

DEBORAH A. DAWSON (0021580)
(*Counsel of Record*)
STEPHAN P. BABIK (0080165)
JOHN D. FERRERO,
THE STARK COUNTY PROSECUTING ATTORNEY
110 Central Plaza South
Suite 510
Canton, Ohio 44702
Telephone: (330) 451-7865
Facsimile: (330) 451-7225
Email: dadawson@starkcountyohio.gov
spbabik@starkcountyohio.gov

Counsel for Respondent
Stark County Board of Elections

RAYMOND V. VASVARI, JR. (0055538)
(*Counsel of Record*)
K. ANN ZIMMERMAN (0059486)
VASVARI & ZIMMERMAN
1301 East Ninth Street
1100 Erieview Tower
Cleveland, Ohio 44114
Telephone: (216) 458-5880
Facsimile: (216) 928-0016
Email: vasvari@vasvarilaw.com
zimmerman@vasvarilaw.com

Counsel for Intervenor Respondent
Thomas M. Bernabei

MIKE DEWINE (0009181)
THE OHIO ATTORNEY GENERAL

SARAH E. PIERCE (0087799)
(*Counsel of Record*)
ZACHERY P. KELLER (0086930)
NICOLE M. KOPPITCH (0082129)
Constitutional Offices Section
30 East Broad Street
16th Floor
Columbus, Ohio 43215
Telephone: (614) 466-2872
Facsimile: (614) 728-7592
Email: sarah.pierce@ohioattorneygeneral.gov
zachery.keller@ohioattorneygeneral.gov
nicole.koppitch@ohioattorneygeneral.gov

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

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

/s/ N. Zachary West

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

-and-

*Counsel for Relator
The Ohio Democratic Party*

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

/s/ Robert S. Peck

Robert S. Peck (*Pro Hac Vice Pending*)
777 6th Street NW
Suite 520
Washington, D.C. 20001
Telephone: (202) 944-2803
Facsimile: (202) 965-0920
Email: robert.peck@cclfirm.com

*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
The Office of the Stark County Prosecutor,
John D. Ferrero
110 Central Plaza South, Suite 510
Canton, Ohio 44702-1413
E: dadawson@starkcountyohio.gov
E: spbabik@starkcountyohio.gov

*Counsel for Respondent
Stark County Board of Elections*

Raymond V. Vasvari, Jr., Esq.
K. Ann Zimmerman, Esq.
Vasvari & Zimmerman
1301 East Ninth Street
1100 Erieview Tower
Cleveland, Ohio 44114-1844
E: vasvari@vasvarilaw.com
E: zimmerman@vasvarilaw.com

*Counsel for Intervenor Respondent
Thomas M. Bernabei*

Sarah E. Pierce, Esq.
Zachery P. Keller, Esq.
Nicole M. Koppitch, Esq.
Assistant Attorneys General
The Office of the Ohio Attorney General,
Michael E. DeWine
Constitutional Offices Section
30 East Broad Street, 16th Floor
Columbus, Ohio 43215
E: sarah.pierce@ohioattorneygeneral.gov
E: zachery.keller@ohioattorneygeneral.gov
E: nicole.koppitch@ohioattorneygeneral.gov

*Counsel for Respondent
Secretary of State Jon Husted*

/s/ Lee E. Plakas
Lee E. Plakas (0008628)

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

EXHIBIT

E

A

LEASE AGREEMENT

This Lease is made this 30TH day of April, 2015 by and between Robert G. Johns and Irene L. Motts, hereinafter "Lessor," and Thomas M. Bernabei, hereinafter "Lessee."

1. Lessor hereby leases to Lessee and Lessee hereby leases from Lessor the single family residence located at 2118 University Ave. N.W., Canton, Ohio 44709.

2. The term of this Lease shall be for one month, commencing May 1, 2015 and ending May 31, 2015. Lessee may renew this lease on a month-to-month basis.

3. The rent shall be \$1,000 per month, due and payable in advance on the first day of each month, beginning May 1, 2015. Rent shall be payable in cash, money order or by check, to Robert G. Johns at his mailing address: 1113 Buena Vista St. N.E., Canton, Ohio 44714. Any monthly rent payment not paid by the 5th day of any month shall constitute a default in payment of the rent.

4. Lessee shall pay a security deposit in the amount of \$1,000 which Lessor shall hold without interest. The security deposit may not be used for payment by Lessee of the final month's rent. Lessor shall return said security deposit to Lessee upon termination of the Lease, less any damages to the property or less any rent owed.

5. Lessee shall be responsible for and make all payments for all utilities, to include gas, electric, telephone, cable tv, water, sewer and trash pickup. Lessor shall maintain all utilities in Lessor's name and shall bill Lessee on a monthly prorated basis.

6. Lessor shall maintain fire and liability insurance on the property and shall pay the real estate taxes. Lessee agrees that Lessee's personal property shall be at Lessee's sole risk and Lessor is not liable for any damage or loss to the property. Lessee may obtain, at Lessee's option, tenant insurance coverages.

7. Lessee has inspected the property and accepts it in "AS IS" condition. Lessee agrees to maintain the property in a state of good condition, fair wear and tear excepted. Lessee shall be responsible for making minor repairs to the premises; Lessor shall be responsible for major repairs. Lessee shall provide reasonable access to the premises to Lessor to inspect or make necessary repairs.

8. Lessor shall maintain the lawn and flower beds and remove leaves in the fall. Lessee shall provide snow and ice removal. Lessee shall keep the outside of the property clean and free from litter and trash. Lessee shall not keep or store any items of unused personal property outside of the house and shall not keep any unlicensed or inoperable vehicles on the property.

9. Lessee shall maintain the property in compliance with all state and local building, zoning and health codes. Lessee shall not create or permit any unreasonably loud or annoying activities on the property which would interfere with the quiet enjoyment of any persons in the neighborhood. Lessee shall not create any nuisances. Lessee shall comply with the Ridgewood Homeowners Association's rules and regulations.

10. Lessee shall be responsible for maintaining, testing and changing the batteries in the smoke detectors as needed.

11. Lessee shall keep no pets.

12. Lessee shall not assign or sublet the premises without consent of Lessor.

13. Lessee shall not make any material alterations, decorations, additions or modifications to the premises without consent of Lessor.

14. The following events shall constitute default of this Lease:

a. If rent shall remain unpaid for a period of five days after its due date.

b. If Lessee fails to keep and perform any of the agreements or obligations set forth in this Lease.

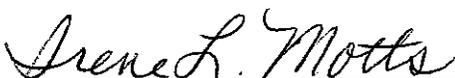
c. If Lessee abandons or vacates the property.

The parties have hereunto set their hands at Canton, Ohio this 30TH
day of April, 2015.

LESSOR



Robert G. Johns



Irene L. Motts

LESSEE



Thomas M. Bernabei

Data For Parcel 216529

Base Data

Parcel: 216529
Owner: JOHNS ROBERT G & MOTTS IRENE L
Site Address: 2118 UNIVERSITY AVE NW CANTON OH 44709-3936
Map Routing Number: 02 015 10 2200
Tax Map: [CC_015.pdf](#)



[\(+1\) Map this property.](#)

Tax Mailing Address - Data as of 4/29/2015 1:37:56 AM

Address: JOHNS ROBERT G
 1113 BUENA VISTA ST NE
 CANTON OH 44714

Geographic Information - Data as of 4/29/2015 1:37:56 AM

Tax District: 00020 CANTON CITY - CANTON CSD
School District: 7602 CANTON CSD
City/Village: CANTON CITY
Township: MCKINLEY TOWNSHIP
Neighborhood ID: [002-02-04-18](#)

Legal - Data as of 4/29/2015 1:37:56 AM

Legal Description: 27746 WH EX 5 X 146.5' TRI SS
DTE Classification: 510 - 1-FAMILY DWELLING
Last Inspected: 02/27/2009
Reviewed By: BEO
Reviewed Date: 03/17/2009

Property Class: RESIDENTIAL
Listed By: PLW
Source of Information: CURB REVIEW
Total Tax Rate (in Mills): 103.500
Effective Tax Rate (in Mills): 76.685723

Allotments - Data as of 4/29/2015 1:37:56 AM

No allotment data found for this parcel.

Parcel History - Data as of 4/29/2015 2:16:31 AM

Date	Activity
12/19/2011	TRANSFER FR. JOHNS EMMA D

List of property taken to 2118 University Ave NW and subsequently to 441 Lakecrest St NW

Bunk bed
Frame
Mattress
Sheets
Blankets
Pillows

Large duffel bag

Lamp
Lounge chair
2 books

Plastic cups

trash bags

3-4 suits/ with ties
3-4 white dress shirts
Dress shoes
Belt
Socks, underwear

Blue jeans
Shorts
Tshirts
Sweat shirt
Tennis shoes

Razor
Shampoo
Toothbrush
Toothpaste
Towels

Card table
1-2 folding chairs

iPod/phone charger
Printer
Laptop

Vitamins
Metamucil
Lipitor
Aspirin
Advil

Bananas
Milk
Cheerios
Diet pepsi/rum



THOMAS BERNABEI 10-96
2745 DUNKEITH DR NW
CANTON, OH 44708

8515
56-55/412
29210

5/1/2015
Date

Pay to the Order of Robert G Johns \$ 1000.00
One thousand and no/100 Dollars

FIRSTMERIT Central Plaza Office
www.firstmerit.com
For Rent-2118 University Ave

Private Client Services

[Signature]

⑆041200555⑆ ⑆2064710509⑆ 08515

USE ANY OTHER BANK OR CREDIT UNION TO DEPOSIT THIS CHECK

Robert G. Johns

RECEIPT NO. **6611**

3:26 P.M. 05-04 2015
MONTH, DAY, YEAR

Type of Report:

- Pre-election
- Post-election
- Non-election year
- Other

Type of Election:

- Primary
- General
- Special
- Date of Election _____

Received of Thomas Bernabee, Treasurer

Candidate for _____

or
Treasurer of _____

- Initial Report of:
- Addendum to Report of:

- Campaign Committee,
- Political Committee,
- Political Party

Other - Letter of resignation - Dem Ctr. Committee and other organizations

- Initial Designation of Treasurer,
- Supplemental Designation of Treasurer,
- Termination Statement

Receipted bills, cancelled checks, or copies attached.

BOARD OF ELECTIONS

MEJ

(B)

Thomas M. Bernabei
2745 Dunkeith Dr NW
Canton, Ohio 44708
330-284-5713

April 30, 2015

Mr. Phil Giavassis
Chairperson, Stark County Democratic Party
2968 Easton St NE
Canton, OH 44721

Dear Mr. Giavassis:

Please accept this letter as my resignation from the Democratic Central Committee of Stark County.

Thank you.



Thomas M. Bernabei

RECEIVED
2015 MAY -4 PM 3:26
STARK COUNTY
BOARD OF ELECTION

Thomas M. Bernabei
2745 Dunkeith Dr NW
Canton, Ohio 44708
330-284-5713

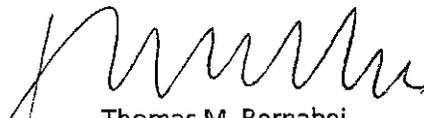
April 30, 2015

Ms. Jeanette Mullane
Western Stark County Democratic Club
7769 Hudson Dr SW
Navarre, OH 44662

Dear Ms. Mullane:

Please accept this letter as my resignation from the Western Stark County Democratic Club.

Thank you.



Thomas M. Bernabei

RECEIVED
2015 MAY -4 PM 3: 26
STARK COUNTY
BOARD OF ELECTION

Thomas M. Bernabei
2745 Dunkeith Dr NW
Canton, Ohio 44708
330-284-5713

April 30, 2015

Mr. Dave Kirven
President, Jefferson-Jackson Club
P.O. Box 9765
Canton, OH 44711-9765

Dear Mr. Kirven:

Please accept this letter as my resignation from the Jefferson-Jackson Club.

Thank you.



Thomas M. Bernabei

RECEIVED
2015 MAY -4 PM 3: 26
STARKE COUNTY
BOARD OF ELECTION

Thomas M. Bernabei
2745 Dunkeith Dr NW
Canton, Ohio 44708
330-284-5713

April 30, 2015

Ms. Gwendolyn Dunagan
1115 S. Seneca Street
Alliance, OH 44601

Dear Ms. Dunagan:

Please accept this letter as my resignation from the Alliance Area Democratic Club.

Thank you.



Thomas M. Bernabei

RECEIVED
2015 MAY -4 PM 3:26
STARK COUNTY
BOARD OF ELECTION

Voter Registration Form

(C)

Please read instructions carefully. Please type or print clearly with blue or black ink.
For further information, you may consult the Secretary of State's Web site at: www.sos.state.oh.us or call 1-877-767-6446.

