY
BEFORE PETITIONS ARE CIRCULATED.**

STATEMENT OF CANDIDACY

I, Thomas M. Bernabei, the undersigned, hereby declare under penalty of election
(Name of Candidate)
falsification that my voting residence address is 2118 University Ave. N.W.
(Street and Number, if any, or Rural Route Number)
Canton, Ohio 44709; and I am a qualified elector.
(City or Village) (Zip Code)

I further declare that I desire to be a candidate for election to the office of Mayor
in the Municipality of City of Canton
for the: (check one) full term, or unexpired term ending _____ in
(Fill in the appropriate date)
Stark County, Ohio at the general election to be held on the 3rd day
of November, 2015.

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

Dated this 3rd day of May, 2015
[Signature]
(Signature of Candidate)

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

I, Thomas M. Bernabei, hereby designate the persons named below as a committee to
(Name of Candidate)
represent me:

NAME	RESIDENCE

2015 MAY -4 PM 3:23
RECEIVED
STARK COUNTY
BOARD OF ELECTION

NOMINATING PETITION

We, the undersigned, qualified electors of the State of Ohio, whose voting residence is in the county, city, village, or township set opposite our names, hereby nominate Thomas M. Bernabei as a candidate for election to the office of Mayor in the municipality of City of Canton, for the: (check one) full term, or unexpired term ending _____, to be voted for at the next general election, and certify said person is, in our opinion, well qualified to perform, the duties of the office or position to which the person desires to be elected.

Signatures on this petition must be from only one county and must be written in ink.

	SIGNATURE	VOTING RESIDENCE ADDRESS STREET AND NUMBER	CITY, VILLAGE OR TOWNSHIP	COUNTY	DATE OF SIGNING
1.	<u>[Signature]</u>	<u>220 Alltman Ave NW Canton OH 44708</u>	<u>Canton</u>	<u>Stark</u>	<u>5/4/15</u>
2.	<u>[Signature]</u>	<u>231 Grandview Ave. N.W. 44708</u>	<u>Canton</u>	<u>Stark</u>	<u>5/4/15</u>
3.	<u>[Signature]</u>	<u>231 - Grandview Ave Canton, OH 44708</u>	<u>Canton</u>	<u>Stark</u>	<u>5/4/15</u>
4.	<u>[Signature]</u>	<u>237 BLANDVICK RD CANTON, OHIO 44708</u>	<u>CANTON</u>	<u>STARK</u>	<u>5/4/15</u>

	SIGNATURE	VOTING RESIDENCE ADDRESS STREET AND NUMBER	CITY, VILLAGE OR TOWNSHIP	COUNTY	DATE OF SIGNING
5.	<i>Bruce Schme</i>	215 Harter Ave. NW	Canton, OH	Stark	5-4-15
6.	<i>Steve K...</i>	220 AULTMAN AVE NW	CANTON	STARK	5-4-15
7.	<i>Richard James Douka</i>	201 LINWOOD AVE NW	CANTON	STARK	5-4-15
8.	<i>Abdul K. Johnson</i>	910 BELLFLOWER AVE SW	CANTON	STARK	5-4-15
9.	<i>Paul Blinnick</i>	3240 DOVER AVE NE	CANTON	STARK	5-4-15
10.	<i>Christina M. Schilly</i>	435-52nd ST. NW	Canton	Stark	5-4-15
11.	<i>Andrew Frank Miller</i>	5043 Susetta Ave. NW	Canton	Stark	5-4-15
12.	<i>Theodore Kunka</i>	706 23rd St. NW	Canton	Stark	5-4-15
13.	<i>Anna Kunka</i>	706-23rd St. NW	Canton	Stark	5-4-15
14.	<i>Belinda Manard</i>	135 34th St. NW	Canton	Stark	5-4-15
15.	<i>J. Michael Black, Jr.</i>	207 LINWOOD AVE NW	CANTON	STARK	5-4-15
16.	<i>Cheryl D. Smith</i>	220 HARTER AVE NW	CANTON	STARK	5-4-15
17.	<i>Laura K. Steier</i>	4501 Yale Ave. NW	Canton	STARK	5-4-15
18.	<i>Virginia M. Byt</i>	136 Bellflower NW	Canton	Stark	5-4-15

CIRCULATOR STATEMENT – Must be completed and signed by circulator.

I, Kimberly Kingsbury, declare under penalty of election falsification that I
(Printed Name of Circulator)
 reside at the address appearing below my signature; that I am the circulator of the foregoing petition
 containing 18 signatures; that I witnessed the affixing of every signature; that all signers were to
(Number)
 the best of my knowledge and belief qualified to sign; and that every signature is to the best of my
 knowledge and belief the signature of the person whose signature it purports to be or of an attorney in fact
 acting pursuant to section 3501.382 of the Revised Code.

Kimberly Kingsbury
(Signature of Circulator)

3124 Sussex St NW
(Permanent residence address)

Canton, OH 44718
(City or Village, State and Zip Code)

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

County Board of Elections
 Form 3-N Nominating Petition
 For Municipal Office

Statement of Candidacy of _____
 Candidate for _____
 Filed _____

Certificate of Validity
 REVISED CODE 3501.11

We, the undersigned members of the Board of
 Elections of this county, certify that we have
 reviewed and examined the foregoing petition and
 find it to be sufficient and valid, and caused our
 signatures and official seal to be
 affixed at _____, Ohio,
 This _____ day of _____
 Chairperson _____
 Member _____
 Member _____
 Member _____
 Member _____
 Director _____ (seal)

**NOMINATING PETITION AND STATEMENT OF CANDIDACY
FOR MUNICIPAL OFFICE**

For Use in Cities or Any Village with a Population of 2,000 or more

To be filed with the Board of Elections not later than 4 p.m. the day before the primary election.
Revised Code 3501.38, 3513.261, 3513.262

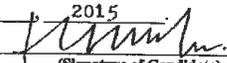
**NOTE -- THE CANDIDATE MUST FILL IN, SIGN AND DATE THIS STATEMENT OF CANDIDACY
BEFORE PETITIONS ARE CIRCULATED.**

STATEMENT OF CANDIDACY

I, Thomas M. Bernabei, the undersigned, hereby declare under penalty of election
(Name of Candidate)
falsification that my voting residence address is 2118 University Ave. N.W.
(Street and Number, if any, or Rural Route Number)
Canton, Ohio 44709; and I am a qualified elector.
(City or Village) (Zip Code)

I further declare that I desire to be a candidate for election to the office of Mayor
in the Municipality of City of Canton
for the: (check one) full term, or unexpired term ending _____, in
(Fill in the appropriate date)
Stark County, Ohio at the general election to be held on the 3rd day
of November, 2015.

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

Dated this 3rd day of May, 2015

(Signature of Candidate)

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

I, Thomas M. Bernabei, hereby designate the persons named below as a committee to
(Name of Candidate)
represent me:

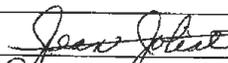
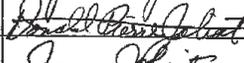
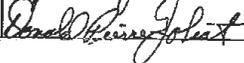
NAME	RESIDENCE

RECEIVED
2015 MAY -4 PM 3:23
STARK COUNTY
BOARD OF ELECTION

NOMINATING PETITION

We, the undersigned, qualified electors of the State of Ohio, whose voting residence is in the county, city, village, or township set opposite our names, hereby nominate Thomas M. Bernabei as a candidate for election to the office of Mayor in the municipality of City of Canton, for the: (check one) full term, or unexpired term ending _____, to be voted for at the next general election, and certify said person is, in (Fill in the appropriate date) our opinion, well qualified to perform, the duties of the office or position to which the person desires to be elected.

Signatures on this petition must be from only one county and must be written in ink.

	SIGNATURE	VOTING RESIDENCE ADDRESS STREET AND NUMBER	CITY, VILLAGE OR TOWNSHIP	COUNTY	DATE OF SIGNING
1.		<u>1245 11th St NW</u>	<u>Canton</u>	<u>Stark</u>	<u>5-3-15</u>
2.		<u>1245-11 St NW</u>	<u>Canton</u>	<u>Stark</u>	<u>5/3</u>
3.		<u>1245-11th St NW</u>	<u>Canton</u>	<u>Stark</u>	<u>5/3/15</u>
4.		<u>1245-11 St NW</u>	<u>Canton</u>	<u>Stark</u>	<u>5-3-15</u>

	SIGNATURE	VOTING RESIDENCE ADDRESS STREET AND NUMBER	CITY, VILLAGE OR TOWNSHIP	COUNTY	DATE OF SIGNING
5.	<i>Christine M. May</i>	2824 6 th NW	CANTON	STARK	5-3-15
6.	<i>Jeffrey Stark</i>	2918 5 th NW	Canton	Stark	5-3-15
7.	<i>Mona Stark</i>	2918-5 th NW	Canton	Stark	5-3-15
8.	<i>Paul Everhart</i>	2918 5 th SE NW	Canton	Stark	5-3-15
9.	<i>Joe H</i>	2918 5 th NW	Canton	STARK	5-3-15
10.	<i>Christina</i>	2918 5 th NW	Canton	Stark	5-3-15
11.	<i>Paul H. H. Morris</i>	2824 6 th NW	Canton	STARK	5-3-15
12.	<i>Sarah Thompson</i>	2903 6 th NW	Canton	Stark	5-3-15
13.	<i>Quinn</i>	2915 6 th NW	Canton	Stark	5-3-15
14.	<i>Paul H. H. Morris</i>	266 11 th NW	Canton, Ohio	Stark	5-4-15
15.	<i>Debra Angel</i>	1524 FULTON RD	CANTON	Stark	5-4-15
16.	<i>Paul H. H. Morris</i>	142 35 th SE NW	CANTON	STARK	5/4/15
17.					
18.					

CIRCULATOR STATEMENT – Must be completed and signed by circulator.

I, GREGORY F. HAWK, declare under penalty of election falsification that I
 (Printed Name of Circulator)
 reside at the address appearing below my signature; that I am the circulator of the foregoing petition
 containing 14 signatures; that I witnessed the affixing of every signature; that all signers were to
 (Number)
 the best of my knowledge and belief qualified to sign; and that every signature is to the best of my
 knowledge and belief the signature of the person whose signature it purports to be or of an attorney in fact
 acting pursuant to section 3501.382 of the Revised Code.

G. Hawk
 (Signature of Circulator)

2907 6th NW
 (Permanent residence address)

CANTON OHIO 44708
 (City or Village, State and Zip Code)

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

County Board of Elections
 Form 3-N Nominating Petition
 For Municipal Office

Statement of Candidacy of _____
 Candidate for _____
 Filed _____

Certificate of Validity
 REVISED CODE 3501.11

We, the undersigned members of the Board of
 Elections of this county, certify that we have
 reviewed and examined the foregoing petition and
 find it to be sufficient and valid, and caused our
 signatures and official seal to be
 affixed at _____, Ohio,
 This _____ day of _____
 Chairperson _____
 Member _____
 Member _____
 Member _____
 Member _____
 Director _____ (seal)

**NOMINATING PETITION AND STATEMENT OF CANDIDACY
FOR MUNICIPAL OFFICE**

For Use in Cities or Any Village with a Population of 2,000 or more

To be filed with the Board of Elections not later than 4 p.m. the day before the primary election.
Revised Code 3501.38, 3513.261, 3513.262

**NOTE - THE CANDIDATE MUST FILL IN, SIGN AND DATE THIS STATEMENT OF CANDIDACY
BEFORE PETITIONS ARE CIRCULATED.**

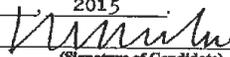
STATEMENT OF CANDIDACY

I, Thomas M. Bernabei, the undersigned, hereby declare under penalty of election
(Name of Candidate)
falsification that my voting residence address is 2118 University Ave. N.W.
(Street and Number, if any, or Rural Route Number)
Canton, Ohio 44709; and I am a qualified elector.
(City or Village) (Zip Code)

I further declare that I desire to be a candidate for election to the office of Mayor
in the Municipality of City of Canton,
for the: (check one) full term, or unexpired term ending _____, in
(Fill in the appropriate date)
Stark County, Ohio at the general election to be held on the 3rd day
of November, 2015.

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

Dated this 3rd day of May, 2015.


(Signature of Candidate)

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

I, Thomas M. Bernabei, hereby designate the persons named below as a committee to
(Name of Candidate)
represent me:

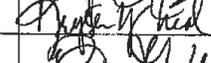
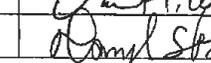
NAME	RESIDENCE

2015 MAY -4 PM 3:23
RECEIVED
STARK COUNTY
BOARD OF ELECTION

NOMINATING PETITION

We, the undersigned, qualified electors of the State of Ohio, whose voting residence is in the county, city, village, or township set opposite our names, hereby nominate Thomas M. Bernabei as a candidate for election to the office of Mayor in the municipality of City of Canton, for the: (check one) full term, or unexpired term ending _____, to be voted for at the next general election, and certify said person is, in (Fill in the appropriate date) our opinion, well qualified to perform, the duties of the office or position to which the person desires to be elected.

Signatures on this petition must be from only one county and must be written in ink.

	SIGNATURE	VOTING RESIDENCE ADDRESS STREET AND NUMBER	CITY, VILLAGE OR TOWNSHIP	COUNTY	DATE OF SIGNING
1.		151 26 th ST NW	CANTON	STARK	5-3-2015
2.		314-30 th ST NW	CANTON	STARK	5/3/15
3.		314-36 th ST. NW	CANTON	STARK	5.2.15
4.		336-36 th ST NW	CANTON	STARK	5/3/15

	SIGNATURE	VOTING RESIDENCE ADDRESS STREET AND NUMBER	CITY, VILLAGE OR TOWNSHIP	COUNTY	DATE OF SIGNING
5.	<i>Peggy L. Paden</i>	334 36th NW	Canton	Stark	5/3/15
6.	<i>Michelle Marie Johnson</i>	334-33rd NW	Canton	Stark	5-3-15
7.	<i>Gay Johnson</i>	224-33rd NW	CANTON	STARK	5-3-15
8.	<i>Colleen Barlow</i>	330-33rd NW	Canton	stark	5.3.15
9.	<i>Mel Barlow</i>	330-33rd NW	CANTON	STARK	5-3-15
10.	<i>Dotty Zuppan</i>	350 33rd NW	CANTON	St.	5-3-15
11.	<i>Dale Zuppan</i>	350 33rd NW	Canton	Stark	5-3-15
12.	<i>Dale Zuppan</i>	402 23rd NW	CANTON	Stark	5-3-15
13.	<i>[Signature]</i>	402 23rd St NW	Canton	Stark	5/3/15
14.	<i>Tosh Lopez</i>	408 23rd St NW	CANTON	STARK	5/3/15
15.	<i>[Signature]</i>	414 23rd St NW	CANTON	STARK	5-3-15
16.	<i>Thomas P. Patten</i>	414 23rd St NW	Canton	Stark	5/3/15
17.	<i>[Signature]</i>	421 23rd St NW	Canton	Stark	5/3/15
18.	<i>Dale Barlow</i>	351 23rd St NW	Canton	Stark	5/3/15

CIRCULATOR STATEMENT – Must be completed and signed by circulator.

I, Paula Bernabeo-Forrer, declare under penalty of election falsification that I
(Printed Name of Circulator)
 reside at the address appearing below my signature; that I am the circulator of the foregoing petition
 containing 18 signatures; that I witnessed the affixing of every signature; that all signers were to
(Number)
 the best of my knowledge and belief qualified to sign; and that every signature is to the best of my
 knowledge and belief the signature of the person whose signature it purports to be or of an attorney in fact
 acting pursuant to section 3501.382 of the Revised Code.

Paula Bernabeo-Forrer
(Signature of Circulator)
212 26th St NW
(Permanent residence address)
Canton OH 44709
(City or Village, State and Zip Code)

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

County Board of Elections
 Form 3-N Nominating Petition
 For Municipal Office

Statement of Candidacy of
 Candidate for _____

Filed _____

Certificate of Validity
 REVISED CODE 3501.11

We, the undersigned members of the Board of
 Elections of this county, certify that we have
 reviewed and examined the foregoing petition and
 find it to be sufficient and valid, and caused our
 signatures and official seal to be
 affixed at _____ Ohio,
 This _____ day of _____

Chairperson _____
 Member _____
 Member _____
 Member _____
 Member _____
 Director _____ (seal)

**NOMINATING PETITION AND STATEMENT OF CANDIDACY
FOR MUNICIPAL OFFICE**

For Use in Cities or Any Village with a Population of 2,000 or more

To be filed with the Board of Elections not later than 4 p.m. the day before the primary election.
Revised Code 3501.38, 3513.261, 3513.262

**NOTE - THE CANDIDATE MUST FILL IN, SIGN AND DATE THIS STATEMENT OF CANDIDACY
BEFORE PETITIONS ARE CIRCULATED.**

STATEMENT OF CANDIDACY

I, Thomas M. Bernabei, the undersigned, hereby declare under penalty of election
(Name of Candidate)
falsification that my voting residence address is 2118 University Ave. N.W.
(Street and Number, if any, or Rural Route Number)
Canton, Ohio 44709; and I am a qualified elector.
(City or Village) (Zip Code)

I further declare that I desire to be a candidate for election to the office of Mayor
in the Municipality of City of Canton
for the: (check one) full term, or unexpired term ending _____, in
(Fill in the appropriate date)
Stark County, Ohio at the general election to be held on the 3rd day
of November, 2015.

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

Dated this 3rd day of May, 2015
[Signature]
(Signature of Candidate)

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

I, Thomas M. Bernabei, hereby designate the persons named below as a committee to
(Name of Candidate)
represent me:

NAME	RESIDENCE	2015 MAY - 4 PM 3:23 BOARD OF ELECTIONS STARK COUNTY	RECEIVED
ALBERT R. COUSE	517 23rd St. NW Canton, OH		

NOMINATING PETITION

We, the undersigned, qualified electors of the State of Ohio, whose voting residence is in the county, city, village, or township set opposite our names, hereby nominate Thomas M. Bernabei as a candidate for election to the office of Mayor in the municipality of City of Canton, for the: (check one) full term, or unexpired term ending _____, to be voted for at the next general election, and certify said person is, in (Fill in the appropriate date) our opinion, well qualified to perform, the duties of the office or position to which the person desires to be elected.

Signatures on this petition must be from only one county and must be written in ink.

	SIGNATURE	VOTING RESIDENCE ADDRESS STREET AND NUMBER	CITY, VILLAGE OR TOWNSHIP	COUNTY	DATE OF SIGNING
1.	<u>M. P. O'Brien</u>	<u>310 23rd St. NW</u>	<u>Canton</u>	<u>Stark</u>	<u>5/3/15</u>
2.	<u>Dino D'Brien</u>	<u>310 23rd St. NW</u>	<u>Canton</u>	<u>Stark</u>	<u>5/3/15</u>
3.	<u>Dustin D'Brien</u>	<u>310 23rd St. NW</u>	<u>Canton</u>	<u>Stark</u>	<u>5/3/15</u>
4.	<u>Robert Johnson</u>	<u>326 23rd St. NW</u>	<u>CANTON</u>	<u>STARK</u>	<u>5/3/15</u>

	SIGNATURE	VOTING RESIDENCE ADDRESS STREET AND NUMBER	CITY, VILLAGE OR TOWNSHIP	COUNTY	DATE OF SIGNING
5.	<i>Albert R. Conde</i>	225 2 nd ST NW ^{APT 1101}	CANTON	STARR	5.4.15
6.					
7.					
8.					
9.					
10.					
11.					
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CIRCULATOR STATEMENT – Must be completed and signed by circulator.

I, ALBERT R. CONDE, declare under penalty of election falsification that I
(Printed Name of Circulator)
 reside at the address appearing below my signature; that I am the circulator of the foregoing petition
 containing FIVE signatures; that I witnessed the affixing of every signature; that all signers were to
(Number)
 the best of my knowledge and belief qualified to sign; and that every signature is to the best of my
 knowledge and belief the signature of the person whose signature it purports to be or of an attorney in fact
 acting pursuant to section 3501.382 of the Revised Code.

Albert R. Conde
(Signature of Circulator)

318 23rd St NW
(Permanent residence address)

Canton, OH 44709
(City or Village, State and Zip Code)

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

County Board of Elections
 Form 3-N Nominating Petition
 For Municipal Office

Statement of Candidacy of _____
 Candidate for _____
 Filed _____

**Certificate of Validity
 REVISED CODE 3501.11**

We, the undersigned members of the Board of
 Elections of this county, certify that we have
 reviewed and examined the foregoing petition and
 find it to be sufficient and valid, and caused our
 signatures and official seal to be
 affixed at _____, Ohio,
 This _____ day of _____
 Chairperson _____
 Member _____
 Member _____
 Member _____
 Member _____
 Director _____ (seal)

**NOMINATING PETITION AND STATEMENT OF CANDIDACY
FOR MUNICIPAL OFFICE**

For Use in Cities or Any Village with a Population of 2,000 or more

To be filed with the Board of Elections not later than 4 p.m. the day before the primary election.
Revised Code 3501.38, 3513.261, 3513.262

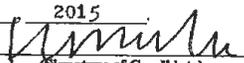
**NOTE -- THE CANDIDATE MUST FILL IN, SIGN AND DATE THIS STATEMENT OF CANDIDACY
BEFORE PETITIONS ARE CIRCULATED.**

STATEMENT OF CANDIDACY

I, Thomas M. Bernabei, the undersigned, hereby declare under penalty of election
(Name of Candidate)
falsification that my voting residence address is 2118 University Ave. N.W.
(Street and Number, if any, or Rural Route Number)
Canton, Ohio 44709; and I am a qualified elector.
(City or Village) (Zip Code)

I further declare that I desire to be a candidate for election to the office of Mayor
in the Municipality of City of Canton
for the: (check one) full term, or unexpired term ending _____, in
(Fill in the appropriate date)
Stark County, Ohio at the general election to be held on the 3rd day
of November, 2015.

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

Dated this 3rd day of May, 2015

(Signature of Candidate)

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

I, Thomas M. Bernabei, hereby designate the persons named below as a committee to
(Name of Candidate)
represent me:

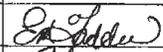
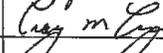
NAME	RESIDENCE

2015 MAY 4 PM 3:23
RECEIVED
STARK COUNTY
BOARD OF ELECTION

NOMINATING PETITION

We, the undersigned, qualified electors of the State of Ohio, whose voting residence is in the county, city, village, or township set opposite our names, hereby nominate Thomas M. Bernabei as a candidate for election to the office of Mayor in the municipality of City of Canton, for the: (check one) full term, or unexpired term ending _____, to be voted for at the next general election, and certify said person is, in (Fill in the appropriate date) our opinion, well qualified to perform, the duties of the office or position to which the person desires to be elected.

Signatures on this petition must be from only one county and must be written in ink.

	SIGNATURE	VOTING RESIDENCE ADDRESS STREET AND NUMBER	CITY, VILLAGE OR TOWNSHIP	COUNTY	DATE OF SIGNING
1.		4008 LOGAN AVENUE	CANTON	STARK	5/3/2015
2.		351 Lakecrest St	Canton	Stark	5/3/2015
3.		351 Lakecrest St NW	Canton	Stark	5/3/15
4.		4100 Logan Ave	Canton	Stark	5/3/15

	SIGNATURE	VOTING RESIDENCE ADDRESS STREET AND NUMBER	CITY, VILLAGE OR TOWNSHIP	COUNTY	DATE OF SIGNING
5.	<i>Maura Dugas</i>	4215 Logan Ave NW	Canton	Stark	5/3/15
6.	<i>Joe P. P.</i>	4015 Logan Ave NW	CANTON	STARK	5/3/15
7.	<i>Pat J. Kelly</i>	150 Lakeside	CANTON	STARK	5/2/15
8.	<i>Fred Miller</i>	4531 Logan Ave	CANTON	STARK	5-3-15
9.	<i>Frank Lelene</i>	415 Santa Clara St NW	Canton	STARK	5/3/15
10.	<i>Marian LePue</i>	415 Santa Clara St NW	Canton	STARK	5/3/15
11.	<i>Phyllis</i>	3934 Logan Ave NW	CANTON	STARK	5/3/15
12.	<i>Charles Carter</i>	407 3rd St NW	CANTON	STARK	5/3/15
13.	<i>Barbara Carter</i>	407 3rd St NW	CANTON	STARK	5/3/15
14.	<i>John Muddith</i>	550 31st St NW	CANTON	STARK	5/3/15
15.	<i>Alan M. Kat</i>	4021 Beechtree Blvd	Canton	Stark	5/3/15
16.	<i>John</i>	201 Lakeside NW	Canton	Stark	5/3/15
17.	<i>Jim T.</i>	151 35th St NW	CANTON	STARK	5/3/15
18.	<i>Weather Hau</i>	151 35th St NW	Canton	Stark	5-3-15

CIRCULATOR STATEMENT – Must be completed and signed by circulator.

I, Eric Waldrop, declare under penalty of election falsification that I
(Printed Name of Circulator)
 reside at the address appearing below my signature; that I am the circulator of the foregoing petition
 containing 18 signatures; that I witnessed the affixing of every signature; that all signers were to
(Number)
 the best of my knowledge and belief qualified to sign; and that every signature is to the best of my
 knowledge and belief the signature of the person whose signature it purports to be or of an attorney in fact
 acting pursuant to section 3501.382 of the Revised Code.

Eric Waldrop
(Signature of Circulator)
4008 Logan Ave NW
(Permanent residence address)
Canton, OH 44709
(City or Village, State and Zip Code)

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

County Board of Elections Form 3-N Nominating Petition For Municipal Office	Statement of Candidacy of Candidate for	Filed	Certificate of Validity REVISED CODE 3501.11	We, the undersigned members of the Board of Elections of this county, certify that we have reviewed and examined the foregoing petition and find it to be sufficient and valid, and caused our signatures and official seal to be affixed at _____, Ohio, This _____ day of _____, Chairperson Member Member Member Member Director	(seal)
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**NOMINATING PETITION AND STATEMENT OF CANDIDACY
FOR MUNICIPAL OFFICE**

For Use in Cities or Any Village with a Population of 2,000 or more

To be filed with the Board of Elections not later than 4 p.m. the day before the primary election.
Revised Code 3501.38, 3513.261, 3513.262

**NOTE - THE CANDIDATE MUST FILL IN, SIGN AND DATE THIS STATEMENT OF CANDIDACY
BEFORE PETITIONS ARE CIRCULATED.**

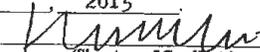
STATEMENT OF CANDIDACY

I, Thomas M. Bernabei, the undersigned, hereby declare under penalty of election
(Name of Candidate)
falsification that my voting residence address is 2118 University Ave. N.W.
(Street and Number, if any, or Rural Route Number)
Canton, Ohio 44709; and I am a qualified elector.
(City or Village) (Zip Code)

I further declare that I desire to be a candidate for election to the office of Mayor
in the Municipality of City of Canton
for the: (check one) full term, or unexpired term ending _____ in
(Fill in the appropriate date)
Stark County, Ohio at the general election to be held on the 3rd day
of November, 2015.

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

Dated this 3rd day of May, 2015


(Signature of Candidate)

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

I, Thomas M. Bernabei, hereby designate the persons named below as a committee to
(Name of Candidate)
represent me:

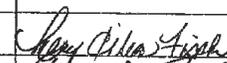
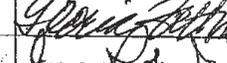
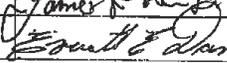
NAME	RESIDENCE

2015 MAY -4 PM 3:23
RECEIVED
STARK COUNTY
BOARD OF ELECTION

NOMINATING PETITION

We, the undersigned, qualified electors of the State of Ohio, whose voting residence is in the county, city, village, or township set opposite our names, hereby nominate Thomas M. Bernabei as a candidate for election to the office of Mayor in the municipality of City of Canton, for the: (check one) full term, or unexpired term ending _____, to be voted for at the next general election, and certify said person is, in (Fill in the appropriate date) our opinion, well qualified to perform, the duties of the office or position to which the person desires to be elected.

Signatures on this petition must be from only one county and must be written in ink.

	SIGNATURE	VOTING RESIDENCE ADDRESS STREET AND NUMBER	CITY, VILLAGE OR TOWNSHIP	COUNTY	DATE OF SIGNING
1.		4409 Kingswood Rd	Canton	Stark	5-3-15
2.		4409 Kingswood Rd	CANTON	STARK	5/3/15
3.		131 47th Street	CANTON	STARK	5/3/15
4.		222-47 St. N.W.	CANTON	STARK	5/3/15

	SIGNATURE	VOTING RESIDENCE ADDRESS STREET AND NUMBER	CITY, VILLAGE OR TOWNSHIP	COUNTY	DATE OF SIGNING
5.	<i>Nancy McCar</i>	300 47th St NW	Canton	Stark	5/3/15
6.	<i>Daniel Van Dusen</i>	300 47th St	Canton	Stark	5-3-15
7.	<i>Daniel Caldwell</i>	325 47th St	Canton	Stark	5-3-15
8.	<i>Brianne Pappas</i>	832 47th St NW	Canton	Stark	5.3.15
9.	<i>John A. Galt</i>	332 47th St NW	Canton	Stark	5/3/15
10.	<i>Liesl Forbes</i>	369 47th St NW	Canton	Stark	5/3/15
11.	<i>Jean E. Schief</i>	4700 King Ave NW	Canton	Stark	5/3/15
12.	<i>Cornelia J. Bauster</i>	4836 Ellinda Cir NW	CANTON	STARK	5-3-15
13.	<i>Richard A. Fuzinski</i>	215 47th St NW	CANTON	STARK	5/3/15
14.	<i>Christine W. Bauster</i>	4836 Ellinda Cir NW	Canton	OH 44709	5-3-15
15.	<i>Armonde Schief</i>	2400 Logansport	W Canton	Stark	5/3/15
16.	<i>Wendy M. Schief</i>	4633 Kingsrow Ave	Canton	Stark	5/3/15
17.	<i>Wm M. Dwyer</i>	624 23rd St NW	Canton	Stark	5/4/15
18.	<i>Ashley A. Reinbold</i>	315 6th St SW Canton, OH 44710	Canton	Stark OH	5/4/15

CIRCULATOR STATEMENT - Must be completed and signed by circulator.

I, NANCY S. REINBOLD, declare under penalty of election falsification that I
(Printed Name of Circulator)
 reside at the address appearing below my signature; that I am the circulator of the foregoing petition
 containing 19 signatures; that I witnessed the affixing of every signature; that all signers were to
(Number)
 the best of my knowledge and belief qualified to sign; and that every signature is to the best of my
 knowledge and belief the signature of the person whose signature it purports to be or of an attorney in fact
 acting pursuant to section 3501.382 of the Revised Code.

Nancy S. Reinbold
(Signature of Circulator)

4633 KINGSROW AVE NW
(Permanent residence address)

CANTON, OH 44709
(City or Village, State and Zip Code)

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

County Board of Elections
 Form 3-N Nominating Petition
 For Municipal Office

Statement of Candidacy of
 Candidate for _____

Filed _____

Certificate of Validity
 REVISED CODE 3501.11

We, the undersigned members of the Board of
 Elections of this county, certify that we have
 reviewed and examined the foregoing petition and
 find it to be sufficient and valid, and caused our
 signatures and official seal to be
 affixed at _____, Ohio,
 This _____ day of _____,
 Chairperson _____
 Member _____
 Member _____
 Member _____
 Member _____
 Director _____ (seal)

**NOMINATING PETITION AND STATEMENT OF CANDIDACY
FOR MUNICIPAL OFFICE**

For Use in Cities or Any Village with a Population of 2,000 or more

To be filed with the Board of Elections not later than 4 p.m. the day before the primary election.
Revised Code 3501.38, 3513.261, 3513.262

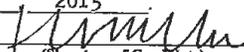
**NOTE - THE CANDIDATE MUST FILL IN, SIGN AND DATE THIS STATEMENT OF CANDIDACY
BEFORE PETITIONS ARE CIRCULATED.**

STATEMENT OF CANDIDACY

I, Thomas M. Bernabei, the undersigned, hereby declare under penalty of election
(Name of Candidate)
falsification that my voting residence address is 2118 University Ave. N.W.
(Street and Number, if any, or Rural Route Number)
Canton, Ohio 44709; and I am a qualified elector.
(City or Village) (Zip Code)

I further declare that I desire to be a candidate for election to the office of Mayor
in the Municipality of City of Canton
for the: (check one) full term, or unexpired term ending _____ in
(Fill in the appropriate date)
Stark County, Ohio at the general election to be held on the 3rd day
of November, 2015.

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

Dated this 3rd day of May, 2015

(Signature of Candidate)

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

I, Thomas M. Bernabei, hereby designate the persons named below as a committee to
(Name of Candidate)
represent me:

NAME	RESIDENCE	BOARD OF ELECTIONS	RECEIVED

NOMINATING PETITION

We, the undersigned, qualified electors of the State of Ohio, whose voting residence is in the county, city, village, or township set opposite our names, hereby nominate Thomas M. Bernabei as a candidate for election to the office of Mayor in the municipality of City of Canton, for the: (check one) full term, or unexpired term ending _____, to be voted for at the next general election, and certify said person is, in our opinion, well qualified to perform, the duties of the office or position to which the person desires to be elected.

Signatures on this petition must be from only one county and must be written in ink.

	SIGNATURE	VOTING RESIDENCE ADDRESS STREET AND NUMBER	CITY, VILLAGE OR TOWNSHIP	COUNTY	DATE OF SIGNING
1.		1510 34th St NW	Canton	Stark	5/4/15
2.		1119 15th St NW	Canton	Stark	5/4/15
3.		2232 Anderson Pl SW	Canton	Stark	5/4/15
4.		2325 4th SE	CANTON	STARK	5.4.15

	SIGNATURE	VOTING RESIDENCE ADDRESS STREET AND NUMBER	CITY, VILLAGE OR TOWNSHIP	COUNTY	DATE OF SIGNING
5.	<i>Angela Griffin</i>	1327 Plain Acre	CANTON	STARK	5-4-15
6.	<i>Kevin S. Anderson</i>	1503 39TH NW	CANTON	STARK	5-4-15
7.	<i>Charles L. Urczak</i>	401 GIRARD AVENUE	CANTON	STARK	5-4-15
8.	<i>Charles L. Urczak</i>	404 GLENRIDGE CIR NE	CANTON	STARK	5-4-15
9.	<i>Constance M. Collier</i>	2029 38th St. N.E.	CANTON	STARK	5-4-15
10.	<i>Romy Stephen</i>	1130 Bellflower Avenue	CANTON	STARK	5-4-15
11.					
12.					
13.					
14.					
15.					
16.					
17.					
18.					

CIRCULATOR STATEMENT – Must be completed and signed by circulator.

I, NANCY S. REINGOLD, declare under penalty of election falsification that I
(Printed Name of Circulator)
 reside at the address appearing below my signature; that I am the circulator of the foregoing petition
 containing 10 signatures; that I witnessed the affixing of every signature; that all signers were to
(Number)
 the best of my knowledge and belief qualified to sign; and that every signature is to the best of my
 knowledge and belief the signature of the person whose signature it purports to be or of an attorney in fact
 acting pursuant to section 3501.382 of the Revised Code.

Nancy S. Reingold
(Signature of Circulator)

4633 KINGSROW AVE NW
(Permanent residence address)

CANTON, OH 44709
(City or Village, State and Zip Code)

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

County Board of Elections Form 3-N Nominating Petition For Municipal Office	Statement of Candidacy of Candidate for _____	Filed _____	Certificate of Validity REVISED CODE 3501.11	We, the undersigned members of the Board of Elections of this county, certify that we have reviewed and examined the foregoing petition and find it to be sufficient and valid, and caused our signatures and official seal to be affixed at _____, Ohio, This _____ day of _____	Chairperson _____	Member _____	Member _____	Member _____	Member _____	Director _____ (seal)
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**NOMINATING PETITION AND STATEMENT OF CANDIDACY
FOR MUNICIPAL OFFICE**

For Use in Cities or Any Village with a Population of 2,000 or more

To be filed with the Board of Elections not later than 4 p.m. the day before the primary election.
Revised Code 3501.38, 3513.261, 3513.262

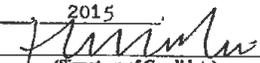
**NOTE -- THE CANDIDATE MUST FILL IN, SIGN AND DATE THIS STATEMENT OF CANDIDACY
BEFORE PETITIONS ARE CIRCULATED.**

STATEMENT OF CANDIDACY

I, Thomas M. Bernabei, the undersigned, hereby declare under penalty of election
(Name of Candidate)
falsification that my voting residence address is 2118 University Ave. N.W.
(Street and Number, if any, or Rural Route Number)
Canton, Ohio 44709; and I am a qualified elector.
(City or Village) (Zip Code)

I further declare that I desire to be a candidate for election to the office of Mayor
in the Municipality of City of Canton
for the: (check one) full term, or unexpired term ending _____, in
(Fill in the appropriate date)
Stark County, Ohio at the general election to be held on the 3rd day
of November, 2015.

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

Dated this 3rd day of May, 2015

(Signature of Candidate)

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

I, Thomas M. Bernabei, hereby designate the persons named below as a committee to
(Name of Candidate)
represent me:

NAME	RESIDENCE

2015 MAY - 4 PM 3: 23
RECEIVED
STARK COUNTY
BOARD OF ELECTION

NOMINATING PETITION

We, the undersigned, qualified electors of the State of Ohio, whose voting residence is in the county, city, village, or township set opposite our names, hereby nominate Thomas M. Bernabei as a candidate for election to the office of Mayor in the municipality of City of Canton, for the: (check one) full term, or unexpired term ending _____, to be voted for at the next general election, and certify said person is, in
(Fill in the appropriate date)
our opinion, well qualified to perform, the duties of the office or position to which the person desires to be elected.