Eligibility

You are qualified to register to vote in Ohio if you meet all the following requirements:

1. You are a citizen of the United States.
2. You will be at least 18 years old on or before the day of the general election.
3. You will be a resident of Ohio for at least 30 days immediately before the election in which you want to vote.
4. You are not incarcerated (in jail or in prison) for a felony conviction.
5. You have not been declared incompetent for voting purposes by a probate court.
6. You have not been permanently disenfranchised for violations of the election laws.

Use this form to register to vote or to update your current Ohio registration if you have changed your address or name.

NOTICE: This form must be received or postmarked by the 30th day before an election at which you intend to vote. You will be notified by your county board of elections of the location where you vote. If you do not receive a notice prior to Election Day, please contact your county board of elections.

Lines 1 and 2 below are required by law. You must answer both of the questions for your registration to be processed.

Registering in Person

If you have a current valid Ohio driver's license, you must provide that number on line 10. If you do not have an Ohio driver's license, you must provide the last four digits of your Social Security number on line 10. If you have neither, please write "None."

Registering by Mail

If you register by mail and do not provide either a current Ohio driver's license number or the last four digits of your Social Security number, please enclose with your application a copy of one of the following forms of identification that shows your name and current address:

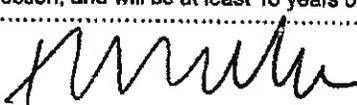
Current valid photo identification card, military identification, or current (within one year) utility bill, bank statement, paycheck, government check or government document (except board of elections notifications) showing your name and current address.

Your Signature

Your signature is required for your registration to be processed. In the box next to the arrow by line 14, please affix your signature or mark, taking care that it does not touch surrounding lines or type so it can be effectively used to identify you. If your signature is a mark, include the name and address of the person who witnessed the mark beneath the signature line. If by reason of disability you are unable to physically sign, you may follow specific procedures found in Ohio law (R.C. 3501.382) to appoint an attorney-in-fact who may sign this form on your behalf at your direction and in your presence.

Please see information on back of this form to learn how to obtain an absentee ballot.

FOLD HERE

1. Are you a U.S. citizen? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No			
2. Will you be at least 18 years of age on or before the next general election? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No			
If you answered NO to either of the questions, do not complete this form.			
3. Last Name BERNABET BERNABET	First Name THOMAS	Middle Name or Initial M	Jr., II, etc.
4. House Number and Street (Enter new address if changed) 2118 UNIVERSITY AVE NW		5. City or Post Office CANTON	6. ZIP Code 44709
7. Additional Rural or Mailing Address (if necessary)		8. County where you live STARK	
9. Birthdate (MO-DAY-YR) (required)	10. Ohio driver's license No. OR last 4 digits of Social Security No. (one form of ID required to be listed or provided)	11. Phone No. (voluntary) 330 284 5713	
12. PREVIOUS ADDRESS IF UPDATING CURRENT REGISTRATION - Previous House Number and Street 2745 DUNKERTH DR NW			FOR BOARD USE ONLY SEC4010 (Rev. 07/08) City, Village, Twp. Ward 2018 Precinct STARK COUNTY School Dist. City, Dist. Senate Dist. House Dist.
Previous City or Post Office CANTON	County STARK	State OH	
13. CHANGE OF NAME ONLY Former Legal Name		Former Signature	
I declare under penalty of election falsification I am a citizen of the United States, will have lived in this state for 30 days immediately preceding the next election, and will be at least 18 years of age at the time of the general election.			
14. Your Signature →			
Date 5, 3, 2015			
MO	DAY	YR	

RECEIPT NO. **6610**

2:02 PM M. 05-04 2010
MONTH, DAY, YEAR

Type of Report:

- Pre-election
- Post-election
- Non-election year
- Other

Type of Election:

- Primary
- General
- Special
- Date of Election

Received of Tom Bernabee

Candidate for

or

Treasurer of Friends of Bernabee

- Initial Report of:
- Addendum to Report of:

- Initial Designation of Treasurer,
- Supplemental Designation of Treasurer,
- Termination Statement

- Received bills, cancelled checks, or copies attached.

- Campaign Committee,
- Political Committee,
- Political Party

BOARD OF ELECTIONS



FF

D

Designation of Treasurer

Prescribed by Secretary of State 07/05

RECEIVED

2015 MAY 4 PM 2:02

All Committees			
Full Name of Committee Friends of Bernabei			
Street Address 2118 University Ave NW		Telephone Number (330) 284-5713	
City Canton		State OH	Zip Code 44709
Full Name of Treasurer Michael E Haike			
Street Address 1112 Southpointe Cir NE		Telephone Number 330 936 2609	
City Canton		State OH	Zip Code 44714
Full Name of Deputy Treasurer (if any) NA			
Street Address 1		Telephone Number	
City		State OH	Zip Code
Candidate's Campaign Committees Only			
Full Name of Candidate Thomas M Bernabei		Party Affiliation/Independent/Non-Partisan Independent	
Street Address 2118 University Ave NW		Office Sought Mayor	
City Canton		State OH	Zip Code 44709
Signature of Candidate 		Date 5/4/15	
Political Action Committees Only			
Is the PAC sponsored by a labor organization or corporation? <input type="checkbox"/> No <input type="checkbox"/> Yes		If Yes, name the sponsor	
PAC Registration Number		Authorized Signature	
Date		List any affiliated PACs	
Political Parties, Political Contributing Entities, or Legislative Campaign Funds Only			
Authorized Signature		Date	
Ballot Issue PAC? <input type="checkbox"/> Yes <input type="checkbox"/> No			

Signature of Treasurer _____

Date _____

Reason(s) for filing this form:

- Original Designation of Treasurer/Acknowledgement of Appointment
- Change of Treasurer/Acknowledgement of Appointment
- Designation or change of Deputy Treasurer
- Change of Address for _____

Change of Committee name. The previous name was: Elect Thomas M. Bernabei For County Commissioner Committee

Change of Filing Location. The previous location was: _____
The new location is: _____

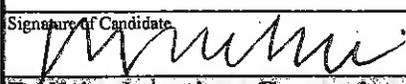
Change of Office Sought from _____ to _____

Other. Please explain: Change party affiliation

E

Designation of Treasurer RECEIVED

Prescribed by Secretary of State 07/05

All Committees		2015 MAY -4 PM 2:02	
Full Name of Committee Friends of Bernabei			
Street Address 2118 University Ave NW		Telephone Number (330) 284-5713	e-mail Address STARK COUNTY BOARD OF ELECTION
City Canton	State OH	Zip Code 44709	FAX Number
Full Name of Treasurer Michael E Hanke			
Street Address 1812 Southpointe Cir NE		Telephone Number 330 936 2609	e-mail Address
City Canton	State OH	Zip Code 44714	FAX Number
Full Name of Deputy Treasurer (if any) NA			
Street Address 1		Telephone Number	e-mail Address
City	State OH	Zip Code	FAX Number
Candidate's Campaign Committees Only			
Full Name of Candidate Thomas M Bernabei		Party Affiliation/Independent/Non-Partisan Independent	
Street Address 2118 University Ave NW		Office Sought Mayor	Subdivision/District Canton
City Canton	State OH	Zip Code 44709	Election Year 2015
Signature of Candidate 		Date 5/4/15	
Political Action Committees Only			
Is the PAC sponsored by a labor organization or corporation? <input type="checkbox"/> No <input type="checkbox"/> Yes. If Yes, name the sponsor			Acronym, if any
PAC Registration Number	Authorized Signature	Date	List any affiliated PACs
Political Parties, Political Contributing Entities, or Legislative Campaign Funds Only			
Authorized Signature		Date	Ballot Issue PAC? <input type="checkbox"/> Yes <input type="checkbox"/> No

Michael E. Hanke
Signature of Treasurer

5-4-15
Date

- Reason(s) for filing this form:
- Original Designation of Treasurer/Acknowledgement of Appointment
 - Change of Treasurer/Acknowledgement of Appointment
 - Designation or change of Deputy Treasurer
 - Change of Address for _____
 - Change of Committee name. The previous name was: Elect Thomas M. Bernabei For County Commissioner Committee
 - Change of Filing Location. The previous location was: _____
The new location is: _____
 - Change of Office Sought from _____ to _____
 - Other. Please explain: Change party affiliation

RECEIVED
 2015 MAY -4 PM 3:29
 STARK COUNTY BOARD OF ELECTION

F

RECEIVED

2015 MAY -4 PM 2: 02

STARK COUNTY
BOARD OF ELECTION

May 4, 2015

To the Board of Elections:

Effective immediately, I resign as Treasurer of the following campaign committees and any other campaign committee affiliated with a Democratic candidate.

Kristen Donohue Guardado for Judge

Elect Chryssa Hartnett

Keep Joe Martuccio Law Director Committee

Sincerely,



Thomas M. Bernabei

Voter Registration and Information Update Form

Please read instructions carefully. Please type or print clearly with blue or black ink.

For further information, you may consult the Secretary of State's website at: www.OhioSecretaryofState.gov or call 1-877-767-6446.

Eligibility

You are qualified to register to vote in Ohio if you meet all the following requirements:

1. You are a citizen of the United States.
2. You will be at least 18 years old on or before the day of the general election.
3. You will be a resident of Ohio for at least 30 days immediately before the election in which you want to vote.
4. You are not incarcerated (in jail or in prison) for a felony conviction.
5. You have not been declared incompetent for voting purposes by a probate court.
6. You have not been permanently disenfranchised for violations of election laws.

Use this form to register to vote or to update your current Ohio registration if you have changed your address or name.

NOTICE: This form must be received or postmarked by the 30th day before an election at which you intend to vote. You will be notified by your county board of elections of the location where you vote. If you do not receive a notice following timely submission of this form, please contact your county board of elections.

Numbers 1 and 2 below are required by law. You must answer *both* of the questions for your registration to be processed.

Registering in Person

If you have a current valid Ohio driver's license, you must provide that number on line 10. If you do not have an Ohio driver's license, you must provide the *last four digits* of your Social Security number on line 10. If you have neither, please write "None."

Registering by Mail

If you register by mail and do not provide either an Ohio driver's license number or the last four digits of your Social Security number, you must enclose with your application a copy of one of the following forms of identification:

Current and valid photo identification, a military identification, or a current (within the last 12 months) utility bill, bank statement, paycheck, government check or government document (other than a notice of voter registration mailed by a board of elections) that shows your name and current address.

Residency Requirements

Your voting residence is the location that you consider to be a permanent, not a temporary, residence. Your voting residence is the place in which your habitation is fixed and to which, whenever you are absent, you intend to return. If you do not have a fixed place of habitation, but you are a consistent or regular inhabitant of a shelter or other location to which you intend to return, you may use that shelter or other location as your residence for purposes of registering to vote. If you have questions about your specific residency circumstances, you may contact your local board of elections for further information.

Your Signature

In the area below the arrow in Box 14, please write your cursive, hand-written signature or make your legal mark, taking care that it does not touch the surrounding lines so when it is digitally imaged by your county board of elections it can effectively be used to identify your signature.

Please see information on back of this form to learn how to obtain an absentee ballot.

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

FOLD HERE

I am: Registering as an Ohio voter Updating my address Updating my name

1. Are you a U.S. citizen? Yes No
 2. Will you be at least 18 years of age on or before the next general election? Yes No
 If you answered NO to either of the questions, do not complete this form.

3. Last Name: Bernabei First Name: Thomas Middle Name or Initial: M Jr., II, etc.:
 4. House Number and Street (Enter new address if changed): 441 Lakecrest St NW Apt. or Lot #: City or Post Office: Canton 5. ZIP Code: 44709

7. Additional Mailing Address (if necessary): 8. County (where you live): Stark
 9. Birthdate (MO-DAY-YR) (required): 7/21/1946 10. Ohio Driver's License No. OR Last Four Digits of Social Security No. (one form of ID required to be listed or provided): 6033 11. Phone No. (voluntary): 330 284 5713

12. PREVIOUS ADDRESS IF UPDATING CURRENT REGISTRATION - Previous House Number and Street: 2118 University Ave NW
 Previous City or Post Office: Canton County: Stark State: OH

13. CHANGE OF NAME ONLY Former Legal Name: Former Signature:

14. I declare under penalty of election falsification I am a citizen of the United States, will have lived in this state for 30 days immediately preceding the next election, and will be at least 18 years of age at the time of the general election.

Your Signature ↓ [Signature] Date 05 / 15 / 2015
 MO DAY YR

FOR BOARD USE ONLY
SEC4010 (Rev. 6/14)

City, Village, Twp. _____

Ward _____

2015 MAY 15 PM 2:55

RECEIVED

BOARD OF ELECTIONS
STARK COUNTY

School Dist. _____

County Dist. _____

Senate Dist. _____

House Dist. _____

EXHIBIT

F



LEE E. PLAKAS

JAMES G. MANNOS

JAMES M. MCHUGH

GARY A. CORROTO

DAVID L. DINGWELL

DENISE K. HOUSTON

MEGAN J. FRANTZ OLDHAM

EDMOND J. MACK

MARIA C. KLUTINOTY EDWARDS

JOSHUA E. O'FARRELL

COLLIN S. WISE

BRANDON O. TRENT

Of Counsel

CHERYL S. LEE

AMANDA M. PAAR CONROY

ROBERT G. KONSTAND*

*Also licensed in FL

Deceased

GEORGE J. TZANGAS

1930-2012

Canton Office

220 Market Avenue South

Eighth Floor

Canton, Ohio 44702

330.453.LION

Akron Office

2500 FirstMerit Tower

106 South Main Street

Akron, Ohio 44308

330.784.LION

Fax 330.455.2108

www.lawlion.com

VIA HAND DELIVERY

May 29, 2015

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

RECEIVED

2015 MAY 29 PM 1: 26

STARK COUNTY
BOARD OF ELECTION

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

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

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

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

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

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

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

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

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

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

Dear Director Matthews:

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

INTRODUCTION

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

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

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

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

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

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

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

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

² Ohio Sec. State Adv. Op. No. 2007-05 (Appx Tab 2).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

¹⁰ *Id.*

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

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

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

THE PROTESTORS

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

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

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

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

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

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

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

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

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

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

FACTUAL BACKGROUND

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

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

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

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

24. Bernabei’s first job after graduating law school in 1975 was with the Massillon Law Department, beginning on May 3, 1976.¹⁴ Consistent with his political affiliation, he was hired by a long-time Stark County Democrat, Thomas V. Ferrero, had been elected Massillon City Solicitor the prior November. Ferrero himself was appointed to replace long-time Democrat Virgil L. Musser, who had recently been elected as a Democrat Stark County Commissioner.¹⁵

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

26. When voters elected Democrat-Judge Irene Smart to the Stark County Court of Common Pleas in 1984, the Democratic Central Committee appointed Klide to replace Judge Smart on the Canton Municipal Court in January 1985.¹⁸ Later that spring, the Democratic Central Committee appointed W. Scott Gwin to replace Klide as the Canton City Law Director.¹⁹ Bernabei continued his employment with the Canton Law Department under newly appointed Democrat-Law Director Gwin.²⁰ In fact, in November of 1986, Bernabei even helped Gwin’s brother, James S. Gwin, mount an unsuccessful challenge to newly appointed Republican Senator Scott Oelslager.²¹

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

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

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

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

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

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

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

¹⁹ See, *id.*

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

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

27. In November of 1988, Gwin defeated Republican Ira Turpin as Judge for the Fifth District Court of Appeals.²² Democratic Mayor Sam Pursues temporarily appointed Bernabei as Canton Law Director, and the Democratic Central Committee permanently appointed Bernabei to replace Gwin as the Canton Law Director in February of 1989.²³

28. Running as a Democrat, Bernabei retained the position of Canton Law Director over Republican Richard Kurn in November of 1989.²⁴ He was successfully re-elected as Canton Law Director in 1991, 1995, and 1999 – each time, running as a Democrat.

29. After 11 years as a Democratic elected official, Bernabei retired as Canton Law Director in 2000.²⁵ Upon his retirement, Bernabei lobbied the Democratic Central Committee to appoint fellow Democrat Joseph Martuccio as Bernabei's successor.²⁶ After the Democratic Central Committee appointed Martuccio over former Stark County Democratic Party Chairman Roy Gutierrez in July of 2000, Bernabei was named Treasurer of Martuccio's campaign committee. Bernabei then donated the entire \$13,081.20 remaining in his own campaign fund to Martuccio in early 2001.²⁷ To the extent this cash-dump was intended to scare off any potential challenger to Martuccio, it was successful. Martuccio was unopposed in his effort to retain the position of Canton Law Director as a Democrat, and with Bernabei as his Treasurer, he has run unopposed since.²⁸

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

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

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

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

²⁵ Id.

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

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

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

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

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

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

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

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

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

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

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

³⁴ Id.

³⁵ Id.

³⁶ Id.

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

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

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

⁴⁰ R.C. § 735.01.

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

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

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

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

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

⁴¹ Canton Ord. No. 17-2008 (Appx. Tab 101).

⁴² Letter to Bernabei (Jan. 26, 2009) (Appx. Tab 102).

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

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

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

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

⁴⁷ Bernabei Designation of Treasurer (Apr. 21, 2010) (Appx. Tab 18).

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

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

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

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

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

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

I further declare that, if elected to this office or position, I will qualify therefor, and I will support and abide by the principles enunciated by the DEMOCRATIC Party.⁵¹

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

41. As further confirmation of his continuing Democratic affiliation, on February 4, 2014 Bernabei submitted a Declaration of Candidacy to run as a member of the Stark County Democratic Central Committee.⁵³ Bernabei had not previously served on Democratic Central Committee. *Containing the same Democratic affirmation set forth in his County Commissioner Declaration of Candidacy,*⁵⁴ quoted above, and utilizing his voting address of 2745 Dunkeith Drive NW in the Village of Hills and Dales, Bernabei was elected to the Democratic Central Committee on May 6, 2014.⁵⁵

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

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

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

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

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

⁵⁵ Stark BOE May 6, 2014 Election Results (Appx. Tab 48).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

⁷⁰ Stark Democratic Party Finance Report (Appx. Tab 41).

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

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

⁷³ Bernabei SOS Contributions (Appx. Tab 88).

⁷⁴ Stark Democratic Party Finance Report (Appx. Tab 41).

⁷⁵ Jefferson Jackson Democratic Club Finance Report (Appx. Tab 42).

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

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

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

48. As this Board knows, Ohio does not allow people to register as a member of a political party when they register to vote. Rather, a person's political affiliation is determined by the partisan primary in which they vote.⁷⁹ Unsurprisingly, a cursory review of Bernabei's voting history confirms Bernabei's own self-assessment – he is "a dyed-in-the-wool Democrat." Since 1991, Bernabei has voted as a Democrat in Democratic primaries 20 times – most recently in May 2014.⁸⁰ Bernabei historically, regularly, and most importantly – recently – votes in furtherance of his Democrat affiliation.

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

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

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

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

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

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

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

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

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

51. The deadline to submit partisan Declarations of Candidacy for the Office of Mayor of the City of Canton was February 4, 2015.⁸¹ Healy satisfied this deadline, and the Stark County Board of Elections certified Healy as a Democratic candidate. The Board of Elections similarly certified the Declaration of Candidacy of the current Canton City Treasurer, Democrat Kim R. Perez. A Democratic primary was therefore to take place for the Office of Canton Mayor on May 5, 2015 between Healy and Perez. No other Democrat or Republican candidates submitted Declarations of Candidacy – *including Democrat-Commissioner Bernabei*.

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

53. To run as an Independent candidate for the Office of Canton Mayor, a candidate must submit his or her nominating petition by 4:00 PM on Monday, May 4, 2015.⁸³ However, for someone such as Bernabei, who is a lifelong Democrat, current Democratic officeholder, and not even a resident of the City of Canton, it is not nearly as simple as submitting signed petitions – indeed, it is not even remotely possible, as explained below.

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

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

⁸¹ R.C. § 3513.05.

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

⁸³ R.C. § 3513.257.

⁸⁴ Olson Interview Tr., p. 4 (Appx. Tab 49).

⁸⁵ Olson Interview Tr., p. 4 (Appx. Tab 49).

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

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

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

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

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

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

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

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

⁸⁷ Olson Interview Tr., p. 5 (Appx. Tab 49).

⁸⁸ Olson Interview Tr., p. 5 (Appx. Tab 49).

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

⁹⁰ Id.

⁹¹ Id.

⁹² Bernabei Voter Registration Form (May 3, 2015) (Appx. Tab 44).

⁹³ Bernabei Designation of Treasurer (Apr. 21, 2010) (Appx. Tab 18).

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

D. Bernabei's name appeared throughout Canton (and beyond) on numerous different types of campaign materials on behalf of Democrat Kristen Guardado, a judicial candidate for the Canton Municipal Court. Guardado was in the midst of a contested Democratic primary against Democrat Angela Alexander. Bernabei's name was appearing on Guardado's campaign materials in connection with both his public endorsement of Guardado's candidacy and his service as Guardado's Campaign Treasurer.⁹⁵ Indeed, Bernabei's name continued to appear on these campaign materials through May 5, 2015.⁹⁶ By way of example, on April 29, 2015, Bernabei personally recorded the following radio advertisement on behalf of Guardado,⁹⁷ which began to air on April 30, 2015 and continued to air on May 5, 2015:⁹⁸

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

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

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

Paid for by the Kristen Donohue Guardado for Judge Committee.⁹⁹

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

⁹⁵ Guardado for Judge Campaign Materials (Appx. Tab 92).

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

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

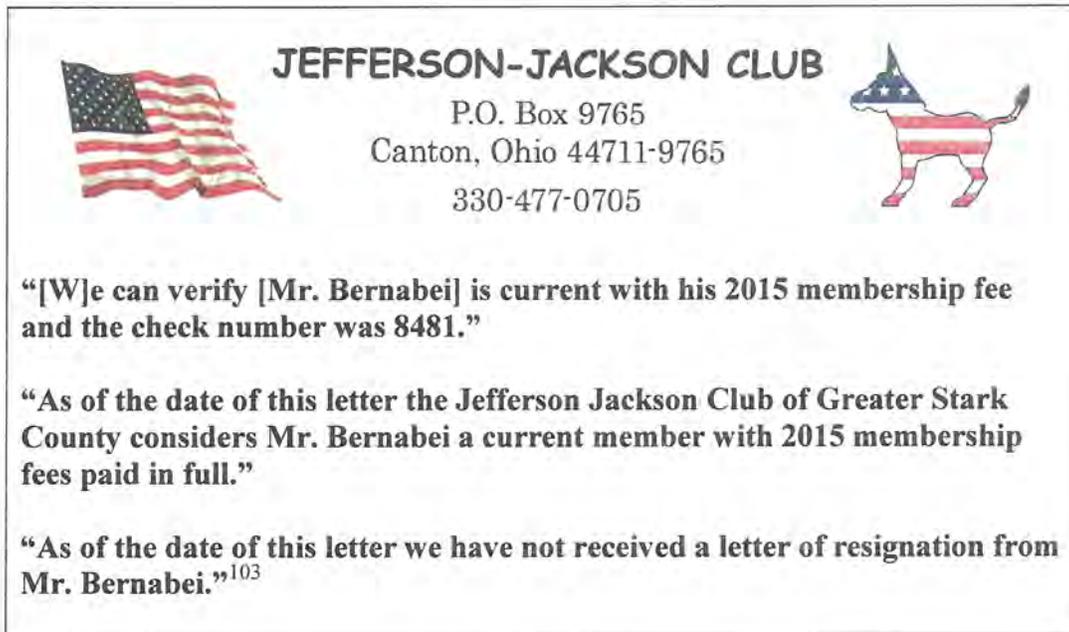
⁹⁸ Invoice for Radio Commercial Recording, Thomas M. Bernabei on Behalf of Democrat Kristen Guardado for Judge (Appx. Tab 93).

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

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

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

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



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

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

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

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

¹⁰⁴ Olson Interview Tr., pp. 4-5 (Appx. Tab 49).

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

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

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

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

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

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

¹⁰⁶ Bernabei Treasurer Resignation Letter (May 4, 2015) (Appx. Tab 45).

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

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

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

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

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

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

In another interview the same day:

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

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

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

MR. OLSON: Okay.

MR. BERNABEI: – is, is now available.

MR. OLSON: Okay.

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

* * *

¹¹¹ Ponder Interview Tr., p. 11 (Appx. Tab 50).

¹¹² Ponder Interview Tr., p. 11 (Appx. Tab 50).

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

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

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

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

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

¹¹³ Olson Interview Tr., pp. 2-4 (Appx. Tab 49).

¹¹⁴ Ponder Interview Tr., p. 10 (Appx. Tab 50).

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

¹¹⁶ Ponder Interview Tr., p. 10 (Appx. Tab 50).

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

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

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

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

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

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

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

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

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

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

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

¹²⁴ Olson Interview Tr., p. 10 (Appx. Tab 49).

¹²⁵ Cook and Rivers Interview Tr., p. 7 (Appx. Tab 51).

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

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

GROUNDS FOR PROTEST

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

¹³⁴ *Id.* at 736 (*citing*, The Federalist, No. 10 (Madison)).

¹³⁵ *Id.* at 735.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

¹⁴⁵ *Id.*

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

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

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

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

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

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

C. ***Democrat Ballot Appearances.*** Bernabei appeared on the ballot in primary and general elections as a Democrat candidate for public office on 14 separate occasions, most recently in May of 2014.¹⁴⁹

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

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

F. ***Democrat Central Committee Membership.*** Bernabei served as a member of the Democratic Central Committee until April 30, 2015.¹⁵²

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

¹⁴⁷ *Supra* at ¶¶ 4, 49.