Signatures on this petition must be from only one county and must be written in ink.

	SIGNATURE	VOTING RESIDENCE ADDRESS STREET AND NUMBER	CITY, VILLAGE OR TOWNSHIP	COUNTY	DATE OF SIGNING
1.		1815 29th St NW	Canton	Stark	5/4/15
2.		2617 Marble Ave NW	Canton	Stark	5/4/15
3.		333 Bellflower Avenue	Canton	Stark	5/4/15
4.		2335 Jewell Pk E	Canton	Stark	5/4/15

	SIGNATURE	VOTING RESIDENCE ADDRESS STREET AND NUMBER	CITY, VILLAGE OR TOWNSHIP	COUNTY	DATE OF SIGNING
5.	<i>John Hatcher</i>	1809 Auburn St. NW	Canton	Stark	5-4-15
6.	Jean Buonocore	236-36 th St. NW	Canton	Stark	5-4-15
7.	<i>Comity [Signature]</i>	1237 Logan Ave NW	Canton	Stark	5-4-15
8.	Diane Perry	462 32nd St NW	Canton	Stark	5-4-15
9.	Denise McGinn	3866 Westview Ave	Canton	Stark	5-4-15
10.	<i>[Signature]</i>	3931 HAREISON AVE	Canton	STARK	5-4-15
11.	<i>[Signature]</i>	256 Poplar Ave NW	Canton	Stark	5-4-15
12.	Cheryl Turley	1712 24 th St NW	Canton	Stark	5/4/15
13.	Dellie Tate	605. Hye ct. SE	Canton	Stark	5-4-15
14.	<i>[Signature]</i>	1215-16 th NE	Canton	Stark	5-4-15
15.	Alton P. Rocky III	2182 Fulton NE	Canton	Stark	5-4-15
16.					
17.					
18.					

CIRCULATOR STATEMENT - Must be completed and signed by circulator.

I, Parade A Bernabei-Porcer, declare under penalty of election falsification that I
(Printed Name of Circulator)
 reside at the address appearing below my signature; that I am the circulator of the foregoing petition
 containing 15 signatures; that I witnessed the affixing of every signature; that all signers were to
(Number)
 the best of my knowledge and belief qualified to sign; and that every signature is to the best of my
 knowledge and belief the signature of the person whose signature it purports to be or of an attorney in fact
 acting pursuant to section 3501.382 of the Revised Code.

Parade A Bernabei-Porcer
(Signature of Circulator)
212 36th St NW
(Permanent residence address)
Canton, OH 44709
(City or Village, State and Zip Code)

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

County Board of Elections Form 3-N Nominating Petition For Municipal Office	Statement of Candidacy of Candidate for	Filed	Certificate of Validity REVISED CODE 3501.11	We, the undersigned members of the Board of Elections of this county, certify that we have reviewed and examined the foregoing petition and find it to be sufficient and valid, and caused our signatures and official seal to be affixed at _____, Ohio, This _____ day of _____ Chairperson Member Member Member Member Director <small>(seal)</small>
---	--	-------	---	---

**NOMINATING PETITION AND STATEMENT OF CANDIDACY
FOR MUNICIPAL OFFICE**

For Use in Cities or Any Village with a Population of 2,000 or more

To be filed with the Board of Elections not later than 4 p.m. the day before the primary election.
Revised Code 3501.38, 3513.261, 3513.262

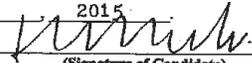
**NOTE -- THE CANDIDATE MUST FILL IN, SIGN AND DATE THIS STATEMENT OF CANDIDACY
BEFORE PETITIONS ARE CIRCULATED.**

STATEMENT OF CANDIDACY

I, Thomas M. Bernabei, the undersigned, hereby declare under penalty of election
(Name of Candidate)
falsification that my voting residence address is 2118 University Ave. N.W.
(Street and Number, if any, or Rural Route Number)
Canton, Ohio 44709; and I am a qualified elector.
(City or Village) (Zip Code)

I further declare that I desire to be a candidate for election to the office of Mayor
in the Municipality of City of Canton
for the: (check one) full term, or unexpired term ending _____, in
(Fill in the appropriate date)
Stark County, Ohio at the general election to be held on the 3rd day
of November, 2015.

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

Dated this 3rd day of May, 2015

(Signature of Candidate)

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

I, Thomas M. Bernabei, hereby designate the persons named below as a committee to
(Name of Candidate)
represent me:

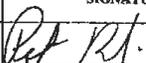
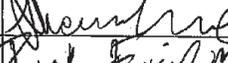
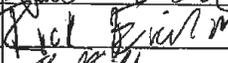
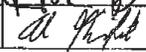
NAME	RESIDENCE

RECEIVED
 2015 MAY 4 PM 3:23
 STARK COUNTY
 BOARD OF ELECTIONS

NOMINATING PETITION

We, the undersigned, qualified electors of the State of Ohio, whose voting residence is in the county, city, village, or township set opposite our names, hereby nominate Thomas M. Bernabei as a candidate for election to the office of Mayor in the municipality of City of Canton, for the: (check one) full term, or unexpired term ending _____, to be voted for at the next general election, and certify said person is, in (Fill in the appropriate date) our opinion, well qualified to perform, the duties of the office or position to which the person desires to be elected.

Signatures on this petition must be from only one county and must be written in ink.

	SIGNATURE	VOTING RESIDENCE ADDRESS STREET AND NUMBER	CITY, VILLAGE OR TOWNSHIP	COUNTY	DATE OF SIGNING
1.		351 35th St NW	Canton	Stark	5/1/15
2.		310 21st Street NW	CANTON	Stark	5/3/15
3.		310 2nd Street NW	Canton	Stark	5/3/15
4.		402 22nd Street NW	Canton	Stark	5/2/15

	SIGNATURE	VOTING RESIDENCE ADDRESS STREET AND NUMBER	CITY, VILLAGE OR TOWNSHIP	COUNTY	DATE OF SIGNING
5.	<i>[Signature]</i>	4000 Broadway NW	Canton	Stark	5/3/15
6.	<i>[Signature]</i>	345 22nd St NW	Canton	Stark	5/3/15
7.	<i>[Signature]</i>	408-23rd NW	Canton	Stark	5/3/15
8.	<i>[Signature]</i>	714-26th St NE	Canton	Stark	5-3-15
9.	<i>[Signature]</i>	209 26th St NE	Canton	Stark	5/3/15
10.	<i>[Signature]</i>	722 26th St NE	Canton	Stark	5-3-15
11.	<i>[Signature]</i>	726 26th St NE	Canton	Stark	5-3-15
12.	<i>[Signature]</i>	816 Colonial Blvd NE	Canton	Stark	5-3-15
13.	<i>[Signature]</i>	723-26th St NE	Canton	Stark	5-3-15
14.	<i>[Signature]</i>	335-36th St NW	Canton	Stark	5-3-15
15.	<i>[Signature]</i>	335 36th St NW	Canton	Stark	5-3-15
16.	<i>[Signature]</i>	209 36th St NW	Canton	"	5/3/15
17.	<i>[Signature]</i>	209 36th St NW	Canton	Stark	5/3/15
18.	<i>[Signature]</i>	143 18th St NW	Canton	Stark	5/3/15

CIRCULATOR STATEMENT - Must be completed and signed by circulator.

I, Pamela A. Bernabei-Borner, declare under penalty of election falsification that I
(Printed Name of Circulator)
 reside at the address appearing below my signature; that I am the circulator of the foregoing petition
 containing 18 signatures; that I witnessed the affixing of every signature; that all signers were to
(Number)
 the best of my knowledge and belief qualified to sign; and that every signature is to the best of my
 knowledge and belief the signature of the person whose signature it purports to be or of an attorney in fact
 acting pursuant to section 3501.382 of the Revised Code.

[Signature]
(Signature of Circulator)
212 36th St NW
(Permanent residence address)
Canton, OH 44709
(City or Village, State and Zip Code)

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

County Board of Elections
 Form 3-N Nominating Petition
 For Municipal Office

Statement of Candidacy of
 Candidate for _____

Filed _____

Certificate of Validity
 REVISED CODE 3501.11

We, the undersigned members of the Board of
 Elections of this county, certify that we have
 reviewed and examined the foregoing petition and
 find it to be sufficient and valid, and caused our
 signatures and official seal to be
 affixed at _____ Ohio,
 This _____ day of _____

Chairperson _____
 Member _____
 Member _____
 Member _____
 Member _____
 Director _____ (seal)

**NOMINATING PETITION AND STATEMENT OF CANDIDACY
FOR MUNICIPAL OFFICE**

For Use in Cities or Any Village with a Population of 2,000 or more

To be filed with the Board of Elections not later than 4 p.m. the day before the primary election.
Revised Code 3501.38, 3513.261, 3513.262

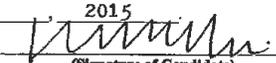
**NOTE - THE CANDIDATE MUST FILL IN, SIGN AND DATE THIS STATEMENT OF CANDIDACY
BEFORE PETITIONS ARE CIRCULATED.**

STATEMENT OF CANDIDACY

I, Thomas M. Bernabei, the undersigned, hereby declare under penalty of election
(Name of Candidate)
falsification that my voting residence address is 2118 University Ave. N.W.
(Street and Number, if any, or Rural Route Number)
Canton, Ohio 44709; and I am a qualified elector.
(City or Village) (Zip Code)

I further declare that I desire to be a candidate for election to the office of Mayor
in the Municipality of City of Canton
for the: (check one) full term, or unexpired term ending _____, in
(Fill in the appropriate date)
Stark County, Ohio at the general election to be held on the 3rd day
of November, 2015.

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

Dated this 3rd day of May, 2015

(Signature of Candidate)

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

I, Thomas M. Bernabei, hereby designate the persons named below as a committee to
(Name of Candidate)
represent me:

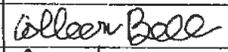
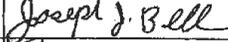
NAME	RESIDENCE

2015 MAY -4 PM 3:23
 RECEIVED
 STARK COUNTY
 BOARD OF ELECTIONS

NOMINATING PETITION

We, the undersigned, qualified electors of the State of Ohio, whose voting residence is in the county, city, village, or township set opposite our names, hereby nominate Thomas M. Bernabei as a candidate for election to the office of Mayor in the municipality of City of Canton, for the: (check one) full term, or unexpired term ending _____, to be voted for at the next general election, and certify said person is, in our opinion, well qualified to perform, the duties of the office or position to which the person desires to be elected.
(Fill in the appropriate date)

Signatures on this petition must be from only one county and must be written in ink.

	SIGNATURE	VOTING RESIDENCE ADDRESS STREET AND NUMBER	CITY, VILLAGE OR TOWNSHIP	COUNTY	DATE OF SIGNING
1.		<u>2917 8th NW</u>	<u>Canton</u>	<u>Stark</u>	<u>05-03-15</u>
2.		<u>5149 Rebecca Ave. NW</u>	<u>Canton</u>	<u>Stark</u>	<u>5/3/15</u>
3.		<u>5149 Rebecca Ave. NW</u>	<u>Canton</u>	<u>Stark</u>	<u>5/3/15</u>
4.					

	SIGNATURE	VOTING RESIDENCE ADDRESS STREET AND NUMBER	CITY, VILLAGE OR TOWNSHIP	COUNTY	DATE OF SIGNING
5.					
6.					
7.					
8.					
9.					
10.					
11.					
12.					
13.					
14.					
15.					
16.					
17.					
18.					

CIRCULATOR STATEMENT – Must be completed and signed by circulator.

I, BERNADETTE BERNADETTE, declare under penalty of election falsification that I
(Printed Name of Circulator)
 reside at the address appearing below my signature; that I am the circulator of the foregoing petition
 containing 3 signatures; that I witnessed the affixing of every signature; that all signers were to
(Number)
 the best of my knowledge and belief qualified to sign; and that every signature is to the best of my
 knowledge and belief the signature of the person whose signature it purports to be or of an attorney in fact
 acting pursuant to section 3501.382 of the Revised Code.

Bernadette Bernadette
(Signature of Circulator)

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

2746 DUNKIN DR. NW
(Permanent residence address)

CANTON, OHIO 44708
(City or Village, State and Zip Code)

County Board of Elections
 Form 3-N Nominating Petition
 For Municipal Office

Statement of Candidacy of
 Candidate for _____

Filed _____

Certificate of Validity
 REVISED CODE 3501.11

We, the undersigned members of the Board of
 Elections of this county, certify that we have
 reviewed and examined the foregoing petition and
 find it to be sufficient and valid, and caused our
 signatures and official seal to be
 affixed at _____, Ohio,
 This _____ day of _____

Chairperson _____

Member _____

Member _____

Member _____

Member _____

Director _____ (seal)

**NOMINATING PETITION AND STATEMENT OF CANDIDACY
FOR MUNICIPAL OFFICE**

For Use in Cities or Any Village with a Population of 2,000 or more

To be filed with the Board of Elections not later than 4 p.m. the day before the primary election.
Revised Code 3501.38, 3513.261, 3513.262

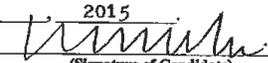
**NOTE -- THE CANDIDATE MUST FILL IN, SIGN AND DATE THIS STATEMENT OF CANDIDACY
BEFORE PETITIONS ARE CIRCULATED.**

STATEMENT OF CANDIDACY

I, Thomas M. Bernabei, the undersigned, hereby declare under penalty of election
(Name of Candidate)
falsification that my voting residence address is 2118 University Ave. N.W.
(Street and Number, if any, or Rural Route Number)
Canton, Ohio 44709; and I am a qualified elector.
(City or Village) (Zip Code)

I further declare that I desire to be a candidate for election to the office of Mayor
in the Municipality of City of Canton
for the: (check one) full term, or unexpired term ending _____, in
(Fill in the appropriate date)
Stark County, Ohio at the general election to be held on the 3rd day
of November, 2015.

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

Dated this 3rd day of May, 2015

(Signature of Candidate)

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

I, Thomas M. Bernabei, hereby designate the persons named below as a committee to
(Name of Candidate)
represent me:

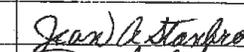
NAME	RESIDENCE

2015 MAY -4 PM 3:24
RECEIVED
STARK COUNTY
BOARD OF ELECTIONS

NOMINATING PETITION

We, the undersigned, qualified electors of the State of Ohio, whose voting residence is in the county, city, village, or township set opposite our names, hereby nominate Thomas M. Bernabei as a candidate for election to the office of Mayor in the municipality of City of Canton, for the: (check one) full term, or unexpired term ending _____, to be voted for at the next general election, and certify said person is, in (Fill in the appropriate date) our opinion, well qualified to perform, the duties of the office or position to which the person desires to be elected.

Signatures on this petition must be from only one county and must be written in ink.

	SIGNATURE	VOTING RESIDENCE ADDRESS STREET AND NUMBER	CITY, VILLAGE OR TOWNSHIP	COUNTY	DATE OF SIGNING
1.		3811 BERNARD AVENUE	CANTON	STARK	5-3-15
2.		3811 BERNARD AVENUE	CANTON	STARK	5-3-15
3.	Stefanie Bell	1326 31 st ST NW	CANTON	STARK	5-3-15
4.	Jennifer Schultz	828 37th ST NW	CANTON	STARK	5-3-15

	SIGNATURE	VOTING RESIDENCE ADDRESS STREET AND NUMBER	CITY, VILLAGE OR TOWNSHIP	COUNTY	DATE OF SIGNING
5.	<i>[Signature]</i>	828 37 th NW	Canton	Stark	5/3/15
6.	<i>Cindy Uida</i>	3900 NORMAN AVE	Canton	Stark	5/3/15
7.	<i>Heather Heigel</i>	914 Field St NW	Canton	Stark	5/3/15
8.	<i>Michael A. Maffio</i>	121 CRESTDALE NE	CANTON	STARK	5/3/15
9.	<i>Diana D Maffio</i>	121 Crestdale NE 599 S	Canton	Stark	5-3-15
10.	<i>Judith Mattson</i>	704 Coatsdale Pkwy	Canton	Stark	5-3-15
11.	<i>[Signature]</i>	4444 Dawnridge Ln	Canton	Stark	5/3/15
12.	<i>[Signature]</i>	4444 DAWN RIDGE AVE	CANTON	STARK	5/3/15
13.	<i>[Signature]</i>	4450 Dawn Ridge Ave	Canton	Stark	5/3/15
14.	<i>Mary Jo DeChallos</i>	4450 Dawnridge Ln NW	Canton	Stark	5/3/15
15.	<i>[Signature]</i>	4445 Dawnridge Ave	Canton	Stark	5/3/15
16.	<i>Elizabeth J. Jorde</i>	4415 Dawnridge Cr NW	CANTON	STARK	5/3/15
17.	<i>Mary Garrison</i>	535-38th NW	CANTON	STARK	5/3/15
18.					

CIRCULATOR STATEMENT – Must be completed and signed by circulator.

I, BERNETTE BERNARD, declare under penalty of election falsification that I
(Printed Name of Circulator)
 reside at the address appearing below my signature; that I am the circulator of the foregoing petition
 containing 17 signatures; that I witnessed the affixing of every signature; that all signers were to
(Number)
 the best of my knowledge and belief qualified to sign; and that every signature is to the best of my
 knowledge and belief the signature of the person whose signature it purports to be or of an attorney in fact
 acting pursuant to section 3501.382 of the Revised Code.

[Signature]
(Signature of Circulator)

2745 DUKEITH DR. NW.
(Permanent residence address)

CANTON, OH 44708
(City or Village, State and Zip Code)

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

County Board of Elections
 Form 3-N Nominating Petition
 For Municipal Office

Statement of Candidacy of _____
 Candidate for _____

Filed _____

Certificate of Validity
 REVISED CODE 3501.11

We, the undersigned members of the Board of
 Elections of this county, certify that we have
 reviewed and examined the foregoing petition and
 find it to be sufficient and valid, and caused our
 signatures and official seal to be
 affixed at _____, Ohio,
 This _____ day of _____

Chairperson _____
 Member _____
 Member _____
 Member _____
 Member _____
 Director _____ (seal)

**NOMINATING PETITION AND STATEMENT OF CANDIDACY
FOR MUNICIPAL OFFICE**

For Use in Cities or Any Village with a Population of 2,000 or more

To be filed with the Board of Elections not later than 4 p.m. the day before the primary election.
Revised Code 3501.38, 3513.261, 3513.262

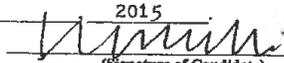
**NOTE - THE CANDIDATE MUST FILL IN, SIGN AND DATE THIS STATEMENT OF CANDIDACY
BEFORE PETITIONS ARE CIRCULATED.**

STATEMENT OF CANDIDACY

I, Thomas M. Bernabei, the undersigned, hereby declare under penalty of election
(Name of Candidate)
falsification that my voting residence address is 2118 University Ave. N.W.
(Street and Number, if any, or Rural Route Number)
Canton, Ohio 44709; and I am a qualified elector.
(City or Village) (Zip Code)

I further declare that I desire to be a candidate for election to the office of Mayor
in the Municipality of City of Canton
for the: (check one) full term, or unexpired term ending _____, in
(Fill in the appropriate date)
Stark County, Ohio at the general election to be held on the 3rd day
of November, 2015.

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

Dated this 3rd day of May 2015

(Signature of Candidate)

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

I, Thomas M. Bernabei, hereby designate the persons named below as a committee to
(Name of Candidate)
represent me:

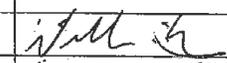
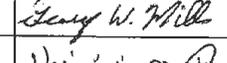
NAME	RESIDENCE

RECEIVED
 2015 MAY -4 PM 3:24
 STARK COUNTY
 BOARD OF ELECTIONS

NOMINATING PETITION

We, the undersigned, qualified electors of the State of Ohio, whose voting residence is in the county, city, village, or township set opposite our names, hereby nominate Thomas M. Bernabei as a candidate for election to the office of Mayor in the municipality of City of Canton, for the: (check one) full term, or unexpired term ending _____, to be voted for at the next general election, and certify said person is, in (Fill in the appropriate date) our opinion, well qualified to perform, the duties of the office or position to which the person desires to be elected.

Signatures on this petition must be from only one county and must be written in ink.

	SIGNATURE	VOTING RESIDENCE ADDRESS STREET AND NUMBER	CITY, VILLAGE OR TOWNSHIP	COUNTY	DATE OF SIGNING
1.		1211-41st St. NW Canton	Canton	Stark	5/3/15
2.		1306-39th NW	Canton	Stark	5/3/15
3.		1306 37th St NW	Canton	Stark	5/3/15
4.		5203 George St NW Canton	Canton	Stark	5/3/15

	SIGNATURE	VOTING RESIDENCE ADDRESS STREET AND NUMBER	CITY, VILLAGE OR TOWNSHIP	COUNTY	DATE OF SIGNING
5.	<i>Pamela Anderson</i>	5203 Canton Hill Circle	Canton	Stark	5/3/15
6.	<i>Bruce A. Yarnall</i>	5315 Somerville Dr. NE	Canton	Stark	5/3/15
7.	<i>Janice [unclear]</i>	1211 41st NW	Canton	Stark	5/4/15
8.	<i>Stacia Poole</i>	1411-41st W	Canton	Stark	5/4/15
9.	<i>David Poole</i>	1411-41st NW	CANTON	STARK	5/4/15
10.	<i>Anna M. Baumgardner</i>	1616-41st. NW	Canton	Stark	5/4/15
11.	<i>James [unclear]</i>	3916 Vernon Avenue	Canton	Stark	5-4-15
12.	<i>Michelle [unclear]</i>	4002 Shandonck Ave NW	Canton	Stark	5/4/15
13.	<i>Barbara [unclear]</i>	1105 Younger Ave NE	CANTON	STARK	5/4/15
14.	<i>Marcia K. Zawadzky</i>	2831 Harrison Ave NW	Canton	Stark	5/4/15
15.	<i>Martin H. Zawadzky</i>	2831 Harrison Ave NW	Canton	Stark	5/4/15
16.	<i>Mark [unclear]</i>	1231 Center St. NE	Canton	Stark	5/4/15
17.					
18.					

CIRCULATOR STATEMENT – Must be completed and signed by circulator.

I, LEON M. COTE, declare under penalty of election falsification that I
(Printed Name of Circulator)
 reside at the address appearing below my signature; that I am the circulator of the foregoing petition containing 16 signatures; that I witnessed the affixing of every signature; that all signers were to
(Number)
 the best of my knowledge and belief qualified to sign; and that every signature is to the best of my knowledge and belief the signature of the person whose signature it purports to be or of an attorney in fact acting pursuant to section 3501.382 of the Revised Code.

Leon M. Cote
(Signature of Circulator)

1225 41st St. N.W.
(Permanent residence address)

Canton, Ohio 44709
(City or Village, State and Zip Code)

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

County Board of Elections
 Form 3-N Nominating Petition
 For Municipal Office

Statement of Candidacy of _____
 Candidate for _____
 Filed _____

Certificate of Validity
 REVISED CODE 3501.11

We, the undersigned members of the Board of Elections of this county, certify that we have reviewed and examined the foregoing petition and find it to be sufficient and valid, and caused our signatures and official seal to be affixed at _____, Ohio, This _____ day of _____, _____

Chairperson _____
 Member _____
 Member _____
 Member _____
 Member _____
 Director _____ (seal)

**NOMINATING PETITION AND STATEMENT OF CANDIDACY
FOR MUNICIPAL OFFICE**

For Use in Cities or Any Village with a Population of 2,000 or more

To be filed with the Board of Elections not later than 4 p.m. the day before the primary election.
Revised Code 3501.38, 3513.261, 3513.262

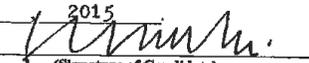
**NOTE - THE CANDIDATE MUST FILL IN, SIGN AND DATE THIS STATEMENT OF CANDIDACY
BEFORE PETITIONS ARE CIRCULATED.**

STATEMENT OF CANDIDACY

I, Thomas M. Bernabei, the undersigned, hereby declare under penalty of election
(Name of Candidate)
falsification that my voting residence address is 2118 University Ave. N.W.
(Street and Number, if any, or Rural Route Number)
Canton, Ohio 44709; and I am a qualified elector.
(City or Village) (Zip Code)

I further declare that I desire to be a candidate for election to the office of Mayor
in the Municipality of City of Canton
for the: (check one) full term, or unexpired term ending _____, in
Stark County, Ohio at the general election to be held on the 3rd day
(Fill in the appropriate date)
of November, 2015.

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

Dated this 3rd day of May, 2015

(Signature of Candidate)

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

I, Thomas M. Bernabei, hereby designate the persons named below as a committee to
(Name of Candidate)
represent me:

NAME	RESIDENCE

2015 MAY -4 PM 3:24
 RECEIVED
 STARK COUNTY
 BOARD OF ELECTIONS

NOMINATING PETITION

We, the undersigned, qualified electors of the State of Ohio, whose voting residence is in the county, city, village, or township set opposite our names, hereby nominate Thomas M. Bernabei as a candidate for election to the office of Mayor in the municipality of City of Canton, for the: (check one) full term, or unexpired term ending _____, to be voted for at the next general election, and certify said person is, in (Fill in the appropriate date) our opinion, well qualified to perform, the duties of the office or position to which the person desires to be elected.

Signatures on this petition must be from only one county and must be written in ink.

	SIGNATURE	VOTING RESIDENCE ADDRESS STREET AND NUMBER	CITY, VILLAGE OR TOWNSHIP	COUNTY	DATE OF SIGNING
1.	<u>Barbara Z. Morgan</u>	<u>922 27th St. NE</u>	<u>Canton</u>	<u>Stark</u>	<u>05/03/15</u>
2.	<u>Carl Anderson</u>	<u>915 27th St. NE</u>	<u>Canton</u>	<u>STARK</u>	<u>05/03/15</u>
3.	<u>Oliver Anderson</u>	<u>918 27th St. NE</u>	<u>Canton</u>	<u>STARK</u>	<u>05/13/15</u>
4.	<u>Jerome A. Hart</u>	<u>2405 University Ave</u>	<u>Canton</u>	<u>Stark</u>	<u>5/3/15</u>

	SIGNATURE	VOTING RESIDENCE ADDRESS STREET AND NUMBER	CITY, VILLAGE OR TOWNSHIP	COUNTY	DATE OF SIGNING
5.	<i>Richard A. Hart</i>	2205 UNIVERSITY BLVD.	CANTON	STARK	5/3/15
6.	<i>Mark D. Bowman</i>	117 Colonial Blvd	CANTON	STARK	5/3/15
7.	<i>Raven Bowman</i>	117 Colonial Blvd	NE Canton	Stark	5-3-15
8.	<i>Andy Ross</i>	703 Colonial Blvd	NE Canton	Stark	5-3-15
9.	<i>Ronald E. Hoff</i>	3309 Belmont Pl SW	Canton	Stark	5-3-15
10.	<i>Jane Henderson</i>	237 33rd St NW	Canton	Stark	5-3-15
11.	<i>Shawn A. Jones</i>	2617 WILSON AVE	CANTON	STARK	5-4-15
12.					
13.					
14.					
15.					
16.					
17.					
18.					

CIRCULATOR STATEMENT – Must be completed and signed by circulator.

I, C. DAVID MORGAN, declare under penalty of election falsification that I
(Printed Name of Circulator)
 reside at the address appearing below my signature; that I am the circulator of the foregoing petition
 containing 11 signatures; that I witnessed the affixing of every signature; that all signers were to
(Number)
 the best of my knowledge and belief qualified to sign; and that every signature is to the best of my
 knowledge and belief the signature of the person whose signature it purports to be, or of an attorney in fact
 acting pursuant to section 3501.382 of the Revised Code.

[Signature]
(Signature of Circulator)

922 ZTEU NE
(Permanent residence address)

CANTON OH 44714
(City or Village, State and Zip Code)

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

County Board of Elections
 Form 3-N Nominating Petition
 For Municipal Office

Statement of Candidacy of _____
 Candidate for _____

Filed _____

Certificate of Validity
 REVISED CODE 3501.11

We, the undersigned members of the Board of
 Elections of this county, certify that we have
 reviewed and examined the foregoing petition and
 find it to be sufficient and valid, and caused our
 signatures and official seal to be
 affixed at _____, Ohio,
 This _____ day of _____,
 Chairperson _____
 Member _____
 Member _____
 Member _____
 Member _____
 Director _____ (seal)

**NOMINATING PETITION AND STATEMENT OF CANDIDACY
FOR MUNICIPAL OFFICE**

For Use in Cities or Any Village with a Population of 2,000 or more

To be filed with the Board of Elections not later than 4 p.m. the day before the primary election.
Revised Code 3501.38, 3513.261, 3513.262

**NOTE - THE CANDIDATE MUST FILL IN, SIGN AND DATE THIS STATEMENT OF CANDIDACY
BEFORE PETITIONS ARE CIRCULATED.**

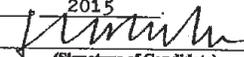
STATEMENT OF CANDIDACY

I, Thomas M. Bernabei, the undersigned, hereby declare under penalty of election
(Name of Candidate)
falsification that my voting residence address is 2118 University Ave. N.W.
(Street and Number, if any, or Rural Route Number)
Canton, Ohio 44709; and I am a qualified elector.
(City or Village) (Zip Code)

I further declare that I desire to be a candidate for election to the office of Mayor
in the Municipality of City of Canton
for the: (check one) full term, or unexpired term ending _____, in
(Fill in the appropriate date)
Stark County, Ohio at the general election to be held on the 3rd day
of November, 2015.

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

Dated this 3rd day of May 2015


(Signature of Candidate)

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

I, Thomas M. Bernabei, hereby designate the persons named below as a committee to
(Name of Candidate)
represent me:

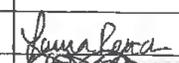
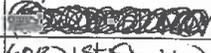
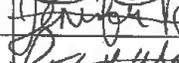
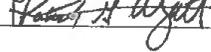
NAME	RESIDENCE

2015 MAY -4 PM 3:24
RECEIVED
STARK COUNTY
BOARD OF ELECTION

NOMINATING PETITION

We, the undersigned, qualified electors of the State of Ohio, whose voting residence is in the county, city, village, or township set opposite our names, hereby nominate Thomas M. Bernabei as a candidate for election to the office of Mayor in the municipality of City of Canton, for the: (check one) full term, or unexpired term ending _____, to be voted for at the next general election, and certify said person is, in our opinion, well qualified to perform, the duties of the office or position to which the person desires to be elected.

Signatures on this petition must be from only one county and must be written in ink.

	SIGNATURE	VOTING RESIDENCE ADDRESS STREET AND NUMBER	CITY, VILLAGE OR TOWNSHIP	COUNTY	DATE OF SIGNING
1.		<u>444 Lakecrest St NW</u>	<u>CANTON</u>	<u>STARK</u>	<u>5/3/15</u>
2.					
3.		<u>608 21st St NW</u>	<u>Canton</u>	<u>STARK</u>	<u>5/4/15</u>
4.		<u>225 2nd St NW, Suite 101</u>	<u>Canton</u>	<u>Stark</u>	<u>5/19/15</u>

	SIGNATURE	VOTING RESIDENCE ADDRESS STREET AND NUMBER	CITY, VILLAGE OR TOWNSHIP	COUNTY	DATE OF SIGNING
5.	Brenda Jackson	326 23rd St NW	Canton	Stark	5/3/15
6.	BLAKE FEARN	345 23rd St NW	Canton	Stark	5/3/15
7.	Deborah Fearn	345 23rd St NW	Canton	Stark	5/3/15
8.	Kathleen A. Conde	318 23rd St NW	Canton	Stark	5/3/15
9.	_____	244 23rd St. N.W.	CANTON	Stark	5/3/15
10.	Lisa Means	205 23rd St. NW	Canton	Stark	5/3/15
11.	STON	205 23rd St NW	Canton	Stark	5/3/15
12.	David Baker	168 23rd St. NW	Canton	Stark	5/3/15
13.	David Baker	168 23rd St. NW	Canton	Stark	5/3/15
14.	Rodney Conrad	148 19th St. NW	Canton	Stark	5/3/15
15.	Elisha Conrad	148 19th St. N.W.	Canton	Stark	5-3-15
16.	E. Dennis Holbrook	319 31st NW	CANTON	STARK	5/3/15
17.	Marilyn M Holbrook	319 31st NW	CANTON	STARK	5/3/15
18.	Lebonna Laurion	5205 61st St NW	canton	Stark	5/3/15

CIRCULATOR STATEMENT - Must be completed and signed by circulator.

I, ALBERT R CONDE, declare under penalty of election falsification that I
(Printed Name of Circulator)
 reside at the address appearing below my signature; that I am the circulator of the foregoing petition
 containing 17 signatures; that I witnessed the affixing of every signature; that all signers were to
(Number)
 the best of my knowledge and belief qualified to sign; and that every signature is to the best of my
 knowledge and belief the signature of the person whose signature it purports to be or of an attorney in fact
 acting pursuant to section 3501.382 of the Revised Code.

Albert R Conde
(Signature of Circulator)

318 23rd St. NW
(Permanent residence address)

Canton, OH 44709
(City or Village, State and Zip Code)

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

County Board of Elections Form 3-N Nominating Petition For Municipal Office	Statement of Candidacy of Candidate for	Filed	Certificate of Validity REVISED CODE 3501.11	We, the undersigned members of the Board of Elections of this county, certify that we have reviewed and examined the foregoing petition and find it to be sufficient and valid, and caused our signatures and official seal to be affixed at _____, Ohio, This _____ day of _____, Chairperson Member Member Member Member Director	(seal)
---	--	-------	---	---	--------

**NOMINATING PETITION AND STATEMENT OF CANDIDACY
FOR MUNICIPAL OFFICE**

For Use in Cities or Any Village with a Population of 2,000 or more

To be filed with the Board of Elections not later than 4 p.m. the day before the primary election.
Revised Code 3501.38, 3513.261, 3513.262

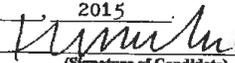
**NOTE -- THE CANDIDATE MUST FILL IN, SIGN AND DATE THIS STATEMENT OF CANDIDACY
BEFORE PETITIONS ARE CIRCULATED.**

STATEMENT OF CANDIDACY

I, Thomas M. Bernabei, the undersigned, hereby declare under penalty of election
(Name of Candidate)
falsification that my voting residence address is 2118 University Ave. N.W.
(Street and Number, if any, or Rural Route Number)
Canton, Ohio 44709; and I am a qualified elector.
(City or Village) (Zip Code)

I further declare that I desire to be a candidate for election to the office of Mayor
in the Municipality of City of Canton,
for the: (check one) full term, or unexpired term ending _____, in
Stark County, Ohio at the general election to be held on the 3rd day
of November, 2015. (Fill in the appropriate date)

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

Dated this 3rd day of May, 2015

(Signature of Candidate)

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

I, Thomas M. Bernabei, hereby designate the persons named below as a committee to
(Name of Candidate)
represent me:

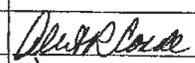
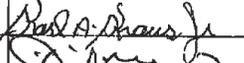
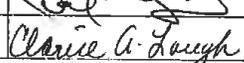
NAME	RESIDENCE

2015 MAY -4 PM 3:24
RECEIVED
STARK COUNTY
BOARD OF ELECTIONS

NOMINATING PETITION

We, the undersigned, qualified electors of the State of Ohio, whose voting residence is in the county, city, village, or township set opposite our names, hereby nominate Thomas M. Bernabei as a candidate for election to the office of Mayor in the municipality of City of Canton, for the: (check one) full term, or unexpired term ending _____, to be voted for at the next general election, and certify said person is, in (Fill in the appropriate date) our opinion, well qualified to perform, the duties of the office or position to which the person desires to be elected.

Signatures on this petition must be from only one county and must be written in ink.

	SIGNATURE	VOTING RESIDENCE ADDRESS STREET AND NUMBER	CITY, VILLAGE OR TOWNSHIP	COUNTY	DATE OF SIGNING
1.		<u>218 23rd St NW</u>	<u>Canton</u>	<u>Stark</u>	<u>5/3/2015</u>
2.		<u>5315 Loma Linda Ln. E.</u>	<u>CANTON</u>	<u>STARK</u>	<u>5/3/2015</u>
3.		<u>922 24th NE</u>	<u>CANTON</u>	<u>STARK</u>	<u>5/3/2015</u>
4.	<u>Charlie A. Lough</u>	<u>711-41st. N.W</u>	<u>CANTON</u>	<u>STARK</u>	<u>5/4/15</u>

	SIGNATURE	VOTING RESIDENCE ADDRESS STREET AND NUMBER	CITY, VILLAGE OR TOWNSHIP	COUNTY	DATE OF SIGNING
5.	<i>[Signature]</i>	721-41st P+M	Canton	Stark	4/21/15
6.	<i>[Signature]</i>	700 11th St NW	Canton	Stark	5/4/15
7.	<i>[Signature]</i>	9103 CRIMER AVE NW	CANTON	STARK	5/4/15
8.	<i>[Signature]</i>	1724 Fulton Rd NW	Canton	Stark	5/4/15
9.	<i>[Signature]</i>	1130 26th St NE	Canton	Stark	5/4/15
10.	<i>[Signature]</i>	1920 Edwards NE	Canton	Stark	5/4/15
11.	<i>[Signature]</i>	1939-54th St, N.E	Canton	Stark	5-4-2015
12.	<i>[Signature]</i>	2117 Rowland Ave, NE	Canton	Stark	5-4-2015
13.	<i>[Signature]</i>	223 22nd St. NW	Canton	Stark	5-4-2015
14.					
15.					
16.					
17.					
18.					