¹⁴⁸ *Supra* at ¶¶ 4, 49.

¹⁴⁹ *Supra* at ¶¶ 4, 49.

¹⁵⁰ *Supra* at ¶ 46.

¹⁵¹ *Supra* at ¶ 58.

¹⁵² *Supra* at ¶¶ 41, 55.

¹⁵³ *Supra* at ¶ 27.

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

I. ***Democratic Event Attendance.*** Bernabei regularly attended Democrat events and functions, including as a guest speaker for the Alliance Area Democratic Club on February 5, 2015.¹⁵⁵

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

K. ***Democrat Candidate Treasurer.*** Bernabei served as the designated Campaign Treasurer for three separate Democratic candidates until May 4, 2015.¹⁵⁷

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

M. ***Democrat Public Statements.*** Bernabei publicly described himself as “a dyed-in-the-wool Democrat” in March of 2014.¹⁵⁹

N. ***Democrat Voting History.*** Bernabei has consistently voted as a Democrat – specifically, over 20 times since 1991, and as recently as May 2014.¹⁶⁰

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

¹⁵⁴ *Supra* at ¶ 29.

¹⁵⁵ *Supra* at ¶ 43.

¹⁵⁶ *Supra* at ¶¶ 36, 60-61.

¹⁵⁷ *Supra* at ¶¶ 42, 60.

¹⁵⁸ *Supra* at ¶¶ 42, 58.

¹⁵⁹ *Supra* at ¶ 44.

¹⁶⁰ *Supra* at ¶ 48.

¹⁶¹ *Supra* at ¶ 60.

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

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

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

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

I further declare that, if elected to this office or position, I will qualify therefor, and I will support and abide by the principles enunciated by the DEMOCRATIC Party.¹⁶⁶

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

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

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

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

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

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

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

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

ARTICLE VII. PARTY UNITY

Section 1. Party Unity

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

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

¹⁶⁷ Ponder Interview Tr., p. 13 (Appx. Tab 50).

¹⁶⁸ R.C. § 305.02(B) [emphasis added].

¹⁶⁹ R.C. § 305.02(C) [emphasis added].

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

¹⁷¹ *Supra* at ¶ 48.

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

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

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

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

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

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

88. At best, Bernabei asserted his claim of disaffiliation simply and solely to allow him to bypass the primary party process and run for the Office of Canton Mayor as an Independent candidate on November 3, 2015.¹⁷⁹ Bernabei claims that he can do a better job than the current Democrat Mayor of Canton. However, this is the *exact* reason why primary elections exist. If Bernabei thought he could do better, Bernabei was required to submit a Declaration of Candidacy by the February 4, 2015 deadline and run against the Democrat Mayor in the May 5, 2015 primary election. Bernabei did not do this.¹⁸⁰ Bernabei may not now shortcut the primary process via the independent route to the ballot. Indeed, it is this type of “short-range political

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

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

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

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

¹⁷⁷ *Supra* at ¶¶ 65, 72, 76.

¹⁷⁸ *Supra* at ¶¶ 65, 72, 76.

¹⁷⁹ *Supra* at ¶ 66-67.

¹⁸⁰ *Supra* at ¶ 51.

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

89. Most likely, Bernabei’s disingenuous claim of disaffiliation is driven by his own personal dislike for the Democrat Mayor of Canton. Through his “Independent candidacy,” Bernabei is extracting revenge from the Democrat Mayor for having previously fired Bernabei as Canton Service Director in 2009.¹⁸⁴ Bernabei’s private sentiments certainly support this notion, as do Bernabei’s public statements that the current-Democrat Mayor fails to provide “ethical leadership.”¹⁸⁵ Nevertheless, independent candidacies prompted by “pique or personal quarrel” are also an intended target of the Independent candidate requirements in Ohio Election law.¹⁸⁶ Indeed, this too is the *exact* reason why primary elections exist. If Bernabei felt the Democrat Mayor of Canton treated him poorly, Bernabei’s remedy was to submit a Declaration of Candidacy by the February 4, 2015 deadline and exact his vengeance in the May 5, 2015 primary election. “The general election ballot is reserved for major struggles; it is not a forum for continuing intraparty feuds.”¹⁸⁷

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

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

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

¹⁸¹ *Supra* at ¶¶ 9, 72-73, 76.

¹⁸² *Supra* at ¶¶ 50-61.

¹⁸³ *Supra* at ¶¶ 62-64.

¹⁸⁴ *Supra* at ¶ 32.

¹⁸⁵ *Supra* at ¶ 32.

¹⁸⁶ *Supra* at ¶ 9, 73.

¹⁸⁷ *Supra* at ¶ 73.

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

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

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

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

* * *

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

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

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

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

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

¹⁹¹ R.C. §§ 3513.262 and 3501.39(A).

¹⁹² R.C. § 3501.01(P).

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

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

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

* * *

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

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

Residency Requirements

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

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

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

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

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

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

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

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

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

¹⁹⁸ *Supra* at ¶¶ 58.

¹⁹⁹ *Supra* at ¶¶ 62 – 64.

²⁰⁰ *Supra* at ¶¶ 62 – 64.

²⁰¹ *Supra* at ¶¶ 62 – 64.

²⁰² R.C. § 3503.02(D)[emphasis added].

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

²⁰⁴ R.C. §§ 3501.01(N), (P), 3503.01(A).

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

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

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

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

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

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

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

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

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

CONCLUSION

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

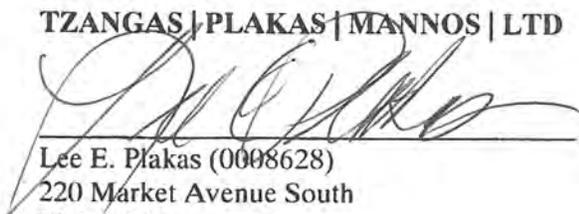
104. The evidence in this case is clear, plain, and undisputable. This Board’s conclusion must be as well. Based upon the foregoing, and pursuant to R.C. §§ 3513.262 and 3501.39(A), the Protestors respectfully request that this Board uphold this protest, and invalidate the nominating petitions and candidacy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

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

DATED: May 29, 2015

Respectfully submitted,

TZANGAS | PLAKAS | MANNOS | LTD



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

ENDNOTE TABLE A

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

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

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

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

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

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

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

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

²¹⁷ Stark Democratic Party Finance Report (Appx. Tab 41).

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

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

²²⁰ Bernabei SOS Contributions (Appx. Tab 88).

²²¹ Stark Democratic Party Finance Report (Appx. Tab 41).

²²² Jefferson Jackson Democratic Club Finance Report (Appx. Tab 42).

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

²²⁴ Stark Democratic Party Finance Report (Appx. Tab 41).

²²⁵ Bernabei SOS Contributions (Appx. Tab 88).

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

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

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

²²⁸ Bernabei SOS Contributions (Appx. Tab 88).

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

²³⁰ Bernabei SOS Contributions (Appx. Tab 88).

²³¹ Bernabei SOS Contributions (Appx. Tab 88).

²³² Bernabei SOS Contributions (Appx. Tab 88).

²³³ Bernabei SOS Contributions (Appx. Tab 88).

²³⁴ Bernabei FEC Contributions (Appx. Tab 87).

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

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

²³⁷ Bernabei FEC Contributions (Appx. Tab 87).

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

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

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

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

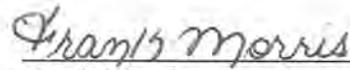
²⁴² Bernabei FEC Contributions (Appx. Tab 87).

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

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

²⁴⁵ Bernabei FEC Contributions (Appx. Tab 87).

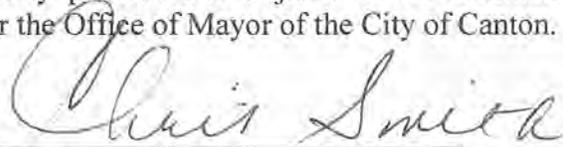
By and through counsel, for those reasons articulated, and pursuant to R.C. Chapter 3513 and all other applicable Ohio Law, the undersigned hereby protests and objects to the nominating petitions and candidacy of Thomas M. Bernabei for the Office of Mayor of the City of Canton.



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

[Signature Page]

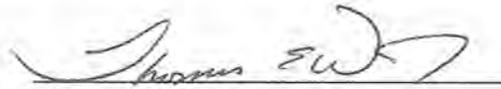
By and through counsel, for those reasons articulated, and pursuant to R.C. Chapter 3513 and all other applicable Ohio Law, the undersigned hereby protests and objects to the nominating petitions and candidacy of Thomas M. Bernabei for the Office of Mayor of the City of Canton.



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

[Signature Page]

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



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

[Signature Page]

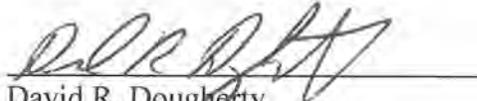
By and through counsel, for those reasons articulated, and pursuant to R.C. Chapter 3513 and all other applicable Ohio Law, the undersigned hereby protests and objects to the nominating petitions and candidacy of Thomas M. Bernabei for the Office of Mayor of the City of Canton.



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

[Signature Page]

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



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

[Signature Page]

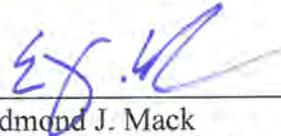
By and through counsel, for those reasons articulated, and pursuant to R.C. Chapter 3513 and all other applicable Ohio Law, the undersigned hereby protests and objects to the nominating petitions and candidacy of Thomas M. Bernabei for the Office of Mayor of the City of Canton.



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

[Signature Page]

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



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

[Signature Page]

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



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

[Signature Page]

EXHIBIT

G



LEE E. PLAKAS

JAMES G. MANNOS

JAMES M. MCHUGH

GARY A. CORROTO

DAVID L. DINGWELL

DENISE K. HOUSTON

MEGAN J. FRANTZ OLDHAM

EDMOND J. MACK

MARIA C. KLUTINOTY EDWARDS

JOSHUA E. O'FARRELL

COLLIN S. WISE

BRANDON O. TRENT

Of Counsel

CHERYL S. LEE

AMANDA M. PAAR CONROY

ROBERT G. KONSTAND*

*Also licensed in FL

Deceased

GEORGE J. TZANGAS

1930-2012

Canton Office

220 Market Avenue South

Eighth Floor

Canton, Ohio 44702

330.453.LION

Akron Office

2500 FirstMerit Tower

106 South Main Street

Akron, Ohio 44308

330.784.LION

Fax 330.455.2108

www.lawlion.com

VIA HAND DELIVERY

July 8, 2015

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

RECEIVED

2015 JUL -8 PM 1:38

STARK COUNTY
BOARD OF ELECTION

Re: Notice of Filing Certified Mail Return of Service for the Subpoena Duces Tecum Previously Issued to Thomas M. Bernabei in Connection with the Protest Against the Nominating Petitions and Candidacy of Thomas M. Bernabei as an Independent Candidate for the Office of Mayor of the City of Canton, Ohio R.C. §§ 3513.262 and 3501.39(A)

Dear Director Matthews:

Pursuant to R.C. § 3519.18, and Ohio R. Civ. P. 45 as incorporated by Ohio Sec. of State Adv. Op. No. 2008-10, please find the attached Return of Service for the Subpoena Duces Tecum served upon Thomas M. Bernabei on July 3, 2015, by Certified Mail, addressed to 2745 Dunkeith Dr. NW, Canton, Ohio 44708.

Thank you for your consideration, and do not hesitate to contact our office with any questions or concerns.

Respectfully submitted,

TZANGAS | PLAKAS | MANNOS | LTD

Lee E. Plakas (0088628)

220 Market Avenue South

Eighth Floor

Canton, Ohio 44702

Telephone: (330) 455-6112

Facsimile: (330) 455-2108

Email: lplakas@lawlion.com

Counsel for Protestors

Majority Leader Frank Morris, Canton City Council, Ward 9, Assistant Majority Leader Chris Smith, Canton City Council, Ward 4, Thomas E. West, Canton City Council, Ward 2, Kevin Fisher, Canton City Council, Ward 3, David R. Dougherty, Canton City Council, Ward 6, John Mariol II, Canton City Council, Ward 7, and Edmond J. Mack, Canton City Council, Ward 8

Cc: Raymond V. Vasvari, Jr., Esq.

<p>3. Complete name 1, 2, and 3.</p> <p>4. Print your name and address on the reverse so that we can return the card to you.</p> <p>5. Attach this card to the back of the mailpiece, or on the front if space permits.</p>		<p>6. Signature</p> <p><i>Thomas M. Bernabei</i></p> <p><input type="checkbox"/> Agent <input type="checkbox"/> Addressee</p>	
<p>1. Article Addressed to:</p> <p>Thomas M. Bernabei 2746 Dunwoith Drive NW Canton, OH 44708</p>		<p>6. Received by (Printed Name)</p> <p>7. Date of Delivery 7-3</p>	
<p>2. Service Type</p> <p><input type="checkbox"/> Adult Signature <input type="checkbox"/> Adult Signature Restricted Delivery <input type="checkbox"/> Certified Mail <input type="checkbox"/> Certified Mail Restricted Delivery <input type="checkbox"/> Collect on Delivery <input type="checkbox"/> Collect on Delivery Restricted Delivery <input type="checkbox"/> Registered Delivery</p>		<p><input type="checkbox"/> Priority Mail Express® <input type="checkbox"/> Registered Mail™ <input type="checkbox"/> Registered Mail Restricted Delivery <input type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Signature Confirmation™ <input type="checkbox"/> Signature Confirmation Restricted Delivery</p>	
<p>3. Article Number (Transfer from service label)</p> <p>7030 1670 0000 6432 8180</p>		<p>4. Is delivery address different from item 1? <input checked="" type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No</p>	
<p>PS Form 3811, April 2015 PSN 7530-02-000-9083</p>		<p>Domestic Return Receipt</p>	





LEE E. PLAKAS
JAMES G. MANNOS
JAMES M. MCHUGH
GARY A. CORROTO
DAVID L. DINGWELL
DENISE K. HOUSTON
MEGAN J. FRANTZ OLDHAM
EDMOND J. MACK
MARIA C. KLUTINOTY EDWARDS
JOSHUA E. O'FARRELL
COLLIN S. WISE
BRANDON O. TRENT

Of Counsel
CHERYL S. LEE
AMANDA M. PAAR CONROY
ROBERT G. KONSTAND*
*Also licensed in FL

Deceased
GEORGE J. TZANGAS
1930-2012

Canton Office
220 Market Avenue South
Eighth Floor
Canton, Ohio 44702
330.453.LION

Akron Office
2500 FirstMerit Tower
106 South Main Street
Akron, Ohio 44308
330.784.LION

Fax 330.455.2108
www.lawlion.com

VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED

June 30, 2015

Thomas M. Bernabei
2745 Dunkeith Dr. NW
Canton, OH 44708

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

Dear Mr. Bernabei:

Pursuant to R.C. § 3519.18, and Ohio R. Civ. P. 45 as incorporated by Ohio Sec. of State Adv. Op. No. 2008-10, please find the enclosed Subpoena Duces Tecum.

Thank you for your anticipated cooperation.

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

Stark County Board of Elections
STARK COUNTY, OHIO
*****ADMINISTRATIVE SUBPOENA*****

RE: Protest Hearing Regarding 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)

TO: Thomas M. Bernabei

ADDRESS: 2745 Dunkeith Dr. NW
Canton, OH 44708

YOU ARE HEREBY COMMANDED TO:

- _____ ATTEND AND GIVE TESTIMONY AT A (TRIAL) (HEARING) (DEPOSITION) ON THE DATE, TIME AND AT THE PLACE SPECIFIED BELOW.
- X ATTEND AND PRODUCE (DOCUMENTS) (TANGIBLE THINGS) AT A (TRIAL) (**HEARING**) (DEPOSITION) ON THE DATE, TIME AND THE PLACE SPECIFIED BELOW.
- _____ PRODUCE AND PERMIT INSPECTION AND COPYING ON THE DATE AND AT THE TIME AND PLACE SPECIFIED BELOW, OF ANY DESIGNATED DOCUMENTS THAT ARE IN YOUR POSSESSION, CUSTODY OR CONTROL.
- _____ PRODUCE AND PERMIT INSPECTION AND COPYING, TESTING OR SAMPLING, ON THE DATE AND AT THE TIME AND PLACE SPECIFIED BELOW, OF ANY TANGIBLE THINGS THAT ARE IN YOUR POSSESSION, CUSTODY OR CONTROL.
- _____ PERMIT ENTRY UPON THE FOLLOWING DESCRIBED LAND OR OTHER PROPERTY, FOR THE PURPOSE DESCRIBED IN CIV. R. 34(A)(3), ON THE DATE AND AT THE TIME SPECIFIED BELOW. DESCRIPTION OF LAND OR PREMISES: _____

DAY: Monday DATE: July 6, 2015 TIME: 9:00 AM

PLACE: Stark County Board of Elections
3525 Regent Ave NE, Canton, OH 44705

DESCRIPTION OF ITEMS TO BE PRODUCED:

- (1) All communications, including text messages and emails, with any circulator or signatory of the petitions that are the subject of the above-referenced protest, from April 26, 2015 to May 9, 2015.
- (2) All communications, including text messages and emails, with any person concerning the candidacy or potential candidacy that is the subject of the above-referenced protest, from January 1, 2015 to the present date.

THE STATE OF OHIO

Stark County, ss:

To the Attorney of Stark County, Ohio Greetings:

YOU ARE HEREBY COMMANDED TO SUBPOENA THE ABOVE NAMED PERSON.

WITNESS MY HAND AND SEAL OF SAID BOARD THIS 30th DAY OF JUNE, 2015

BY: [Signature]
SIGNATURE OF (Deputy Clerk/Attorney for Protestors)

REQUESTING PARTY INFORMATION:

NAME: Lee E. Plakas, Tzangas Plakas Mannos Ltd., 220 Market Ave. S., 8th Fl., Canton, Ohio 44709
(Attorney for Protestors)

ATTORNEY CODE: 0008628 TELEPHONE NUMBER: (330)455-6112

NOTE: READ ALL INFORMATION ON THE REVERSE SIDE OF THIS SUBPOENA

CIVIL RULE 45 (C) PROTECTION OF PERSONS SUBJECT TO SUBPOENAS

- (1) A PARTY OR AN ATTORNEY RESPONSIBLE FOR THE ISSUANCE AND SERVICE OF A SUBPOENA SHALL TAKE REASONABLE STEPS TO AVOID IMPOSING UNDUE BURDEN OR EXPENSE ON A PERSON SUBJECT TO THAT SUBPOENA.
- (2)(a) A PERSON COMMANDED TO PRODUCE AND PERMIT INSPECTION AND COPYING OF DESIGNATED BOOKS, PAPERS, DOCUMENTS, OR TANGIBLE THINGS, OR INSPECTION OF PREMISES, NEED NOT APPEAR IN PERSON AT THE PLACE OF PRODUCTION OR INSPECTION UNLESS COMMANDED TO APPEAR FOR DEPOSITION, HEARING, OR TRIAL.
- (b) SUBJECT TO DIVISION (D) (2) OF THIS RULE, A PERSON COMMANDED TO PRODUCE AND PERMIT INSPECTION AND COPYING MAY, WITHIN FOURTEEN DAYS AFTER SERVICE OF THE SUBPOENA OR BEFORE THE TIME SPECIFIED FOR COMPLIANCE IF SUCH TIME IS LESS THAN FOURTEEN DAYS AFTER SERVICE, SERVE UPON THE PARTY OR ATTORNEY DESIGNATED IN THE SUBPOENA WRITTEN OBJECTIONS TO INSPECTION AND COPYING OF ANY OR ALL OF THE DESIGNATED MATERIALS OR OF THE PREMISES. IF OBJECTION IS MADE, THE PARTY SERVING THE SUBPOENA SHALL NOT BE ENTITLED TO INSPECT AND COPY THE MATERIALS OR INSPECT THE PREMISES EXCEPT PURSUANT TO AN ORDER OF THE COURT BY WHICH THE SUBPOENA WAS ISSUED. IF OBJECTION HAS BEEN MADE, THE PARTY SERVING THE SUBPOENA, UPON NOTICE TO THE PERSON COMMANDED TO PRODUCE, MAY MOVE AT ANY TIME FOR AN ORDER TO COMPEL THE PRODUCTION. AN ORDER TO COMPEL PRODUCTION SHALL PROTECT ANY PERSON WHO IS NOT A PARTY OR AN OFFICER OF A PARTY FROM SIGNIFICANT EXPENSE RESULTING FROM THE INSPECTION AND COPYING COMMANDED.
- (3) ON TIMELY MOTION, THE COURT FROM WHICH THE SUBPOENA WAS ISSUED SHALL QUASH OR MODIFY THE SUBPOENA, OR ORDER APPEARANCE OR PRODUCTION ONLY UNDER SPECIFIED CONDITIONS, IF THE SUBPOENA DOES ANY OF THE FOLLOWING:
 - (a) FAILS TO ALLOW REASONABLE TIME TO COMPLY;
 - (b) REQUIRES DISCLOSURE OF PRIVILEGED OR OTHERWISE PROTECTED MATTER AND NO EXCEPTION OR WAIVER APPLIES;
 - (c) REQUIRES DISCLOSURE OF AN UNRETAINED EXPERTS OPINION OR INFORMATION NOT DESCRIBING SPECIFIC EVENTS OR OCCURRENCES IN DISPUTE AND RESULTING FROM THE EXPERTS STUDY MADE NOT AT THE REQUEST OF ANY PARTY;
 - (d) SUBJECTS A PERSON TO UNDUE BURDEN.
- (4) BEFORE FILING A MOTION PURSUANT TO DIVISION (C) (3) (d) OF THIS RULE, A PERSON RESISTING DISCOVERY UNDER THIS RULE SHALL ATTEMPT TO RESOLVE ANY CLAIM OF UNDUE BURDEN THROUGH DISCUSSIONS WITH THE ISSUING ATTORNEY. A MOTION FILED PURSUANT TO DIVISION (C) (3) (d) OF THIS RULE SHALL BE SUPPORTED BY AN AFFIDAVIT OF THE SUBPOENAED PERSON OR A CERTIFICATE OF THAT PERSONS ATTORNEY OF THE EFFORTS MADE TO RESOLVE ANY CLAIM OF UNDUE BURDEN.
- (5) IN CASES UNDER DIVISION (C) (3) (c) or (C) (3) (d) OF THIS RULE, THE COURT SHALL QUASH OR MODIFY THE SUBPOENA UNLESS THE PARTY IN WHOSE BEHALF THE SUBPOENA IS ISSUED SHOWS A SUBSTANTIAL NEED FOR THE TESTIMONY OR MATERIAL THAT CANNOT BE OTHERWISE MET WITHOUT UNDUE HARDSHIP AND ASSURES THAT THE PERSON TO WHOM THE SUBPOENA IS ADDRESSED WILL BE REASONABLY COMPENSATED.

CIVIL RULE 45 (D) DUTIES IN RESPONDING TO SUBPOENA

- (1) A PERSON RESPONDING TO A SUBPOENA TO PRODUCE DOCUMENTS SHALL PRODUCE THEM AS THEY ARE KEPT IN THE USUAL COURSE OF BUSINESS OR SHALL ORGANIZE AND LABEL THEM TO CORRESPOND WITH THE CATEGORIES IN THE DEMAND. A PERSON PRODUCING DOCUMENT PURSUANT TO A SUBPOENA FOR THEM SHALL PERMIT THEIR INSPECTION AND COPYING BY ALL PARTIES PRESENT AT THE TIME AND PLACE SET IN THE SUBPOENA FOR INSPECTION AND COPYING.
- (2) WHEN INFORMATION SUBJECT TO A SUBPOENA IS WITHHELD ON A CLAIM THAT IT IS PRIVILEGED OR SUBJECT TO PROTECTION AS TRIAL PREPARATION MATERIALS, THE CLAIM SHALL BE MADE EXPRESSLY AND SHALL BE SUPPORTED BY A DESCRIPTION OF THE NATURE OF THE DOCUMENTS, COMMUNICATIONS, OR THINGS NOT PRODUCED THAT IS SUFFICIENT TO ENABLE THE DEMANDING PARTY TO CONSENT THE CLAIM.

CIVIL RULE 45 (E) SANCTIONS

FAILURE BY ANY PERSON WITHOUT ADEQUATE EXCUSE TO OBEY A SUBPOENA SERVED UPON THAT PERSON MAY BE DEEMED A CONTEMPT OF THE COURT FROM WHICH THE SUBPOENA ISSUE. A SUBPOENAED PERSON OR THAT PERSONS ATTORNEY FRIVOLOUSLY RESISTING DISCOVERY UNDER THIS RULE MAY BE REQUIRED BY THE COURT TO PAY THE REASONABLE EXPENSES, INCLUDING REASONABLE ATTORNEY'S FEES, OF THE PARTY SEEKING THE DISCOVERY. THE COURT FROM WHICH THE SUBPOENA WAS ISSUED MAY IMPOSE UPON A PARTY OR ATTORNEY IN BREACH OF DUTY IMPOSED BY DIVISION (C) (1) OF THIS RULE AN APPROPRIATE SANCTION. WHICH MAY INCLUDE, BUT IS NOT LIMITED TO, LOST EARNINGS AND REASONABLE ATTORNEYS FEES.