CIRCULATOR STATEMENT – Must be completed and signed by circulator.

I, JANET WEIR CREIGHTON, declare under penalty of election falsification that I
(Printed Name of Circulator)
 reside at the address appearing below my signature; that I am the circulator of the foregoing petition
 containing 13 signatures; that I witnessed the affixing of every signature; that all signers were to
(Number)
 the best of my knowledge and belief qualified to sign; and that every signature is to the best of my
 knowledge and belief the signature of the person whose signature it purports to be or of an attorney in fact
 acting pursuant to section 3501.382 of the Revised Code.

[Signature]
(Signature of Circulator)
 7711 Bucknell Cir NW
(Permanent residence address)
 N. Canton OH 44720
(City or Village, State and Zip Code)

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

County Board of Elections
 Form 2-N Nominating Petition
 For Municipal Office

Statement of Candidacy of _____
 Candidate for _____

Filed _____
 Certificate of Validity
 REVISED CODE 3501.11

We, the undersigned members of the Board of
 Elections of this county, certify that we have
 reviewed and examined the foregoing petition and
 find it to be sufficient and valid, and caused our
 signatures and official seal to be
 affixed at _____, Ohio,
 This _____ day of _____,
 Chairperson _____
 Member _____
 Member _____
 Member _____
 Member _____
 Director _____ (seal)

**NOMINATING PETITION AND STATEMENT OF CANDIDACY
FOR MUNICIPAL OFFICE**

For Use in Cities or Any Village with a Population of 2,000 or more

To be filed with the Board of Elections not later than 4 p.m. the day before the primary election.
Revised Code 3501.38, 3513.261, 3513.262

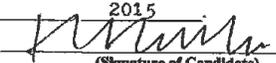
**NOTE - THE CANDIDATE MUST FILL IN, SIGN AND DATE THIS STATEMENT OF CANDIDACY
BEFORE PETITIONS ARE CIRCULATED.**

STATEMENT OF CANDIDACY

I, Thomas M. Bernabei, the undersigned, hereby declare under penalty of election
(Name of Candidate)
falsification that my voting residence address is 2118 University Ave. N.W.
(Street and Number, if any, or Rural Route Number)
Canton, Ohio 44709; and I am a qualified elector.
(City or Village) (Zip Code)

I further declare that I desire to be a candidate for election to the office of Mayor
in the Municipality of City of Canton
for the: (check one) full term, or unexpired term ending _____, in
(Fill in the appropriate date)
Stark County, Ohio at the general election to be held on the 3rd day
of November, 2015.

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

Dated this 3rd day of May, 2015

(Signature of Candidate)

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

I, Thomas M. Bernabei, hereby designate the persons named below as a committee to
(Name of Candidate)
represent me:

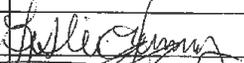
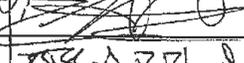
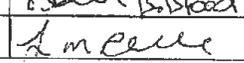
NAME	RESIDENCE

2015 MAY -4 PM 3:24
RECEIVED
STARK COUNTY
BOARD OF ELECTIONS

NOMINATING PETITION

We, the undersigned, qualified electors of the State of Ohio, whose voting residence is in the county, city, village, or township set opposite our names, hereby nominate Thomas M. Bernabei as a candidate for election to the office of Mayor in the municipality of City of Canton, for the: (check one) full term, or unexpired term ending _____, to be voted for at the next general election, and certify said person is, in our opinion, well qualified to perform, the duties of the office or position to which the person desires to be elected.

Signatures on this petition must be from only one county and must be written in ink.

	SIGNATURE	VOTING RESIDENCE ADDRESS STREET AND NUMBER	CITY, VILLAGE OR TOWNSHIP	COUNTY	DATE OF SIGNING
1.		5046 Rebecca Avenue	Canton	Stark	5/3/15
2.		5046 Rebecca Avenue	Canton	Stark	5/3/15
3.		376 Montebello Ave	Canton	Stark	5/3/15
4.		538 Montebello Ave	Canton	Stark	5-3-15

	SIGNATURE	VOTING RESIDENCE ADDRESS STREET AND NUMBER	CITY, VILLAGE OR TOWNSHIP	COUNTY	DATE OF SIGNING
5.	<i>Donald Bad</i>	326 Huntabek PI	Canton	Stark	5/3/15
6.	<i>Neil M...</i>	335 Montabek PI	Canton	Stark	5/3/15
7.	<i>Maha Beth...</i>	1624 Beckweel St NE	Canton	Stark	5/3/15
8.	<i>Nancy L. George</i>	1631-17th St NW	Canton	Stark	5/3/15
9.	<i>Patricia Dawson</i>	317-19th St NW	Canton	Stark	5/3/15
10.	<i>Lid Dawson</i>	317-19th St NW	Canton	Stark	5/3/15
11.	<i>Mary Ann Lemmo</i>	1129 Ridge Rd NW	Canton	Stark	5/3/15
12.	<i>Ronald Lemmo</i>	1129 Ridge Rd NW	Canton	Stark	5/3/15
13.	<i>Catherine Gott</i>	222 Raff Rd NW	Canton	Stark	5/3/15
14.	<i>[Signature]</i>	222 Raff Rd NW	Canton	Stark	5/3/15
15.	<i>Robert L. George</i>	1631 17th St NW	Canton	Stark	5/4/15
16.	<i>[Signature]</i>	2907 6th St NW	Canton	Stark	5/4/15
17.	<i>[Signature]</i>	256 Raff Rd NW	Canton	Stark	5/4/15
18.	<i>Angela Engstrom</i>	1126 Raff Rd SW	Canton	Stark	5/4/15

CIRCULATOR STATEMENT - Must be completed and signed by circulator.

I, Alan Harold, declare under penalty of election falsification that I
(Printed Name of Circulator)
 reside at the address appearing below my signature; that I am the circulator of the foregoing petition
 containing 18 signatures; that I witnessed the affixing of every signature; that all signers were to
(Number)
 the best of my knowledge and belief qualified to sign; and that every signature is to the best of my
 knowledge and belief the signature of the person whose signature it purports to be or of an attorney in fact
 acting pursuant to section 3501.382 of the Revised Code.

Alan Harold
(Signature of Circulator)

3025 Darlington NW
(Permanent residence address)

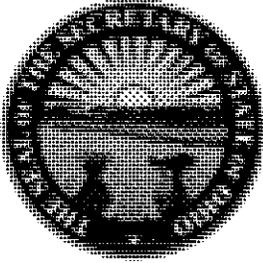
Canton OH 44708
(City or Village, State and Zip Code)

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

<p>County Board of Elections Form 3-N Nominating Petition For Municipal Office</p> <p>Statement of Candidacy of Candidate for _____ Filed _____</p> <p>Certificate of Validity REVISED CODE 3501.11</p> <p>We, the undersigned members of the Board of Elections of this county, certify that we have reviewed and examined the foregoing petition and find it to be sufficient and valid, and caused our signatures and official seal to be affixed at _____, Ohio, This _____ day of _____ Chairperson Member Member Member Member Director</p>	<p>(seal)</p>
---	---------------

APPX. TAB

2



JENNIFER BRUNNER
OHIO SECRETARY OF STATE

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

ADVISORY NO. 2007-05

June 4, 2007

To: All County Boards of Elections

Re: Independent Candidates and Party Affiliation

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

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

Facts and History of *Morrison*

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

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

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

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

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

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

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

The Appellate Court's Analysis

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

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

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

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

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

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

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

Conclusion

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

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

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

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

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

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

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

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

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

Sincerely,



Jennifer Brunner
Ohio Secretary of State

LEXSEE 467 F3D 503

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

No. 06-4216

UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

06a0373p.06;

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

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

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

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

DISPOSITION: Affirmed.

CASE SUMMARY:

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

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

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

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

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

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

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

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

OPINION BY: Griffin

OPINION:

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

I.

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

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

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

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

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

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

II.

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

III.

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

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

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

* * *

Many electoral regulations, including voter registration generally, require that voters take some action to participate in the primary process. *See, e.g., Rosario v. Rockefeller*, 410 U.S. 752, 760-62, 36 L. Ed. 2d 1, 93 S. Ct. 1245 (1973) (upholding requirement that voters change party registration 11 months in advance of the primary election). Election laws invariably "affect[t] -- at least to some degree -- the individual's [**7] right to vote and his right to associate with others for political ends." *Anderson v. Celebrezze*, 460 U.S. 780, 788, 75 L. Ed. 2d 547, 103 S. Ct. 1564 (1983).

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

C

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

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

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

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

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

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

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

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

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

OHIO REV. CODE § 3513.257.

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

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

IV.

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

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

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

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

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

[**16]

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

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

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

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

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

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

OHIO REV. CODE § 3513.20.

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

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

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

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

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

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

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

[**20]

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

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

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

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

V.

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

Affirmed.

APPX. TAB

3



Jon Husted
Ohio Secretary of State

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June 26, 2012

Lynn Kinkaid, Director
Jocelyn Bucaro, Deputy Director
Butler County Board of Elections
1802 Princeton Road
Princeton Road Campus
Hamilton, Ohio 45011

Re: Tie Vote on the Candidacy of Greg Jolivette

Dear Director Kinkaid and Deputy Director Bucaro:

At the Butler County Board of Elections meeting on May 30, 2012, the board held a protest hearing concerning the candidacy of Mr. Greg Jolivette. The protest hearing centered on whether Mr. Jolivette can appear on the ballot as an independent candidate for State Representative for the 51st House District. At the close of the hearing, Board Members Ellis and Shelton voted to grant the protest and keep Mr. Jolivette off the ballot. Chairperson Cloud and Board Member Carter voted to deny the protest and allow Mr. Jolivette to appear on the ballot. The vote resulted in a tie vote.

In accordance with R.C. 3501.11(X), your board submitted the tie vote to my office, including the reasoning behind the board members' votes and a copy of the transcript from the May 30, 2012 board meeting. My decision is outlined below.

On December 7, 2011, Mr. Jolivette filed his Declaration of Candidacy and Petition as a Republican candidate for nomination for State Representative in the 51st House District, the same office that he now seeks to run for as an independent.

After filing, Mr. Jolivette became aware that it was unlikely that the Butler County Board of Elections would certify his candidacy because of deficiencies in his Declaration of Candidacy and Petition. When the Butler County Board of Elections met on December 14, 2011 to certify candidates to the 2012 Primary Ballot, Mr. Jolivette indicated that he wished he had brought his petitions into the Board of Elections earlier so that the error would have been noted and he would have had additional time to circulate another petition. The Board decided not to act on Mr. Jolivette's certification until the next meeting to provide Mr. Jolivette and his counsel more time to conduct further research.

At the next board meeting, December 19, 2011, Mr. Jolivette withdrew his candidacy for State Representative for the 51st District. The same day, he resigned as member of the Republican State Central Committee.

Under Ohio law, an independent candidate is “any candidate who claims not to be affiliated with a political party.”¹ The Sixth Circuit Court of Appeals explained that an independent candidate must actually be unaffiliated, or disaffiliated from any political party.²

Although Mr. Jolivette did not vote in the 2012 primary election, Mr. Jolivette’s voting history shows that he voted in Republican primary elections in 2010, 2008, 2006, 2004, 2002, 2000, and 1998. From 1997 to 2010, Mr. Jolivette served as a Republican Legislator and as a Republican County Commissioner. In addition, during the fall of 2011, Mr. Jolivette asserted his affiliation with the Republican Party by circulating and filing a petition to run in the Republican Party primary election for nomination as the Republican candidate for the 51st House District for the November 2012 General Election. Because Mr. Jolivette did not have sufficient valid signatures to be certified to the primary ballot as a Republican, he withdrew his candidacy and subsequently filed to run for the same office as an independent candidate.

Based on the facts described above, I find that Mr. Jolivette is not unaffiliated and cannot run as an independent candidate for this election. I therefore break the tie in favor of the protest. If you have any questions please contact the Secretary of State’s election counsel assigned to your county.

Sincerely,



Jon Husted

¹ R.C. 3501.01(I).

² *Morrison v. Colley*, 467 F. 3d 503, 509 (2006).

APPX. TAB

4

886 F.Supp.2d 820
United States District Court,
S.D. Ohio,
Eastern Division.

Greg JOLIVETTE, Plaintiff,
v.
Jon HUSTED, Ohio Secretary of State, et al.,
Defendants.

Case No. 2:12-cv-603. | Aug. 15, 2012.

Synopsis

Background: Prospective independent candidate for office of state representative brought action against state and county election officials seeking for declaratory and injunctive relief that would allow him to run in general election. Candidate moved for preliminary injunction, and officials moved to dismiss.

Holdings: The District Court, [George C. Smith, J.](#), held that:

- ^[1] court had subject matter jurisdiction over action;
- ^[2] determination that candidate was not eligible to run as independent did not violate First Amendment;
- ^[3] Ohio's party disaffiliation provisions did not violate Equal Protection Clause; and
- ^[4] statute regarding challenges to nominating petitions did not violate Equal Protection Clause.

Motions denied.

Affirmed, [694 F.3d 760 \(6th Cir.2012\)](#)

Attorneys and Law Firms

*[822 John Corey Colombo](#), [Donald Joseph McTigue](#), [Mark Alan McGinnis](#), McTigue & McGinnis LLC, Columbus, OH, for Plaintiff.

[Aaron D. Epstein](#), Michael Joseph Schuler, Ohio Attorney General, Columbus, OH, for Defendants.

OPINION AND ORDER

[GEORGE C. SMITH](#), District Judge.

Plaintiff, Greg [Jolivet](#), has filed a Motion for Preliminary Injunction against Jon Husted, in his official capacity as the Ohio Secretary of State, and Frank Cloud, Tom Ellis, Judith Shelton, and Bruce Carter, in their official capacity as members of the Butler County, Ohio, Board of Elections,¹ seeking an injunction prohibiting Defendants from denying Plaintiff's candidacy as an independent candidate for the Office of State Representative for Ohio's 51st House District at the November 6, 2012 general election (Doc. 3). Additionally, the individual defendant members of the Butler County Board of Elections moved to dismiss Plaintiff's complaint for failure to state a claim as to these individual Defendants, and for lack of subject matter jurisdiction (Doc. 13). These motions have been briefed, and the Court held a hearing on the motions. Therefore, this matter is ripe for disposition.² For the reasons that follow, the Court **DENIES** Plaintiff's Motion for Preliminary Injunction. The Court also **DENIES** the Motion to Dismiss for lack of subject matter jurisdiction filed by Defendants Frank Cloud, Tom Ellis, Judith Shelton, and Bruce Carter, and **DENIES as moot** these Defendants' Motion to Dismiss for failure to state a claim upon which relief can be granted.

I. Background

Plaintiff Greg [Jolivet](#) is a resident and qualified elector of Ohio's 51st House District, which is located within Butler County, Ohio. Defendant Jon Husted is the Secretary of State of Ohio and, as such, is Ohio's chief elections officer. Defendants Frank Cloud, Tom Ellis, Judith Shelton, and Bruce Carter are the members of the Butler County Board of Elections (the "Board of Elections").

From approximately 1997 to 2010, Plaintiff served as a Republican State Legislator and then as a Republican Butler County Commissioner. Plaintiff was also elected to, and served on, the Butler County Republican Party's Central Committee from 2008 until he resigned from this position in mid-December 2011.

On December 7, 2011, Plaintiff filed four Declaration of

Candidacy and Petition *823 forms (“part-petitions”) as a Republican candidate for nomination for State Representative for Ohio’s 51st House District. On his Declaration of Candidacy forms, Plaintiff declared that it was his “desire to be a candidate for nomination to the office of State Representative as a member of the Republican Party from the 51st District,” and that “if elected to this office or position, I will qualify therefor, and I will support and abide by the principles enunciated by the Republican Party.” Plaintiff signed three of the Declarations and dated these documents on October 12 and 13, and November 3, 2011. Plaintiff did not, however, sign the Declaration of the fourth form that was submitted. Plaintiff sought the endorsement of the Butler County Republican Party for the nomination at the endorsement meeting held early December 2011. Wes Retherford also sought the party’s endorsement. According to Plaintiff, his opponent “had absolutely no qualifications” to serve. (Aug. 6, 2012, Tr., p. 12). Neither Plaintiff or his opponent received the endorsement because neither reached the required threshold number of votes. Plaintiff was upset when he did not receive the endorsement. Considering his opponent’s lack of qualifications as compared to his own, Plaintiff could not believe that the party would “turn their back on me with regards to this comparison.” *Id.* Not getting the endorsement “rocked [Plaintiff’s] world,” and he started to think that “the Party just doesn’t want [him]”. *Id.*

On December 12 or 13, 2011, Plaintiff learned that there were some problems with his petitions, and he consulted an attorney regarding the matter. To qualify for the Republican primary ballot, Plaintiff needed 50 valid signatures on his Republican petitions. Plaintiff had submitted four part-petitions with a total of 72 signatures. The part-petition that Plaintiff failed to sign had 17 signatures, and the other three petitions that Plaintiff submitted had 6 signatures with questionable validity.

On December 14, 2011, the Board of Elections met to certify candidacies, including the candidacy of Plaintiff. Whether Plaintiff met the signature requirement was at issue at the meeting. Plaintiff and his attorney addressed the Board members to advocate his position that there was substantial compliance with the signature requirements and therefore his candidacy should be certified. Plaintiff brought affidavits of two persons whose signatures were in question, in an attempt to seek validation and to meet the signature threshold of 50. Plaintiff also offered to bring the individuals before the Board of Elections to testify. Counsel for the Board of Elections advised it that the law did not favor Plaintiff’s position. The Board of Elections decided to provide Plaintiff additional time to present additional evidence or arguments in support of his

candidacy, or to otherwise consider his candidacy. At that time, Plaintiff still intended to run as a Republican, but was contemplating his option to run as an independent.

The day after the December 14, 2011, Board of Elections meeting, Plaintiff met with Defendant Husted, whom Plaintiff had served with in the legislature, to discuss his candidacy and the problems with his petitions. Plaintiff initiated the meeting with Defendant Husted to get his view on the contested signatures, within the context of Plaintiff’s contemplation regarding whether to continue to seek his candidacy as a Republican or to possibly run as an independent. That is, Plaintiff was “looking at what [his] options could quite possibly be.” (Aug. 6, 2012, Tr., p. 15). Plaintiff did not indicate to Defendant Husted his escalating dissatisfaction with the Republican Party. Defendant Husted indicated that he viewed Plaintiff’s failure *824 to sign the one petition as a fatal flaw, but was not decisive on whether two of the challenged six signatures could somehow be validated by affidavit or otherwise. At a minimum, whether Plaintiff’s candidacy as a Republican was going to be approved by the Board of Elections remained uncertain after Plaintiff met with Defendant Husted. However, Plaintiff believed that he was permitted under Ohio law to withdraw his candidacy as a Republican, and subsequently run as an independent, as long as the Board of Elections had not taken action on his candidacy as a Republican.

On December 19, 2011, Plaintiff withdrew his partisan candidacy prior to the Butler County Board of Elections taking any formal action to certify his petition. Also on December 19, 2011, Plaintiff resigned as a member of the Butler County Republican Party Central Committee. When Plaintiff withdrew his candidacy as a Republican, he was “not entirely” sure that he was going to run as an independent candidate, even though he knew he “was finished with the Republican Party at that point.” (Aug. 6, 2012, Tr., p. 17). Plaintiff did not consider running as a Democrat because he “wasn’t anywhere near their philosophy of government.” *Id.*

Plaintiff asserts that he left the Republican Party because his relationship with the party had deteriorated over the course of time. Plaintiff cites several circumstances that contributed to his discontentment with the Republican Party. First, at a Republican party endorsement meeting in 2004 or 2005, someone presented a police report that was based on a completely baseless allegation that Plaintiff stole a purse, in an apparent attempt to hinder Plaintiff’s effort to get the party’s endorsement for county commissioner. Plaintiff was upset that the party allowed such a baseless report to be distributed at the meeting. Second, Plaintiff did not receive the party endorsement

when he ran for County Commissioner in 2010, even though he was an incumbent. According to Plaintiff, he was defeated in the 2010 Republican primary for County Commissioner because he did not receive the party endorsement. At that time, Plaintiff viewed his “partnership” with the Republican Party as “getting to be very shaky.” (Aug. 6, 2012, Tr., p. 11). Third, in early December 2011, Plaintiff sought, but did not receive, the Republican Party’s endorsement for candidacy for state representative. Finally, Plaintiff was generally upset with both the Republican and Democratic parties in view of the amount of money spent on a high profile collective bargaining issue that was on the November 2011 general election ballot in Ohio. According to Plaintiff, the matter should have been resolved “with some good compromise and good legislative leadership on both sides.” *Id.* at 18.

On February 22, 2012, Plaintiff prepared a Nominating Petition and Statement of Candidacy to run as an independent candidate for election to the office of State Representative for Ohio’s 51st House District. On March 5, 2012, Plaintiff filed with the Butler County Board of Elections a Nominating Petition and Statement of Candidacy, seeking to be an independent candidate for election to the office of State Representative for Ohio’s 51st House District. Plaintiff views himself as “the best candidate for being a State Representative [for the 51st District], regardless of any political ties.” (Aug. 6, 2012, Tr., p. 18). Plaintiff did not vote in the March 6, 2012 primary election of any political party. According to Plaintiff, he has not “done anything to jeopardize or compromise [his] position as an Independent.” (Aug. 6, 2012, Tr., p. 19). Plaintiff has testified that, when he filed to run as an independent, he considered himself an independent, and that he takes very seriously his *825 obligation not to commit election falsification as it relates to the documents he submitted in support of his independent candidacy.

As of the date of Plaintiff’s filing to run as an independent, he had a “Designation of Treasurer” on file with the Board of Elections. The document was filed with the Board of Elections on July 15, 2008, and it identifies his campaign committee as “Friends of Greg Jolivet.” The Designation of Treasurer indicated that he was affiliated with the Republican Party. Plaintiff filed an amended Designation of Treasurer on May 4, 2012, again identifying his campaign committee as “Friends of Greg Jolivet,” but indicating that the reason for the filing of the form was to identify himself as an independent candidate.

On April 19, 2012, three individuals filed a protest, pursuant to [Ohio Revised Code § 3513.262](#), against

Plaintiff’s candidacy for the office of State Representative for Ohio’s 51st House District, challenging his ability to run as an independent candidate.

On May 16, 2012, the Butler County Board of Elections approved Plaintiff’s Petition, certified Plaintiff to the ballot, and set a date for a protest hearing. On May 30, 2012, the Butler County Board of Elections conducted a protest hearing. Plaintiff testified at the hearing. At the conclusion of the hearing, two Board members, Defendants Ellis and Shelton, voted to grant the protest, and two Board members, Defendants Cloud and Carter, voted to deny the protest, resulting in a 2–2 tie vote. The matter was referred to the Ohio Secretary of State pursuant to [Ohio Revised Code § 3501.05](#), and on June 26, 2012, Defendant Husted broke the tie in favor of the protest when he concluded that Plaintiff is “not unaffiliated and cannot run as an independent candidate for this election.”

On July 9, 2012, Plaintiff initiated this action seeking a preliminary injunction prohibiting the Defendants from denying his candidacy as an independent candidate for the Office of State Representative for Ohio’s 51st House District at the November 6, 2012 general election. Plaintiff asserts that Defendants’ decision to grant the protest, thereby preventing his name from being placed on the ballot as an independent candidate for the Office of State Representative for Ohio’s 51st House District at the November 6, 2012 general election, violates his rights under the United States Constitution. First, Plaintiff claims that Defendants’ finding that he is affiliated with a political party, and therefore ineligible to run as an independent candidate, violates his First Amendment Speech and Association Rights (Count I). Second, Plaintiff claims that Ohio’s statutes regarding party disaffiliation violate his First Amendment, Equal Protection, and Substantive Due Process rights because the statutes unconstitutionally treat independent candidates differently than candidates affiliated with a political party (Count II). Third, Plaintiff claims that Ohio’s statutes regarding petition protests violate his First Amendment, Equal Protection, and Substantive Due Process rights because the statutes unconstitutionally treat independent candidates differently than candidates affiliated with a political party (Count III). Defendants Frank Cloud, Tom Ellis, Judith Shelton, and Bruce Carter (collectively the “Defendant board members”), in their official capacity as members of the Butler County, Ohio, Board of Elections, move to dismiss all claims for failure to state a claim upon which relief can be granted, and they move to dismiss Count I for lack of subject matter jurisdiction (Doc. 13).

The parties have fully briefed the merits of Plaintiff's Motion for Preliminary Injunction and the Defendant board members' *826 Motion to Dismiss. This Court heard testimony and argument on this matter on August 6, 2012. These motions are therefore ripe for disposition.

II. Defendant Board Members' Motion to Dismiss

Because the Defendant board members' Motion to Dismiss concerns the threshold matter of subject matter jurisdiction, the Court will address it first. The Defendant board members argue that Count I of the Complaint should be dismissed because the Court lacks subject matter jurisdiction to order the relief requested. Specifically, as it relates to Count I, these Defendants argue that this Court is without jurisdiction to review whether Defendants incorrectly determined that Plaintiff failed to meet Ohio's statutory definition of an "independent candidate," and the Court cannot instruct Defendants to comply with state law. The Defendant board members also argue that they are not proper parties to this action and should be dismissed as parties pursuant to [Federal Rule of Civil Procedure 12\(b\)\(6\)](#).

^[1] The Defendant board members are correct in asserting that Plaintiff's challenge of Defendants conduct in this case relates to the factual determination regarding whether he is an "independent candidate," as that term is defined for the purpose of Ohio election law. However, the gravamen of Count I of Plaintiff's Complaint is that Defendants' application of the Ohio definition of "independent candidate" set forth in [Ohio Revised Code § 3501.01\(I\)](#), violates his First Amendment rights. Therefore, while Plaintiff may be challenging the underlying factual determination of whether he is an independent candidate, he also alleges that the application of Ohio law to him by Defendants violates his First Amendment rights. Plaintiff alleges that the Defendant Board members played a role in unconstitutionally applying the Ohio law. The Court thus has jurisdiction to review this claim. Accordingly, insofar as these Defendants request dismissal of Count I for lack of subject matter jurisdiction, the Motion to Dismiss is **DENIED**. In regard to the Defendant board members' argument that they are not proper parties in this action, the Court need not resolve this issue because, for the reasons expressed below, Plaintiff is not entitled to the requested preliminary injunction. Accordingly, to the extent these Defendants request dismissal for failure to state a claim, their Motion to Dismiss is **DENIED as moot**.

III. Plaintiff's Motion for Preliminary Injunction

A. Standard of Review

^[2] The Court must consider four factors in determining whether to issue a preliminary injunction and/or permanent injunction:

- (1) whether the movant has a strong or substantial likelihood of success on the merits;
- (2) whether the movant would suffer irreparable injury without the relief requested;
- (3) whether issuance of the injunction will cause substantial harm to others; and
- (4) whether the public interest will be served by issuance of the injunction.

Chabad of S. Ohio & Congregation Lubavitch v. City of Cincinnati, 363 F.3d 427, 432 (6th Cir.2004). These four factors are "to be balanced, not prerequisites that must be met." *Hamad v. Woodcrest Condominium Assoc.*, 328 F.3d 224, 230 (6th Cir.2003); *see also Capobianco, D.C. v. Summers*, 377 F.3d 559, 561 (6th Cir.2004).

B. Discussion

1. Likelihood of success on the merits

Plaintiff asserts three claims pursuant to 42 U.S.C. § 1983. First, Plaintiff argues that Defendants' finding that he is affiliated *827 with a political party, and therefore ineligible to run as an independent candidate, violates his First Amendment Speech and Association Rights. Second, Plaintiff argues that Ohio's statutes regarding party disaffiliation violate his First Amendment, Equal Protection, and Substantive Due Process rights because the statutes unconstitutionally treat independent candidates differently than candidates affiliated with a political party. Third, Plaintiff argues that Ohio's statutes regarding petition protests violate his First Amendment, Equal Protection, and Substantive Due Process rights because the statutes unconstitutionally treat independent candidates differently than candidates affiliated with a political party.

^[3] [Section 1983](#) provides in relevant part:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of

Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

A § 1983 claim must satisfy two elements: “1) the deprivation of a right secured by the Constitution or laws of the United States and 2) the deprivation was caused by a person acting under color of state law.” *Ellison v. Garbarino*, 48 F.3d 192, 194 (6th Cir.1995).

The Court first will address Plaintiff’s First Amendment argument and then will address Plaintiff’s two Equal Protection arguments together.³

a. First Amendment

Plaintiff argues that Defendants’ decision that would preclude him from running as an independent candidate violates his First Amendment rights to free speech and association. Plaintiff argues that preventing his access to the ballot as an independent is a restraint on his ability to exercise his speech rights as an independent, and to associate with others who are like-minded. In support of his position, Plaintiff cites the important role of independent candidates in the American political system. Additionally, Plaintiff argues that his claim of independence was made in good faith, and that this case is factually distinguishable from *Morrison v. Colley*, 467 F.3d 503 (6th Cir.2006), a case in which the Sixth Circuit found that the candidate’s claim of unaffiliation with a political party was not made in good faith. In fact, at the hearing before this Court, Plaintiff testified that he disaffiliated from the Republican Party when he withdrew his partisan candidacy and withdrew from the central committee, and that he made his disaffiliation decision in good faith.

Defendant Husted argues that he did not violate Plaintiff’s First Amendment rights because Plaintiff’s claim of independence was not made in good faith, but “was a disingenuous attempt to gain ballot access at any cost.” (Doc. 19, p. 8). Therefore, at issue is whether Defendants’ application of Ohio law to preclude Plaintiff *828 from running as an independent candidate violates his First Amendment rights.

^[4] The State of Ohio’s “oversight of state and local elections is clearly an important state interest.” *Citizens for a Strong Ohio v. Marsh*, 123 Fed.Appx. 630, 634 (6th Cir.2005). “[U]nless a state election regulation places a heavy or severe burden on a party, ‘a State’s important regulatory interests will usually be enough to justify reasonable, nondiscriminatory restrictions.’ ” *Morrison*, 467 F.3d at 506 (quoting *Clingman v. Beaver*, 544 U.S. 581, 587, 125 S.Ct. 2029, 161 L.Ed.2d 920 (2005)). “States may, and inevitably must, enact reasonable regulations of parties, elections, and ballots to reduce election-and campaign-related disorder.” *Timmons v. Twin Cities Area New Party*, 520 U.S. 351, 358, 117 S.Ct. 1364, 137 L.Ed.2d 589 (1997). “[A]s a practical matter, there must be a substantial regulation of elections if they are to be fair and honest and if some sort of order, rather than chaos, is to accompany the democratic process.’ ” *Burdick v. Takushi*, 504 U.S. 428, 433, 112 S.Ct. 2059, 119 L.Ed.2d 245 (1992) (quoting *Storer v. Brown*, 415 U.S. 724, 730, 94 S.Ct. 1274, 39 L.Ed.2d 714 (1974)). The Supreme Court directs courts, when deciding whether a state election law violates First and Fourteenth Amendment associational rights, to “weigh the ‘character and magnitude’ of the burden the State’s rule imposes on those rights against the interests the State contends justify that burden, and consider the extent to which the State’s concerns make the burden necessary.” *Id.*, at 434, 112 S.Ct. 2059.

The Ohio Supreme Court has outlined some of the important state interests that have been recognized to uphold the constitutionality of various elections provisions as follows:

- (1) having orderly, fair and honest elections instead of chaos,
- (2) maintaining the integrity of the political process by preventing interparty raids and intraparty feuds,
- (3) maintaining the integrity of various routes to the ballot,
- (4) avoiding voter confusion, ballot overcrowding, or frivolous candidacies,
- (5) ensuring that elections are operated equitably and efficiently,
- (6) preventing candidacies that are prompted by short-range political goals, pique, or personal quarrel, and
- (7) preventing parties from fielding an independent candidate to capture and bleed off votes in a general election that might otherwise go to

another party.

State ex rel. Purdy v. Clermont Cty. Bd. of Elections, 77 Ohio St.3d 338, 673 N.E.2d 1351, 1356 (1997) (internal citations omitted).

[5] [6] The First Amendment to the United States Constitution protects the right of citizens to associate and to form political parties for the advancement of common political goals and ideas. *Colorado Republican Fed. Campaign Committee v. Fed. Election Comm.*, 518 U.S. 604, 616, 116 S.Ct. 2309, 135 L.Ed.2d 795 (1996). “The impact of candidate eligibility requirements on voters implicates basic constitutional rights.” *Anderson v. Celebrezze*, 460 U.S. 780, 786, 103 S.Ct. 1564, 75 L.Ed.2d 547 (1983). The exclusion of candidates from the ballot burdens “voters’ freedom of association, because an election campaign is an effective platform for the expression of views on the issues of the day, and a candidate serves as a rallying point for like-minded citizens.” *Id.* at 787–88, 103 S.Ct. 1564. Therefore, election statutes “should be liberally construed in favor of those seeking to hold office, in order that the public may have the benefit of choosing from all persons who are qualified.” *State ex rel. Allen v. Warren Cty. Bd. of Elections*, 115 Ohio St.3d 186, 874 N.E.2d 507, 510 (2007). However, “splintered *829 parties and unrestrained factionalism may do significant damage to the fabric of government.” *Storer v. Brown*, 415 U.S. 724, 736, 94 S.Ct. 1274, 39 L.Ed.2d 714 (1974).

The United States Supreme Court, in *Storer*, upheld a *per se* temporal restriction on the ability of a candidate to claim independence after being a member of a party. In *Storer*, the Court upheld a California statute which denied access to the ballot to any independent candidate who had voted in a party primary or been registered as a member of a political party within one year prior to the immediately preceding primary election. The Court observed: “[T]he one-year disaffiliation provision furthers the State’s interest in the stability of its political system. We also consider that interest as not only permissible, but compelling and as outweighing the interest the candidate and his supporters may have in making a late rather than an early decision to seek independent ballot status.” *Id.* at 736, 94 S.Ct. 1274. Restricting such access to the ballot in this manner protects “against independent candidacies prompted by short-range political goals, pique, or personal quarrel.” *Id.* In Ohio, there is no such *per se* temporal restriction, but a candidate’s ability to run as an independent is restricted by how Ohio defines an “independent candidate.” Additionally, there is nothing in Ohio law that precludes the consideration of a temporal factor in evaluating a candidate’s disaffiliation from a

party.

Ohio defines an “independent candidate” as “any candidate who claims not to be affiliated with a political party, and whose name has been certified on the office-type ballot at a general or special election through the filing of a statement of candidacy and nominating petition, as prescribed in section 3513.257 of the Revised Code.” Ohio Rev.Code § 3501.01(I). As made clear by the Sixth Circuit Court of Appeals, a candidate cannot be both an independent and an affiliated party member. *Morrison*, 467 F.3d at 503. Furthermore, an aspiring independent candidate “must actually be independent, rather than merely claim it.” *Id.* at 509. That is, a candidate’s “claim of independence must be made in good faith—otherwise there would be no reasons for having the claim requirement, and none of the state interests animating the claim requirement would be served.” *Morrison*, 467 F.3d at 509; *Cf. McInerney v. Wrightson*, 421 F.Supp. 726 (D.Del.1976) (only analyzing whether prospective independent candidate objectively disaffiliated from his former party).

Subsequent to the Sixth Circuit’s *Morrison* decision, the Ohio Secretary of State issued Advisory Opinion No. 2007–05, which interprets the *Morrison* decision and establishes further guidelines for boards of elections deciding a candidate’s independence. The Advisory Opinion advises that Ohio Revised Code § 3513.257 requires that (1) “an independent candidate actually be unaffiliated, or disaffiliated, from any political party” and (2) “the required claim of unaffiliation by an independent candidate must be made in good faith.” Secretary of State Advisory Opinion No. 2007–05, at 3. The Secretary further advised:

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

*830 was either not made in good faith or is no longer current.

Id. at 3–4. In addition to these bright line rules, the Secretary directed boards of elections as follows:

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

(Emphasis sic). *Id.* at 4.

The standard for determining whether a candidate meets the definition of an "independent candidate" makes it difficult to determine the point of demarcation between a candidate's genuine and legitimate unaffiliation or disaffiliation and a claim of independence that is actually rooted in intra-party feuding, tactical maneuvering, or political convenience—circumstances that potentially disrupt the integrity of the election process by causing voter confusion or other problems. Consequently, determining whether a candidate is actually unaffiliated or disaffiliated with a political party, and whether the claim of independence is made in good faith, are necessarily fact specific and intensive. This determination requires a thorough review of the candidate's conduct as it relates to party affiliation. Furthermore, the strength of the affiliation is necessarily pertinent when evaluating an asserted disaffiliation, as the candidate must demonstrate

that the strings attaching him or her to the party are sufficiently severed, or at least that the candidate has engaged in decisive conduct demonstrating an intent to completely sever those strings, within a context not demonstrating a shift to independence as a means of political convenience or opportunism.

^[7] Here, Plaintiff engaged in conduct demonstrating a disaffiliation with the Republican Party, and Defendant Husted does not dispute that Plaintiff has met the objective aspect of the *Morrison* test. For example, Plaintiff withdrew his candidacy from the Republican party and resigned his position on the central committee. Additionally, Plaintiff, unlike *Morrison*, did not vote in the Republican Party primary after he filed the necessary paperwork to run as an independent. The Court notes that *Morrison*, along with the Secretary of State's Advisory Opinion, places candidates on notice that certain specific conduct, namely voting in a party primary or serving on a party committee, are absolute bars to a good faith claim of independence. And as demonstrated by Plaintiff's testimony, he understood that certain conduct would "jeopardize" his candidacy as an independent. However, that Plaintiff did not engage in this certain conduct does not end the analysis of whether he is an independent candidate under Ohio law for the purpose of the November 2012 general election.

Morrison's conduct after filing to run as an independent clearly demonstrated his desire to be affiliated with the Republican Party and precluded a finding that he was an "independent candidate" under Ohio law. Advisory Opinion No. 2007–05 appropriately *831 views this conduct as conclusive conduct demonstrating an absence of independence. However, the *Morrison* case, and the Advisory Opinion, recognize that the analysis may extend beyond the bright-line test. That is, even if a candidate does not vote in a party primary after filing as an independent, and does not serve on a party's central or executive committee after filing as an independent, these circumstances do not preclude a finding that the candidate is not unaffiliated or disaffiliated in view of other conduct or circumstances, or a finding that the disaffiliation was not made in good faith. Indeed, a rational candidate attempting to disaffiliate from a party out of political convenience would not engage in such conduct, if the candidate understands that taking certain actions would necessarily preclude running as an independent.

Although Plaintiff took decisive affirmative steps to disaffiliate with the Republican Party, evidence also indicates that Plaintiff's disaffiliation with the Republican Party was driven by political necessity and opportunism. Plaintiff did not withdraw his candidacy immediately

after the party endorsement meeting, which, according to Plaintiff, was essentially the proverbial “straw that broke the camel’s back.” Such an assertion would have weight if Plaintiff had disaffiliated immediately after the meeting. Instead, he continued to press his candidacy as a Republican, advocating for his candidacy as a Republican at the December 14, 2011 Board of Elections meeting, and meeting with Defendant Husted the day after the Board of Elections meeting to see if Defendant Husted could help him with his situation. Thus, Plaintiff ultimately withdrew his candidacy only after it became increasingly apparent that he did not meet the signatory requirement and the Board of Elections likely would decline to certify his name to the ballot.

Additionally, Plaintiff repeatedly testified that he withdrew his candidacy from the Republican Party because he was upset with the Republican establishment in Butler County due to actions that were taken to discredit him and in failing to support him. However, Plaintiff did not express a change in ideology or policy to explain his disaffiliation with the Republican Party. The Court acknowledges that Plaintiff did not, like Morrison, vote in the partisan primary after seeking to run as an independent. However, Plaintiff’s conduct still undermines the integrity of the election process. In the same election cycle, Plaintiff obtained signatures of electors on petitions, bearing his affirmation that he desired to be a Republican candidate and that he would “support and abide by the principles enunciated by the Republican Party.”⁴ Then, when Plaintiff’s candidacy as a Republican became unlikely, he withdrew his partisan candidacy. Sixteen days later, he was obtaining nominating signatures in an effort to run as an independent. Therefore, within the same election cycle, Plaintiff obtained signatures in support of his candidacy as a Republican for the Office of State Representative for Ohio’s 51st House District, and then signatures in support of a candidacy as an independent for the same office.

Although neither party cites [Ohio Revised Code § 3513.04](#), the statute appears to have some relevance to the analysis of whether Plaintiff may run as an independent, *832 after withdrawing his candidacy as a Republican, but prior to the Board of Elections taking action on his candidacy. This statute generally prevents a person who “seeks” a party nomination at a primary election from running for the same or a different office at the following general election. In pertinent part, this statute provides:

No person who *seeks* party nomination for an office or position at a primary election by declaration of candidacy or by declaration of

intent to be a write-in candidate ... shall be permitted to become a candidate by nominating petition or by declaration of intent to be a write-in candidate at the following general election for any office other than the office of member of the state board of education, office of a member of a city, local, or exempted village board of education, office of member of a governing board of an educational service center, or office of township trustee.

(Emphasis added). In *State ex rel. Knowlton v. Noble Cty. Bd. of Elections*, the Ohio Supreme Court addressed the meaning of “seeks” in this provision. [126 Ohio St.3d 483, 935 N.E.2d 395, 403 \(2010\)](#). In analyzing whether a potential write-in candidacy was barred by this statute, the Ohio Supreme Court determined that the statute was aimed at preventing primary election losers from subsequently attempting to run in the general election as a write-in candidate. *Id.* Because the candidate in *Knowlton* was not on the ballot in the primary election, even though he did attempt to become a party nominee, the Ohio Supreme Court reasoned that he could still run in the general election as a write-in candidate. *Id.*

The potential applicability of [Ohio Revised Code § 3513.04](#) must be analyzed in conjunction with the Ohio Supreme Court’s interpretation of [Ohio Revised Code § 3513.052](#), which places “restrictions on seeking multiple offices.” See [Ohio Rev.Code § 3513.052\(A\)](#). [Section 3513.052\(G\)](#) contains an exception to these restrictions:

Nothing in this section or [section 3513.04](#), [3513.041](#), [3513.05](#), [3513.251](#), [3513.253](#), [3513.254](#), [3513.255](#), [3513.257](#), [3513.259](#), or [3513.261](#) of the Revised Code prohibits, and the secretary of state or a board of elections shall not disqualify, a person from being a candidate for an office, if that person timely withdraws as a candidate for any offices specified in division (A) of this section [which includes “a state office”] for which that person first sought to become a candidate by filing a declaration of candidacy and petition, a declaration of intent to be a write-in candidate, or a

nominating petition, by party nomination in a primary election, or by the filling of a vacancy under [section 3513.30](#) or [3513.31](#) of the [Revised Code](#).

In *State ex rel. Canales–Flores v. Lucas Cty. Bd. of Elections*, the Ohio Supreme Court ruled that the prospective candidate’s first filed nominating petition for a city council position precluded the filing of her second nominating petition for the same office. [108 Ohio St.3d 129, 841 N.E.2d 757 \(2005\)](#). In reaching this conclusion, the Court cited [Ohio Revised Code § 3513.261](#), which prohibits a board of elections from accepting a nominating petition of a person seeking to be a candidate for a municipal office if that person has already filed a nominating petition or declaration of candidacy to be a candidate for a municipal office at the same election.⁵ *833 The *State ex rel. Canales–Flores* court reasoned that [Section 3513.052](#) does not prevent the application of [Sections 3513.261](#) and [3513.05](#) to “bar a second nominating petition for the same office at the same election after the first nominating petition has been ruled invalid.” *Id.* at 763.

In view of the *Canales–Flores* decision, the Ohio Secretary of State issued Directive 2011–24, which advised Boards of Elections that “A person who withdraws his or her candidacy for office cannot subsequently file a new declaration of candidacy and petition, or nominating petition, or declaration of intent to be a write-in candidate for the *same office* at the same election.” (Emphasis sic).

Subsequently, in *State ex rel. Coble v. Lucas Cty. Bd. of Elections*, a case cited by Plaintiff, the Ohio Supreme Court ruled that a prospective candidate for the office of municipal judge may timely withdraw as a candidate and then subsequently re-file to run in the same office at the same election. [130 Ohio St.3d 132, 956 N.E.2d 282 \(2011\)](#). As a result of the *Coble* decision, the Ohio Secretary of State rescinded Directive 2011–24, and issued Directive 2011–29, which generally advised Boards of Elections that “a candidate who timely withdraws that person’s candidacy prior to Board action on his nominating petition and prior to the filing deadline may file a new petition even if that petition is for the same office to be elected at the same election as the withdrawn petition as long as the board has not officially acted on the petition.”

Unlike the case at bar, the *Coble* case did not involve a candidate disaffiliating from a party to run as an independent. Therefore, the Ohio Supreme Court has not

defined the parameters of the applicability of its decisions regarding withdrawn and subsequently refiled candidacies as it relates to candidates who disaffiliated from a party. In the final analysis, the Court must apply the definition of an “independent candidate,” as interpreted in *Morrison*, to the facts of this case. That Plaintiff withdrew his candidacy prior to the Board of Elections taking action on it does not eliminate the requirement that he disaffiliate from the Republican Party in good faith in order to run as an independent in the same election for the same office.

After carefully reviewing all of the evidence, including Plaintiff’s testimony, there is no question that Plaintiff remained steadfast in his effort to get on the primary ballot as a Republican until it became increasingly apparent that his candidacy as a Republican likely would not be approved by the Board of Elections. Thus, Plaintiff withdrew his candidacy as a Republican once it became apparent that he faced a significant hurdle in his path to the ballot. Shortly thereafter, Plaintiff began seeking candidacy as an independent for the same office.

^[8] The Court emphasizes that it is not opining on Plaintiff’s level of discontent with the Republican Party and his relationship to it. Freedom of thought and assembly are critical to a vibrant democracy and the exchange of ideas. The First Amendment protects these rights. Thus, the Government cannot, and should not, place restraints on an individual’s ability to change parties or disaffiliate from a party, outside the context of the individual seeking public office. However, an individual running for public office undermines the integrity of the election process if he or she initially runs as a partisan for a particular office (and affirms allegiance to the party when seeking the necessary petition signatures), and then withdraws that partisan candidacy and attempts to run as an independent, all within the same election cycle.

In sum, while Plaintiff may have had legitimate reasons to be upset with the *834 Republican Party establishment in Butler county, it is clear from the evidence that Plaintiff was motivated in significant part to disaffiliate from the Republican Party and become independent because he wanted access to the ballot as a candidate for the office of State Representative for Ohio’s 51st House District, which likely would have been otherwise precluded. This type of political maneuvering must not be condoned, lest the integrity of the political process will suffer.

Accordingly, Plaintiff’s First Amendment rights have not been violated. Plaintiff is not an “independent candidate,” and therefore is not eligible to run as an independent for the office of State Representative for Ohio’s 51st House District in the November 2012 general election.

b. Equal Protection

Plaintiff challenges Ohio law as it relates to an individual affiliated with a political party seeking to become unaffiliated with any political party. That is, Plaintiff challenges Ohio's party disaffiliation provisions. Plaintiff asserts that Ohio law permits an individual affiliated with a political party to freely change to another political party, but leaves it to the discretion of a Board of Elections whether to allow an individual affiliated with a political party to become unaffiliated. Additionally, Plaintiff asserts that Ohio's statutory scheme regarding candidate protests violates his constitutional rights because it permits challenges to be filed against an unaffiliated candidate by electors affiliated with political parties, but does not permit unaffiliated electors to file challenges against partisan candidates. Plaintiff argues that the State does not have a legitimate interest or justification in making these distinctions. Defendant Husted argues that Plaintiff's assertion that Ohio's election laws violate the Equal Protection Clause is meritless because partisan candidates are not similarly situated with independent candidates.

^[9] ^[10] The Equal Protection Clause protects against arbitrary classifications, and requires that similarly situated persons be treated equally. *City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 439, 105 S.Ct. 3249, 87 L.Ed.2d 313 (1985). In the context of comparing independent and partisan candidates, a plaintiff alleging an Equal Protection violation "must establish that the two groups, partisan and independent candidates, are similarly situated with respect to the routes they must take to get on the general election ballot." *Van Susteren v. Jones*, 331 F.3d 1024, 1027 (9th Cir.2003). In *Van Susteren*, the court found that independent and partisan candidates are not similarly situated under the California election code because "[p]arty candidates must run in a primary election, which is integral to the election process because it serves the important function of winnowing out competing partisan candidates ... [whereas] an independent candidate need not, and indeed may not, participate in a party primary in order to be on the general election ballot." *Id.* This reasoning is persuasive here, as partisan and independent candidates in Ohio face different challenges in the election process.

(1) Changing Parties Versus Party Disaffiliation

As discussed above, for a candidate to be qualified to run as an independent candidate, the individual must actually be unaffiliated or disaffiliated from any political party, and there is a corresponding requirement that the claim of unaffiliation or disaffiliation must be made in good faith. *See Morrison*. There is no similar requirement for a partisan candidate to show that the change in party affiliation was made in good faith.

***835** It is the general rule in Ohio that "No person shall be a candidate for nomination or election at a party primary if the person voted as a member of a different political party at any primary election within the current year and the immediately preceding two calendar years." [Ohio Rev.Code § 3513.191\(A\)](#). However, a person may be a candidate for nomination of any political party at a primary election, regardless of party affiliation established by voting in a prior partisan primary, if the person does not hold elective office, or the person holds an elective office other than the one for which candidates are nominated at a party primary. [Ohio Rev.Code § 3513.191\(B\)](#). Furthermore, notwithstanding the general rule, a person who holds an elective office for which candidates are nominated at a party primary may be a candidate at a primary election for a different party if the person completes and files a declaration of intent to seek the nomination of that party by the 30th day before the filing deadline for the primary election. [Ohio Rev.Code § 3513.191\(C\)\(1\)](#). A person may file such declaration of intent only once during a period of 10 years after filing the first declaration of intent. [Ohio Rev.Code § 3513.191\(C\)\(3\)](#).

Thus, while there are restrictions in Ohio as it relates to a candidate changing parties, there is no requirement that the candidate make the change in good faith, unlike the rule that applies to a candidate who disaffiliates from a party. Plaintiff asserts that this unequal treatment violates his Equal Protection rights.

The Court finds that differences between partisan and independent candidates' paths to the general election ballot lead to the conclusion that they are not similarly situated, and therefore there is no Equal Protection violation. Ohio law sets forth certain filing requirements for a partisan candidate to appear on the primary ballot. The "declaration of candidacy" filing deadline for party candidates is 90 days before the primary election. *See Ohio Rev.Code § 3513.05*. Major party candidates seeking a State Representative position must submit 50 signatures of qualified electors along with the declaration of candidacy. *Id.* The signing electors must be members of the same political party as the political party of the candidate. *Id.*

An independent candidate, however, has different filing and signatory requirements than a partisan candidate. The filing deadline for a person desiring to become an independent candidate is one day before the primary election. See [Ohio Rev.Code § 3513.257](#). The independent candidate must file a “statement of candidacy and separate petition papers” bearing the number of signatures of qualified electors, with no restriction as to each elector’s party affiliation, determined by a formula that is based on the number of votes cast in the district in the last general election for governor. *Id.* Specifically, if the number of votes cast was 5,000 or more, the candidate must submit signatures of at least one percent of the number of votes cast. *Id.* Here, although the precise number is not pertinent, it is undisputed that Plaintiff was required to, and did submit, hundreds of signatures in support of his independent candidacy.

Furthermore, the requirement that an independent candidate make his or her claim of disaffiliation in good faith is reasonable because independent candidates do not face political challenge in a primary. That is, even though partisan candidates face a vetting process in party primaries,⁶ independent candidates may proceed directly *836 to the general election ballot, assuming all filing requirements are met. Thus, although an independent candidate may be required to submit a significantly higher number of signatures to gain access to the ballot, such a candidate need not face potential elimination in a primary. See *Storer*, 415 U.S. at 733, 94 S.Ct. 1274 (“The independent candidate need not stand for primary election but must qualify for the ballot by demonstrating substantial public support in another way.”). Moreover, as noted above, how Ohio defines an “independent candidate” helps ensure the State’s interest in protecting the integrity of the election process. Conversely, as it relates to partisan candidates, these concerns are mitigated in view of primaries which provide an inherent mechanism for party affiliation to be challenged. This statutory scheme is reasonable and is consistent with the different political realities that face partisan and independent candidates. Therefore, the Court is not persuaded by Plaintiff’s argument that Ohio’s statutory scheme regarding party affiliation violates the Equal Protection Clause.

(2) Elector Challenge of Candidacy

^[11] Plaintiff argues that Ohio law is unconstitutional as it relates to elector challenges of a person’s candidacy because it treats partisan and independent candidates

differently. It is Plaintiff’s position that a statutory scheme that permits any elector to challenge the candidacy of an independent, but only allows electors of the same party of a partisan candidate to challenge such a candidate, is unconstitutional. The Court disagrees.

Qualified electors may challenge whether a particular candidate is an elector of the state, district, county, or political subdivision in which the candidate seeks a party nomination or election to an office or position, or whether the candidate has otherwise fully complied with Ohio Revised Code Chapter 3513. [Ohio Rev.Code § 3513.05](#). As to independent candidates, [Ohio Revised Code § 3513.262](#) provides in part that “[w]ritten protests against nominating petitions [of independent candidates] may be filed by *any* qualified elector eligible to vote for the candidate whose nominating petition he objects to[.]” (Emphasis added). As to partisan candidates, [Ohio Revised Code § 3513.05](#) provides in part as follows:

Protests against the candidacy of any person filing a declaration of candidacy for party nomination or for election to an office or position, as provided in this section, may be filed by any qualified elector who is a member of the same political party as the candidate and who is eligible to vote at the primary election for the candidate whose declaration of candidacy the elector objects to, or by the controlling committee of that political party.

Therefore, while Ohio law permits any qualified elector to challenge the nominating petition of an independent candidate, regardless of party (un)affiliation, protests against the partisan candidacy of any person may only be filed by a qualified elector of the same political party.

The distinction between elector challenges of partisan candidates and independent candidates must be viewed in the context of their respective paths to the general ballot. While a partisan candidate typically needs fewer petition signatures than an independent to initiate a candidacy, the signatures submitted in support of a partisan candidate must be of members of the same political party. In contrast, while an independent candidate may need more signatures, the signatures may be of members of any party or no party. Considering this circumstance, it is reasonable for Ohio to permit any qualified elector to challenge the candidacy of an independent, but restrict challenges of partisan candidates *837 to qualified electors of the same political party. In other words,

partisans and independents face different paths to the general ballot, and the challenge provisions are consistent with that framework.

For these reasons, the Court concludes that Plaintiff has not shown an Equal Protection violation, and therefore his second and third claims are without merit.

2. Irreparable harm

Because Plaintiff has not substantially demonstrated a constitutional violation, the Court is unable to conclude that irreparable harm has been established for the purpose of issuing a preliminary and/or permanent injunction.

3. Harm to others

While the protection of constitutional rights is always a public interest, there has been no violation of constitutional rights here. Further, if Plaintiff is permitted to run for the Office of State Representative for Ohio's 51st House District, there will be harm to the general public as the integrity of the ballot will be undermined.

4. Public interest

The Court finds that in this case the public interest is best served by deferring to Defendants' efforts to ensure the integrity of the election process.

Examining the four preliminary and permanent injunction factors together, the Court concludes that the issuance of a preliminary and/or permanent injunction is not warranted in this instance.

IV. CONCLUSION

For the foregoing reasons, the Court **DENIES** Plaintiff's Motion for Preliminary Injunction (Doc. 3), **DENIES** the Defendant board members' Motion to Dismiss for lack of subject matter jurisdiction, and **DENIES as moot** the Defendant board members' Motion to Dismiss for failure to state a claim upon which relief can be granted (Doc. 13). Final judgment shall be rendered in favor of Defendants and against Plaintiff.

The Clerk shall remove Documents 3 and 13 from the Court's pending motions list.

The Clerk shall remove this case from the Court's pending cases list.

IT IS SO ORDERED.

Footnotes

- ¹ Plaintiff initially named the individual Defendants as defendants in both their official and individual capacity, but Plaintiff withdrew his claims against the individual Defendants in their individual capacities (Doc. 10).
- ² After review of the parties' submissions, the Court suggested a consolidation of the hearing with a trial on the merits pursuant to [Federal Rule of Civil Procedure 65\(a\)\(2\)](#). The parties have agreed that all facts and applicable law are before the Court, and that this action is ripe for full adjudication on its merits.
- ³ Although Plaintiff generally alleges that Defendants violated his substantive due process rights, this claim is not developed and appears to fully overlap his First Amendment and Equal Protection claims. As such, the Court will focus its analysis on whether Defendants violated Plaintiff's First Amendment and Equal Protection rights. See *Albright v. Oliver*, 510 U.S. 266, 273, 114 S.Ct. 807, 127 L.Ed.2d 114 (1994) ("Where a particular Amendment 'provides an explicit textual source of constitutional protection' against a particular sort of government behavior, 'that Amendment, not the more generalized notion of 'substantive due process,' must be the guide for analyzing' such a claim.").
- ⁴ [Ohio Revised Code § 3501.38\(l\)\(2\)\(a\)](#) provides that "No declaration of candidacy, nominating petition, or other petition for the purpose of becoming a candidate may be withdrawn after it is filed in a public office. Nothing in this division prohibits a person from withdrawing as a candidate as otherwise provided by law." Thus, while an individual may withdraw his or her candidacy, a declaration of candidacy or petition may not be withdrawn after it is filed in a public office.
- ⁵ The Court notes that, as relevant here, [Ohio Revised Code § 3513.257](#) also contains language prohibiting a board of elections from accepting a nominating petition of a person if that person has already filed, in the same election, a

nominating petition or declaration of candidacy for any state office.

- 6 The Court recognizes that often partisan candidates are unopposed in the party primary. However, this does not negate the fact that a mechanism exists for someone to challenge the candidate prior to placement on the general election ballot.

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APPX. TAB

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694 F.3d 760
United States Court of Appeals,
Sixth Circuit.

Greg JOLIVETTE, Plaintiff–Appellant,

v.

Jon HUSTED; Frank Cloud; Tom Ellis; Judith
Shelton; Bruce Carter, Defendants–Appellees.

No. 12–3998. | Argued: Sept. 11, 2012. | Decided and
Filed: Sept. 14, 2012. | Rehearing and Rehearing En
Banc Denied Sept. 26, 2012.*

Synopsis

Background: Prospective independent candidate for office of state representative brought action against county election officials and Ohio’s Secretary of State, moving for declaratory relief and for a preliminary and a permanent injunction that would allow him to run in general election. The United States District Court for the Southern District of Ohio, [George C. Smith, J., 2012 WL 3527733](#), denied the motion, and prospective candidate appealed.

Holdings: The Court of Appeals, [Karen Nelson Moore](#), Circuit Judge, held that:

- ^[1] Ohio election statute disqualifying prospective candidate based on his association with a political party did not violate his First Amendment associational rights;
- ^[2] prospective candidate failed to preserve for review on appeal claim that the statute was unconstitutionally vague; and
- ^[3] Ohio election statutes governing independent versus partisan candidates did not violate the Equal Protection Clause of the Fourteenth Amendment.

Affirmed.

[Merritt](#), Circuit Judge, filed a dissenting.

Attorneys and Law Firms

*762 ARGUED: [Donald J. McTigue](#), McTigue & McGuinnis LLC, Columbus, Ohio, for Appellant. [Aaron D. Epstein](#), Office of the Ohio Attorney General,

Columbus, Ohio, for Appellee. **ON BRIEF:** [Donald J. McTigue](#), [J. Corey Colombo](#), [Mark A. McGinnis](#), McTigue & McGuinnis LLC, Columbus, Ohio, for Appellant. [Aaron D. Epstein](#), Michael J. Schuler, Office of the Ohio Attorney General, Columbus, Ohio, for Appellee.

Before: [MERRITT](#), [MOORE](#), and [McKEAGUE](#), Circuit Judges.

[MOORE](#), J., delivered the opinion of the court, in which [McKEAGUE](#), J., joined. [MERRITT](#), J. (pp. 772–74), delivered a separate dissenting opinion.

*763 OPINION

[KAREN NELSON MOORE](#), Circuit Judge.

Plaintiff–Appellant Greg [Jolivette](#) (“[Jolivette](#)”) appeals the district court’s denial of his request for declaratory relief and for a preliminary and a permanent injunction that would allow him to run as an independent candidate for the Office of State Representative for Ohio’s 51st House District in the upcoming November 6, 2012 general election. [Jolivette](#) seeks to prevent members of the Butler County, Ohio Board of Elections and Ohio’s Secretary of State, Jon Husted (together, “[Defendants](#)”), from blocking his access to the ballot as an independent candidate. [Jolivette](#) claims that the defendants’ denial of his petition for candidacy as an independent violated his rights to free speech and association guaranteed by the First and Fourteenth Amendments. [Jolivette](#) also challenges differences in Ohio election statutes regulating independent versus partisan candidates, arguing that these portions of Ohio’s statutory election framework violate the Equal Protection Clause. [Jolivette](#) brings his constitutional claims to federal court pursuant to 42 U.S.C. § 1983. The United States District Court for the Southern District of Ohio denied preliminary and permanent injunctive relief, as well as declaratory relief, finding no merit to any of [Jolivette](#)’s constitutional claims. See *Jolivette v. Husted*, No. 2:12–cv–603, — F.Supp.2d —, —, 2012 WL 3527733, at *16 (S.D. Ohio Aug. 15, 2012). For the reasons discussed below, we **AFFIRM** the district court’s judgment.

I. BACKGROUND

Plaintiff Greg Jolivet desires to appear on the ballot at the upcoming November 6, 2012 general election as an independent candidate for the Office of State Representative for Ohio's 51st House District in Butler County, Ohio. From approximately 1997 to 2010, prior to his current attempted independent candidacy, Jolivet served as a Republican State Legislator and a Republican Butler County Commissioner. R. 11-3 (Transcript of Bd. of Elections Protest Hearing, May 30, 2012 at 22:8-11) (Page ID # 143). Jolivet was also elected to, and served on, the Butler County Republican Party's Central Committee from 2008 until mid-December 2011, when he resigned from the position. *Id.* at 22:12-16 (Page ID # 143).

On November 29, 2011, Jolivet filed a Declaration of Candidacy to run as a Republican for the Office of State Representative for Ohio's 51st House District. R. 18-4 (Joint Ex. 13 at 1-9) (Page ID # 337-45). Ohio law requires that candidates seeking to run in a party primary accompany their Declaration of Candidacy with at least fifty signatures from members of the same political party. OHIO REV.CODE § 3513.05. As part of his Declaration of Candidacy, Jolivet submitted four part-petitions containing seventy-two signatures. However, Jolivet failed to sign one of the part-petitions containing seventeen signatures, and another six signatures on the other signed petitions were of "questionable validity." *Jolivet*, 886 F.Supp.2d at —, 2012 WL 3527733, at *2. The unsigned part-petition and the possible invalid signatures meant that Jolivet was possibly ineligible to run as a Republican. *See* OHIO REV.CODE § 3513.05.

On December 14, 2011, the Board of Elections met and considered Jolivet's candidacy as a Republican. Jolivet, who was present at this meeting, argued in favor of certifying his petition to run in the Republican primary. *See Jolivet*, 886 F.Supp.2d at —, 2012 WL 3527733, at *2. At the meeting, the Board decided to give Jolivet extra time to gather additional evidence and arguments to support his position. *Id.* At this time, the district *764 court found that Jolivet "still intended to run as a Republican, but was contemplating his option to run as an independent." *Id.*; *see* R. 11-3 (Transcript of Bd. of Elections Protest Hearing, May 30, 2012 at 26:6-12) (Page ID # 147). The following day, December 15, 2011, Jolivet met with Husted regarding his candidacy and the possible invalidity of his Republican petition. The district court concluded that after this meeting, approval of Jolivet's candidacy as a Republican by the Board of

Elections "remained uncertain." *Jolivet*, 886 F.Supp.2d at —, 2012 WL 3527733, at *2. On December 19, 2011, Jolivet withdrew his candidacy as a Republican and resigned from the Butler County Republican Party Central Committee. R. 2 (Compl. ¶¶ 8-9) (Page ID # 4). Jolivet alleges that at this time, he "left the Republican Party in good faith" and "no longer wish[ed] to be affiliated with the Republican Party." *Id.* ¶ 10 (Page ID # 4). Jolivet testified that his relationship with the Republican Party had been deteriorating since 2008, and that the party refused to support him after "tough" budgetary votes he made as County Commissioner. *See* R. 27 (August 6, 2012 Evidentiary Hearing Transcript at 10:18-11:6) (Page ID # 504-05); Appellant Br. at 13-14. Jolivet subsequently lost the Republican endorsement for County Commissioner in 2010 and was defeated in the Republican primary that year. Appellant Br. at 13-14.

On February 22, 2012, Jolivet prepared a nominating petition and Statement of Candidacy to run as an independent candidate for the same office as his Republican petition, State Representative for Ohio's 51st House District. *Jolivet*, 886 F.Supp.2d at —, 2012 WL 3527733, at *3. The petition and Statement of Candidacy were filed on March 5, 2012. *Id.* Jolivet did not vote in any party primary the following day, March 6, 2012. As of the time Jolivet submitted his petition for candidacy as an independent, Jolivet had on file with the Board of Elections a "Designation of Treasurer" which indicated that he was affiliated with the Republican Party. *Id.* This Designation of Treasurer had been filed with the Board of Elections on July 15, 2008, but was not amended until May 4, 2012, when Jolivet filed an amended form identifying himself as an independent. R. 11-1 (Joint Evid. Ex. I) (Page ID # 82-86). Additionally, as of March 5, 2011, when the independent petition was filed, Jolivet's campaign committee maintained a website which indicated he would "be a vote for strong Republican leadership." R. 11-3 (Transcript of Bd. of Elections Protest Hearing, May 30, 2012 at 29:10-24) (Page ID # 150).

On April 19, 2012, a protest was filed by three members of the Republican Party challenging Jolivet's candidacy as an independent on the basis that he was not unaffiliated from the Republican Party. *See* R. 2 (Compl. ¶ 14) (Page ID # 5); OHIO REV.CODE § 3513.262. On May 16, 2012, the Butler County Board of Elections approved Jolivet's petition, certified him to be on the ballot, and scheduled the protest hearing. *Jolivet*, 886 F.Supp.2d at —, 2012 WL 3527733, at *4. The protest hearing, held on May 30, 2012, resulted in a tie vote with respect to whether to grant or deny the protest, with the two Democratic board members voting to deny the protest,

and the two Republican board members voting to grant the protest. The matter was then referred to Husted. Husted voted on June 26, 2012 to grant the protest, thereby breaking the tie, concluding that Jolivette is “not unaffiliated and cannot run as an independent candidate for this election.” R. 11 (Joint Evid. Ex. 1, at 2) (Page ID # 50). To support his decision, Husted cited Jolivette’s past voting history in Republican Party primary elections, his prior service as a Republican legislator and Republican County Commissioner *765 from 1997 to 2010, and his filing of a petition to run for the same office in the same cycle as a Republican. *Id.*

On July 9, 2012, Jolivette filed this action in the U.S. District Court for the Southern District of Ohio seeking declaratory and injunctive relief, on the grounds that Defendants’ refusal to permit him to appear on the ballot as an independent candidate violated his constitutional rights. R. 2 (Compl. ¶¶ 31, 33, 37) (Page ID # 9–10). Jolivette argues that the decision to block his access to the ballot as an independent candidate because he was affiliated with a political party violated his First, Fifth, and Fourteenth Amendment rights, and that the Ohio election framework governing disaffiliation from a political party violates the Equal Protection Clause. The district court found that neither preliminary nor permanent injunctive relief was warranted, based on a finding that none of Jolivette’s constitutional claims had merit, and as a result dismissed the case. *Jolivette*, 886 F.Supp.2d at —, —, 2012 WL 3527733, at *13, *16. Jolivette timely appealed the order denying relief to this Court. R. 26 (Notice of Appeal at 1) (Page ID # 493).

Because Jolivette’s complaint raises constitutional claims, the district court had jurisdiction under 28 U.S.C. § 1331. See *Morrison v. Colley*, 467 F.3d 503, 505–06 (6th Cir.2006). We have jurisdiction over the appeal pursuant to 28 U.S.C. § 1291.

II. STANDARD OF REVIEW

^[1] ^[2] We review the district court’s denial of preliminary and permanent injunctive relief for abuse of discretion. See *ACLU of Ohio, Inc. v. Taft*, 385 F.3d 641, 645 (6th Cir.2004). Accordingly, we review “the district court’s legal conclusions de novo and its factual findings for clear error.” *Taubman Co. v. Webfeats*, 319 F.3d 770, 774 (6th Cir.2003) (quoting *Owner–Operator Indep. Drivers Ass’n v. Bissell*, 210 F.3d 595, 597 (6th Cir.2000)); see *Worldwide Basketball and Sport Tours, Inc. v. NCAA*, 388 F.3d 955, 958 (6th Cir.2004). We also review for abuse of discretion the district judge’s decision not to grant

declaratory relief. See *Taft*, 385 F.3d at 645 (“Although the district court did not specifically rule on the [plaintiff’s] request for declaratory relief, instead dismissing the case in toto after ruling on the [plaintiff’s] motion for preliminary injunctive relief, we review a ‘district court’s exercise of discretion under the Declaratory Judgment Act, 28 U.S.C. § 2201(a), for abuse of discretion.’ ” (quoting *Scottsdale Ins. Co. v. Rounph*, 211 F.3d 964, 967 (6th Cir.2000))).

^[3] ^[4] ^[5] In considering whether preliminary injunctive relief should be granted, a court considers four factors: “(1) whether the movant has a strong likelihood of success on the merits; (2) whether the movant would suffer irreparable injury without the injunction; (3) whether issuance of the injunction would cause substantial harm to others; and (4) whether the public interest would be served by issuance of the injunction.” *Chabad of S. Ohio v. City of Cincinnati*, 363 F.3d 427, 432 (6th Cir.2004) (quoting *Blue Cross & Blue Shield Mut. of Ohio v. Blue Cross & Blue Shield Ass’n*, 110 F.3d 318, 322 (6th Cir.1997)). “Although no one factor is controlling, a finding that there is simply no likelihood of success on the merits is usually fatal.” *Gonzales v. Nat’l Bd. of Med. Examiners*, 225 F.3d 620, 625 (6th Cir.2000). “In general, [t]he standard for a preliminary injunction is essentially the same as for a permanent injunction with the exception that [for a preliminary injunction] the plaintiff must show a likelihood of success on the merits rather than actual success.” *ACLU of Ky. v. McCreary Cnty.*, 607 F.3d 439, 445 (6th Cir.2010) (quoting **766 Amoco Prod. Co. v. Vill. of Gambell*, 480 U.S. 531, 546 n. 12, 107 S.Ct. 1396, 94 L.Ed.2d 542 (1987)). The district court found that none of Jolivette’s constitutional claims had merit, and that when balanced with the other factors, injunctive relief was not warranted. *Jolivette*, 886 F.Supp.2d at —, 2012 WL 3527733, at *16. We consider each of Jolivette’s arguments on appeal in turn.

III. FIRST AMENDMENT CLAIM

^[6] Jolivette first argues that Defendants’ determination that he is ineligible to run as an independent candidate because he is affiliated with a political party violates his First Amendment rights to free speech and association. See Appellant Br. at 8. The focus of our inquiry is thus on this constitutional question.¹ The grant of the protest against Jolivette’s independent candidacy by the Board of Elections and Husted was based on Ohio’s requirement that independent candidates claim, no later than four p.m. on the day before the primary elections, that they are not affiliated with a political party. See

3501.01(I); 3513.257. Ohio law defines an “Independent Candidate” as “any candidate who claims not to be affiliated with a political party, and whose name has been certified ... through the filing of a statement of candidacy and nominating petition, as prescribed in section 3513.257 of the Revised Code.” *Id.* § 3501.01(I). In turn, § 3513.257 requires independent candidates to file a statement of candidacy and nominating petition no later than four p.m. the day before the day of the primary elections. See *id.* § 3513.257.² Jolivette’s First Amendment argument is essentially an attack on the application of these ballot-access restrictions to his petition for candidacy.

The Supreme Court’s approach to constitutional challenges to election regulations requires balancing a state’s “broad power” to regulate elections against the “fundamental rights” of candidates and voters, including the right to “freedom of political association.” See *Tashjian v. Republican Party of Conn.*, 479 U.S. 208, 217, 107 S.Ct. 544, 93 L.Ed.2d 514 (1986); see also *Lawrence v. Blackwell*, 430 F.3d 368, 372–73 (6th Cir.2005) (explaining that in evaluating election regulations, “[c]ourts must undertake the difficult task of considering and weighing the asserted injury to fundamental constitutional rights, the precise interest of the state in the regulation at issue, and the extent to which it is necessary to burden important rights in order to achieve any important state interests.”). On the one hand, the Court has recognized that in structuring the election process, “States may, and inevitably must, enact reasonable regulations of parties, elections, and ballots to reduce election- and campaign-related disorder.” *Timmons v. Twin Cities Area New Party*, 520 U.S. 351, 358, 117 S.Ct. 1364, 137 L.Ed.2d 589 (1997); see *Storer v. Brown*, 415 U.S. 724, 730, 94 S.Ct. 1274, 39 L.Ed.2d 714 (1974) (“[A]s a practical matter, there must be a substantial regulation of elections if they are to be fair and honest and if some sort of order, rather than chaos, is to accompany the democratic process.”). On the other hand, states’ broad authority to regulate elections must be carefully balanced against the “fundamental” right to associate freely for the advancement of *767 political ideas. See *Anderson v. Celebrezze*, 460 U.S. 780, 787–88, 103 S.Ct. 1564, 75 L.Ed.2d 547 (1983); *Williams v. Rhodes*, 393 U.S. 23, 30, 89 S.Ct. 5, 21 L.Ed.2d 24 (1968) (holding that the right to freedom of political association “rank[s] among our most precious freedoms”).

[7] [8] [9] The level of scrutiny applied to a state election regulation depends on the burden imposed by the regulation on the constitutional rights of voters and candidates. See *Burdick v. Takushi*, 504 U.S. 428, 434, 112 S.Ct. 2059, 119 L.Ed.2d 245 (1992). In evaluating an

election regulation against a constitutional challenge, “we weigh the ‘character and magnitude’ of the burden the State’s rule imposes” on citizens’ constitutional rights against “the interests the State contends justify that burden, and consider the extent to which the State’s concerns make the burden necessary.” *Timmons*, 520 U.S. at 358, 117 S.Ct. 1364 (quoting *Burdick*, 504 U.S. at 434, 112 S.Ct. 2059). If the regulation imposes a severe burden on plaintiffs’ rights, the regulation must be “narrowly tailored and advance a compelling state interest.” *Id.* “Lesser burdens, however, trigger less exacting review, and a State’s important regulatory interests will usually be enough to justify reasonable, nondiscriminatory restrictions.” *Id.* (internal quotation marks omitted).