******RETURN OF SERVICE******

I RECEIVED THIS SUBPOENA ON _____, AND SERVED THE PARTY NAMED ON THE REVERSE HEREOF BY _____ ON _____

I WAS UNABLE TO COMPLETE SERVICE FOR THE FOLLOWING REASON: _____

Sheriff s Fees

Service _____

Mileage _____

Copy _____

Total _____

(Signature of Serving Party)

Circle One: Deputy Sheriff Attorney

 Process Server Deputy Clerk

 Other _____

7010 1670 0000 6412 8180

U.S. Postal Service
CERTIFIED MAIL RECEIPT
(Domestic Mail Only; No Insurance Coverage Provided)

For delivery information visit our website at www.usps.com

OFFICIAL USE

Postage	\$
Certified Fee	
Return Receipt Fee (Endorsement Required)	
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	\$ 6.73 ⁵

Postmark
Here

Sent To *Thomas M. Bernabei*

Street, Apt. No.: *2745 Dunkeith Drive NW*

or PO Box No.

City, State, ZIP+4 *Canton, OH 44708*



USPS Tracking™



[Customer Service](#) ›
Have questions? We're here to help.



[Get Easy Tracking Updates](#) ›
Sign up for My USPS.

Tracking Number: 70101670000064128180



Delivered

Updated Delivery Day: Friday, July 3, 2015

Product & Tracking Information

Postal Product:

Features:

Certified Mail™

Available Actions

[Text Updates](#)

[Email Updates](#)

DATE & TIME	STATUS OF ITEM	LOCATION
July 3, 2015 , 11:37 am	Delivered	CANTON, OH 44709
Your item was delivered at 11:37 am on July 3, 2015 in CANTON, OH 44709.		
July 3, 2015 , 8:02 am	Arrived at Unit	CANTON, OH 44711
July 2, 2015 , 4:25 pm	Departed USPS Facility	CLEVELAND, OH 44101
July 1, 2015 , 6:53 pm	Arrived at USPS Facility	CLEVELAND, OH 44101

Track Another Package

Tracking (or receipt) number

[Track It](#)

Manage Incoming Packages

Track all your packages from a dashboard.
No tracking numbers necessary.



[Sign up for My USPS](#) ›



HELPFUL LINKS

- [Contact Us](#)
- [Site Index](#)
- [FAQs](#)

ON ABOUT.USPS.COM

- [About USPS Home](#)
- [Newsroom](#)
- [USPS Service Updates](#)
- [Forms & Publications](#)
- [Government Services](#)
- [Careers](#)

OTHER USPS SITES

- [Business Customer Gateway](#)
- [Postal Inspectors](#)
- [Inspector General](#)
- [Postal Explorer](#)
- [National Postal Museum](#)
- [Resources for Developers](#)

LEGAL INFORMATION

- [Privacy Policy](#)
- [Terms of Use](#)
- [FOIA](#)
- [No FEAR Act EEO Data](#)

EXHIBIT

H

H.B. 1062
(As Introduced)

Reps. Maddux

Standardizes filing deadlines for nominating, initiative, and referendum petitions at 75 days before an election.

Renames officers of boards of elections, and changes the role of the Secretary of State in selecting directors and deputy directors of these boards.

Standardizes requirements for the form and circulation of election petitions.

Permits a person to register to vote any time the offices of a board of elections are open.

Authorizes the Secretary of State to establish an identification card system to identify voter registrars.

Permits an elector to update his registration as a means of avoiding having his registration cancelled for failure to vote.

Modifies standards of eligibility for a voter who wishes to cast an absent voter's ballot, and permits specified relatives of the voter to deliver the ballot to the director of the board of elections.

Reduces residency requirements for members of municipal legislative authorities from 1 year to 30 days.

Provides for filling a ballot vacancy if a candidate nominated by petition withdraws from the election.

Requires the Ohio ballot board to prescribe ballot language for constitutional amendments or questions and issues proposed by initiative and referendum petitions.

Makes various other changes in the Elections Laws.

CONTENT AND OPERATION

House Bill 1062 makes numerous changes in the Election Law. These changes are discussed below under topical headings.

Conforming filing deadlines

One hundred and six sections of Ohio law would be amended by the bill to standardize the deadlines for filing various petitions, including nominating, initiative, referendum, and local option petitions, with boards of elections. The bill would establish a standard filing deadline of 75 days before the election at which the issue or candidacy in question would appear on the ballot.

Board of elections officers and employees

The bill would change the titles of various officers of county boards of elections. The clerk of a board of elections would be renamed the director of the board, and the deputy clerk would be renamed deputy director. All other persons employed by a board would be referred to as "employees" of the board.

The bill would make a number of other changes in the law concerning officers and employees of boards of elections. Presently, if three board members are unable to agree on a person to serve as director, the names of all persons nominated are turned over to the Secretary of State, who then chooses both a director and deputy director from the names submitted (secs. 3501.09 and 3501.14). The bill would require instead that the Secretary of State select only a director at that point (not a deputy director). If he had reason to believe that no nominee was qualified for the directorship, though, he would have to state this in writing to the board, which would have to nominate other persons and make a selection from among these new nominees. If the board still could not agree on a person, the Secretary of State would appoint the director. After a director was selected, the board would select a deputy director in the same manner.

The bill emphasizes, in conformity with present practice, that officers and employees of a board are not public officers and that they serve at the pleasure of the board. The director or deputy director could be removed by a vote of at least three members of a board and any other employee could be removed by a majority vote of its membership.

Form and circulation of petitions

Various sections of law govern nominating, initiative, referendum, and local option petitions filed with the Secretary of State or a board of elections. These sections regulate such matters as who may sign a petition, how signatures must be affixed, and the responsibilities of petition circulators. One elections statute (section 3501.38) initially enacted in 1974, establishes general requirements for petitions. The bill makes the petitions mentioned in various statutes throughout the law subject to these general requirements.

The bill would amend the general requirements to prohibit a person from signing a petition more than once, and to require the circulator of a petition to indicate on each petition paper the number of signatures contained on it.

Election officials

Present law requires each board of elections to appoint six competent electors as election officials for each precinct by September 15th of each year (sec. 3501.22). Those appointed must reside in the county of their appointment. Four are designated as judges and two as clerks, and no more than two of the judges and one of the clerks may be members of the same political party. Each board must determine the number of receiving and counting officials each precinct is to have at each election. The bill would permit a board at any time to designate any even number of election officers, equally divided between the major political parties, to perform their duties in any election. A board would have to adopt a resolution providing for not more than two judges and two clerks as election officials at any special election at which no candidates

are to be elected, or at any primary election when only one party primary is to be held for the nomination of candidates for municipal office. Boards would have to select all election officials for primary, general, or special elections from the six official per precinct appointed each year by September 15th, as mentioned above.

On the Monday preceding each primary or general election, election judges meet to hear challenges to the right of any person whose name appears on the registration list to vote. Present law requires that, in the event of a challenge, three judges are required to agree to sustain or overrule the challenge (sec. 3501.31). The bill would require that a "majority" of judges concur, thus allowing for the appointment of varying numbers of election officials at each election.

Election falsification

In 1974 the General Assembly established the offense of "election falsification," violation of which is a first degree misdemeanor (sec. 3599.36). This offense includes purposely stating a falsehood regarding an election in a proceeding before a court, tribunal, or officer, or in a matter in which an oath or statement under penalty of election falsification is authorized by law, such as is required on a nominating, initiative, referendum, or recall petition. While many sections were amended at that time to replace affidavit requirements (notarization) with the requirement that statements be made "under penalty of election falsification," not all such sections were amended. The bill would make this change in most of the remaining elections statutes that require affidavits.

Voter registration

The bill would provide that no person is entitled to vote at any election unless he is registered as an elector at least 29 days preceding an election (sec. 3503.06).

Presently, a person may register to vote with the board of elections at any time its offices are open, except after nine p.m. of the 30th day preceding any election (sec. 3503.11). The bill would permit registration at any time the board's offices are open.

The bill also would establish an identification card system to authorize persons to perform the duties of a voter registrar. Presently a person who wishes to distribute registration forms must be an elector and must sign a statement at the board of elections in the county in which he is a resident. This statement specifies his duties as a registrar and contains the penalty for failing to comply with the law (sec. 3503.11). Under the bill a board would provide registration forms to any elector residing in the state who presented an identification card prescribed by the Secretary of State. Such persons could provide assistance to any person wishing to register who resided in the county served by the board from which the forms were received. One could receive such a card by signing the aforementioned statement at the board of elections. The board could keep a copy of the signed statement for its records, but would have to forward without delay the original statement to the Secretary of State, who would maintain a record of all such statements. The Secretary would promptly send an identification card to each voter registrar. The form of the card would be determined by the Secretary, and each card would contain an expiration date.

The bill would also permit a board of elections to designate any school governed by a county board of education to distribute registration forms (sec. 3503.11). The school would, during its regular hours, be required to supply registration forms upon request to prospective voters.

Present law requires a board of elections each year to cancel the registration of all registered electors who have not voted at least once in the four preceding calendar years (sec. 3503.21). The bill would require cancellation if the person has not voted during this period and "has not registered a change of name or change of address or otherwise updated his registration during that period." Thirty days prior to cancellation the board would be required to send to each such person a notification of cancellation and a notice that the person must update his registration in order to be eligible to vote. The board would not be required as it presently is, to send a registration form and instructions for reregistration. (Apparently the person would not have to register again, but would only have to "update" his registration to remain eligible to vote.)

Compensation of registration and election officials

Present law requires that each election or registration official be paid at the same hourly rate, but not less than the minimum wage established by the federal Fair Labor Standards Act, as amended, and not more than \$55 per day (sec. 3501.28). The bill would remove all references to registration officials in the present law, thus removing these provisions relating to their salaries.

In regard to the compensation of precinct election officials who deliver election materials from a polling place to the board of elections, or vice-versa, on the day of an election, the bill would permit compensation of each such official at not more than \$5 per trip (the present rate is \$3), plus mileage at the rate provided by rules governing travel adopted by the Office of Budget and Management (the present rate is \$1 if the distance is not more than 10 miles, \$1.50 if the distance is between 10 and 15 miles, \$2 if between 15 and 20 miles, and \$2.50 if more than 20 miles).

Polling places

Current law requires two or more small U.S. flags to be placed "at a distance of" 100 feet from a polling place on the thoroughfare leading to the polling place on election day to mark off an area in which no loitering or congregating is allowed (sec. 3501.30). The bill would require the placement of the flags at any point "within" 100 feet of the polling place.

Voting assistance

Present law permits two election officials of different political parties to assist any elector who is unable to mark his ballot because of a physical infirmity (sec. 3505.24). The bill would permit similar assistance to any elector who declares to the presiding judge that he is unable to mark his ballot by reason of illiteracy.

Appointment of engineers

Whenever a county considers the purchase or lease of voting machines or marking devices and automatic tabulating equipment, the Secretary of State must appoint a board of examiners consisting of an experienced election officer

and two competent and experienced mechanical engineers, to examine the equipment and make recommendations (secs. 3506.05 and 3507.04). The bill would eliminate the requirement that mechanical engineers be appointed, and would require instead the appointment of two persons "knowledgeable about the operation" of the equipment.

Absentee voting

Absent voter's ballots are required by law to be printed and ready for use on the 45th day before an election (sec. 3509.01). The bill would change this date to the 35th day before an election. Present law also requires the board of elections to mail armed services absent voter's ballots on the 45th day before a primary or general election (sec. 3511.04), but if after that time a valid application for an armed service absent voter's ballot is received, the director of the board is to deliver the ballot to the applicant (sec. 3511.10). The bill would change the mailing date to 35 days prior to a primary or general election.

Qualifications for casting an absent voter's ballot include a voter's being absent from his polling place on the day of an election due to his entry into a hospital for medical or surgical treatment, due to his confinement in a jail or workhouse under sentence for a misdemeanor or awaiting trial, or due to his absence from the county (secs. 3509.02 and 3509.04). The bill would abolish these standards and permit any elector to cast an absent voter's ballot who has a physical disability or illness or who is unable to travel to his polling place on election day.

Once a voter has cast his absentee ballot, current law requires him to mail or personally deliver it to the director of the board of elections (sec. 3509.05). The bill would permit the voter to allow any of the following people to deliver the ballot to the director: the elector's spouse, father, mother, mother-in-law, father-in-law, grandfather, grandmother, brother or sister of the whole or half blood, son, daughter, adopting parent, adopted child, stepparent, stepchild, uncle, aunt, nephew, or niece (sec. 3509.05).

In addition, the bill states that whenever any person applies for registration as a voter on a form adopted in accordance with federal regulations relating to armed services absent voter ballots, this application is to be sufficient for voter registration and as a request for an absentee ballot. This provision is consonant with recent efforts of the Congress and the Department of Defense to standardize absentee voting procedures for members of the armed services.

Residence requirements for members of municipal legislative authorities

Present law requires that members of municipal legislative authorities be electors and have resided in their respective districts (ward, village, or city) for at least one year prior to their election (secs. 731.02 and 731.12). The bill would reduce minimum period of residence from 1 year to 30 days.