In *Morrison v. Colley*, we upheld against a First Amendment challenge the application of § 3513.257 to disqualify a would-be independent candidate from running in the general election because he was found to be affiliated with a political party. 467 F.3d at 508. We held that § 3513.257 requires a claim of independence to be made “in good faith.” *Id.* at 509. In *Morrison*, the plaintiff, Morrison, filed a petition to run as an independent candidate for office as United States Representative in Ohio’s Fifteenth Congressional District. *Id.* at 504. Subsequent to filing his independent petition, Morrison voted in a Republican primary, and he also appeared on the Republican primary ballot for his county’s Republican Party Central Committee and the Ohio Republican Party State Central Committee. *Id.* at 505. On these facts, we found that Morrison’s claim of independence was not made in good faith, because simultaneous to his claim of independence, Morrison “evinced a desire to be affiliated with the Republican Party” by “registering Republican, running as a Republican in the primary, and voting in the Republican primary.” *Id.* at 510. We further found that § 3513.257 did not violate First or Fourteenth Amendment freedoms under the facts of that case. *Id.* at 508. We explained that the district court “concluded correctly that Ohio Rev.Code § 3513.257 does not impose a severe restriction” on candidates or voters, and that it is “merely a reasonable, nondiscriminatory regulation to require would-be independent candidates to claim ... that they are free of affiliation with any political party.” *Id.* at 507–08.

In this case, there are objective facts in the record indicating that Jolivette was affiliated with Republican Party at the time he filed his petition as an independent. As of the time his independent petition was submitted, Jolivette had on file a Designation of Treasurer indicating that he was affiliated with the Republican Party. This Designation of Treasurer was not amended until May 5, 2012. R. 11–1 (Joint Evid. Ex. I) (Page ID # 82–86). In

addition, at the time Jolivette's independent petition was filed, his campaign committee maintained a website which stated that Jolivette would be a "Vote for Strong Republican Leadership." R. 11 (Joint Evid. Ex. F) (Page ID # 68). Further, after he filed as an independent, Jolivette continued to maintain a Facebook page that indicated he was affiliated with various Republican organizations, including the *768 Ohio–Republican Party and Positively Republican!, among others. R. 11 (Joint Evid. Ex. G) (Page ID # 70). These objective factors are "inconsistent with [Jolivette's] claim that he is unaffiliated with a political party." *State ex rel. Livingston v. Miami Cnty. Bd. of Elections*, 196 Ohio App.3d 263, 963 N.E.2d 187, 192 (2011). Although Jolivette argues that he has not actively participated in partisan activities or promoted himself as a partisan candidate since his disaffiliation, there is evidence in the record indicating that Jolivette did not completely undo his affiliation with the Republican Party in advance of filing his petition to run as an independent.

^[10] Jolivette tries to distinguish the facts of his case from the facts in *Morrison*, mainly by arguing that the Board of Elections in this case—unlike in *Morrison*—considered conduct from *before* he filed as an independent. See Appellant Br. at 8. In his tie-breaking vote, Husted considered Jolivette's voting history in recent past Republican primaries, his holding of office as a Republican Legislator and Republican County Commissioner until 2010, and his pursuit of access to the Republican primary ballot as a candidate for the 51st House District in the 2012 election cycle up until it was clear that his Republican petition did not have sufficient valid signatures. R. 11 (Joint Evid. Ex. 1) (Page ID # 50). As a result, Husted agreed with the Board of Elections' members who found Jolivette's claim of non-affiliation to be "disingenuous," see R. 11–2 (Joint Evid. Ex. 5) (Page ID # 105), and found that "Jolivette is not unaffiliated and cannot run as an independent candidate for this election." R. 11 (Joint Evid. Ex. 1) (Page ID # 50). Relying in part on a candidate's conduct prior to his or her filing as an independent candidate is permissible under Ohio law. See *Livingston*, 963 N.E.2d at 192; Ohio Sec'y of State, Advisory Op. No.2007–05, at 4 (June 4, 2007) (allowing the Board to consider: "past voting history, information submitted on required election-related filings, political advertisements, participation as a political party officer or member, or holding a public office for which the office holder was nominated through a political party's primary election and elected on a partisan ticket"). Cf. OHIO REV.CODE § 3513.19(A)(3) (stating that a voter will be considered affiliated with a political party if he or she voted in that party's primary in the immediately preceding two calendar years, for purposes of determining eligibility

to vote in a party primary election). Although no Ohio case to date has upheld the disqualification of an independent candidate "solely on the basis of pre-filing conduct or activity," such conduct may be considered in the Board of Elections' overall determination. *Livingston*, 963 N.E.2d at 192 (rejecting the disqualification of an independent candidate when the evidence of lack of good faith in disaffiliating was based solely on pre-filing conduct).

^[11] Jolivette argues that such consideration of an independent candidate's pre-filing conduct is impermissible as a matter of constitutional law.³ See Appellant Br. at 8 (stating that the issue in the case is "[w]hether a Board of Election's determination to deny an independent candidate's access to the ballot based on evidence of party affiliation that occurred prior to the candidate's filing of an independent candidate petition ... violates the candidate's First Amendment speech and association rights"); *id.* at 20–23. This argument is *769 unavailing. A ballot access restriction is not per se unconstitutional solely because it permits a decisionmaker to look backward in time from the filing of a petition for independent candidacy to determine if a candidate disaffiliated; indeed, the Supreme Court upheld a backward-looking election restriction requiring a per se one-year waiting period for candidates seeking to run as independents who disaffiliated from a political party. See *Storer*, 415 U.S. at 736, 94 S.Ct. 1274. The Court found that the per se waiting period helps avoid "independent candidacies prompted by short-range political goals, pique, or personal quarrel." *Id.* at 735, 94 S.Ct. 1274. The state's interests in "the stability of its political system" and preventing "splintered parties and unrestrained factionalism" outweighed the burden placed on would-be independent candidates who disaffiliate from a political party. *Id.* at 736, 94 S.Ct. 1274; see also *Van Susteren v. Jones*, 331 F.3d 1024, 1026 (9th Cir.2003) (upholding California's one-year waiting period disaffiliation statute).

^[12] In *Morrison*, we concluded that the application of § 3513.257's requirement that "independent candidates [] claim on the day before the primary that they are not affiliated with any political party" was constitutionally permissible. *Morrison*, 467 F.3d at 508. First, our holding that § 3513.257 imposed only a small burden on would-be candidates renders inapposite Jolivette's argument that strict scrutiny applies. See Appellant Br. at 18–19. Rather, because the requirement that independent candidates make a good-faith claim of non-affiliation on the day before the primary imposes only a small burden, the state "need only show that this requirement advances an important state interest." *Morrison*, 467 F.3d at 508.

Section 3513.257 does not inhibit Jolivet’s ability freely to write, speak, organize campaigns, or promote any set of political beliefs that he wishes. See *Jenness v. Fortson*, 403 U.S. 431, 438, 91 S.Ct. 1970, 29 L.Ed.2d 554 (1971). Instead, § 3513.257 is a means of restricting the candidates who may appear on the ballot, and does so by requiring that independent candidates make a good-faith claim that they are free of affiliation with a political party at the time they submit their petitions for independent candidacy. Such a restriction on ballot access “is expressive of a general state policy aimed at maintaining the integrity of the various routes to the ballot.” *Storer*, 415 U.S. at 733, 94 S.Ct. 1274. The Supreme Court has found that the state may legitimately “avoid[] overcrowded ballots” and “protect the integrity of its political processes from frivolous or fraudulent candidacies.” *Bullock v. Carter*, 405 U.S. 134, 145, 92 S.Ct. 849, 31 L.Ed.2d 92 (1972). Further, the state has an interest in regulating ballot access in order to avoid “confusion, deception, and even frustration of the democratic process at the general election.” *Schrader v. Blackwell*, 241 F.3d 783, 789 (6th Cir.2001) (quoting *Jenness*, 403 U.S. at 442, 91 S.Ct. 1970). Ohio’s law, though not structured as a per se waiting period, serves these same interests as applied to Jolivet. Cf. OHIO REV.CODE § 3513.257 (noting that the purposes of requiring an independent candidate to claim he or she is not affiliated with any political party on the day before the primary elections serves the state’s interests in “prevent[ing] splintered parties and unrestrained factionalism,” “avoid[ing] political fragmentation,” “maintain[ing] the integrity of the ballot,” and “ensuring fair and honest elections”). By requiring independent candidates to make a good-faith claim of non-affiliation by the day before the primary, Ohio seeks to maintain the integrity of its different routes to the ballot—the partisan primary and the independent petition.

*770 Under the circumstances of this case, we conclude that the disqualification of an independent candidate based on “a finding that the candidate’s claim to have disaffiliated with a political party was not made in good faith because the candidate is not actually unaffiliated,” *Livingston*, 963 N.E.2d at 192, is constitutionally permissible.⁴ We thus hold that the application of § 3513.257 to disqualify Jolivet as an independent candidate did not impose a constitutionally impermissible burden on his right to associate freely for the advancement of his political beliefs.

IV. VAGUENESS CLAIM

^[13] ^[14] Next, Jolivet argues that the Ohio election framework is unconstitutionally vague, because it contains “no standards or criteria to evaluate a candidate’s claim of independence.” See Appellant Br. at 21; *id.* at 26–30. Jolivet cannot succeed on this argument because he did not explicitly raise it at the district court. See R. 3 (Mot. for Prelim. Inj. at 7–13) (Page ID # 20–26) (failing to make an argument relating to the void-for-vagueness doctrine). As a rule, we will not review issues if they are raised for the first time on appeal. See *In re Hood*, 319 F.3d 755, 760 (6th Cir.2003) (“It is well-settled that this court will not consider arguments raised for the first time on appeal unless our failure to consider the issue will result in a plain miscarriage of justice.”) (quoting *Overstreet v. Lexington–Fayette Urban Cnty. Gov’t*, 305 F.3d 566, 578 (6th Cir.2002)). Jolivet’s efforts to re-describe his argument about the arbitrariness of the determination that his claim of independence was not made in good faith into a vagueness challenge is a stretch from what was actually argued at the district court. See Appellant Reply Br. at 15–18. The district court opinion did not consider or rule on a vagueness challenge. See *Jolivet*, 886 F.Supp.2d 820, 2012 WL 3527733. Because Jolivet did not develop the vagueness claim at the district court, we will not consider the argument here. See *Armstrong v. City of Melvindale*, 432 F.3d 695, 700 (6th Cir.2006) (“[T]he failure to present an issue to the district court forfeits the right to have the argument addressed on appeal.”).

V. EQUAL PROTECTION CLAIMS

^[15] Jolivet’s third and fourth arguments challenge portions of the Ohio election statutory framework under the Equal Protection Clause of the Fourteenth Amendment. Appellant Br. at 30, 38; see R. 2 (Compl. ¶¶ 33, 37) (Page ID # 9–10). Jolivet’s first contention is that the Ohio election statutes are unconstitutional because they leave “to the discretion of a county board of elections whether to allow an individual affiliated with a political party to become unaffiliated, i.e. independent,” but permit candidates to switch from one party to another “freely.” Appellant Br. at 31. Section 3513.191 of the Ohio Revised Code allows candidates previously affiliated with a political party to run in a different party’s primary under certain defined circumstances. OHIO REV.CODE § 3513.191. In contrast, the eligibility of candidates seeking to disaffiliate from a political party and run as independents is governed by the “good faith” standard as explained in *Morrison*, 467 F.3d at 508–09. *771 Second, Jolivet takes issue with the code provisions relating to who may bring protests against the

nominating petitions of partisan versus independent candidates. See Appellant Br. at 38. In Ohio, although “any qualified elector eligible to vote for the candidate whose nominating petition he objects to” may file a written protest against the nominating petition of an independent candidate, see OHIO REV.CODE § 3513.262, only a “qualified elector who is a member of the same political party as the candidate and who is eligible to vote in the primary election for the candidate” may protest the candidacy of a person seeking a party nomination. *Id.* § 3513.05. Jolivet argues that these differences in the statutes governing independent versus partisan candidates constitute unjustified “unequal treatment.” Appellant Br. at 39.

[16] [17] We examine Jolivet’s equal-protection challenges to the Ohio statutory framework using the same balancing framework as his First Amendment challenge. See *Burdick*, 504 U.S. at 434, 112 S.Ct. 2059; *Anderson*, 460 U.S. at 789, 103 S.Ct. 1564. The Equal Protection Clause of the Fourteenth Amendment states that no state shall “deny to any person within its jurisdiction the equal protection of the laws.” U.S. CONST. amend. XIV, § 1. This is “‘essentially a direction that all persons similarly situated should be treated alike.’” *Bower v. Vill. of Mount Sterling*, 44 Fed.Appx. 670, 676 (6th Cir.2002) (quoting *City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 439, 105 S.Ct. 3249, 87 L.Ed.2d 313 (1985)). A successful equal-protection claim requires that “the government treated the plaintiff disparately as compared to similarly situated persons...” *Ctr. for Bio-Ethical Reform, Inc. v. Napolitano*, 648 F.3d 365, 379 (6th Cir.2011) (internal quotation marks omitted).

Jolivet’s equal-protection claims do not get off the ground because independent candidates and partisan candidates are not similarly situated for purposes of election regulations. See *Jenness v. Fortson*, 403 U.S. 431, 440–41, 91 S.Ct. 1970, 29 L.Ed.2d 554 (1971). In *Jenness v. Fortson*, the Supreme Court upheld Georgia’s election regulations that required nonpartisan candidates to collect signatures from 5% of voters before their names were printed on the ballot, but had no such requirement for partisan candidates who won their party primary. *Id.* at 434, 440–41, 91 S.Ct. 1970. The Court held that the state permissibly recognized two alternate paths to the ballot—the party primary and non-partisan candidate petitions—“neither of which [could] be assumed to be inherently more burdensome than the other.” *Jenness*, 403 U.S. at 441, 91 S.Ct. 1970. Because the partisan candidate must win the majority of votes in a party primary, whereas the independent candidate must gather signatures from 5% of the total electorate, the two pathways to the ballot were different, and thus partisan candidates were

not similarly situated to independent candidates. *Id.* at 440–42, 91 S.Ct. 1970. Other federal appellate courts have come to the same conclusion, that for purposes of an Equal Protection Clause challenge to an election regulatory framework, partisan candidates and independent candidates are not similarly situated. See, e.g., *Curry v. Buescher*, 394 Fed.Appx. 438, 447 (10th Cir.2010); *Van Susteren*, 331 F.3d at 1026–27. As the Ninth Circuit pointed out in *Van Susteren*, whereas the primary process is “integral to the election [] because it serves the important function of winnowing out competing partisan candidates,” the independent candidate is excused from this process, and thus different restrictions for their access to the ballot are permissible. *Van Susteren*, 331 F.3d at 1027. Because of the differences between the pathways to the ballot of partisan versus independent candidates in Ohio, we agree with the district *772 court that Jolivet’s equal-protection arguments lack merit. See *Jolivet*, 886 F.supp.2d at ———, 2012 WL 3527733, at *14–16.

After examining Jolivet’s constitutional claims and finding that none of them have merit, we find no abuse of discretion in the district court’s decision to deny Jolivet’s requests for a preliminary injunction, a permanent injunction, and declaratory relief. See *Taft*, 385 F.3d at 645.

VI. CONCLUSION

For the reasons discussed above, we **AFFIRM** the district court’s judgment denying declaratory as well as preliminary and permanent injunctive relief.

MERRITT, Circuit Judge, dissenting.

I do not agree with the result in this case barring Jolivet from running as an Independent for the state legislature or with the majority’s interpretation of Ohio law as set out in the recent case of *Livingston v. Miami County Board of Elections*, 196 Ohio App.3d 263, 963 N.E.2d 187, decided September 8, 2011, or with the majority’s interpretation of the seminal ballot access case on the First Amendment, *Anderson v. Celebrezze*, 460 U.S. 780, 103 S.Ct. 1564, 75 L.Ed.2d 547 (1983). The bottom line is that Jolivet clearly wants to leave the Republican Party—his long fight in this case is certainly evidence of that choice, along with his many earlier statements to that effect—because the party now rejects him after many years of public service as a Republican. He has nowhere

else to turn except as an independent candidate if he is to continue his public service. What stands in his way is the adverse ruling of the Ohio Secretary of State, a partisan official elected statewide as a Republican, who disagrees with the interpretation given the state's ballot access statute by the highest state court to decide the issue.

In *Livingston*, the state court overruled a decision rejecting the independent candidacy of two candidates for local office because they had voted in Republican primary elections, signed petitions in support of Republican candidates a few months before the election, and previously won office as a Republican candidate for local office. And one of them, Livingston, was a member of the local Republican Executive Committee until he resigned just before filing a petition as an independent candidate. In reversing the decision rejecting their independent candidacies, the court said:

Consistent with the liberal construction of the laws in favor of candidates, a finding that the candidate's claim was not made in good faith must be supported by clear and convincing evidence.... The record supports a finding that both relators may have acted on a calculation that they would have a better chance of winning as independent candidates. However, that fails to rise to the level of clear and convincing evidence that their claims of disaffiliation from the Republican Party were not made in good faith because the claim is a sham or deceitful—that is, that either actually remains affiliated with the Republican Party. Such proof is necessary to find an impropriety in their claims sufficient to permit the board to invalidate their petitions pursuant to R.C. 3501.39(A) on a finding of a lack of good faith.

196 Ohio App.3d at 270–71, 963 N.E.2d at 192–93 (citation omitted). Likewise, in the present case, there is no “clear and convincing” evidence that Jolivette is lying about his choice and no one claims his application is a sham. He has attempted to remove all doubt that he is still a Republican by eliminating former references on a website that he is a Republican and in other ways. He has privately and publicly consistently renounced his membership in *773 the Republican Party. The *Livingston*

case is directly contrary to the Ohio Secretary of State's view that Jolivette remains affiliated with the Republican Party. Under Ohio law, the Secretary may try to persuade Jolivette to remain with the GOP but he may not indenture him to the party or deprive him of the right to change his partisan views and associations.

That should be the end of this case and make it unnecessary to reach a First Amendment question. But our court's approval of the rulings below makes it necessary to reach the federal question arising under the First Amendment. Ohio has a number of cases in which the Supreme Court has reversed Ohio's rejection of ballot access by independent candidates or parties thus allowing incumbents to insulate themselves against challengers. See, e.g., *Williams v. Rhodes*, 393 U.S. 23, 89 S.Ct. 5, 21 L.Ed.2d 24 (1968). More recently, an Ohio case in the Supreme Court, *Anderson v. Celebrezze*, 460 U.S. 780, 103 S.Ct. 1564, 75 L.Ed.2d 547 (1983), reversed a Sixth Circuit case upholding Ohio's effort to bar an independent candidacy and further entrench and stabilize the two major parties in their dominant positions.

In *Anderson*, the Court struck down an Ohio effort to require minor parties and independent candidates to file much earlier than the major party candidates. This Ohio policy would prevent the candidacy of individuals and minor parties who become disenchanted during the primary process and decide to quit the party. In this case the candidate was John Anderson, who unsuccessfully sought the Republican nomination for President, but then decided to bolt and to seek the office independently. The Supreme Court's opinion by Justice John Paul Stevens sets out general First Amendment standards that apply up and down the political hierarchy:

A burden that falls unequally on new or small political parties or on independent candidates impinges, by its very nature, on associational choices protected by the First Amendment. It discriminates against those candidates and—of particular importance—against those voters whose political preferences lie outside the existing political parties. *Clements v. Fashing*, [457 U.S. 957, 964–65, 102 S.Ct. 2836, 73 L.Ed.2d 508 (1982)] (plurality opinion). By limiting the opportunities of independent-minded voters to associate in the electoral arena to enhance their political effectiveness as a group, such restrictions threaten to reduce diversity and competition in the marketplace of ideas. Historically political figures outside the two major parties have been fertile sources of new ideas and new programs; many of their challenges to the status quo have in time made their way into the political mainstream. *Illinois Elections Bd. v. Socialist Workers Party*, 440 U.S. [173] at 186 [99 S.Ct. 983, 59

L.Ed.2d 230 (1979)]; *Sweezy v. New Hampshire*, 345 [354] U.S. 234, 250–251 [77 S.Ct. 1203, 1 L.Ed.2d 1311] (1957) (opinion of Warren, C.J.). In short, the primary values protected by the First Amendment—“a profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open,” *New York Times Co. v. Sullivan*, 376 U.S. 254, 270, 84 S.Ct. 710, 11 L.Ed.2d 686 (1964)—are served when election campaigns are not monopolized by the existing political parties.

460 U.S. at 793–94, 103 S.Ct. 1564 (footnote and parallel citations omitted).

I believe the *Livingston* case standards meet the First Amendment test, but the standards applied by my colleagues do not. The *Livingston* case standards do not “discriminate[] against those candidates and—of

particular importance—against those voters whose political preferences lie outside the existing political parties.” *Id.* But *774 the majority opinion “restrictions threaten to reduce diversity and competition in the marketplace of ideas.” *Id.* The majority opinion undermines our “profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide open.” The majority opinion once again prefers the corporate or establishment side of the case against the iconoclastic individual on his soap box in Hyde Park. I have no idea what Jolivette might do or propose, but he should be given his shot rather than be indentured to the Republican Party because he used to be a Republican.

Footnotes

- * Judge Merritt would grant rehearing for the reasons stated in his dissent.
- 1 Jolivette’s complaint does not include a state-law claim that the disqualification of his independent candidacy violated Ohio law. See R. 2 (Compl.) (Page ID # 2–12)
- 2 Although the requirement for an independent candidate to “claim [] not to be affiliated with a political party” is contained in the text of § 3501.01(l), it is carried through to § 3513.257 by reference to an “independent candidate.” We will continue to use the convention of other courts of referring to § 3513.257 as requiring a claim of non-affiliation.
- 3 To the extent that Jolivette’s First Amendment argument is really a claim that the good-faith requirement lacks objective standards and is thus void for vagueness, we do not address his argument here. As discussed *infra*, Jolivette did not make a void-for-vagueness argument at the district court, and thus it is waived on appeal.
- 4 Because we need only decide the constitutional question to dispose of this case, we do not address what standard of evidence applies under Ohio law to sustain a protest for lack of disaffiliation under § 3513.257, and whether that standard was met in this case. See *Livingston*, 963 N.E.2d at 192 (holding that a clear and convincing standard of evidence applies). Jolivette cannot succeed on his federal constitutional claims because he has not shown that the application of Ohio law’s “good faith” standard for disaffiliation to his case violated his constitutionally protected rights as a candidate.

APPX. TAB

6



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October 5, 2007

Bryan C. Williams, Director
Summit County Board of Elections
470 Grant St.
Akron, Ohio 44311-1157

Re: Tie Votes on Candidate for City of Barberton Law Director

Dear Director Williams:

On October 4, 2007 I received a package sent by your office providing information and arguments on a tie vote by the members of the Summit County Board of Elections ("the Board"). My analysis and decision are below.

INTRODUCTION

The tie vote raises the question whether or not Edna J. Boyle is affiliated with a political party and how such status affects whether she may run for office as an independent candidate.

FACTS

On September 10, 2007, Edna J. Boyle timely filed a nominating petition to seek election to the office of City of Barberton Law Director at the November 2007 general election.

On September 25, 2007, Dan Whitaker timely filed a protest against the candidacy of Ms. Boyle, asserting that she is affiliated with the Republican party, and so, cannot run as an independent candidate under *Morrison v. Colley*, 467 F.3d 503 (6th Cir. 2006), and Ohio Secretary of State Advisory 2007-05.

MOTIONS

At a meeting of the Board on September 25, 2007, Member Arshinkoff moved to "approve" the petition in question. Member Morrison seconded the motion. Members Arshinkoff and Morrison voted in favor of the motion. Chairman Jones and Member Gorbach voted against the motion.

ARGUMENTS

Members Arshinkoff and Morrison argue that the Ms. Boyle has done everything that she can do under the law to disaffiliate herself from the Republican party with which she was formerly affiliated, and so, passes the legal test for independence under *Morrison* and Advisory 2007-05.

Chairman Jones and Member Gorbach argue that Ms. Boyle is affiliated with the Republican Party and cannot run as independent candidate under *Morrison* and Advisory 2007-05.

DISCUSSION

This tie vote is properly before me pursuant to R.C. § 3501.11(X) and Appendix G of the Election Official Manual for Ohio County Boards of Elections.

The municipal charter for the City of Barberton, Ohio provides that the general laws of Ohio prevail with regard to nominations for office.

R.C. 3501.39 provides:

If a petition is filed for the nomination or election of a candidate in a charter municipal corporation with a filing deadline that occurs after the seventy-fifth day before the day of the election, a board of elections may invalidate the petition within fifteen days after the date of that filing deadline. R.C. 3501.39(C)(1).

The general election at which Ms. Boyle seeks election will occur on November 6, 2007. The seventy-fifth day prior to that election was August 23, 2007. The filing deadline for Ms. Boyle's nominating petition was September 10, 2007, the day before the primary election in Barberton, and well after the seventy-fifth day before the election. The protest was filed, and the Board tied on the protest on September 25, 2007, the fifteenth day after the filing deadline.

Under R.C. 3513.01, *Morrison*, and Advisory 2007-05, an independent candidate must declare that she is not affiliated with any political party and must make that claim in good faith. In Advisory 2007-05, I stated that if an independent candidate is on a central or executive committee of a political party when she files her nominating petition or becomes a member of such committee during her candidacy, or if she votes in a party primary the day after she files her nominating petition, those actions are prima facie evidence that the claim of no affiliation is not in good faith. Absent either of those two clear indicia of party affiliation, a board must take into consideration all evidence presented or available that tends to indicate affiliation or no affiliation, and decide whether or not the candidate in question is actually not affiliated with a political party such that she may be an independent candidate.

Here, there is no prima facie evidence of party affiliation as is set forth in Advisory 2007-05. After reviewing the transcript of the Board meeting at which this tie vote occurred, it is clear that the Board did not vote to hold a separate hearing on this matter as it did in the Cuyahoga Falls Municipal Court Clerk tie vote also decided today. Such a hearing would have provided Ms. Boyle an opportunity to be heard and offer additional evidence in support of her non-affiliation with the Republican Party. The Board has requested that I break this tie vote on the ultimate issue of the validity of Ms. Boyle's candidacy rather than on whether or not to further hear the matter. Under other circumstances where the election cycle of the primary and general

elections permitted for more time between the two elections, I would be inclined to refrain from breaking the tie vote and advising the Board to hold such a hearing. However, in light of the impending November 6, 2007 election and the fact that the Board is faced with preparing absentee ballots that were required by law to be mailed beginning on October 2, 2007, I will not order further hearing on the matter and determine the matter on the evidence presented to me by the Board.

The evidence shows that Ms. Boyle voted a Republican ballot in May 2006, September 2005, March 2004, September 2004, May 2002, September 2001, March 2000, September 1999, and May 1998. The evidence does not indicate whether or not Ms. Boyle voted a party ballot in September 2007, and voting history, alone, is not sufficient to determine party affiliation under Advisory 2007-05.

The evidence also shows that Ms. Boyle donated to both the state and Summit County Republican parties in both 2006 and 2007.

Chairman Jones and Member Gorbach indicate that Ms. Boyle was a Republican candidate for nomination in the race for Judge of the 9th District Court of Appeals in 2006. For that race alone, Ms. Boyle accepted \$40,000 from the Summit County Republican Party.

All four Board members agree that Ms. Boyle was the Republican Director of the Board several years ago, and that former Republican Governor Bob Taft appointed her to a judgeship.

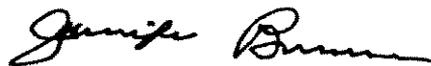
In the face of such evidence tending to indicate that Ms. Boyle is affiliated with the Republican Party, I find no contradictory evidence of any affirmative act to indicate disaffiliation other than filing a nominating petition as an independent candidate.

Because the evidence provided overwhelmingly indicates that Ms. Boyle is actually affiliated with the Republican Party I cannot vote to certify her nominating petition to be an independent candidate under *Morrison* and Advisory 2007-05.

DECISION

For the reasons stated above, I vote with Chairman Jones and Member Gorbach, AGAINST the motion to certify the nominating petition of Edna J. Boyle.

Sincerely,



Jennifer Brunner

APPX. TAB

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IN THE COURT OF COMMON PLEAS
SUMMIT COUNTY, OHIO

DANIEL M. HERRIGAN
2007 OCT 17 PM 4:06
SUMMIT COUNTY
CLERK OF COURTS

STATE <i>ex. rel.</i> EDNA BOYLE,)	CASE NO. CV 2007-10-7107
)	
Plaintiff,)	JUDGE STORMER
)	
-vs-)	JUDGE CURRAN
)	(sitting by assignment)
SUMMIT COUNTY BOARD OF)	
ELECTIONS,)	
)	
Defendant.)	JUDGMENT ENTRY

This matter was heard before the Court on October 16, 2007. Upon due consideration this Court finds that Defendant's Motion to Dismiss for failure to join a necessary party is well taken and is therefore GRANTED.

Facts

On or about September 5, 2007, Edna J. Boyle filed nomination petitions and a declaration of candidacy as an independent candidate for the City of Barberton's Law Director position. This position is to be elected in Ohio's general election on November 6, 2007. On September 25, 2007, Mr. Daniel Whitaker, of Akron, Ohio, filed a written protest regarding Ms. Boyle's nomination as an independent. He asserted that she was in fact affiliated with the Republican. On that same date, the Board held a previously scheduled meeting at which it considered candidate's petitions. Mr. Whitaker's petition was presented to the Board. On consideration, the Board divided 2-2 on whether to certify Ms. Boyle's candidacy as an independent. In accordance with O.R.C. 3501.11(X), the controversy was submitted to the Secretary of State. On October 5, 2007, the Secretary of State issued a Decision finding that Ms. Boyle was not an independent candidate, but in fact was affiliated with the Republican Party.

Therefore, Ms. Boyle's candidacy was invalidated, and she has been left off of the ballot for the November 6 election.

On October 11, 2007, Ms. Boyle entered a verified complaint seeking a temporary restraining order, a writ of mandamus, and a prayer for injunctive relief against the Summit County Board of Elections. She seeks to have her name placed upon the ballot as an independent. On October 16, 2007, the Board entered a Motion to Dismiss supported by a Memorandum. A hearing was held before this Court on October 16, 2007.

Law and Analysis

The Board has argued that this matter must be dismissed under Civ.R. 12(B)(7) for failure to join a necessary party. This Court would find more accurately that the plaintiff has failed to assert a claim upon which relief could be granted and dismiss under Civ.R. 12(B)(6), since the party defendant is without authority to act. Regardless of the particular subsection asserted, the analysis is unchanged, and this Court finds the Motion well taken.

Ms. Boyle has brought her claim only against the Summit County Board of Elections, through its individual members. At the meeting of September 25, 2007, the Board voted on two issues. The Board divided evenly regarding the necessity of a hearing on the protest of Mr. Whitaker. The Board also divided evenly regarding certification of Ms. Boyle's candidacy. These matters were then submitted to the Ohio Secretary of State pursuant to Section 3501.11(X) of the Ohio Revised Code.

"In all cases of a tie vote or a disagreement in the board, if no decision can be arrived at, the director or chairperson shall submit the matter in controversy . . . to the secretary of state, who shall summarily decide the question, and the secretary of state's decision shall be final." O.R.C. § 3501.11(X).

Once a matter is submitted to the Secretary of State, the board is bound by the secretary's decision on that matter. The board cannot act contrary to that decision.

Ms. Boyle relies on language in O.R.C §3501.05 as support for her claim that the Secretary of State is not a necessary party to this action.

“In any action involving the laws in Title XXXV [35] of the Revised Code wherein the interpretation of those laws is in issue in such a manner that the result of the action will affect the lawful duties of the secretary of state or of any board of elections, the secretary of state may, on the secretary of state's motion, be made a party.” O.R.C. § 3501.05.

Ms. Boyle contends that this section makes the Secretary of State a permissive party to any election action, and therefore, if the Secretary had an interest in this matter, she could intervene.

Intervention allows a potential party, who has not yet been made a party, to join an action by his or her own initiative under circumstances. Staff Notes to Civ.R. 24. The Ohio legislature may provide by statute certain parties the power to intervene as a matter of right. Civ.R. 24(A). Section 3501.05 provides such a power to the Secretary of State in controversies surrounding election matters. This right to intervene is at the discretion of the Secretary of State. *In re Protest of Initiative Petitions* (3d App. Dist., 2004), 2004-Ohio-4157. Therefore, in any matter encompassed by Section 3501.05 properly brought against a third party, the Secretary of State has a right to make herself a party to that action.

However, the Secretary of State's statutory right of intervention does not alter the analysis of the present action. Section 3501.05 provides the Secretary of State a permissive right to join an action, even where she is not a necessary party. That section does not render her an unnecessary party to any action involving Title 35. Section 3501.05 does not provide the Board with any authority to act in this matter, and Section 3501.11(X) is unequivocal that the Secretary's decision in this matter is final. If this matter were properly brought against the Board, the Secretary would, under § 3501.05, be able to intervene. Indeed, she still has such a

right, and her intervention would cure what is a fatal error in Ms. Boyle's claim.

Plaintiff has failed to state a claim upon which relief can be granted. The named defendant, the Summit County Board of Elections, is without authority to act in this matter. Plaintiff has not joined the Ohio Secretary of State, and the Secretary has not sought to intervene in this action. Therefore the case is dismissed pursuant to Civ.R. 12(B)(6) and 12(B)(7).

While this matter must be dismissed as brought against a party with no authority to act, this Court recognizes the time constraints under which all parties are acting. Having heard the merits of the parties' arguments, this Court issues the following statements *obiter dicta*.

After a board of election submits an issue to the Secretary of State, the Secretary's decision is final. O.R.C. 3501.11(X). The decision of the Secretary of State is not subject to appeal except that it may be reviewed to determine if the Secretary of State engaged in fraud, corruption, abuse of discretion, or clear disregard for the law. *State ex. rel. Herman v. Klopfleisch* (1995), 72 Ohio St.3d 581, 583, 651 N.E.2d 995. An abuse of discretion is more than an error of law or judgment; rather, it implies that the decision was unreasonable, arbitrary, or unconscionable, or that there was "no sound reasoning process" to support the ruling. See, e.g. *AAAA Enterprises., Inc. v. River Place Community Urban Redevelopment Corp.* (1990), 50 Ohio St. 3d 157, 161; See also, *Pilz v. Dept. of Rehab. & Corr.*, Franklin App. No. 04 AP-240, 2004-Ohio-4040, citing *Blakemore v. Blakemore* (1983), 5 Ohio St.3d 217, 219.

The Ohio Revised Code provides that independent candidates may enter a general election by filing, no later than four p.m. of the day before the day of the primary election immediately preceding the general election "a statement of candidacy and nominating petition." O.R.C. § 3513.257. An independent candidate is one "who claims not to be affiliated with a political party, and whose name has been certified on the office-type ballot at a general or special

election through the filing of a statement of candidacy and nominating petition.” O.R.C. § 3501.01(I). A claim of independence must be in good faith; “an aspiring independent candidate must actually be independent, rather than merely claim it.” *Morrison v. Colley* (6th Cir. 2006), 467 F.3d 503.

The Ohio Secretary of State issued an Advisory explaining how the good faith requirement of a candidate’s claim of independence is to be reviewed. The Secretary of State articulates two situations which clearly demonstrate party affiliation and require disallowing an independent candidacy. First, if the candidate votes in a party primary election after filing as an independent. Second, if the candidate was on a political party’s central or executive committee at the time he or she filed, or if he or she takes such a position after filing. Advisory 2007-05 at 3.

In addition to these two instances of *prima facie* party affiliation, the Secretary of State stated that other evidence of party affiliation could be presented. “[I]ndications . . . such as past voting history, information submitted on required election-related filings, political advertisements, participation as a political party officer or member, or holding a public office for which the office holder was nominated through a political party’s primary election and elected on a partisan ticket may serve as evidence, though not necessarily conclusive evidence, of party affiliation.” *Id.* at 4.

Ms. Boyle contends that she has been denied her civil rights both because the failure to certify her petition was based on a protest brought improperly by a party without standing to assert it, and because she was not granted a hearing at which she could assert her claims of independence. Ms. Boyle further asserts that she would likely win on the merits of her claim if she had been heard. This Court addresses each of these assertions in turn.

Ms. Boyle asserts that this matter was decided on the protest of Mr. Whitaker, a resident of Akron, Ohio who was not eligible to vote for the City of Barberton Law Director. Ohio law requires that persons eligible to vote for a particular candidate in may enter written protests against that candidate's nomination. See O.R.C. §§ 3513.262, 3513.263.¹ Ms. Boyle points to a reference to Mr. Whitaker's protest in the factual background of Secretary of State Brunner's Decision as evidence that the decision to review Ms. Boyle's petition was based on that protest.