Candidates for State Board of Education

Currently, candidates for the State Board of Education are nominated only by nominating petition and are elected from districts (sec. 3513.259). The bill would eliminate a present requirement that if the district consists of more than one county, the candidate's petition must contain the signatures of at least 100 electors from each of at least one-half of the counties in the district.

Withdrawal of candidates nominated by petition

The bill also would provide for filling, a vacancy on the ballot caused by the withdrawal of any candidate nominated by petition (sec. 3513.31). If such a candidate withdrew before the 80th day preceding the general election, the vacancy could be filled by the committee of five designated in the nominating petition to represent the candidate. A majority of the committee would be required to certify their choice to the same election officials with whom the original nominating petition was filed, not later than 65 days before the general election. The certificate would have to be accompanied by the written acceptance of the nomination by the person named in it. This is the same as the procedure currently used in the event of the death of such a candidate. The Revised Code presently contains no procedures for filling a vacancy caused by withdrawal of such a candidate.

Powers and duties of the Secretary of State

The bill would expand the list of statutory duties of the Secretary of State by requiring him to approve ballot language for any local question or issue, and to edit and issue pamphlets, brochures, and other publications or forms of media "relating to the election process." The bill would permit the Secretary, in any judicial proceedings in which he is a party, to request a change of venue as a substantive right and have the case removed to the common pleas court of an adjoining county or of Franklin County (sec. 3501.05). Presently, the Secretary may request a change of venue only to the common pleas court of an adjoining county. Furthermore, the bill would require the Attorney General, in any case in which the Secretary is a party and one or more boards of elections are also parties, to represent the boards, at the request of the Secretary.

Ohio Ballot Board

The bill would also add to the duties of the Ohio Ballot Board, by requiring it to prescribe ballot language for constitutional amendments on questions and issues proposed by initiative and referendum petitions (sec. 3505.062). Current law makes no provision for the prescribing of this language.

The bill also would require that legal advertisements appearing in newspapers regarding referenda and initiative-proposed laws must contain a headline entitled "referendum," or, when appropriate, "proposed law," printed in not smaller than 30 point type (sec. 7.101).

Other changes

The bill would transfer certain current statutory provisions from one section of the Elections Law to another, without changing their substance.

HISTORY

SECTION
Introduced

DATE

3-04-80

JOURNAL ENTRY

pp. 1998-1999

Sub. H.B. 1062
(As Reported by H. Elections)

FILE COPY

Reps. Maddux, Camera, Rankin, Williams, Zehner

DO NOT REMOVE FROM FILE

Standardizes filing deadlines for nominating, initiative and referendum petitions at 75 days before an election.

Renames officers of boards of elections, and changes the role of the Secretary of State in selecting directors and deputy directors of these boards.

Standardizes requirements for the form and circulation of election petitions.

Permits voter registration at the offices of a board of elections at any time the offices are open.

Authorizes the Secretary of State to establish an identification card system to identify voter registrars.

Permits an elector to update his registration in order to avoid having his registration cancelled for failure to vote.

Modifies standards of eligibility for a voter who wishes to cast an absent voter's ballot, and permits specified relatives of the voter to deliver the ballot to the director of the board of elections.

Reduces residency requirements for members of municipal legislative authorities from 1 year to 30 days.

Provides for filling a ballot vacancy if a candidate nominated by petition withdraws from an election.

Requires the Ohio Ballot Board to prescribe ballot language for constitutional amendments or questions and issues proposed by initiative and referendum petitions.

Makes various other changes in the Elections Laws.

CONTENT AND OPERATION

Substitute House Bill 1062 makes numerous changes in the Election Law. These changes are discussed below under topical headings.

Conforming filing deadlines

One hundred and four sections of Ohio law would be amended by the bill to standardize the deadlines for filing various petitions, including nominating, initiative, referendum, and local option petitions, with boards of elections. The bill would establish a standard filing deadline of 75 days before the election at which the issue or candidacy in question would appear on the ballot.

Morgan

Board of elections officers and employees

The bill would change the titles of various officers of county boards of elections. The clerk of a board of elections would be renamed the "director" of the board, and the deputy clerk would be renamed "deputy director." All other persons employed by a board would be referred to as "employees" of the board.

The bill would make a number of other changes in the law concerning officers and employees of boards of elections. Presently, if three board members are unable to agree on a person to serve as director, the names of all persons nominated are turned over to the Secretary of State, who then chooses both a director and deputy director from the names submitted (secs. 3501.09 and 3501.14). The bill would require instead that the Secretary of State select only a director at that point (and not a deputy director). If he had reason to believe that no nominee was qualified for the directorship, though, he would have to state this in writing to the board, which would have to nominate other persons and make a selection from among these new nominees. If the board still could not agree on a person, the Secretary of State would appoint the director. After a director was selected, the board would select a deputy director following the same procedures.

The bill emphasizes, in conformity with present practice, that officers and employees of a board are not public officers and that they serve at the pleasure of the board. The director or deputy director could be removed by a vote of at least three members of a board and any other employee could be removed by a majority vote of its membership (boards of elections have four members).

Form and circulation of petitions

Various sections of law govern nominating, initiative, referendum, and local option petitions filed with the Secretary of State or a board of elections. These sections regulate such matters as who may sign a petition, how signatures must be affixed, and the responsibilities of petition circulators. One elections statute (section 3501.38) initially enacted in 1974, establishes general requirements for petitions. The bill makes the petitions mentioned in various statutes throughout the law subject to these general requirements.

The bill would amend the general requirements to require the circulator of a petition to indicate on each petition paper the number of signatures contained on it; the bill would also provide that if a petition contained the signature of an elector two or more times, only the first such signature would be counted.

Election officials

Present law requires each board of elections to appoint six competent electors as election officials for each precinct by September 15th of each year (sec. 3501.22). Those appointed must reside in the county of their appointment. Four are designated as judges and two as clerks, and no more than two of the judges and one of the clerks may be members of the same political party. Each board must determine the number of receiving and counting officials each precinct is to have at each election. The bill would permit a board at any

time to designate any number of election officers, equally divided between the major political parties, to perform their duties at any precinct in any election. A board would have to adopt a resolution providing for not more than two judges and two clerks as election officials at any special election at which no candidates are to be elected, or at any primary election when only one party primary is to be held for the nomination of candidates for municipal office. Boards would have to select all election officials for primary, general, or special elections from those officials appointed each year by September 15th, as mentioned above.

On the Monday preceding each primary or general election, election judges meet to hear challenges to the right of any person whose name appears on the registration list to vote. Present law requires that, in the event of a challenge, three judges are required to agree to sustain or overrule the challenge (sec. 3501.31). The bill would require that a "majority" of judges concur, thus allowing for the appointment of varying numbers of election officials at each election.

Election falsification

In 1974 the General Assembly established the offense of "election falsification," commission of which is a first degree misdemeanor (sec. 3599.36). This offense includes purposely stating a falsehood regarding an election in a proceeding before a court, tribunal, or officer, or in a matter in which an oath or statement under penalty of election falsification is authorized by law, such as is required on a nominating, initiative, referendum, or recall petition. While many sections were amended at that time to replace affidavit requirements (notarization) with the requirement that statements be made "under penalty of election falsification," not all such sections were amended. The bill would make this change in most of the remaining elections statutes that require affidavits.

Voter registration

The bill would provide that no person is entitled to vote at any election unless he is registered as an elector at least 29 days preceding an election (sec. 3503.06).

Presently, a person may register to vote at the offices of the board of elections or at any of its permanent or temporary branch registration offices, any time these offices are open, except after nine p.m. of the 30th day preceding any election (sec. 3503.11). The bill would permit registration at the board's offices or at any permanent branch registration offices any time they are open, and would permit registration at temporary branch registration offices any time they are open except after nine p.m. of the 29th day before a primary or general election.

The bill also would establish an identification card system to authorize persons to perform the duties of a voter registrar. Presently a person who wishes to distribute registration forms must be an elector and must sign a statement at the board of elections in the county in which he is a resident.

This statement specifies his duties as a registrar and contains the penalty for failing to comply with the law (sec. 3503.11). Under the bill a board would also provide registration forms to any elector residing in the state who presented an identification card prescribed by the Secretary of State. Such persons could provide assistance to any person wishing to register who resided in the county served by the board from which the forms were received. One could receive such a card by signing the aforementioned statement at the board of elections. The board could keep a copy of the signed statement for its records, but would have to forward without delay the original statement to the Secretary of State, who would maintain a record of all such statements. The Secretary would promptly send an identification card to each voter registrar. The form of the card would be determined by the Secretary, and each card would contain an expiration date.

The bill would also permit a board of elections to designate any school governed by a county, city, exempted village, or local board of education to distribute registration forms (sec. 3503.11). The school would, during its regular hours, be required to supply registration forms upon request to prospective voters.

Present law requires that every year each board of elections cancel the registration of all registered electors who have not voted at least once in the four preceding calendar years (sec. 3503.21). The bill would require cancellation if the person has not voted during this period or "has not registered a change of name or change of address or otherwise updated his registration during that period." Thirty days prior to cancellation the board would be required to send to each such person a notification of cancellation and a notice that the person must update his registration in order to be eligible to vote. The board would not be required, as it presently is, to send a registration form and instructions for reregistration. The person would not have to register again, but would only have to "update" his registration to remain eligible to vote.

Compensation of registration and election officials

Present law requires that each election or registration official be paid at the same hourly rate, but not less than the minimum wage established by the federal Fair Labor Standards Act, as amended, and not more than \$55 per day (sec. 3501.28). The bill would remove all references to registration officials in the present law, thus removing these provisions relating to their salaries.

In regard to the compensation of precinct election officials who deliver election materials from a polling place to the board of elections, or vice-versa, on the day of an election, the bill would permit compensation of each such official at not more than \$5 per trip (the present rate is \$3), plus mileage at the rate provided by rules governing travel adopted by the Office of Budget and Management (the present rate is \$1 if the distance is not more than 10 miles, \$1.50 if the distance is between 10 and 15 miles, \$2 if between 15 and 20 miles, and \$2.50 if more than 20 miles).

Polling places

Current law requires two or more small U.S. flags to be placed "at a distance of" 100 feet from a polling place on the thoroughfare leading to the polling place on election day to mark off an area in which no loitering

or congregating is allowed (sec. 3501.30). The bill would require, wherever reasonable, the placement of the flags 100 feet from the voter entrance to the establishment housing the polling place. If placing them at 100 feet is not reasonable, the presiding election judge would be required to place the flags as near to 100 feet from the entrance as is reasonable.

Voting assistance

Present law permits two election officials of different political parties to assist any elector who is unable to mark his ballot because of a physical infirmity (sec. 3505.24). The bill would permit similar assistance to any elector who declares to the presiding judge that he is unable to mark his ballot by reason of illiteracy. It would also prohibit any candidate whose name appears on the ballot from assisting any person in working that person's ballot.

Appointment of engineers

Whenever a county considers the purchase or lease of voting machines, marking devices, or automatic tabulating equipment, the Secretary of State must appoint a board of examiners consisting of an experienced election officer and two competent and experienced mechanical engineers, to examine the equipment and make recommendations (secs. 3506.05 and 3507.04). The bill would eliminate the requirement that mechanical engineers be appointed, and would require instead the appointment of two persons "knowledgeable about the operation" of the equipment.

Absentee voting

Absent voter's ballots are required by law to be printed and ready for use on the 45th day before an election (sec. 3509.01). The bill would change this date to the 35th day before an election. Present law also requires the board of elections to mail armed services absent voter's ballots on the 45th day before a primary or general election (sec. 3511.04), but if after that time a valid application for an armed service absent voter's ballot is received, the director of the board is to deliver the ballot to the applicant (sec. 3511.10). The bill would change the mailing date to 35 days prior to a primary or general election.

Qualifications for casting an absent voter's ballot include a voter's being absent from his polling place on the day of an election due to his entry into a hospital for medical or surgical treatment, due to his confinement in a jail or workhouse under sentence for a misdemeanor or awaiting trial, or due to his absence from the county (secs. 3509.02 and 3509.04). The bill would abolish these standards and permit any elector to cast an absent voter's ballot who has a physical disability or illness or who is unable to travel to his polling place on election day.

Once a voter has cast his absentee ballot, current law requires him to mail or personally deliver it to the director of the board of elections (sec. 3509.05). The bill would permit the voter to allow any of the following people to deliver the ballot to the director: the elector's spouse, father, mother, mother-in-law, father-in-law, grandfather, grandmother, brother or sister of the whole or half blood, son, daughter, adopting parent, adopted child, stepparent, stepchild, uncle, aunt, nephew, or niece (sec. 3509.05).

In addition, the bill states that whenever any person applies for registration as a voter on a form adopted in accordance with federal regulations relating to armed services absent voter ballots, this application is to be sufficient for voter registration and as a request for an absentee ballot. This provision is consonant with recent efforts of the Congress and the Department of Defense to standardize absentee voting procedures for members of the armed services.