Defendant contends that the decision to take up Ms. Boyle's candidacy was raised on personal knowledge of the board members. The affidavit of Wayne M. Jones, Chairman of the Summit County Board of Elections, states that the issue was raised on his motion and was independent of the protest of Mr. Whitaker. Bryan C. Williams, Director of the Board, testified under oath that certification of nominating petitions was a previously scheduled agenda item for the September 25, 2007 board meeting, and consideration of Ms. Boyle's petition was raised without reference to Mr. Whitaker's protest. However, Mr. Williams did state that the protest was included among the information that was delivered to Secretary Brunner. Ms. Brunner's description of the motions leading to her consideration of this matter indicate that the issue was raised on a motion to approve Ms. Boyle's petition, not on any consideration of Mr. Whitaker's protest. This Court finds sufficient evidence that Mr. Whitaker's protest was not the basis for consideration of Ms. Boyle's petition, and therefore any error in its filing is moot.

Ms. Boyle next contends that she was due a hearing prior to any finding that she was not an independent candidate. Again, she bases this assertion on language in sections 3513.262 and

¹ This Court notes that §§ 3513.262 and 3513.263 may not apply in the present matter. These sections, which provide for protests of nominating petitions, articulate timelines for entering such protests which are wholly inapplicable to the filing schedule in this matter. For example, section 3513.262 requires that all written protests be filed by four p.m. of the thirtieth day of July. The filing deadline in this case was the tenth of September. However, for purposes of this analysis, this Court accepts the argument of Plaintiff that only a person qualified to vote for the candidate could submit a protest to that candidate's petition.

3513.263 of the Ohio Revised Code. Similarly, O.R.C. § 3501.39, which sets for the grounds for rejection of a petition or candidacy, requires that a hearing be held upon consideration of a written protest before a petition may be rejected based on that protest. O.R.C. §3501.39(A)(1), (2). However, a board of elections may also reject a candidate if it finds that the petition violates any requirement of Chapter 3501, 3513, “or any other requirements established by law.” O.R.C. §3501.39(A)(3). A board’s independent consideration of such a matter does not require a hearing. See *Id.* Rather, the board must make any *sua sponte* consideration of a petition’s validity within specific time constraints. In the instant case, the Board could invalidate any candidacy within fifteen days of the filing deadline of September 10, 2007. The Board timely considered Ms. Boyle’s petition on September 25, 2007.

It is regrettable that Ms. Boyle was not given a hearing on this matter. As Secretary of State Brunner writes in her decision, if the election cycle permitted more time for consideration of this matter, it would have been beneficial to all sides to allow for such a hearing. However, no such hearing was required in this matter, and Secretary Brunner did not abuse her discretion when she did not order that the Board conduct one.

Finally, Ms. Boyle asserts that the evidence on which her petition was invalidated was inaccurate, and then she would be able to demonstrate that she was no longer affiliated with the Republican party. However, Ms. Boyle was unable to refute any point on which the Secretary of State’s relied in her Decision. Ms. Boyle did donate money to the Republican Party as late as March, 2007. Ms. Boyle has had a long affiliation with the Republican Party, attending a dinner as late as 2007. She ran as a Republican in the May, 2006 party primary for Judge in the Ninth District Court of Appeals.

In the face of this evidence of a lengthy relationship with the Republican Party, Ms. Boyle offered no evidence, symbolic or otherwise, that she has disassociated herself from that party. When asked by her counsel why she had elected to enter the fall election as an independent, she indicated that it was because the filing deadline for party candidates had expired. Ms. Boyle has taken no affirmative act to disassociate herself from the Republican Party, other than filing as an independent for the stated reason that it was too late to file as a partisan. This Court cannot find that Secretary of State Brunner abused her discretion.

Conclusion

This Court finds that the Ohio Secretary of State is a necessary party to this action. Therefore, Defendant's Motion to Dismiss is GRANTED.

IT IS SO ORDERED.


JUDGE THOMAS P. CURRAN

cc: Attorney John F. Manley
Attorney Brian J. Williams

amm

Judge Thomas Patrick Curran
Sitting by Assignment
Ohio Const. Art. IV, Sec. 6

APPX. TAB

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To ensure your information is updated, please do the following:

1. Print this form.
2. Complete all required fields.
3. Sign and date your form.
4. Fold and insert your form into an envelope.
5. Mail your form to your county board of elections. For your county board's address please visit www.OhioSecretaryofState.gov/boards.htm.

If you have additional questions, please call the office of the Ohio Secretary of State at 877-SOS-OHIO (767-6446).

HOW TO OBTAIN AN OHIO ABSENTEE BALLOT

You are entitled to vote by absentee ballot in Ohio without providing a reason. Absentee ballot applications may be obtained from your county board of elections or from the Secretary of State at: www.OhioSecretaryofState.gov or by calling 1-877-767-6446.

OHIO VOTER IDENTIFICATION REQUIREMENTS

Voters must bring identification to the polls in order to verify identity. Identification may include current and valid photo identification, a military identification, or a copy of a current (within the last 12 months) utility bill, bank statement, government check, paycheck, or other government document, other than a notice of an election or a voter registration notification sent by a board of elections, that shows the voter's name and current address. Voters who do not provide one of these documents will still be able to vote by providing the last four digits of the voter's Social Security number and by casting a provisional ballot pursuant to R.C. 3505.181. For more information on voter identification requirements, please consult the Secretary of State's website at: www.OhioSecretaryofState.gov or call 1-877-767-6446.

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

APPX. TAB

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J. Kenneth Blackwell
J. KENNETH BLACKWELL
 Ohio Secretary of State

100 E. BROAD STREET / 10TH FLOOR / COLUMBUS, OH 43215
 614.466.2668 / TOLL FREE: 877.787.8446 / FAX: 614.464.0849
 e-mail: blackwell@sec.state.oh.us www.state.oh.us/sec

July 8, 2002

Pat Warner, Director
 Erie County Board of Elections
 2900 Columbus Ave.
 Sandusky, OH 44870

Re: The votes of May 7, 2002, concerning challenges to the residency qualifications of Kelleys Island voters Paul S. Finnegan and Victoria J. Finnegan

Dear Director Warner:

On May 9, 2002, my office received what purported to be five tie votes that occurred at May 7, 2002, hearings of the Erie County Board of Elections concerning challenges to the residency qualifications of Kelleys Island voters Douglas P. Belden, John F. Eaton, Paul S. Finnegan, Victoria J. Finnegan and Martin J. Tremmel. At the request of board member Marinko, I returned the votes on Belden, Eaton and Tremmel to your office under separate cover on June 24. Thus, the scope of this letter is limited to the tie votes on challenges to husband and wife Paul and Victoria Finnegan. For the reasons stated below, I vote with board members Giese and Marinko against the motions to deny the separate challenges as to Paul and Victoria Finnegan's eligibility to vote from the address they claim on Kelleys Island.

Background

• Paul S. Finnegan

On February 13, 2002, Kelleys Island ejector Sally Hiller filed a written challenge under R.C. 3505.19 to Paul S. Finnegan's right to vote in the Kelleys Island precinct, claiming that "Kelleys Island is not his permanent residence; he uses Kelleys Island on a temporary basis during the summer. He works in another city outside of commuting range. Children go to school in another precinct."

On March 1, the Erie County Board of Elections sent Mr. Finnegan a notice of the challenge and the hearing thereon set for April 1 via certified mail, which was signed for on March 13. The hearing subsequently was rescheduled and ultimately was held on May 7. Ms. Hiller and Mr. Finnegan were present for the hearing — Mr. Finnegan with legal counsel — and were afforded the opportunity to address the board. Ms. Hiller's sole testimony was that she wanted her challenge of Mr. Finnegan "to stand on its own merit."

In response to questions from the prosecuting attorney and members of the board of elections, Mr. Finnegan testified that he considers himself a resident of Kelleys Island, having bought property there in 1986 and having voted there continuously since 1991. Mr. Finnegan owns two homes: one at 328 Bookerman Road, Kelleys Island, Ohio, and the other at 2995 Osgood Road, Columbus, Ohio. He works Monday through Friday during the school year as a teacher in the South Western City School District, located in Franklin and Pickaway Counties, Ohio. His Columbus address appears on his Ohio drivers license. He receives mail at both the Columbus and Kelleys Island addresses, but his utility bills for Kelleys Island are sent to his Columbus address. He listed his Columbus address on his state and federal income tax returns, although he claimed Kelleys Island as his school district on his state income tax return. He has kept one car on the island for 11 years. Mr. Finnegan described his involvement in a variety of community organizations and activities over the past 11 years, stating that Kelleys Island is where his life is involved and that he is on the island on weekends and when not working. He calculated that he spends approximately 190 days a year on the island. He testified that he no minor children.

The board tabled its decision on the challenge to Mr. Finnegan's residency until after it heard testimony from his wife, Victoria Finnegan, on the separate challenge to her residency and eligibility to vote on Kelleys Island.

Erie County Tie Vote re: Challenge of Paul S. Finnegan & Victoria J. Finnegan's Right to Vote on Kelleys Island
July 8, 2002 - Page 1 of 4

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• Victoria J. Finnegan

On February 5, 2002, Kelleys Island elector Leslie Korenko filed a written challenge under R.C. 3505.19 to Victoria J. Finnegan's right to vote in the Kelleys Island precinct, claiming that "Kelleys Island is not the *(sic)* permanent residence; she uses Kelleys Island on a temporary basis during the summer. She works in another city outside of commuting range. Children go to school in another precinct."

On March 1, the Erie County Board of Elections sent Victoria J. Finnegan a notice of the challenge and the hearing thereon set for April 1 via certified mail, which was signed for on March 13. The hearing subsequently was rescheduled and ultimately was held on May 7. Ms. Korenko and Mrs. Finnegan were present for the hearing -- Mrs. Finnegan with legal counsel -- and were afforded the opportunity to address the board. Ms. Korenko stated only that she wanted her challenge "to stand on its own merits." However, Ms. Korenko asked the board, and the board agreed, to inquire into the registration of the motor vehicle the Finnegans had had on Kelleys Island for 11 years.

Mr. Finnegan's testimony was similar to that of her husband concerning their two residences, time spent on the island, voter registration history, drivers license information, state income tax returns, receipt of mail, and participation in community activities and organizations. She stated that she always had voted absentee from Kelleys Island. Three of the couple's four motor vehicles, apparently including the car on Kelleys Island, are registered in Franklin County, with the fourth vehicle not registered at the time of the testimony. Although Mrs. Finnegan also is employed by the South Western City School District in Franklin County, working 195 days per contractual year as a guidance counselor, she testified that she spent between 180 and 195 days on Kelleys Island during that year. She stated that, every Friday, they left right from work and went to Kelleys Island. She also reminded the board members that she has no minor children.

Law

An elector's voting residence is defined in R.C. 3503.02(A) as that place "in which the person's habitation is fixed and to which, whenever the person is absent, the person has the intention of returning." The rules that must be applied to every determination of a qualifying voting residence also are set forth in R.C. 3503.02:

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

- (A) That place shall be considered the residence of a person in which the person's habitation is fixed and to which, whenever the person is absent, the person has the intention of returning.
- (B) A person shall not be considered to have lost the person's residence who leaves the person's home and goes into another state or county of this state, for temporary purposes only, with the intention of returning.
- (C) A person shall not be considered to have gained a residence in any county of this state into which the person comes for temporary purposes only, without the intention of making such county the permanent place of abode.
- (D) The place where the family of a married man or woman resides shall be considered to be his or her place of residence; except that when the husband and wife have separated and live apart, the place where he or she resides the length of time required to entitle a person to vote shall be considered to be his or her place of residence.
- (E) If a person removes to another state with the intention of making such state the person's residence, the person shall be considered to have lost the person's residence in this state.
- (F) Except as otherwise provided in division (G) of this section, if a person removes from this state and continuously resides outside this state for a period of four years or more, the person shall be considered to have lost the person's residence in this state, notwithstanding the fact that the person may entertain an intention to return at some future period.
- (G) If a person removes from this state to engage in the services of the United States government, the person shall not be considered to have lost the person's residence in this state during the period of such service, and likewise should the person enter the employment of the state, the place where such person resided at the time of the person's removal shall be considered to be the person's place of residence.

Eric County Tie Vote re: Challenges of Paul S. Finnegan & Victoria J. Finnegan's Right to Vote on Kelleys Island
July 8, 2002 - Page 3 of 4

(H) If a person goes into another state and while there exercises the right of a citizen by voting, the person shall be considered to have lost the person's residence in this state.

Several other sections of the Revised Code pertain to determinations of an elector's qualifying voting residence, including R.C. 3501.11(Q) (a board of elections must investigate and determine the residence qualifications of electors), R.C. 3503.23 ("The board of elections may conduct investigations, summon witnesses, and take testimony under oath regarding the registration of any voter ..."), R.C. 3505.19 (any person registered as an elector may be challenged, at any time of the year, by any qualified elector as to the person's right to vote at any election), R.C. 3505.20 (any person offering to vote may be challenged at the polling place on election day), and R.C. 3515.19 (challenge at the polling place of a person's right to vote in a primary election).

Discussion and Decision

Turning to the matter before me, I am troubled by the apparent paucity of personal knowledge on the part of the people who filed the challenges against the Finnegans. Neither challenger presented any evidence to corroborate the allegations each stated in her challenge. Although both challengers alleged that the Finnegans' children go to school in another precinct, Paul and Victoria Finnegan separately testified that they do not have minor children. Because neither the challengers nor the board members identified the children purportedly attending school in another school district, nor identified the other school districts, the record submitted with these tie votes fails to establish the accuracy of those allegations. In any event, the absence of minor school children moots this aspect of the challenges.

However, the record before me contains specific arguments only from board members Giese and Marinko, who voted against the motion to deny the challenges. In voting to deny the challenges, board member Henry stated only that his "vote to deny the challenge was based on the fact that I believe the voter spends sufficient time on Kelleys Island to qualify as a permanent resident for voter purposes." Board member Seaver offered only that his "vote to deny the challenge was on the basis of O.R.C. 3501.11 and 3503.02," which merely references the law without explaining how board member Seaver applied the law to the evidence presented to reach a legal conclusion. Therefore, I am left only with the hearing transcripts and the arguments of board members Giese and Marinko in considering these tie votes.

The amount of time a person spends on Kelleys Island or at any other location is but one, rather than the sole, factor in determining whether that person is legally entitled to vote from that location. These decisions must be made on a case-by-case basis, with equal and uniform application of all the legal requirements to the facts presented.

The record demonstrates that Mr. and Mrs. Finnegan have significant ties to Kelleys Island. However, our election laws require that a person have more than "ties" to a residence in order for that residence to qualify as that person's voting address. A person may have multiple residences, but only one will qualify as the voting residence at any given time. The General Assembly gave exclusive determination of persons' voting qualifications, including location of voting residences, to the boards of elections.

But the General Assembly also requires the boards, in resolving residency issues, to apply all the rules contained in R.C. 3503.02 that are germane to a particular situation. The language of R.C. 3503.02 is written in the present tense. Thus, the boards of elections must make determinations based on what a person's situation is at that moment; that is, not what the person may do at some indefinite time in the future, but how the person actually is situated at the time of determination.

Applying R.C. 3503.02(A), Mr. and Mrs. Finnegan's voting residence is that place in which their habitation is fixed and to which, whenever they are absent, they have the intention of returning. This case is substantively more difficult to resolve than other scenarios previously presented to this office on the issue of voter residency that involved persons claiming as their qualifying voting residences places that were business premises that lacked any living quarters; land that lacked any habitation structure; a house under construction that was not yet habitable and/or into which the person had not yet moved; a vacated former home that was for sale but had not yet sold; and persons who used a family member's residence as their voting address without actually having established or maintained their residence at the relative's address.

Eric County Tie Vote re Challenges of Paul S. Finnegan & Victoria J. Finnegan's Right to Vote on Kelleys Island
July 8, 2002 - Page 4 of 4

Mr. and Mrs. Finnegan may well intend to make Kelleys Island their residence, as that term is defined in R.C. 3503.02, at some time in the future. Certainly, they have shown enthusiasm in participating in Kelleys Island activities when they are on the island. But, for the present, the record submitted to me demonstrates that the residence in Columbus, rather than the residence on Kelleys Island, should be considered the place in which the Finnegans' habitation is fixed and to which, whenever they are absent, they have the intention of returning.

Conclusion

For the foregoing reasons, I vote as follows on these two tie votes:

- As to Paul S. Finnegan, I vote against the motion to deny the challenge to his legal eligibility to vote from the address on Kelleys Island.
- As to Victoria J. Finnegan, I vote against the motion to deny the challenge to her legal eligibility to vote from the address on Kelleys Island.

Sincerely,


Kenneth Blackwell

APPX. TAB

10



JON HUSTED
OHIO SECRETARY OF STATE

180 EAST BROAD STREET, 16TH FLOOR
COLUMBUS, OHIO 43215 USA
TEL: (877) 767-6446 FAX: (614) 644-0649
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July 8, 2011

Janet Leahy, Director
Jane M. Sheeley, Deputy Director
Seneca County Board of Elections
71 S. Washington St.
Tiffin, Ohio 44883

**RE: Tie vote regarding the protest filed against the nominating petition of
Alicia Wolph Roshong**

Dear Director Leahy and Deputy Director Sheeley:

As you know, on June 8, 2011, the Seneca County Board of Elections heard the protest to the nominating petition of Alicia Wolph Roshong. A motion was made to deny the protest filed against the nominating petition of Ms. Wolph Roshong. Board members Bour and Knight voted in favor of the motion and chairwoman Puffenberger and board member Marley voted against the motion.

In accordance with R.C. 3501.11(X) and with the procedures outlined in the Ohio Election Officials Manual, your board submitted to my office a packet of materials relating to the tie vote, including position statements of the board members and the transcript of the June 8, 2011 hearing with exhibits. The packet of materials was later supplemented with a copy of the protest. For the reasons discussed in this letter, I break the tie against the motion to deny the protest. My analyses and decision are outlined below.

Background

Alicia Wolph Roshong filed a "Nominating Petition and Statement of Candidacy" with the Seneca County Board of Elections on April 21, 2011 to appear on the 2011 General Election Ballot as a candidate for the office of Law Director of the City of Fostoria, Ohio.

On the Statement of Candidacy, Ms. Roshong declared that her voting residence is 123 South Main St., Fostoria, Ohio 44830 and that she is a qualified elector. On the Circulator Statement she listed the same address and that she resides at that addresses. See the Nominating Petition and Statement of Candidacy of Alicia Wolph Roshong.

On May 20, 2011, qualified electors of Fostoria filed a protest against Ms. Roshong's nominating petition with the Seneca County Board of Elections and a hearing on the

protest was held on June 8, 2011. The protest alleges that Ms. Roshong is not a resident of Fostoria and is, therefore, not a qualified elector of the City. Protest, at 4.

Alicia Wolph Roshong, a licensed Ohio attorney, owns and operates a title agency, WolphTitle, located at 123 South Main St., Fostoria, Ohio, (Seneca County). Hearing Tr. 20, 46, 48. There is an apartment located in the building with a bathroom and beds. Hearing Tr. 46. Ms. Roshong maintains that 123 South Main St. in Fostoria is the address she uses for voter registration and tax purposes. Hearing Tr. 43. Ms. Roshong considers herself to be a member of the Fostoria community and has family in Fostoria. Hearing Tr. 45.

At the hearing Ms. Roshong testified that she, her husband, and their four children all live under the same roof at 28 Middle Avenue, Huron, Ohio, (Erie County) and that the children attend school in Huron. Hearing Tr. 20-21 and 30-31. Ms. Roshong uses the Huron address to register as an attorney with the Ohio Supreme Court and on her Ohio driver's license. Hearing Tr. 16 -22.

Decision

While I appreciate the fact Ms. Roshong wants to serve the community as law director, under Ohio law, she must be a qualified elector eligible to vote for the office that she seeks. R.C. 3513.261. In order to be a qualified elector eligible to vote for the office of Fostoria law director, Ms. Roshong's voting residence must be in Fostoria. Ohio law generally defines a person's "voting residence" as "[t]hat place * * * in which the person's habitation is fixed and to which, whenever the person is absent, the person has the intention of returning." R.C. 3503.02(A). Unfortunately for Ms. Roshong, the clear and convincing evidence in this case demonstrates that her permanent habitation for voting purposes is in Huron (Erie County) Ohio.

Accordingly, Ms. Roshong's Nominating Petition and Statement of Candidacy must be invalidated. See R.C. 3513.261 and *State ex rel. Markulin v. Ashtabula Cty. Bd. of Elections* (1992), 65 Ohio St.3d 180. The protest is upheld and the board should deny certification of Roshong's candidacy to the November 8, 2011 general election ballot.

Sincerely,



Jon Husted

APPX. TAB

11

467 F.3d 503
United States Court of Appeals,
Sixth Circuit.

Charles R. MORRISON, Donald E. Eckhart, and
Alexander Smith, Plaintiffs–Appellants,

v.

Michael F. COLLEY, Carolyn C. Petree, William A.
Anthony, Jr., Kimberly E. Marinello, and [Franklin
County Board of Elections](#), Defendants–Appellees.

No. 06–4216. | Argued: Sept. 20, 2006. | Decided
and Filed: Sept. 22, 2006.

Synopsis

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

Holdings: The Court of Appeals, [Griffin](#), Circuit Judge, held that:

- ^[1] strict scrutiny did not apply;
- ^[2] Ohio statute did not violate First Amendment right to associate; and
- ^[3] statute was not void for vagueness, as would violate due process.

Affirmed.

Attorneys and Law Firms

*504 **ARGUED:** [David R. Langdon](#), Langdon & Hartman LLC, Cincinnati, Ohio, for Appellants. [Patrick J. Piccininni](#), PROsecuting Attorney’s office for the County of Franklin, Columbus, Ohio, for Appellees. **ON BRIEF:** [David R. Langdon](#), [Curt C. Hartman](#), [Joshua B. Bolinger](#), Langdon & Hartman LLC, Cincinnati, Ohio, Christopher

P. Finner, Finney, Stagnaro, Saba & Klusmeier Co., L.P.A., Cincinnati, Ohio, for Appellants. [Patrick J. Piccininni](#), [Nick A. Soulas, Jr.](#), Prosecuting Attorney’s Office for the County of Franklin, Columbus, Ohio, for Appellees.

Before [SILER](#), [GILMAN](#), and [GRIFFIN](#), Circuit Judges.

OPINION

[GRIFFIN](#), Circuit Judge.

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

I.

In December 2005 and January 2006, Morrison began circulating petitions seeking placement on the May 2, 2006, ballot for the Madison County Republican Party Central Committee and the Ohio Republican Party State Central Committee. Morrison filed his petitions, was

certified as a candidate in the Republican primary for the state and county committee positions, and appeared on the May 2, 2006, Republican primary ballot. He lost both races.

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

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

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

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

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

II.

^[1] Because Morrison alleged the violation of rights recognized by the First and *506 Fourteenth Amendments to the U.S. Constitution, the district court had federal-question jurisdiction under [28 U.S.C. § 1331](#). Regarding our jurisdiction, the district court consolidated

the hearing on Morrison’s preliminary injunction application with the hearing on the merits, and its order disposed of Morrison’s complaint and request for permanent injunctive relief. Accordingly, the district court’s order is final and immediately appealable. We review the district court’s legal conclusions de novo and its factual findings for clear error. *Planned Parenthood Cincinnati Region v. Taft*, 444 F.3d 502, 507 (6th Cir.2006) (citing *Taubman Co. v. Webfeats*, 319 F.3d 770, 774 (6th Cir.2003)).

III.

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

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

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

* * *

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

of the primary election). Election laws invariably “affect [t]—at least to some degree—the individual’s right to vote and his right to associate with others for political ends.” *Anderson v. Celebrezze*, 460 U.S. 780, 788, 103 S.Ct. 1564, 75 L.Ed.2d 547 (1983).

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

C

[4] [5] When a state electoral provision places no heavy burden on associational rights, “a State’s important regulatory interests will usually be enough to justify reasonable, nondiscriminatory restrictions.” *Timmons, supra*, at 358, 520 U.S. 351, 117 S.Ct. 1364, 137 L.Ed.2d 589 (internal quotation marks omitted); *Anderson, supra*, at 788, 460 U.S. 780, 103 S.Ct. 1564, 75 L.Ed.2d 547. *Clingman*, 544 U.S. at 592–93, 125 S.Ct. 2029. *Clingman* follows, and is consistent with, *Timmons*, which likewise refused to apply strict scrutiny to a challenge to a Minnesota election law prohibiting multi-party or “fusion” candidates from appearing on the ballot. In rejecting a claim that the Minnesota regulation violated the plaintiff’s First and Fourteenth Amendment rights, the Supreme Court stated,

[I]t is also clear that States may, and inevitably must, enact reasonable regulations of parties, elections, and ballots to reduce election- and campaign-related disorder. *Burdick [v. Takushi]*, 504 U.S. 428, 112 S.Ct. 2059, 119 L.Ed.2d 245 (1992)], *supra*, at 433, 112 S.Ct. 2059 (“[A]s a practical matter, there must be a substantial regulation of elections if they are to be fair and honest and if some sort of order, rather

than chaos, is to accompany the democratic process’ ”) (quoting *Storer v. Brown*, 415 U.S. 724, 730, 94 S.Ct. 1274, 39 L.Ed.2d 714 (1974)); *Tashjian, supra*, at 217, 107 S.Ct. 544 (The Constitution grants States “broad power to prescribe the ‘Time, Places and Manner of holding elections for Senators and Representatives’, Art. I, § 4, cl. 1, which power is matched by state control over the election process for state offices”).

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

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

[6] [7] The district court concluded correctly that *Ohio Rev.Code § 3513.257* does not impose a severe restriction on the First and Fourteenth Amendment rights of Morrison or other potential independent candidates or voters. See *Lawrence v. Blackwell*, 430 F.3d 368 (6th Cir.) (Ohio *508 statute requiring independent congressional candidates to file statement of candidacy and nominating petition on the day preceding the primary election did not impose a severe burden on independent candidates’ or voters’ constitutional rights, so strict scrutiny was not warranted), *cert. denied*, 547 U.S. 1178, 126 S.Ct. 2352, 165 L.Ed.2d 278 (2006). The election regulation at issue is merely a reasonable,

nondiscriminatory regulation to require would-be independent candidates to claim, no later than 4:00 p.m. of the day before the primary elections, that they are free of affiliation with any political party. Therefore, Ohio need only show that this requirement advances an important state interest, not a compelling state interest. *Id.* For the reasons stated by the district court, the non-affiliation requirement passes muster under this deferential standard. In addition, the statute itself specifies the following important state interests furthered by the election regulation:

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

[OHIO REV.CODE § 3513.257.](#)

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

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

IV.

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

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

The district court rejected Morrison’s argument that the statute “creates confusion as to ... whether a person desiring to become an independent candidate can merely claim not to be affiliated with a political party or whether they must truly be unaffiliated with a political party.” The district court reasoned, “a person of ordinary intelligence, when considering O.R.C. § 3513.257 [which requires the candidate to claim independence] and O.R.C. § 3501.01(I) [which defines an ‘independent’ candidate as one ‘who claims not to be affiliated with any political party’] in the whole legislative scheme, would understand that an aspiring independent candidate ‘must actually be independent, rather than merely claim it.’ ” A candidate possessing ordinary intelligence and common sense would readily understand that the claim of independence

must be made in good faith—otherwise there would be no reason for having the claim requirement, and none of the state interests animating the claim requirement would be served. See *United States v. Gjieli*, 717 F.2d 968, 972 (6th Cir.1983).

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

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

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

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

(Emphasis added.) By registering as a Republican and then affirmatively requesting and voting the Republican

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

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

OHIO REV.CODE § 3513.20.

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

Morrison cannot complain if his own campaign committee’s express statement of his party affiliation is considered and used to rule against him. Cf. *In re El-Amin*, 252 B.R. 652, 659 (Bankr.E.D.Va.2000) (“The party who made the admission cannot complain that they [sic] were prejudiced by their own words.”); *Levy v. United States*, 1858 WL 4645, at *27 (Ct.Cl. May 4, 1858) (“The petitioner cannot object to this conclusion, because it is in exact accordance with his own export manifest, rendered on his own oath.”).²

*511 Most importantly, under Ohio law, if Morrison was unaffiliated with any political party on May 1, 2006, as he contends, he could not also claim in good faith to be a Republican at the same time without risking consequences more serious than exclusion from the ballot. Specifically, *Ohio Rev.Code* § 3599.11(A) provides the

following criminal penalties for false swearing: “No person shall knowingly swear or affirm falsely upon a lawful examination by or before any registering officer; or make, print, or issue, any false ... certificate of registration.... No person shall ... knowingly make any false statement on any form for registration or change of registration.... Whoever violates this division is guilty of a felony of the fifth degree.”

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

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

For these reasons, we hold that, under the facts of this case, [Ohio Rev.Code § 3513.257](#) is not void for vagueness. Cf. *McEntee v. Merit Sys. Prot. Bd.*, 404 F.3d 1320, 1333–34 (Fed.Cir.2005), cert. denied, 546 U.S.

[873](#), 126 S.Ct. 381, 163 L.Ed.2d 167 (2005). In addition, for the reasons stated by the district court, we hold that [Ohio Rev.Code § 3513.257](#) is not overbroad, nor was it applied in a manner that illegally discriminated against Morrison.

V.

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

Affirmed.

Parallel Citations

2006 Fed.App. 0373P

Footnotes

- * An interim opinion was filed in this matter on September 22, 2006. The court is now filing this more detailed opinion.
- 1 See also [Lewis v. Philip Morris, Inc.](#), 355 F.3d 515, 536 (6th Cir.2004) (Moore, J., for the court, joined in pertinent part by Katz, U.S.D.J.) (referring to “[t]he usual presumption that ‘the same words used twice in the same act have the same meaning’ ”) (quoting 2A NORMAN J. SINGER, SUTHERLAND ON STATUTES AND STATUTORY CONSTRUCTION, § 46.06, at 193 (6th ed.2000)), cert. denied, 543 U.S. 821, 125 S.Ct. 61, 160 L.Ed.2d 31 (2004); [Lake Cumberland Trust, Inc. v. EPA](#), 954 F.2d 1218, 1222 (6th Cir.1992) (“We must presume that words used more than once in the same statute have the same meaning.”) (citation omitted).
- 2 Cf. also [United States v. Beal](#), 940 F.2d 1159, 1162 (8th Cir.1991) (“[D]efendant cannot complain if his own admissions ... [are] received in evidence against him.”); [United States v. Alvarez](#), 810 F.2d 879, 889 (9th Cir.1987) (“The defendant cannot complain when his own testimony fixes the time of his arrest.”); [Courtney v. United States](#), 518 F.2d 514, 517 (4th Cir.1975) (“[T]he defendant cannot be heard to complain that he was convicted on the basis of his own testimony.”); [United States v. Bates](#), 141 F.2d 436, 439 (7th Cir.1944) (“Defendant cannot complain if the jury accepted at their face value his own statements”), vac’d on other grounds, 323 U.S. 15, 65 S.Ct. 15, 89 L.Ed. 13 (1944); [The Eroe](#), 9 Ben. 191, 8 F. Cas. 774, 775 (E.D.N.Y.1877) (No. 4,521) (“[T]he respondents can resort to this bill rendered ... there being no other proof, it must be taken of evidence of the amount of such difference. Of this the consignees cannot complain, as it is their own bill.”), aff’d, 17 Blatchf. 16, 8 F. Cas. 775 (C.C.S.D.N.Y.1879) (No. 4,522).

APPX. TAB

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2006 WL 2619825

Only the Westlaw citation is currently available.
United States District Court,
S.D. Ohio,
Eastern Division.

Charles R. MORRISON, et al., Plaintiffs,
v.
Michael F. COLLEY, et al., Defendants.

No. C-2-06-644. | Sept. 12, 2006.

Attorneys and Law Firms

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OPINION AND ORDER

GEORGE C. SMITH, Judge.

*1 Plaintiffs Charles R. Morrison, Donald E. Eckhart, and Alexander Smith (hereinafter "Plaintiffs") have filed a Motion for Preliminary and Permanent Injunction against Defendants Michael F. Colley, William A. Anthony, Carolyn C. Petree, Kimberly E. Marinello, and the Franklin County Board of Elections (collectively "FCBOE") seeking to enjoin Defendants from enforcing Ohio's election statute against Plaintiff Morrison and to certify him as a candidate for the November 2006 election for the office of United States Representative for the 15th Congressional District in Ohio. For the reasons that follow, the Court denies Plaintiffs' Motion for Preliminary and Permanent Injunction.

I. BACKGROUND

Plaintiff Charles R. Morrison ("Morrison") is an individual citizen of Ohio. Plaintiffs Donald Eckhart and Alexander Smith are individual citizens and qualified

electors who reside in Franklin County, Ohio. Mr. Morrison has been a member of the Republican party for many years. He has been involved in various Republican clubs and other Republican-oriented activities over the years. In addition, Mr. Morrison unsuccessfully sought the Republican nomination to Congress in 2000, 2002, and 2004. Morrison admits that he was a Republican and that others most likely considered him a Republican as well.

On or about December 14, 2005, Mr. Morrison began circulating petitions seeking election to the governing board of the local Republican party, the Madison County Republican Party Central Committee. On or about February 7, 2006, Mr. Morrison began circulating petitions seeking election to the governing board of the state party, the Republican Party State Central Committee. In both of these petitions, Morrison stated that he was a member of the Republican party. Specifically, the petitions read: "I, Charles Morrison, declare under penalty of election falsification that I am a qualified elector of the State of Ohio and reside at the address appearing below my signature; that I am a member of the Republican Party...." Both the state and local central committee petitions were filed on February 17, 2006. Morrison was ultimately certified as a candidate for both these positions and appeared on the May 2, 2006 Republican primary ballot as a candidate for office.

At essentially the same time Morrison was circulating petitions for the state and local Republican Party Central Committees, he was also circulating petitions to run as an independent for Representative for the 15th Congressional District. In fact, Morrison answered in the affirmative when asked, "So you were asking people to sign, representing yourself as a Republican and as an Independent at the same time?" (FCBOE hearing tr. at 43). Around the same time, Morrison was also advertising, campaigning and holding himself out to the public as a Republican. (FCBOE hearing tr. at 43).

While testifying before the FCBOE, Morrison described his procedure in circulating the petition to be an Independent candidate for Congress. Morrison collected approximately 2,316 signatures, 2,000 of which, he collected himself. In collecting these signatures, Morrison "walked up to each one of them, stuck out my hand, shook their hand, and in the processed [sic] say, 'Hi, I'm Charlie Morrison. I'm running as an Independent for Congress. I need about 2,000 signatures to get my name on the ballot, and I wonder if you could help me out and sign my petition.'" (FCBOE hearing tr. at 39).

*2 In addition to holding himself out to the public as a Republican, Morrison also established a campaign committee, “Charlie Morrison for Congress.” To do this, he had to complete Federal Election Committee Form 1, statement of organization, which included designating a party affiliation. Morrison’s campaign committee is designated Republican and he has not changed this, however, he did say he would change it once he became a candidate. (FCBOE hearing tr. at 45-46). Mr. Morrison has solicited contributions for this lawsuit and is taking those funds in through that committee. (FCBOE hearing tr. at 46).

On May 1, 2006, the day before the primary election, Mr. Morrison filed a Statement of Candidacy and Nominating Petition¹ (the “Petition”) with the Franklin County Board of Elections to run as an independent candidate for Representative to Congress for the 15th Congressional District. The Petition contained the requisite number of signatures of qualified electors and contained a declaration signed by Morrison that he is a qualified elector and he desires to be a candidate for election to the office of Representative. Then, on May 2, 2006, Mr. Morrison appeared at his local voting location and requested, received, and voted a Republican party ballot.

Mr. Morrison was unsuccessful in securing a nomination for either the local or state Republican party central committee positions. His political ambitions, however, were still alive because he also submitted the petition to run as an independent candidate for Representative for the 15th Congressional District.

After a petition is submitted to the FCBOE, it is the practice of the Board to verify the signatures on the petition for sufficiency and also to verify that the form of the petition is valid.² It is not, however, the practice of the FCBOE to check the voting history of the candidate. The FCBOE essentially relies on the honesty of the candidates that they satisfy the requirements for the office they are seeking and that they have truthfully completed the declaration of candidacy. However, there is a check on this policy, allowing for protests to be filed challenging the qualifications of the candidate.

The FCBOE determined that Mr. Morrison’s petition contained a sufficient number of signatures and was otherwise valid. On May 22, 2006, the Board was scheduled to meet to consider Mr. Morrison’s candidacy. However, that same day, three qualified electors from the 15th Congressional District filed a written protest challenging Mr. Morrison’s candidacy pursuant to [Ohio Revised Code Section 3501.39](#). The protestors were the chairmen of the Republican Party of each of the counties

that comprise the 15th Congressional District. The protestors argue that Morrison was not an independent candidate as defined in [Ohio Revised Code section 3501.01\(I\)](#), which provides:

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

*3 On June 21, 2006, the FCBOE held a hearing on the protest regarding Mr. Morrison’s candidacy. Each side was given the opportunity to present evidence, including live testimony, as well as present written and oral arguments. The protestors argued that because Morrison appeared on the ballot as a candidate for local and state Republican central committee prior to and on May 2, 2006, and based on his voting as a Republican in the past, including May 2, 2006, which occurred after submitting his petition as an independent, that he is not an independent candidate.

Mr. Morrison, however, argued at the hearing that the definition of independent candidate is not a substantive requirement that must be satisfied before a candidate may be certified to the ballot, but is merely a description of a candidate who satisfied the petition requirement set forth in the statute. In the alternative, Morrison argued that even if the first part of the definition is a substantive requirement, he satisfied it in his sworn statement at the hearing that he is “not affiliated with a political party.”

At the conclusion of the hearing, the FCBOE tied 2-2 on whether to certify Mr. Morrison to the ballot. Then, pursuant to Ohio law, the Motion to certify Morrison to the ballot was submitted to the Secretary of State to break the tie. As part of the tie-breaking process, the two members of the Board who voted for certifying Morrison to the ballot submitted a letter explaining their reasoning to the Secretary of State and the other two members who voted against certification also submitted a letter. In a letter to the FCBOE dated July 14, 2006, Assistant Secretary of State Monty Lobb broke the tie, voting against certification. The letter set forth the Secretary’s interpretation and construction of the Statute and his rationale for voting against certifying Morrison to the ballot. Based upon the rulings by the Board and the Secretary of State, Morrison was not certified as an independent candidate for Representative to Congress for the 15th Congressional District.

Morrison had therefore run out of traditional options to have his name on the ballot, so he initiated this suit

seeking to enjoin Defendants from enforcing Ohio's election statute against Plaintiff Morrison and to certify him as a candidate for the November 2006 election for the office of United States Representative for the 15th Congressional District in Ohio.

Plaintiffs assert that [Ohio Revised Code Section 3513.257](#), which sets forth the requirements for a person desiring to become an independent candidate, is unconstitutionally vague, in violation of Plaintiffs' due process rights guaranteed by the Fourteenth Amendment to the United States Constitution and also that it burdens Plaintiffs' rights to the freedom of speech and association, and to the equal protection of the laws, as guaranteed by the First and Fourteenth Amendments to the United States Constitution.

II. STANDARD OF REVIEW

*4 The Court must consider four factors in determining whether to issue a preliminary injunction and/or permanent injunction:

- (1) whether the movant has a strong or substantial likelihood of success on the merits;
- (2) whether the movant would suffer irreparable injury without the relief requested;
- (3) whether issuance of the injunction will cause substantial harm to others; and
- (4) whether the public interest will be served by issuance of the injunction.

Chabad of S. Ohio & Congregation Lubavitch v. City of Cincinnati, 363 F.3d 427, 432 (6th Cir.2004). The factors are not prerequisites; rather, they must be balanced. *Capobianco, D.C. v. Summers*, 377 F.3d 559, 561 (6th Cir.2004).

III. DISCUSSION

A. Likelihood of success on the merits

Plaintiffs bring their claim under 42 U.S.C. § 1983, arguing that [Ohio Revised Code Section 3513.257](#) violates Plaintiffs' First and Fourteenth Amendment rights to freedom of speech and association, due process and the equal protection of the laws.

[Section 1983](#) provides in relevant part:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

A § 1983 claim must satisfy two elements: "1) the deprivation of a right secured by the Constitution or laws of the United States and 2) the deprivation was caused by a person acting under color of state law." *Ellison v. Garbarino*, 48 F.3d 192, 194 (6th Cir.1995).

1. Vagueness

Plaintiffs claim that [O.R.C. § 3513.257](#) is void for vagueness in violation of the Due Process Clause of the Fourteenth Amendment.³ Plaintiffs maintain that the statute is unconstitutionally vague because: (1) it fails to specify what a person desiring to become an independent candidate must do to be certified to the ballot; and (2) because it lacks objective standards for enforcement. Pls' Mot. at 26. This Court disagrees.

The Supreme Court, in *Grayned v. City of Rockford*, 408 U.S. 104 (1972), enunciated standards for evaluating a vagueness claim: "[f]irst ... we insist that the laws give the person of ordinary intelligence a reasonable opportunity to know what is prohibited ... [s]econd, laws must provide explicit standards for those who apply them." *Id.* at 109. The Supreme Court, in *Hynes v. Mayor of Oradell*, 425 U.S. 610, 621-22 (1976), added the requirement that the applicable coverage of the statute must be clear.

The degree of vagueness that the Constitution tolerates "depends in part on the nature of the enactment." *Village of Hoffman Estates v. Flipside, Hoffman Estates, Inc.*, 455 U.S. 489, 498 (1982). In deciding void-for-vagueness challenges, the courts have created a sliding scale to determine the applicable degree of scrutiny. The Supreme court has "expressed greater tolerance of enactments with civil rather than criminal penalties because the

consequences of imprecision are qualitatively less severe.” *Id.* at 498-99 (footnote omitted). For example, economic legislation “is subject to a less strict vagueness test because its subject matter is often more narrow, and because businesses, which face economic demands to plan behavior carefully, can be expected to consult relevant legislation in advance of action.” *Id.* at 498 (footnotes omitted).

*5 The Sixth Circuit, in *Kay v. Austin*, 621 F.2d 809 (6th Cir.1980), in considering whether a ballot access statute was void for vagueness, articulated the applicable degree of scrutiny for ballot access statutes: “although the right of a candidate to ballot access may not necessarily be entitled to the rigorous standard of review given disenfranchisement cases, restrictions on that access must be justified by important state interests at a minimum.” *Id.* at 811 (internal citations omitted). The *Kay* Court, in determining the appropriate standard, recognized the tension election regulation creates between state interests and individual rights.

Additionally, “[w]hen the constitutionality of a statute is challenged, it is the court’s obligation in determining the validity not to destroy but to construe it, if possible, consistently with the will of the legislature, so as to comport with the constitutional limitations.” *Id.* at 812, citing *United States Civil Service Commission v. National Association of Letter Carriers*, 413 U.S. 548, 571 (1973).

In keeping with this analytical framework, the Court turns to the text of the [O.R.C. § 3513.257](#) to determine whether or not it can be construed⁴ so as to comport with constitutional limitations. [Ohio Revised Code Section 3513.257](#), titled “Statements of candidacy and nominating petitions for independent candidates,” provides in relevant part:

Each person desiring to become an independent candidate for an office for which candidates may be nominated at a primary election, ... shall file no later than four p.m. of the day before the day of the primary election immediately preceding the general election at which such candidacy is to be voted for by the voters, a statement of candidacy and nominating petition as provided in [section 3513.261 \[3513.26.1\]](#) of the [Revised Code](#)....

The statement of candidacy and separate petition papers of each candidate or pair of joint candidates shall be filed at the same time as one instrument.

The nominating petition shall contain signatures of qualified electors in the district, political subdivision,

or portion of a political subdivision in which the candidacy is to be voted on in an amount to be determined as follows:

(C) If the candidacy is to be voted on by the electors in any district, political subdivision, or part thereof in which five thousand or more electors voted for the office of governor at the next preceding election for that office, the nominating petition shall contain a number of signatures equal to at least one percent of those electors.

* * *

Nominating petitions of candidates for offices to be voted on by electors within a district or political subdivision comprised of more than one county but less than all counties of the state shall be filed with the boards of elections of that county or part of a county within the district or political subdivision which had a population greater than that of any other county or part of a county within the district or political subdivision according to the last federal decennial census.

*6 * * *

No petition other than the petition of a candidate whose candidacy is to be considered by electors throughout the entire state shall be accepted for filing if it appears on its face to contain more than three times the minimum required number of signatures. A board of elections shall not accept for filing a nominating petition of a person seeking to become a candidate if that person, for the same election, has already filed a declaration of candidacy, a declaration of intent to be a write-in candidate, or a nominating petition, or has become a candidate by the filling of a vacancy under [section 3513.30 of the Revised Code](#) for any federal, state, or county office, if the nominating petition is for a state or county office, or for any municipal or township office, for member of a city, local, or exempted village board of education, or for member of a governing board of an education service center, if the nominating petition is for a municipal or township office, or for a member of a city, local, or exempted village board of education, or for member of a governing board of an education service center. When a petition of a candidate has been accepted for filing by a board of election, the petition shall not be deemed invalid if, upon verification of signatures contained in the petition, the board of elections finds the number of signatures accepted exceeds three times the minimum number of signatures required. A board of

elections may discontinue verifying signatures when the number of verified signatures on a petition equals the minimum required number of qualified signatures.

Any nonjudicial candidate who files a nominating petition may request, at the time of filing, that the candidate be designated on the ballot as a nonparty candidate or as an other-party candidate, or may request that the candidate's name be placed on the ballot without any designation. Any such candidate who fails to request a designation either as a nonparty candidate or as an other-party candidate shall have the candidate's name placed on the ballot without any designation.

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

*7 Ohio Revised Code section 3501.01(I) sets forth the definition of "Independent candidate as:

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

[3513.257](#) [[3513.257](#)] of the Revised Code.

Plaintiffs claim that [O.R.C. § 3513.257](#), both on its face and as construed by Defendants, fails under the *Grayned* and *Hynes* criteria because the statute "requires guesswork by aspiring candidates and the exercise of subjective judgment by election officials." Pls' Mot. at p. 31. The scope of Plaintiffs' void for vagueness challenge to [O.R.C. § 3513.257](#) is not as broad as it may seem at first blush. Plaintiffs acknowledge that they "are not challenging the State's authority to impose a filing deadline for independent candidates that is prior to the primary election." Pls' Mot. at p. 23. Likewise, Plaintiffs do not challenge the nominating petition signature requirements contained in [O.R.C. § 3515.257](#). Further, Plaintiffs do not dispute that the purposes articulated by the statute serve substantial and compelling interests. *Id.* Finally, Plaintiffs do not challenge *Storer v. Brown*, 415 U.S. 724 (1974), in which the Supreme Court sustained the constitutionality of a ballot access statute requiring at least 12 months of political disaffiliation for an individual desiring to be an independent candidate.

Instead, Plaintiffs argue [O.R.C. § 3515.257](#) (both on its face and as construed) creates confusion as to whether or not [O.R.C. § 3501.01\(I\)](#) operates as a substantive requirement, and, if so, whether a person desiring to become an independent candidate can merely claim not to be affiliated with a political party or whether they must truly be unaffiliated with a political party. *Id.* at 31-32. Additionally, Plaintiffs contend the statute requires additional guesswork because it fails to specify what an aspiring candidate must do to claim independence, when this claim must be made, where it must be made and to whom it must be made. *Id.* at 33-37. Finally, Plaintiffs argue the [O.R.C. § 3513.257](#)'s failure to specify the "who, what, when, where and how" invites discriminatory enforcement by election officials. *Id.* at 38.

The Court first addresses Plaintiffs assertion that [O.R.C. § 3513.257](#) creates confusion as to whether or not [O.R.C. § 3501.01\(I\)](#) operates as a substantive requirement. Ohio precedent on the construction of statutes provides: "[i]f the legislature defines terms that are to be applied to the subject matter of the legislation, that definition controls the application of the statute ." *Dublin School Dist. Bd. of Educ. v. Limbach*, 69 Ohio St.3d 255, 258 (1994). Further, the Ohio Supreme Court has observed:

[i]n the construction of statutes the purpose in every instance is to ascertain and give effect to the legislative intent, and it is well

settled that none of the language employed therein should be disregarded, and that all of the terms used should be given their usual and ordinary meaning and signification except where the lawmaking body has indicated that the language is not so used.

*8 *Weaver v. Edwin Shaw Hosp.*, 104 Ohio St.3d 390 (2004). In ascertaining legislative intent, it is often helpful to review the circumstances surrounding the introduction or amendment of a statute. The Court finds that reviewing the circumstances surrounding the addition of O.R.C. § 3501.01(I) makes clear the General Assembly's purpose in enacting the provision.

In 1980, the Ohio Court of Appeals for the Tenth District, in *State ex rel Moss v. Franklin Cty. Bd. of Elections*, 69 Ohio App.2d 115, considered whether Moss was precluded from being an independent candidate for state representative by virtue of O.R.C. § 3513.04, because he was also seeking a position with the central committee. The appellate court admitted that "the term 'independent' was inconsistent with the status of party affiliation." *Id.* at 120-21, citing *State ex rel Begelow v. Butterfield*, 132 Ohio St. 5 (1936). The court continued to observe:

There is a strong suggestion that a loser in a party primary is not an independent in terms of political philosophy; party allegiance was demonstrated by candidacy in the primary election. The independent candidacy in the general election of a defeated party primary candidate is suggestive of intraparty feuding.

Id. at 12, quoting *Foster v. Bd of Elections*, 53 Ohio App.2d 213, 232 (1977).

The *Moss* court, despite its recognition of the commonsense meaning of 'independent,' concluded: "[w]hile this may be inconsistent with the general philosophy of being 'independent,' there is no statutory prohibition." *Id.* at 121. The appellate court explained that "under Ohio law, any person, regardless of his political affiliation, may become an independent candidate for election to office...." *Id.* at 122.⁵

Congress reacted to *Moss* in House Bill 235, the next amendment after the *Moss* decision was released, by adding the definition of 'independent candidate.' The amendment became O.R.C. § 3501.01(I) and provides in

part: " 'Independent candidate' means any candidate who claims not to be affiliated with a political party...." Based upon the foregoing, it is clear that the legislature's purpose in adding O.R.C. § 3501.01(I), was to remedy the *Moss* court's abandonment of the commonsense interpretation. Thus, O.R.C. § 3501.01(I) does not necessarily add a substantive requirement, but instead evidences the legislature's intent that O.R.C. § 3513.257 be construed according to its commonsense meaning. That is, that an independent candidate must not be politically affiliated.

This Court's interpretation is corroborated through examination of O.R.C. § 3513.257's articulation of the interests the legislature sought to protect, embodied in the final paragraph of the statute.⁶ The statute specifically identifies the following substantial and compelling interests:

protecting [the state's] electoral process by encouraging political stability, ensuring that the winner of the election will represent a majority of the community, providing the electorate with an understandable ballot, and enhancing voter education, thus fostering informed and educated expressions of the popular will in a general election ... [prevention of] splintered parties and unrestrained factionalism, [avoidance of] political fragmentation, and [maintenance of] the integrity of the ballot ... ensuring fair and honest elections....

*9 In *Storer v. Brown*, 415 U.S. 724 (1974), the Supreme Court acknowledged the link between a disaffiliation requirement and furtherance of the interests articulated in O.R.C. § 3513.257:

[t]he requirement that the independent candidate not have been affiliated with a political party for a year before the primary is expressive of a general state policy aimed at maintaining the integrity of the various routes to the ballot ... [the disaffiliation requirement] protects the direct primary process by refusing to recognize independent candidates ... splintered parties and unrestrained factionalism may do significant damage to the fabric of government ... [i]t appears obvious to us that the one-year disaffiliation provision further the State's interest in the stability of its political system.

Id. at 733-736. Likewise, the Ohio Supreme Court has stated:

Some of the important state interests that have been recognized to uphold the constitutionality of various elections provisions are (1) having orderly, fair and honest elections instead of chaos, (2) maintaining the integrity of the political process by preventing interparty raids and intraparty feuds, (3) maintaining the integrity of various routes to the ballot, (4) avoiding voter confusion, ballot overcrowding, or frivolous candidacies, (5) ensuring that elections are operated equitable and efficiently, (6) preventing candidacies that are prompted by short-range political goals, pique, or personal quarrel, and (7) preventing parties from fielding an independent candidate to capture and bleed off votes in a general election that might otherwise go to another party.

State ex rel. Purdy v. Clermont Cty. Bd of Elections, 77 Ohio St.3d 338, 344 (1997)(internal citations omitted). Based upon the foregoing analysis, and considering the whole legislative scheme surrounding the challenged statute, this Court does not hesitate in concluding that O.R.C. § 3513.257 and O.R.C. § 3501.01(I), requires an independent candidate to be politically unaffiliated.

Plaintiffs next argument is that the legislature's use of the word "claim" in O.R.C § 3501.01(I) is confusing and fails to put an aspiring independent candidate on notice that they "must actually *be* independent, rather than merely *claim* it...." (Emphasis in original); Pls' Mot. at p. 31-32, 35. While the Court acknowledges that this statute, like most statutes, could be more precise,⁷ the fact that a statute could have been worded better does not render it unconstitutional. As the Supreme Court recognized in *Grayned*,

Condemned to the use of words, we can never expect mathematical certainty from our language. It will always be true that the fertile legal 'imagination can conjure up hypothetical cases in which the meaning of

(disputed) legal terms will be in nice question .'

408 U.S. at 110, FN 15. Because statutory interpretation is a holistic endeavor, the words of a statute cannot be read in isolation. *United Sav. Assn. of Tex. v. Timbers of Inwood Forest Associates, Ltd.*, 484 U.S. 365, 371 (1988). The touchstone inquiry is not meticulous specificity, but rather whether "the laws give the person of ordinary intelligence a reasonable opportunity to know what is prohibited." *Id.* at 109.

*10 In the instant case, the Court finds that a person of ordinary intelligence, when considering O.R.C. § 3513.257 and O.R.C. § 3501.01(I) in the whole legislative scheme, would understand that an aspiring independent candidate "must actually be independent, rather than merely claim it." That is, that an independent candidate must be truly independent. This is the commonsense, logical interpretation. See *Roschen v. Ward*, 279 U.S. 337, 339 (1929) ("[T]here is no canon against using commonsense in construing laws as saying what they obviously mean."). Additionally, this interpretation furthers the express purposes of O.R.C. § 3513.257 (see discussion *supra*), while to find otherwise would undermine them. See *Kay*, 621 F.2d at 812 (In examining a void for vagueness challenge to a ballot access provision, the Sixth Circuit noted that it had an obligation to "construe [the statute], if possible, consistently with the will of the legislature."); see also *Grayned*, 408 U.S. at 110-11 (In reviewing a city ordinance pursuant to a void for vagueness challenge, the Supreme Court examined "the ordinance as a whole" and looked also to the purpose articulated in its preamble for guidance.).

The Court addresses Plaintiffs' final two arguments-(1) that O.R. .C. § 3513.257 requires additional guesswork for failure to specify the what and when of claiming independence (Pls' Mot. at p. 33-37); and (2) this failure invites discriminatory enforcement by election officials (*Id.* at 38)-together since they are related.

With respect to the 'when' and 'what,' O.R.C. § 3513.257 requires an individual desiring to become an independent candidate to file a statement of candidacy and a nominating petition "no later than four p.m. of the day before the day of the primary election...." Plaintiffs admit in their Motion for Preliminary and Permanent Injunction that these actions are akin to "claiming they are an independent." Pls' Mot. at 46. As discussed *supra*, based upon commonsense, and in keeping with the expressed intent and purposes of the legislature, this claim must not be false. Thus, an individual desiring to become an independent candidate, should be free of political affiliations by "no later than four p.m. of the day before the day of the primary election...."⁸

Generally, the FCBOE accepts the claim of independence at face value. (Damchroder Dep. at 41, 120-121). If however, there is a protest pursuant to [O.R.C. § 3513.262](#), the BOE will look further. (*Id.*) The statute does not “lack any definitive standards” or “afford[] unbridled discretion” as Plaintiffs suggest. Instead, the Court finds that [O.R.C. § 3513.257](#) has sufficiently marked boundaries such that the BOE is able to fairly apply the statute in accordance with the will of Congress. See *United States v. Petrillo*, 332 U.S. 1,7 (1947) (A statute must “mark boundaries sufficiently distinct for judges and juries fairly to administer the law in accordance with the will of Congress.”). The BOE has limited discretion to make a fact-specific determination as to whether or not the individual desiring to be an independent candidate is as he claims, that is, not affiliated with a political party.⁹ For these reasons, the Court rejects Plaintiffs’ final two arguments.

*11 In conclusion, based upon the foregoing, the Court finds that the [O.R.C. § 3513.257](#) satisfies the standards set forth in *Grayned* and *Hynes*, and consequently, is not void for vagueness.

2. Overbreadth

Plaintiffs next argue that, even if the [O.R.C. § 3513.257](#) survives the vagueness challenge, the “severe burden” imposed by the statute on an individual’s First and Fourteenth Amendment rights renders [O.R.C. § 3513.257](#) unconstitutional. Pls’ Mot. at p. 39-40. In making this argument, Plaintiffs ignore precedent.

Plaintiffs correctly point out that election laws, such as [O.R.C. § 3513.257](#), place burdens on the rights of individuals to associate for the advancement of political beliefs and the rights of qualified voters to cast their votes effectively, both ranking among our most precious freedoms. *Libertarian Party of Ohio v. Blackwell*, 2006 Fed.App. 0342P (6th Cir.2006); *Lawrence v. Blackwell*, 430 F.3d 368, 372 (6th Cir.2005), citing *Williams v. Rhodes*, 393 U.S. 23, 30-31 (1968). Conspicuously absent from Plaintiffs’ Motion for Preliminary and Permanent Injunction, however, is any recognition, let alone any discussion, of a state’s “extensive authority to regulate elections which tend[] to restrict those rights to some degree.” *Blackwell*, 430 F.3d at 372, citing *Williams*, 393 U.S. at 30-31; *Burdick v. Takushi*, 504 U.S. 428, 433 (1992); *Anderson v. Celebrezze*, 460 U.S. 780 (1983); *Accord*, *Libertarian Party of Ohio*, 2006 Fed.App. 0342P at *4 (“This does not mean, however, that all state restrictions on political parties and elections violate the Constitution ... The Supreme Court has clearly stated that states may, and inevitably must, enact reasonable

regulations of parties, elections, and ballots to reduce election and campaign-related disorder. Thus, voting regulations are not automatically subjected to heightened scrutiny.”) (Internal quotations and citations omitted). In the instant case, there exists a conflict between the constitutional rights of Plaintiffs and the authority of a state to regulate its elections.

The Sixth Circuit, in evaluating these types of cases, follows the analytical framework set forth by the Supreme Court in *Anderson v. Celebrezze*, 460 U.S. 780 (1983), and its progeny. See example, *Lawrence*, 430 F.3d 368 (applying *Anderson* and progeny to hold that [O.R.C. § 3513.257](#)’s early filing deadline for independents constitutional, where requirement did not impose a severe burden on independent candidates’ or voters’ constitutional rights so as to warrant strict scrutiny); see also, *Libertarian Party of Ohio*, 2006 Fed.App. 0342P (applying *Anderson* and progeny to invalidate regulations governing Ohio’s system for registering new political parties where said regulations imposed a severe burden on constitutional rights, but failed to advance a compelling state interest and were not narrowly tailored). The Sixth Circuit has summarized the *Anderson* (and progeny) analytical framework as follows:

*12 There is no bright-line test to determine when a state oversteps it bounds and impermissibly infringes on the constitutional rights of voters.... Courts must undertake the difficult task of considering and weighing the asserted injury to fundamental constitutional rights, the precise interest of the state in the regulation at issue, and the extent to which it is necessary to burden important rights in order to achieve any important state interests.... When a state promulgates a regulation which imposes a severe burden on individuals’ rights, that regulation will only be upheld if it is narrowly drawn to advance a state interest of compelling importance. However, the state’s important regulatory interests are generally sufficient to justify reasonable, nondiscriminatory restrictions.

Lawrence, 430 F.3d at 372-73 (internal quotations and citations omitted); *accord*, *Libertarian Party of Ohio*, 2006 Fed.App. 0342P at *4-5.

This Court's first task under this analytical framework is to determine whether or not O.R.C. § 3513.257's requirements—that an individual desiring to become an independent candidate, must be free of political affiliations by “no later than four p.m. of the day before the day of the primary election ...”—imposes a “severe burden on individuals’ rights,” or whether the restrictions are “reasonable” and “nondiscriminatory.”¹⁰

Lawrence, 430 F.3d 368, is instructive. In *Lawrence*, the plaintiffs challenged O.R.C. § 3513.257's early filing deadline for independent candidates. Like Plaintiffs in the instant case, the *Lawrence* plaintiffs argued the statute imposed a severe burden on their First and Fourteenth Amendment rights. *Id.* at 373. In support of their argument, the *Lawrence* plaintiffs offered expert testimony that “early filing deadlines place significant burdens on independent candidates because independents often do not decide to run until after the deadline has passed.” *Id.* The *Lawrence* Court acknowledged the veracity of this statement, but responded, “the Supreme Court has held that little weight is given to ‘the interest the candidate and his supporters may have in making a late rather than early decision to seek independent status.’” *Id.*, citing *Storer*, 415 U.S. at 736. The *Lawrence* Court explained that there is a “vital distinction” between a filing deadlines well in advance of the primary elections and those falling closer to the dates of those elections:

The early deadline discussed in *Anderson* imposed such a significant burden because it put independent candidates at a disadvantage vis-a-vis the major parties' nominees who where not named until nearly five months later.... [In the instant case], all candidates seeking a place on the ballot in November must engage in substantial campaign work before the early primary in order to obtain a space on the ballot. Those running in the primary must file sixty days before the primary, campaign, and win their party's primary while independent candidates must spend the time before the primary acquiring the requisite number of signatures and then file their petition by the day before the primary. All candidates are burdened by the fact that Ohio chooses to conduct its primary at an

early date, but there is no particular group which feels the additional burden of being placed at a disadvantage with respect to the rest of the field. The district court correctly concluded that this difference between this case and the *Anderson* case is significant. Here the burden imposed by Ohio's early deadline is nondiscriminatory.

*13 *Id.* at 373.¹¹ The *Lawrence* Court concluded, “[w]hen considering Ohio's election scheme as a whole, the early filing deadline is both reasonable and nondiscriminatory and therefore, within Ohio's constitutional authority to regulate elections as long as it advances an important state regulatory interest.” *Id.* at 374.

The burdens imposed by O.R.C. § 3513.257's early filing deadline for independent candidates, and the statute's requirement that an independent candidate be free of political affiliations by “no later than four p.m. of the day before the day of the primary election ...”, are one in the same. (See discussion on vagueness challenge, *supra*). Indeed, to separate them, renders the early filing requirement meaningless. Separation would cause the level playing field acknowledged by the *Lawrence* Court to be tilted in favor of independent candidates. Further, and even more significantly, if a candidate could remain politically affiliated, or change their political affiliation after the filing deadline, the interests the legislature sought to protect (expressly set forth in the final paragraph of O.R.C. § 3513.257), would be undermined. *Id.* Thus, the finding by the *Lawrence* court—that “the early filing deadline is both reasonable and nondiscriminatory as long as it advances an important state regulatory interest”—applies in the instant case.

The Court's next task under the *Anderson* and progeny analytical framework is to determine whether or not O.R.C. § 3513.257's requirements advance an important state regulatory interest. *Lawrence*, 430 F.3d at 374-75. The *Lawrence* Court found that “Ohio has important state regulatory interests which are sufficient to justify the reasonable and nondiscriminatory burdens imposed by its early filing deadline.” *Id.* at 375. Among the important state regulatory interests the *Lawrence* Court recognized were “a state's strong interest in maintaining the stability of its political system” and “Ohio's important state interest of equal treatment of candidates.” *Id.* Likewise, the Supreme Court, in *Storer*, upheld the constitutionality of an even more onerous disaffiliation requirement finding that the requirement reflected compelling state interests.¹² This Court agrees with the *Lawrence* and

Storer Courts, and accordingly, finds that O.R.C. § 3513.257's requirements advance important, and even compelling state regulatory interests.

In conclusion, applying the analytical framework set forth in *Anderson* and progeny, the Court finds that the reasonable and nondiscriminatory burdens imposed by O.R.C. § 3513.257 on Plaintiffs' First and Fourteenth Amendment rights are justified by Ohio's important, and even compelling, regulatory interests.

3. Discriminatory Application

Lastly, Plaintiffs argue that O.R.C. § 3513.257 was applied against Morrison in a discriminatory manner. Pls' Mot. at p. 47. The Court finds Plaintiffs' argument disingenuous.

*14 It is undisputed that Morrison appeared on the May 2, 2006 ballot as a candidate for the State and Local Republican Central Committees. His appearance on the ballot came *after* the deadline for filing statement of candidacy and nominating petitions. Morrison, in seeking the nomination for the governing bodies of the Republican Party, was attesting, under penalty of election falsification, that he was a Republican. Further, Morrison voted in the primary election (again, *after* O.R.C. § 3513.257's deadline) reaffirming his affiliation with the Republican party. Thus, the Court finds that the FCBOE's determination that Morrison was affiliated with the Republican party in violation with O.R.C. § 3513.257 was not arbitrary or discriminatory, but rather based upon these and other undisputed facts.

Plaintiffs, however, ignore these facts, and in support of their arguments, instead seek to rely on the FCBOE's certification of Robert Fitrakis and his running mate as independent candidates for the 2006 Governor and Lieutenant Governor race, notwithstanding the fact that Fitrakis, like Morrison, had voted in the Republican Primary. Pls' Mot. at 47-48. Plaintiffs' reliance is misplaced.

As a general matter,

[t]here is no right under the Constitution to have the law go unenforced against you, even if you are the first person against whom it is enforced, and even if you think (or can prove) that you are not as culpable as some others who have gone unpunished. The law does not need to be enforced everywhere to

be legitimately enforced somewhere; and prosecutors have broad discretion in deciding who to prosecute.

Daubenmire, et al. v. City of Columbus, 2006 U.S. Dist. LEXIS 7661 at *27, (S.D. Ohio 2006, Marbley, J.) quoting, *Futernick v. Sumpter Twp.*, 78 F.3d 1051, 1056 (6th Cir.1996). Regardless, review of the record reveals that the FCBOE did not treat Fitrakis more favorably, or even differently, than Morrison. Fitrakis' petition, like Morrison's, contained the required number of valid signatures and appeared otherwise valid on its face. It is the FCBOE's stated policy and practice of relying on the honesty of the candidates that they are qualified to be a candidate or will qualify for the office they seek. Absent a protest pursuant to O.R.C. § 3513.262, the FCBOE's examination does not continue beyond the FCBOE's facial review of the petition for validity. Fitrakis' petition, however, was not challenged; Morrison's was. This, not the discriminatory application of O.R.C. § 3513.257, is the reason for the difference.

Plaintiffs advance no further arguments in support of their claims that O.R.C. § 3513.257 is unconstitutional. Having rejected each of Plaintiffs' arguments, the Court concludes that Plaintiffs are not likely to succeed on the merits of their claims.

B. Irreparable harm

Given that Plaintiffs have not substantially demonstrated a constitutional violation, the Court is unable to conclude that irreparable harm has been established for purposes of issuing a preliminary and/or permanent injunction.

C. Harm to others

*15 While the protection of constitutional rights is always a public interest, there has been no violation of constitutional rights here. Further, if Morrison is permitted to run for Representative from the 15th House District, there will be harm to the general public as the integrity of the ballot will be undermined.

D. Public interest

The Court finds that in this case the public interest is best served by deferring to Defendants' efforts to ensure the integrity of the election process.

Examining the four preliminary and permanent injunction

factors together, the Court concludes that the issuance of a preliminary and/or permanent injunction is not warranted in this instance.

Injunction. Final judgment shall be rendered in favor of Defendants and against Plaintiffs.

The Clerk shall remove this case from the Court's pending motions and cases.

IT IS SO ORDERED.

IV. CONCLUSION

Based on the foregoing reasons, the Court **DENIES** Plaintiffs' Motion for a Preliminary and Permanent

Footnotes

- 1 The specific form of the Petition was specifically prescribed and mandated by the Ohio Secretary of State (Form 3-B).
- 2 Interestingly, during this process of investigating the circulators and signers of the potential candidate's petition, the FCBOE determines which political party the signer and the circulator are a member of based solely on their voting history. Morrison was both a circulator and signer of all of the petitions.
- 3 For reasons this Court cannot discern, both parties, at times, incorrectly refer to the [O.R.C. § 3501.01\(I\)](#), the provision defining 'independent candidate,' as the challenged statute. Plaintiffs, however, have challenged the constitutionality of [O.R.C. § 3513.257](#), the provision setting forth the requirements for an individual who seeks to become an independent candidate. (Am. Compl. at p. 1).
- 4 Plaintiffs, in a footnote, argue that this Court is not entitled construe a state statute. See Pls' Reply, p. 3. While the Court acknowledges that the construction of a challenged state statute is "generally a matter best left to the states, there are instances in which federal courts may properly consider challenges to them. Abstention is not appropriate when it is not practicable to wait the necessary length of time to get a definitive state adjudication...." [Kay, 621 F.2d at 812](#).
- 5 During the course of the FCBOE proceeding, Morrison frequently referred to the *Moss* decision for support. This Court refrains from commenting on whether or not the *Moss* court reached the correct conclusion in rejecting the commonsense interpretation of 'independent.' However, in light of the reaction of the General Assembly to amend the statute to add the definition of 'independent candidate,' this Court finds that the significance of the *Moss* opinion is limited to its provision of insight into the legislative intent for the adoption of [O.R.C. § 3501.01\(I\)](#).
- 6 Notably, like the definition of 'independent candidate' in [O.R.C. § 3501.01\(I\)](#), the purpose language in [O.R.C. § 3513.257](#) was added post-*Moss*.
- 7 For example, [O.R.C. § 3501.01\(I\)](#) would be more precise if the legislature had added language such as: "and this must not be a misrepresentation" after "who claims not to be affiliated with a political party".
- 8 If, however, the individual represents himself as unaffiliated for the purpose of persuading a person to sign his nominating petition, that person must be unaffiliated from the date of the representation. See [O.R.C. § 3599.14](#). [O.R.C. § 3599.14](#) provides in part:
[n]o person shall knowingly, directly or indirectly, do any of the following in connection with any declaration of candidacy, ... nominating petition ... or other petition presented to or filed with the secretary of state, a board or [sic] elections, or any other public office for the purpose of becoming a candidate for any elective office, including the office of a political party ... (1) Misrepresent the contents, purpose, or effect of the petition or declaration for the purpose of persuading a person to sign or refrain from signing the petition or declaration; ... (2) Make a false certification or statement concerning the petition or declaration....
- 9 For example, in the instant case, the validity of Morrison's independent candidacy was challenged. At the evidentiary hearing, the FCBOE considered uncontroverted evidence that Morrison appeared on the May 2, 2006 ballot as a candidate for the Republican Party State and Local Central Committees. Significantly, his appearance on the ballot came *after* the deadline for filing statement of candidacy and nominating petitions. Morrison, in seeking the nomination for the governing bodies of the Republican Party, was attesting, under penalty of election falsification, that he was a Republican. Additionally, Morrison voted in the primary (again, *after* [O.R.C. § 3513.257](#)'s deadline) reaffirming his

affiliation with the Republican party. Based upon these and other facts, the FCBOE determined that Morrison was affiliated with the Republican party.

- 10 As the Court noted earlier, Plaintiffs' do not challenge Ohio's authority to impose a filing deadline for independent candidates that is prior to the primary election. Likewise, Plaintiffs do not challenge the nominating petition signature requirements contained in O.R.C. § 3515.257. Accordingly, the Court's analysis focuses only on whether the requirement that an individual desiring to become an independent candidate, must be free of political affiliations by "no later than four p.m. of the day before the day of the primary election ..." is unconstitutionally burdensome.
- 11 The Sixth Circuit again acknowledged this distinction in [Libertarian Party of Ohio, 2006 Fed.App. 0342P at *9](#): "[i]n so ruling, we follow the great weight of the authority that has distinguished between filing deadlines well in advance of the primary and general elections and deadlines falling closer to the dates of those elections."
- 12 The *Storer* Court's application of strict scrutiny is not inconsistent with *Lawrence*. In *Storer*, the challenged California Election Statute, in addition to other requirements, forbade ballot position to an individual desiring to become an independent candidate if that individual voted in the immediately preceding primary or if he had a registered affiliation with a qualified political party at any time within one year prior to the immediately preceding primary election. [415 U.S. at 726](#). As the Sixth Circuit has recognized, courts distinguish "between filing deadlines well in advance of the primary and general elections and deadlines falling closer to the dates of those elections." [Libertarian Party of Ohio, 2006 Fed.App. 0342P at *9](#). Where, as in *Storer*, the "deadlines [are] far in advance of the primary election imposing a severe burden on the rights of political parties, candidates and voters," strict scrutiny is appropriate. *Id.*, citing [Lawrence, 430 F.3d at 375](#).

APPX. TAB

13

170 Ohio St. 511
Supreme Court of Ohio.

STATE ex rel. HIGGINS et al.
v.
BROWN, Secretary of State, et al.

No. 36479. | April 13, 1960.

Proceeding for writ of prohibition to prevent Secretary of State and members of county board of elections from placing name of party on Democratic ballot for primary election as candidate for office of delegate to Democratic national convention. Demurrers to petition were filed. The Supreme Court, Taft, J., held that where a candidate for a party nomination or a candidate for election to an office or position to be voted for at a primary election files a declaration of candidacy stating that his voting residence is in a particular registration precinct and that he is a qualified elector in such precinct, and such candidate was not a resident of such precinct at the time of making such declaration, has not resided there for 40 or more days and has not even attempted to register as an elector therein, such candidate's failure to comply with the statutory provisions would require a determination at a hearing on a protest against such candidacy that his declaration of candidacy be rejected.

Demurrer of Secretary of State sustained and writ against him denied; demurrer of county board of elections overruled and writ allowed.

Herbert, J., dissented in part.

****760** *Syllabus by the Court.*

***511** 1. Prohibition is an appropriate proceeding to prevent a board of elections from placing a candidate's name on a ballot where such name may not lawfully be placed thereon. Paragraph two of the syllabus of [State ex rel. Newell v Brown, 162 Ohio St. 147, 122 N.E.2d 105](#), followed.

2. In such a prohibition proceeding, notwithstanding the provisions of [Section 3513.05, Revised Code](#), that the determination of a board of elections as to the validity of a declaration of candidacy 'shall be final,' a court may in effect reverse such a decision where the undisputed facts are such as to require a different decision as a matter of law.

3. The form of declaration of candidacy provided for by [Section 3513.07 Revised Code](#), indicates a legislative intention to require therein a sworn statement from the candidate that his 'voting residence is in' a specified precinct and that he is a qualified elector in such specified precinct; and that statement relates to the time the declaration of candidacy is signed and sworn to.

4. The affidavit of a candidate in his declaration of candidacy is required so that ****761** the person asked to sign the petition may have the assurance under oath that the facts recited in the declaration of candidacy are true.

5. Where a candidate states under oath in the declaration of candidacy required by [Section 3513.07, Revised Code](#), that his voting residence is in a particular registration precinct and that he is a qualified elector in such precinct, when at the time of such sworn statement the candidate is not residing in such precinct, has not resided there for 40 or more days and has not even attempted to register as an elector therein, there is such a failure to fully comply with [Sections 3513.05 and 3513.07, Revised Code](#), as to require, at a hearing on a protest against the candidacy of such candidate, a determination that his declaration of candidacy be rejected.

Relators seek a writ of prohibition to prevent respondents, the Secretary of State and the four members of the Board of ***512** Elections of Cuyahoga County (said members herein collectively being referred to as the board) from certifying, printing, and placing the name of Thomas P. Burke (herein referred to as Burke) on the Democratic ballot for the May 3, 1960 primary election as a candidate for the office of delegate to the Democratic National Convention from the 23rd Congressional District.

The amended petition alleges the following facts:

1. On January 30, 1960, Burke signed and swore to his declaration of candidacy which certified that his 'voting residence' was then in a precinct within the 23rd Congressional District and he was then a qualified elector in that 23rd district precinct.

2. On February 3, 1960, Burke filed his declaration of candidacy and petition with the board.

3. Burke did not reside in that 23rd district on January 30, 1960, he had not resided therein either on that date or on February 3, 1960 for 40 or more days, and he did not transfer his registration with the board from without to within that district until February 1, 1960.

4. On February 13, 1960, relators filed protests with the board challenging the candidacy of Burke but the board thereafter overruled those protests.

Section 3513.12, Revised Code, provides that delegates to national conventions from districts within the state shall be chosen 'in the manner prescribed in Sections 3513.01 to 3513.32 * * * for the nomination of candidates for district offices.'

The Revised Code further reads, with emphasis added, so far as pertinent:

3513.05. 'Each person desiring to become a candidate for a party nomination or for election to an office or position to be voted for at a primary election shall, not later than * * * the ninetieth day before the day of such * * * election, file a declaration of candidacy and petition * * *.

'Portests against the candidacy of any person filing a declaration of candidacy * * * may be filed * * * not later than * * * the eightieth day before the day of the primary election. * * * *513 such election officials shall hear the protest and determine the validity or invalidity of the declaration of candidacy and petition. If they find that such candidate is not an elector of the state, district, county, or political subdivision in which he seeks a party nomination or election to an office or position, or has not fully complied with sections 3513.01 to 3513.32, inclusive, of the Revised Code, his declaration of candidacy and petition shall be determined to be invalid and shall be rejected, otherwise it shall be determined to be valid. Such determination shall be final.'

**762 3513.07. 'The form of declaration of candidacy and petition of a person desiring to be a candidate for a party nomination or a candidate for election to an office or position to be voted for at a primary election shall be substantially as follows:

'Declaration Of Candidacy Party Primary Election

'I, (Name of Candidate), the undersigned, hereby declare that my voting residence is in precinct of the (Township) or (Ward and City or Village) in the county of \$089, Ohio; that my postoffice address is * * *: that I am a qualified elector in the precinct in which my voting residence is located. * * *

'Dated this day of 19..

.....

'(Signature of Candidate)

'The State of Ohio

'County of}

'..... (Name of candidate), being duly sworn, deposes and says that he is the candidate named in the above declaration of candidacy and that the statements and declarations therein contained are true as he verily believes.

.....

'(Signature of Candidate)

'Subscribed and sworn to before me this day of 19..

.....

'(Signature of officer administering oath)

.....

'(Title of officer)'

*514 3503.01. 'Every citizen of the United States who is of the age of twenty-one years or over and who has been a resident * * * of the county forty days and of the voting precinct forty days next preceding the election at which he offers to vote has the qualifications of an elector and may vote at all elections, provided that any qualified elector who in good faith moves his residence * * * from one precinct to another precinct in the same county at any time subsequent to the fortieth day preceding an election may vote at such election in the precinct from which he moved wherein his voting residence had been legally established. * * *'

3503.06. 'No person residing in any registration precinct shall be entitled to vote at any election, or to sign any declaration of candidacy or any nominating * * * petition, unless he is registered as an elector.'

3503.07. 'Each person * * * who, if he continues to reside in the precinct until the next election, will at that time have fulfilled all the requirements as to length of residence to qualify him as an elector shall, unless otherwise disqualified, be entitled to be registered as an elector in such precinct. * * *'

3503.11. 'Persons * * * may register or change their registration * * * except after * * * the forty-first day

preceding a primary or general election or after * * * the eleventh day preceding a special election held on * * * other than a primary or general election day and ten days following a * * * election. Any registered elector who removed from one precinct to another in the same political subdivision or from one county to another * * * after the close of such registration period may vote at the next succeeding election in the precinct from which he moved, wherein he was legally registered.'

All parties apparently concede that no cause of action is stated against the Secretary of State. Hence his demurrer to the petition must be sustained and a judgment denying allowance of any writ against him must be rendered.

The cause is therefore now before this court for consideration only on the demurrer to the petition filed by the board.

Attorneys and Law Firms

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**763 *515 Mark McElroy, Atty. Gen., Gerald J. Celebrezze and John F. O'Brien, Cleveland, for respondent Secretary of State.

John T. Corrigan, Prosecuting Attorney, A. M. Braun and Frederick W. Frey, Cleveland for respondent Bd. of Elections of Cuyahoga County.

Opinion

TAFT, Judge.

[1] [2] Prohibition is an appropriate proceeding to prevent a board of elections from placing a candidate's name on a ballot where such name may not lawfully be placed thereon. *State ex rel. Newell v. Brown*, 162 Ohio St. 147, 122 N.E.2d 105. Furthermore, in such a prohibition proceeding, notwithstanding the provisions of *Section 3513.05, Revised Code*, that the determination of a board of elections as to the validity of a declaration of candidacy 'shall be final,' a court may in effect reverse such a decision where the undisputed facts are such as to require a different decision as a matter of law. See *State ex rel. Hanna v. Milburn et al., Lake County Board of Elections*, 170 Ohio St. 9, 15, 16, 161 N.E.2d 891.

[3] The form of declaration of candidacy provided for by *Section 3513.07, Revised Code*, certainly indicates a legislative intention to require therein a sworn statement from the candidate that his 'voting residence is in' a specified precinct and that he is ('I am') a qualified

elector in such specified precinct. *State ex rel. Allen v. Board of Elections of Lake County*, 170 Ohio St. 19, 161 N.E.2d 896. There is, under the statutory words, only one time to which the required statement can relate, i. e., the time the declaration of candidacy is signed and sworn to. This conclusion necessarily results from the words 'is in' and 'I am' specified for the statutory form. If the General Assembly intended some other time it could readily have so indicated, as by using words such as 'is to be' or 'will be' either on filing the declaration or at the time of the primary election.

[4] As this court unanimously indicated in its *per curiam* opinion in *State ex rel. Marshall v. Sweeney*, 153 Ohio St. 208, 214, 90 N.E.2d 869, 871, the affidavit of the *516 candidate in his declaration of candidacy is required so 'that the person asked to sign the petition may have the assurance under oath that the facts recited in the foregoing declaration of candidacy are true.' (Emphasis added.) If it would be sufficient to have 'the facts recited in the * * * declaration of candidacy * * * true' merely when the petition was filed, 'the person asked to sign the petition,' who will always have been asked to sign before the petition was filed, would have no such 'assurance.'

[5] In *State ex rel. Ehring v. Bliss et al., Board of Elections of Summit County*, 155 Ohio St. 99, 97 N.E.2d 671, this court held that a declaration of candidacy was valid although it specified a 'voting residence' from which the candidate had moved within 40 days preceding its filing because, under the proviso in what is now *Section 3503.01, Revised Code*, the candidate could have voted at his old address when he filed his declaration. It is obvious that the candidate also could have voted at that former address at any earlier date upon which he may have signed and sworn to his declaration. Certainly, this court had no occasion to and did not consider in that case whether the sworn affidavit speaks as of the time the declaration is filed rather than at the earlier time it is signed and sworn to.

In the instant case, Burke's voting residence could not have been a precinct in the 23rd district on January 30, 1960 because it is admitted by the demurrer to the amended petition that (1) Burke had not on January 30, 1960 resided for 40 or more days in any such 23rd district precinct (see *Section 3503.01, Revised Code*) and (2) he **764 was not then registered in any such 23rd district precinct (see *Section 3503.06, Revised Code*). Since, as admitted by the demurrer to the amended petition, Burke did not reside in any precinct in the 23rd district on January 30, 1960, Burke could not even have registered on that day as an elector in any such precinct for the purpose of becoming qualified as an elector in such

precinct for the May 3, 1960 primary election. See [Section 3503.07, Revised Code](#).

In spite of the foregoing facts, as admitted by the demurrer to the amended petition, Burke on January 30, 1960 *517 stated under oath in his declaration of candidacy that his voting residence was then in a 23rd district precinct and that he was then a qualified elector in that 23rd district precinct.

In our opinion, where a candidate states under oath in the declaration of candidacy required by [Section 3513.07, Revised Code](#), that his voting residence is in a particular registration precinct and that he is a qualified elector in such precinct when at the time of such sworn statement the candidate is not residing in such precinct, has not resided there for 40 or more days and has not even attempted to register as an elector therein, there is such a failure to fully comply with [Sections 3513.05 and 3513.07, Revised Code](#), as to require, at a hearing on a protest against the candidacy of such candidate, a determination that his declaration of candidacy be rejected.

In [State ex rel. Woods v. Eyrich, Jr., et al., Board of Elections of Hamilton County, 157 Ohio St. 326, 105 N.E.2d 393, 394](#), this court did hold that a declaration of candidacy was valid although the candidate had not resided at the voting address specified therein for 40 days preceding the time that 'the candidate signed his declaration' as well as for 40 days preceding the time of its filing. It is not clear from the report whether any contention was made that the candidate was not qualified because he had not resided for 40 days at that voting address as required by what is now [Section 3503.01, Revised Code](#). The report tends to indicate that the only question presented for consideration was whether the candidate had effected a transfer in his registration prior to the execution of his declaration of candidacy, as this court held he had. In any event, the candidate in that case did reside at the address specified in his declaration when he signed it, had resided there for a substantial time and had then (in accordance with statutory authority allowing a registration therein for the next election before 40 days residence, see [Section 3503.07, Revised Code](#)) effected a transfer of his registration to that address. In the instant case, Burke had (on the allegations of the amended petition admitted by the demurrer) never even resided at or endeavored to transfer his registration to the precinct specified in his declaration of candidacy when he signed and swore to the statement in that declaration that that precinct was then his *518 voting residence and that he was then a qualified elector therein.

The board relies upon that part of the decision of the

majority of this court in [State ex rel. Schroy v. Wagner, 127 Ohio St. 174, 187 N.E. 572, 573](#), which held that 'an elector, otherwise qualified, whose name appears upon the permanent registration list, may sign a petition * * * although at the time he has not transferred his registration' to a new residence to which he should have transferred it. In reaching that conclusion, this court relied upon the provisions of what is now [Section 3503.06, Revised Code](#), reading that 'no person * * * shall be entitled * * * to sign any declaration of candidacy or any nominating * * * petition, unless he is registered as an elector,' and apparently upon the provisions of what is now [Section 3503.07, Revised Code](#), for permanency of registration and of what is now [Section 3503.16, Revised Code](#), for transfer or registration. The argument of the board seems to be that if, by reason of his previous permanent registration in a precinct outside of the 23rd district, Burke could **765 have signed a nominating petition without transferring his registration, he could likewise sign a declaration of candidacy. If we assume that this argument is sound, it does not follow that Burke could, in stating under oath as required by [Section 3513.07, Revised Code](#), that his voting residence was in a certain precinct and that he was a qualified elector in that precinct, make untrue statements without thereby failing, within the meaning of [Section 3513.05, Revised Code](#), to fully comply with [Section 3513.07, Revised Code](#). [Section 3513.04, Revised Code](#), specifically contemplates and requires full compliance by a candidate with [Sections 3513.01 to 3513.32, Revised Code](#), but does not suggest the necessity of any such compliance on the part of a signer of such a candidate's petition. Cf. [State ex rel. Bass v. Board of Elections of Summit County, 157 Ohio St. 345, 105 N.E.2d 414](#), denying a collateral attack on the qualifications of a registered circulator of a petition.

From what we have said, it is apparent that the demurrer must be overruled; and, since the parties have agreed that the ruling on the demurrer will be dispositive of the cause, the writ prayed for is allowed. Hence, it is unnecessary to consider *519 the other reasons advanced by relators for allowance of the writ.

Demurrer of Ted W. Brown, Secretary of State to amended petition sustained and allowance of writ against him denied.

Demurrer of members of Board of Elections of Cuyahoga County overruled and writ allowed.

WEYGANDT, C. J., and ZIMMERMAN, MATTHIAS, BELL and PECK, JJ., concur.

State ex rel. Higgins v. Brown, 170 Ohio St. 511 (1960)

166 N.E.2d 759, 11 O.O.2d 322

HERBERT, Judge, concurs in paragraphs one and two of the syllabus and in the judgment but dissents from paragraphs three, four and five of the syllabus.

Parallel Citations

166 N.E.2d 759, 11 O.O.2d 322

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APPX. TAB

14

101 Ohio St.3d 252
Supreme Court of Ohio.
The STATE ex rel. [STINE](#)

v.

BROWN COUNTY BOARD OF ELECTIONS.

No. 2004–0191. | Submitted Feb. 18, 2004. |
Decided Feb. 20, 2004.

Synopsis

Background: Candidate for county engineer requested a writ of mandamus to compel the board of elections to validate nominating petition and place his name on primary election ballot.

[Holding:] The Supreme Court held that evidence established that candidate was resident of county where he had house, not county where he rented apartment, and, therefore, was not eligible to be a candidate.

Writ denied.

Attorneys and Law Firms

****415 *256** Patrick L. Gregory and [Gary Rosenhoffer](#), Batavia, for relator.

[Thomas F. Grennan](#), Brown County Prosecuting Attorney, and [Mary McMullen](#), Assistant Prosecuting Attorney, for respondent.

Opinion

***252 PER CURIAM.**

{ ¶ 1 } On December 31, 2003, relator, Jeff Stine, filed a declaration of candidacy and petition to be a Republican Party candidate for the office of Brown County Engineer at the March 2, 2004 primary election. Stine claimed to be a resident of Brown County.

{ ¶ 2 } Nine electors filed a written protest against Stine’s declaration and petition. They asserted that Stine maintained a permanent residence outside Brown County. The board determined that based on its records, the protestors are all registered members of the Republican Party qualified to protest Stine’s candidacy.

{ ¶ 3 } On January 23, 2004, respondent, Brown County Board of Elections, held a hearing on the protest. At the hearing, several protestors testified that they did not believe that Stine resided in Brown County. They had not seen anyone living ****416** at the Brown County apartment he claimed that he and his wife resided in, but they had seen him walking his dog near his Clermont County home. In addition, Stine had decorated his Clermont County home but not his Brown County apartment for Christmas. One protestor further testified that when telephone information was called on December 4, 2003, the only listing for Stine was for his Clermont County house.

{ ¶ 4 } At the protest hearing, Stine specified that he and his wife had lived at their \$280,000 Clermont County home since 1988 and had remortgaged their home in the summer of 2003 to finance a remodeling project. Stine claimed that he and his wife moved from their Clermont County home to a one-bedroom Brown County apartment he rented from a former client on October 1, 2003. On October 3, 2003, the Brown County Board of Elections accepted Stine’s and his wife’s application to register to vote in Brown County, and they both voted in the ***253** November 2003 Brown County general election. Stine noted that he had rented the Brown County apartment so that he could run for county engineer.

{ ¶ 5 } Nevertheless, Stine admitted that he lived between the Clermont County and Brown County properties, that he kept his dog at his Clermont County home, that the majority of his and his wife’s personal property was at their Clermont County home, that he went to his Clermont County home daily to care for his dog and pick up mail, and that he received more mail at the Clermont County home than the Brown County apartment. Stine owned only two pieces of the furniture at the Brown County apartment: a chair and a television. Stine further testified that he generally spends weekends at his Clermont County house, that he has not listed his Clermont County house for sale and does not intend to do so, and that he did not file a change-of-address form with the Clermont County post office when he rented the Brown County apartment. On an Ohio Bureau of Motor Vehicles change-of-address form, Stine stated that his temporary mailing address until December 30, 2004, would be his Bethel, Clermont County, Ohio work address.

{ ¶ 6 } Furthermore, although Stine claimed that he checks the mail delivered to his Brown County apartment every day, the board sent him two certified letters to that

address regarding the protest, which he did not sign for until seven and nine days after they were mailed.

{ ¶ 7 } Moreover, when asked whether he would return to his Clermont County home if he lost the election, Stine said, “I certainly wouldn’t live in that apartment on Fagley Road [in Brown County] for the rest of my life” and “if it’s a choice between living at Fagley Road and living at my former residence on Frank Willis [Memorial] Road [in Clermont County], * * * I’d return there [i.e., Clermont County] in a minute.”

{ ¶ 8 } On January 27, 2004, the board of elections upheld the protest and declared Stine’s nominating petition invalid because he was not a resident of Brown County. The board concluded that Stine’s permanent habitation is his Clermont County home.

{ ¶ 9 } On January 28, 2004, Stine filed this expedited election matter. Stine requested a writ of mandamus to compel the board of elections to validate his nominating petition and place his name on the March 2, 2004 primary election ballot as the Republican Party candidate for Brown County Engineer. The board answered, and the parties filed briefs and evidence pursuant to S.Ct.Prac.R. X(9).

**417 { ¶ 10 } This cause is now before the court for a consideration of the merits.

*254 { ¶ 11 } Stine asserts that he is entitled to the requested writ of mandamus to compel the board to vacate its January 27, 2004 decision and place his name on the March 2, 2004 primary election ballot for Brown County Engineer.

[1] [2] { ¶ 12 } “We may vacate the decision of a board of elections and grant a writ of mandamus if [Stine] establishes that the board’s decision resulted from fraud, corruption, abuse of discretion, or clear disregard of applicable law.” *State ex rel. Commt. for the Referendum of Lorain Ord. No. 77-01 v. Lorain Cty. Bd. of Elections*, 96 Ohio St.3d 308, 2002-Ohio-4194, 774 N.E.2d 239, ¶ 23. Stine does not allege fraud or corruption here. Instead, he contends that the board abused its discretion in invalidating his petition. “Abuse of discretion” connotes an unreasonable, arbitrary, or unconscionable decision. *State ex rel. Stevens v. Geauga Cty. Bd. of Elections* (2000), 90 Ohio St.3d 223, 226, 736 N.E.2d 882.

{ ¶ 13 } Stine does not claim that a resident of a different county, e.g., Clermont County, could properly sign and file a declaration of candidacy and nominating petition. See, e.g., *State ex rel. Higgins v. Brown* (1960), 170 Ohio

St. 511, 11 O.O.2d 322, 166 N.E.2d 759, paragraph three of the syllabus (“The form of declaration of candidacy provided for by [Section 3513.07 Revised Code](#), indicates a legislative intention to require therein a sworn statement from the candidate that his ‘voting residence is in’ a specified precinct and that he is a qualified elector in such specified precinct; and that statement relates to the time the declaration of candidacy is signed and sworn to”); [R.C. 3513.07](#); [R.C. 3513.05](#) (“If [the election officials] find that such candidate is not an elector of the state, district, county, or political subdivision in which the candidate seeks a party nomination * * *, the candidate’s declaration of candidacy and petition shall be determined to be invalid and shall be rejected”); cf. *State ex rel. Markulin v. Ashtabula Cty. Bd. of Elections* (1992), 65 Ohio St.3d 180, 184, 602 N.E.2d 626, construing a comparable statutory residency requirement for certain candidates (“the candidate must be eligible to vote for the office he or she seeks at the time the statement of candidacy is signed. To be able to sign the statement truthfully, a candidate must be registered at an address within the election district at the time the statement is signed”).

[3] { ¶ 14 } Instead, Stine claims that the board of elections abused its discretion because “[t]he unrefuted competent evidence in this case is that [he] has become an elector in Brown County, Ohio and is eligible to become a candidate for the office of Brown County Engineer.”

{ ¶ 15 } Stine’s claim is meritless. In election cases involving candidate-residence issues, the court applies [R.C. 3503.02](#). See *State ex rel. Herdman v. Franklin Cty. Bd. of Elections* (1993), 67 Ohio St.3d 593, 595, 621 N.E.2d 1204, and cases cited therein. That statute provides that the person’s intent is of great import:

*255 { ¶ 16 } “All registrars and judges of elections, in determining the residence of a person offering to register or vote, shall be governed by the following rules:

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

{ ¶ 18 } “(B) A person shall not be considered to have lost the person’s residence who leaves the person’s home and goes into another state or county of this state, **418 for temporary purposes only, with the intention of returning.

{ ¶ 19 } “(C) A person shall not be considered to have gained a residence in any county of this state into which

the person comes for temporary purposes only, without the intention of making such county the permanent place of abode.”

{ ¶ 20} There was substantial, conflicting evidence here concerning Stine’s appropriate voting residence. Although he was registered in Brown County and had voted in the November 2003 general election in Brown County at the time he signed his declaration of candidacy, the board of elections properly credited the evidence indicating that Stine intended his Clermont County home as his permanent residence.

^[4] { ¶ 21} This evidence was not simply, as Stine claims, the speculative musings of the protestors. Stine testified that he did not intend to sell his Clermont County house and that he would return there “in a minute” if he lost the election. He admitted that he has never requested a change of address for his mail in Clermont County and that his dog and a majority of his personal possessions were in the Clermont County house. “ ‘We will not substitute our judgment for that of a board of elections if there is conflicting evidence on an issue.’ ” *State ex rel. Commt. for the Referendum of Lorain Ord. No. 77–01*, 96 Ohio St.3d 308, 2002-Ohio-4194, 774 N.E.2d 239, ¶ 47, quoting *State ex rel. Wolfe v. Delaware Cty. Bd. of Elections* (2000), 88 Ohio St.3d 182, 185, 724 N.E.2d 771. We have applied this principle to deny writs challenging decisions of boards of elections on candidate-residence issues. *Herdman*, 67 Ohio St.3d at 596, 621 N.E.2d 1204; *State ex rel. Clinard v. Greene Cty. Bd. of Elections* (1990), 51 Ohio St.3d 87, 88, 554 N.E.2d 895 (“There is no abuse of discretion when the board reaches its decision based on substantial though conflicting evidence”).

{ ¶ 22} Stine further asserts that there is a “serious question as to whether any of the testimony received is competent” because “[n]o protestor testified as to his or her party affiliation and whether he or she was registered as an elector.” Stine is correct that *R.C. 3513.05*, which relates to declarations of candidacy and petitions in primary elections, requires that a protest must be filed by a qualified elector who is a member of the same political party as the candidate and is eligible to vote at the primary election. See *Whitman v. Hamilton Cty. Bd. of Elections*, 97 Ohio St.3d 216, 2002-Ohio-5923, 778 N.E.2d 32, ¶ 17. But unlike the evidence in *Whitman*, the evidence here establishes that the protestors were qualified to file the protest because they were members of Stine’s political party and registered as electors in the county. And Stine did not raise this objection at the protest hearing.

{ ¶ 23} Therefore, Stine has not established that the board of elections abused its discretion in invalidating his petition. Accordingly, we deny the writ.

Writ denied.

MOYER, C.J., RESNICK, FRANCIS E. SWEENEY, SR., PFEIFER, LUNDBERG STRATTON, O’CONNOR and O’DONNELL, JJ., concur.

Parallel Citations

804 N.E.2d 415, 2004 -Ohio- 771

APPX. TAB

15

65 Ohio St.3d 180
Supreme Court of Ohio.

The STATE ex rel. MARKULIN
v.

ASHTABULA COUNTY BOARD OF ELECTIONS.

No. 92–1864. | Submitted and Decided Oct. 22,
1992. | Opinion announced Dec. 9, 1992.*

Candidate for county judge whose nominating petition was rejected by county board of elections filed action in mandamus to compel board to certify her nominating petition and place her on ballot. The Supreme Court held that: (1) rejection of petition did not violate open meetings law; (2) board erred in finding that candidate was “non-qualified circulator elector”; (3) however, candidate was not qualified elector-candidate where she was resident of another county at time of filing of nominating petition; (4) statutes which had effect of imposing duration residency requirement of 75 days did not violate candidate’s constitutional rights to seek public office, vote, freedom of expression, freedom of association, right to travel and right to equal protection; and (5) candidate failed to show corruption of board or that any corruption resulted in unlawful rejection of petition.

Writ denied.

****627 *180** On August 20, 1992, relator, Katica Markulin, a licensed attorney and resident of Euclid, Cuyahoga County, Ohio, timely filed with respondent, the Ashtabula County Board of Elections, a nominating petition and statement of candidacy for the office of Judge of the Ashtabula County Court, Eastern Division. The nominating petition contained a legally sufficient number of signatures. Respondent rejected relator’s petition at a meeting held on August 26, 1992. Relator contends that the reason given for rejecting the petition was that she was an “invalid circulator” of the petition. Respondent contends that relator is a “non-qualified elector” and “non-qualified circulator elector,” and that it rejected relator’s petition on advice of Attorney Sara Rectenwald of the Secretary of State’s office.

On September 9, 1992, respondent held a hearing on the rejection at relator’s request and again rejected the petition because relator was a “non-qualified elector” and “non-qualified circulator elector.” On September 28, 1992, relator filed this action in mandamus to compel

respondent to certify her nominating petition and place her name on the November 3, 1992 general ***181** election ballot as a candidate for Judge of the Ashtabula County Court, Eastern Division.

Attorneys and Law Firms

Katica Markulin, pro se.

Gregory J. Brown, Pros. Atty., for respondent.

Opinion

PER CURIAM.

Per Curiam. We deny the writ for the reasons that follow.

Relator raises five issues:

- (1) that the rejection of her petition violated the open meetings law, [R.C. 121.22](#);
- (2) that respondent erred by finding that she was a “non-qualified circulator elector”;
- (3) that respondent erred by finding her a “non-qualified elector”;
- (4) that the proceedings surrounding the rejection of her petition were tainted by corruption; and
- (5) that to the extent that [R.C. 3513.261](#) imposes a durational residency requirement for independent candidates, it violates the First and Fourteenth Amendments to the United States Constitution.

Open Meetings Law

^[1] [R.C. 121.22\(H\)](#) provides in part:

“A resolution, rule, or formal action of any kind is invalid unless adopted in an open meeting of the public body.”

Relator contends that respondent violated [R.C. 121.22](#) by consulting with an attorney from the Secretary of State’s office, ****628** who advised rejection of her petition, but not discussing that fact at the hearing of August 26, 1992, when it rejected her petition. She further contends that the only reason given at the August 26 meeting for rejecting

her petition was that she was not a qualified circulator.

The original minutes of the August 26 meeting state in part:

“The petitioner was not a registered elector in Ashtabula County. Chairman Vensel advised he had contacted Bob Taft, Secretary of State, for legal direction. Legal Section Attorney Sarah Bechenwald [*sic*] advised the Board that the petition should be rejected due to ‘non-qualified elector’ and ‘non-qualified circulator elector.’ * * *”

*182 Relator submits as evidence a handwritten addendum to the August 26 official minutes, apparently written by respondent’s deputy director, which she states accurately describes the August 26 meeting. The addendum states:

“Additions of comments made during general discussions of board meeting of 8–26–92.

“During the general discussion of the petition for Katica (Kathy) Markulin, Director Hornstien’s [*sic*, Hornstein’s] reason for recommending that her petition be rejected was that she was not a qualified elector in this county and that therefore she could not be a qualified circulator of her petitions. Therefore she did not have sufficient qualified signatures to make her petition valid. He then cited various sections of the O.R.C.

“Also during the general discussion and questions asked by the petitioners it was brought out that [the] director and deputy director had conferred with their local legal counsel the county prosecutor for clarification of differing sections of the O.R.C.

“Also it was brought out that the Chairman Arthur Vensel had contacted the legal dept. of the Secretary of States [*sic*] office, without specifically mentioning any name, and they had recommended the [*sic*] these petition’s [*sic*] i.e., Patricia M. Walsh[’s] and Kathy Markulin’s be rejected for the reasons cited in the O.R.C.

“8–27–92

“Ernie Fedor”

On September 8, 1992, respondent amended the minutes of the August 26 meeting to state:

“A motion was made by Arthur Vensel to amend the minutes to officially include the section on background information on section referring to ‘Legal Section Attorney Sarah Bechenwald [*sic*], advised the Board that the petition should be rejected due to non-qualified elector

and non-qualified circulator-elector.’ * * *”

The handwritten addendum to the August 26 minutes, which is the only evidence relator submits as to the alleged violation of the open meetings law, states that respondent’s director recommended to respondent that relator was not a qualified elector. If relator was not a qualified elector, she would not have been an eligible candidate *or* circulator. Moreover, both the official minutes of August 26 and the handwritten addendum mention contact with the Secretary of State’s office. They differ only as to whether attorney Rectenwald’s name was specifically mentioned.

Thus, even relator’s evidence raises the “qualified elector” issue and gives some indication that the hearing of August 26 included mention of contact *183 with the Secretary of State’s legal advisor. Whether the August 26 meeting fully explored both possible reasons why relator’s petition was ultimately rejected—that is, “non-qualified elector” and “non-qualified circulator elector”—is uncertain, since there is no transcript of that hearing in evidence.

R.C. 3501.05(B) requires the Secretary of State to “[a]dvice members of such boards [of elections] as to the proper methods of conducting elections [,]” and R.C. 3501.11(K) requires boards of elections to “[r]eview, examine, and certify the sufficiency and validity of petitions and nominating papers [.]” Thus, respondent properly sought the advice of the Secretary of State’s office. Moreover, we have held that boards may carry out their duties under R.C. 3501.11(K) *sua sponte*, without **629 notice or hearing to the candidate. *Wiss v. Cuyahoga Cty. Bd. of Elections* (1980), 61 Ohio St.2d 298, 301, 15 O.O.3d 357, 359, 401 N.E.2d 445, 448; *State ex rel. McGinley v. Bliss* (1948), 149 Ohio St. 329, 37 O.O. 21, 78 N.E.2d 715. Accordingly, even if respondent did fail to fully explore all the reasons for denying relator’s petition at the August 26 meeting, relator was denied nothing she was entitled to. Moreover, respondent granted relator a second hearing on her petition at which she was given full latitude to discuss all issues. Accordingly, we find on these facts no violation of the open meetings law that invalidates respondent’s action.

Qualified circulator

[2] R.C. 3513.261 provides in part that the circulator of a petition must declare “under penalty of election falsification that he is a qualified elector of the state of Ohio and resides at the address appearing below his

signature [t]hereto[.]”

R.C. 3503.01 provides in part:

“Every citizen of the United States who is of the age of eighteen years or over and who has been a resident of the state thirty days next preceding the election at which he offers to vote, is a resident of the county and precinct in which he offers to vote, and has been registered to vote for thirty days, has the qualifications of an elector and may vote at all elections in the precinct in which he resides.” See, also, *In re Protest Filed by Citizens for the Merit Selection of Judges, Inc.* (1990), 49 Ohio St.3d 102, 104, 551 N.E.2d 150, 152–153.

The parties agree that relator has been registered to vote in Cuyahoga County since 1986, and respondent does not dispute relator’s age, state residence, citizenship, or address on the circulator’s statement. Accordingly, it is clear that she is an elector, which is all that is required to be a petition circulator. Thus, to the extent that respondent invalidated relator’s petition for this reason, it erred by disregarding the plain language of R.C. 3513.261.

***184 Qualified elector-candidate**

[3] R.C. 3513.261 requires, in addition to being an elector, that a candidate swear under penalty of election falsification that he or she is “qualified to vote for the office he [or she] seeks.” Relator crossed out this part of her statement of candidacy on her petitions, and she argues that it cannot create a durational residency requirement for candidates. We hold otherwise, and so find that respondent correctly rejected relator’s petition for this reason.

The Attorney General has held that R.C. 3513.261’s requirement that a candidate be qualified to vote for the office he or she seeks requires a candidate for county court judge to be an elector of the county court district involved. 1958 Ohio Atty.Gen.Ops. No. 2295. More recently, he has reached the same conclusion with regard to all candidates for county office. 1984 Ohio Atty.Gen.Ops. No. 84–025.

Relator relies on R.C. 1907.13, which states in part:

“A county court judge, during his term of office, shall be a qualified elector and a resident of the county court district in which he is elected or appointed.”

She argues that R.C. 1907.13’s requirement of residence

only during office tenure is a special provision that takes precedence over R.C. 3513.261’s general requirement of residency in the district of the office sought, applicable to all candidates. However, in order for this type of analysis to be invoked, the two statutes must be irreconcilable. R.C. 1.51. A general residence requirement for all candidates is not irreconcilable with a specific residence requirement for an elected official during his or her term. The requirements are, in fact, complementary.

[4] Relator also argues that if R.C. 3513.261 does impose a residence requirement, then it violates her constitutional rights to seek public office, vote, freedom of expression, freedom of association, right to trial, and right to equal protection of the law, under the First and Fourteenth Amendments of the United States Constitution.

****630** In effect, R.C. 3513.261 and 3513.263 impose a seventy-five day minimum residence requirement on candidates, because the statement of candidacy and the nominating petitions must be filed with the board of elections at least seventy-five days before the general election, and the candidate must be eligible to vote for the office he or she seeks at the time the statement of candidacy is signed. To be able to sign the statement truthfully, a candidate must be registered at an address within the election district at the time the statement is signed. See *State ex rel. Walsh v. Ashtabula Cty. Bd. of Elections* (1992), 65 Ohio St.3d 197, 602 N.E.2d 638.

***185** Although a majority of the United States Supreme Court has not stated whether courts should apply the “strict scrutiny” test under the Fourteenth Amendment to durational residency requirements involving a candidate, a four-member plurality has stated that candidacy is not a “fundamental right,” and has also stated:

“A ‘waiting period’ is hardly a significant barrier to candidacy. In *Storer v. Brown* [1974], 415 U.S. [724] at 733–737 [94 S.Ct. 1274, at 1281–1282, 39 L.Ed.2d 714, at 725–727], we upheld a statute that imposed a flat disqualification upon any candidate seeking to run in a party primary if he had been registered or affiliated with another political party within the 12 months preceding his declaration of candidacy. Similarly, we upheld a 7–year durational residency requirement for candidacy in *Chimento v. Stark*, 414 U.S. 802 [94 S.Ct. 125, 38 L.Ed.2d 39] (1973), summarily aff’g 353 F.Supp. 1211 (NH). We conclude that this sort of insignificant interference with access to the ballot need only rest on a rational predicate in order to survive a challenge under the Equal Protection Clause. * * *” *Clements v. Fashing* (1982), 457 U.S. 957, 967–968, 102 S.Ct. 2836, 2846, 73 L.Ed.2d 508, 518–519.

In *State ex rel. Brown v. Summit Cty. Bd. of Elections* (1989), 46 Ohio St.3d 166, 545 N.E.2d 1256, we upheld a two-year durational residency requirement for city council candidates, holding that the effects on the rights of travel and association were so minimal that they did not invoke the strict scrutiny test under the Fourteenth Amendment and required only a rational basis. Citing *Brown*, relator further argues that the policy reasons for imposing durational residency requirements on council members do not apply to judges, because the law is the same everywhere, whereas legislative policy matters may differ, making familiarity with local issues more important for council members. This argument has some merit, but not enough to persuade us to declare irrational a legislative requirement that would-be candidates must reside among the citizens whose signatures they solicit to become candidates.

Accordingly, we reject relator's arguments based on constitutional and statutory construction and hold that at the time of her signing her statement of candidacy, relator did not comply with R.C. 3513.261's requirement that she be eligible to vote for the office she seeks.

Corruption

^[5] Relator also argues that respondent's decision to reject her petition was tainted by corruption. The corruption she alleges is that respondent's legal advisor, the prosecuting attorney, is a close personal friend of relator's opponent and should have removed himself from the proceedings. She *186 submits no evidence, however, as to how this corrupted the hearings, except evidence that an assistant prosecuting attorney circulated petitions for the opponent.

Footnotes

* Reporter's Note: A writ of mandamus was denied in this cause on October 22, 1992, "consistent with the opinion to follow." See 65 Ohio St.3d 1438, 600 N.E.2d 681. The "opinion to follow" is announced today.

She also cites respondent's refusal to stipulate certain facts, refusal to answer questions at the hearings, and commingling of her hearings and other protests as further evidence of corruption.

We do review actions of boards of elections in these cases to discover "fraud, *corruption*, abuse of discretion, or a clear disregard of statutes or applicable legal provisions * * *." (Emphasis added.) *State ex rel. Senn v. Cuyahoga Cty. Bd. of Elections* (1977), 51 Ohio St.2d 173, 175, 5 O.O.3d 381, 382, 367 N.E.2d 879, 880. But corruption, like the other acts mentioned, must result in some unlawful or unconscionable **631 result before a relator has the clear right to relief required for a writ of mandamus to issue. Here, neither relator's evidence nor her arguments persuade us that respondent was guilty of corruption. Moreover, in any case, its deliberations did not result in an unlawful rejection of relator's petition, but a lawful one. She was not eligible to vote for the office she seeks when she signed the petition, and her petition was subject to rejection on those grounds. On the same grounds, we deny her request for a writ of mandamus.

Writ denied.

MOYER, C.J., and SWEENEY, HOLMES, DOUGLAS, WRIGHT, HERBERT R. BROWN and RESNICK, JJ., concur.

Parallel Citations

602 N.E.2d 626, 1992 -Ohio- 84