Residence requirements for members of municipal legislative authorities

Present law requires that members of municipal legislative authorities be electors and have resided in their respective districts (ward, village, or city) for at least one year prior to their election (secs. 731.02 and 731.12). The bill would reduce the minimum period of residence from 1 year to 30 days.

Candidates for State Board of Education

Currently, candidates for the State Board of Education are nominated only by nominating petition and are elected from districts (sec. 3513.259). The bill would eliminate a present requirement that if the district consists of more than one county, the candidate's petition must contain the signatures of at least 100 electors from each of at least one-half of the counties in the district.

Withdrawal of candidates nominated by petition

The bill also would provide for filling a vacancy on the ballot caused by the withdrawal of any candidate nominated by petition (sec. 3513.31). If such a candidate withdrew before the 80th day preceding the general election, the vacancy could be filled by the committee of five designated in the nominating petition to represent the candidate. A majority of the committee would be required to certify their choice to the same election officials with whom the original nominating petition was filed, not later than 65 days before the general election. The certificate would have to be accompanied by the written acceptance of the nomination by the person named in it. This is the same as the procedure currently used in the event of the death of such a candidate. The Revised Code presently contains no procedures for filling a vacancy caused by withdrawal of such a candidate.

Powers and duties of the Secretary of State

The bill would expand the list of statutory duties of the Secretary of State by requiring him to approve ballot language for any local question or issue, to prescribe to boards of elections the form of registration cards, blanks, and records (rather than recommending the form as in present law), and to edit and issue pamphlets, brochures, and other publications or forms of media "relating to the election process." The bill would permit the Secretary, in any judicial proceedings in which he is a party, to request a change of venue as a substantive right and have the case removed to the common pleas court of an adjoining county or of Franklin County (sec. 3501.05). Presently, the Secretary may request a change of venue only to the common pleas court of an adjoining county.

Ohio Ballot Board

The bill would also add to the duties of the Ohio Ballot Board, by requiring it to prescribe ballot language for constitutional amendments on questions and issues proposed by initiative and referendum petitions (sec. 3505.062). Current law makes no provision for the prescribing of this language.

The bill also would require that legal advertisements appearing in newspapers regarding referenda and initiative-proposed laws must contain a headline entitled "referendum," or, when appropriate, "proposed law," printed in not smaller than 30 point type (sec. 7.101).

Other changes

The bill would transfer certain current statutory provisions from one section of the Elections Law to another, without changing their substance. In addition, the bill would: require the Secretary of State to forward a copy of each law to the clerk of the court of common pleas within 60 days after each engrossed bill is filed with his office (rather than forwarding ten copies of the engrossed bill within ten days after "passage" of a "law," as in current law); reconcile two different definitions of "political party" in the Elections Law, and clarify the distinctions between "party," "independent," and "nonpartisan" candidates; require all candidates for county commission to designate the starting date of the term of office they seek, in their declarations of candidacy; and alter certain penalties pertaining to election offenses, to conform to the structure of penalties in the criminal code. The act would take effect on January 1, 1981.

* * *

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	3-04-80	pp. 1998-1999
Reported, H. Elections	4-15-80	p. 2264

Am. Sub. H.B. 1062
(As Passed by the House)

Reps. Maddux, Camera, Rankin, Williams, Zehner, Crossland

Standardizes filing deadlines for nominating, initiative, and referendum petitions at 75 days before an election.

Renames officers of boards of elections, and changes the role of the Secretary of State in selecting directors and deputy directors of these boards.

Standardizes requirements for the form and circulation of election petitions.

Permits voter registration at the offices of a board of elections at any time the offices are open.

Authorizes the Secretary of State to establish an identification card system to identify voter registrars.

Permits an elector to update his registration in order to avoid having his registration cancelled for failure to vote.

Modifies standards of eligibility for a voter who wishes to cast an absent voter's ballot, and permits specified relatives of the voter to deliver the ballot to the director of the board of elections.

Reduces residency requirements for members of municipal legislative authorities from 1 year to 30 days.

Provides for filling a ballot vacancy if a candidate nominated by petition withdraws from an election.

Requires the Ohio Ballot Board to prescribe ballot language for constitutional amendments or questions and issues proposed by initiative and referendum petitions.

Makes various other changes in the Elections Laws.

CONTENT AND OPERATION

The bill makes numerous changes in the Election Law. These changes are discussed below under topical headings.

Conforming filing deadlines

One hundred and four sections of Ohio law would be amended by the bill to standardize the deadlines for filing various petitions, including nominating, initiative, referendum, and local option petitions, with boards of elections. The bill would establish a standard filing deadline of 75 days before the election at which the issue or candidacy in question would appear on the ballot.

E. J. ...

Board of elections officers and employees

The bill would change the titles of various officers of county boards of elections. The clerk of a board of elections would be renamed the "director" of the board, and the deputy clerk would be renamed "deputy director." All other persons employed by a board would be referred to as "employees" of the board.

The bill would make a number of other changes in the law concerning officers and employees of boards of elections. Presently, if three board members are unable to agree on a person to serve as director, the names of all persons nominated are turned over to the Secretary of State, who then chooses both a director and deputy director from the names submitted (secs. 3501.09 and 3501.14). The bill would require instead that the Secretary of State select only a director at that point (and not a deputy director). If he had reason to believe that no nominee was qualified for the directorship, though, he would have to state this in writing to the board, which would have to nominate other persons and make a selection from among these new nominees. If the board still could not agree on a person, the Secretary of State would appoint the director. After a director was selected, the board would select a deputy director following the same procedures.

The bill emphasizes, in conformity with present practice, that officers and employees of a board are not public officers and that they serve at the pleasure of the board. The director or deputy director could be removed by a vote of at least three members of a board and any other employee could be removed by a majority vote of its membership (boards of elections have four members).

Form and circulation of petitions

Various sections of law govern nominating, initiative, referendum, and local option petitions filed with the Secretary of State or a board of elections. These sections regulate such matters as who may sign a petition, how signatures must be affixed, and the responsibilities of petition circulators. One elections statute (section 3501.38) initially enacted in 1974 establishes general requirements for petitions. The bill would make the petitions mentioned in various statutes throughout the law subject to these general requirements.

The bill would amend the general requirements to require the circulator of a petition to indicate on each petition paper the number of signatures contained on it; the bill would also provide that if a petition contained the signature of an elector two or more times, only the first such signature would be counted.

Election officials

Present law requires each board of elections to appoint six competent electors as election officials for each precinct by September 15th of each year (sec. 3501.22). Those appointed must reside in the county of their appointment. Four are designated as judges and two as clerks, and no more than two of the judges and one of the clerks may be members of the same political party. The bill would permit a board at any time to designate any number of election officers, equally divided between the major political parties, to perform their duties at any precinct in any election. A board would have to adopt a resolution providing for not more than two judges and two clerks as election officials at any special election at which no candidates are to be elected, or at any primary election

when only one party primary is to be held for the nomination of candidates for municipal office (sec. 3501.23). This action is allowed, but not required, by current law. Boards would have to select all election officials for primary, general, or special elections from those officials appointed each year by September 15th, as mentioned above. As in current law, though, a board could appoint additional officials when necessary to expedite voting.

On the Monday preceding each primary or general election, election judges meet to hear challenges to the right of any person whose name appears on the registration list to vote. Present law requires that, in the event of a challenge, three judges are required to agree to sustain or overrule the challenge (sec. 3501.31). The bill would require that a "majority" of judges concur, thus allowing for the appointment of varying numbers of election officials at each election.

Election falsification

In 1974 the General Assembly established the offense of "election falsification," commission of which is a first degree misdemeanor (sec. 3599.36). This offense includes purposely stating a falsehood regarding an election in a proceeding before a court, tribunal, or officer, or in a matter in which an oath or statement under penalty of election falsification is authorized by law, such as is required on a nominating, initiative, referendum, or recall petition. While many sections were amended at that time to replace affidavit requirements (notarization) with the requirement that statements be made "under penalty of election falsification," not all such sections were amended. The bill would make this change in most of the remaining elections statutes that require affidavits.

Voter registration

The bill would amend a statute that requires registration as a prerequisite for voting, to state that no person is entitled to vote at any election unless he is registered as an elector at least 30 days preceding the election (sec. 3503.06). Being registered for at least 30 days is currently required as one condition for qualifying to vote, by the Ohio Constitution (Sec. 1, Art. V) and by section 3503.01 of the Revised Code.

Presently, a person may register to vote at the offices of the board of elections or at any of its permanent or temporary branch registration offices, any time these offices are open, except after nine p.m. of the 30th day preceding any election (sec. 3503.11). While retaining the 30-day registration requirement contained in current law, the bill would permit registration at the board's offices or at any permanent branch registration offices any time they are open, and would permit registration at temporary branch registration offices any time they are open except after nine p.m. of the 29th day before a primary or general election.

The bill also would establish an identification card system to authorize persons to perform the duties of a voter registrar. Presently a person who wishes to distribute registration forms must be an elector and must sign a statement at the board of elections in the county in which he is a resident. This statement specifies his duties as a registrar and contains the penalty for failing to comply with the law (sec. 3503.11). Under the bill a board would also have to provide registration forms to any elector residing in the state who

presented an identification card prescribed by the Secretary of State. Such persons could provide assistance to any person wishing to register who resided in the county served by the board from which the forms were received. One could receive such a card by signing the aforementioned statement at the board of elections. The board could keep a copy of the signed statement for its records, but would have to forward without delay the original statement to the Secretary of State, who would maintain a record of all such statements. The Secretary would promptly send an identification card to each voter registrar. The form of the card would be determined by the Secretary, and each card would contain an expiration date.

The bill would also permit a board of elections to designate any school governed by a county, city, exempted village, or local board of education to distribute registration forms (sec. 3503.11). The school would, during its regular hours, be required to supply registration forms upon request to prospective voters.

Present law requires that every year each board of elections cancel the registration of all registered electors who have not voted at least once in the four preceding calendar years (sec. 3503.21). The bill would require cancellation if the person has not voted during this period or "has not registered a change of name or change of address or otherwise updated his registration during that period." Thirty days prior to cancellation the board would be required to send to each such person a notification of cancellation and a notice that the person must update his registration in order to be eligible to vote. The board would not be required, as it presently is, to send a registration form and instructions for reregistration. The person would not have to register again, but would only have to "update" his registration to remain eligible to vote.

Compensation of registration and election officials

Present law requires that each election or registration official be paid at the same hourly rate, but not less than the minimum wage established by the federal Fair Labor Standards Act, as amended, and not more than \$55 per day (sec. 3501.28). The bill would remove all references to registration officials in the present law, thus removing these provisions relating to their salaries.

In regard to the compensation of precinct election officials who deliver election materials from a polling place to the board of elections, or vice-versa, on the day of an election, the bill would permit compensation of each such official at not more than \$5 per trip (the present rate is \$3), plus mileage at the rate provided by rules governing travel adopted by the Office of Budget and Management (the present rate is \$1 if the distance is not more than 10 miles, \$1.50 if the distance is between 10 and 15 miles, \$2 if between 15 and 20 miles, and \$2.50 if more than 20 miles).

Polling places

Current law requires two or more small U.S. flags to be placed "at a distance of" 100 feet from a polling place on the thoroughfare leading to the polling place on election day to mark off an area in which no loitering or congregating is allowed (sec. 3501.30). The bill would require, wherever reasonable, the placement of the flags 100 feet from the voter entrance to the establishment housing the polling place. If placing them at 100 feet is not reasonable, the presiding election judge would be required to place the flags as near to 100 feet from the entrance as is reasonable.

Voting assistance

Present law permits two election officials of different political parties to assist any elector who is unable to mark his ballot because of a physical infirmity (sec. 3505.24). The bill would permit similar assistance to any elector who declares to the presiding judge that he is unable to mark his ballot by reason of illiteracy. It would also prohibit any candidate whose name appears on the ballot from assisting any person in marking that person's ballot.

Appointment of engineers

Whenever a county considers the purchase or lease of voting machines, marking devices, or automatic tabulating equipment, the Secretary of State must appoint a board of examiners consisting of an experienced election officer and two competent and experienced mechanical engineers, to examine the equipment and make recommendations (secs. 3506.05 and 3507.04). The bill would eliminate the requirement that mechanical engineers be appointed, and would require instead the appointment of two persons "knowledgeable about the operation" of the equipment.

Absentee voting

Absent voter's ballots are required by law to be printed and ready for use on the 45th day before an election (sec. 3509.01). The bill would change this date to the 35th day before an election. Present law also requires the board of elections to mail armed services absent voter's ballots on the 45th day before a primary or general election (sec. 3511.04), but if after that time a valid application for an armed service absent voter's ballot is received, the director of the board is to deliver the ballot to the applicant (sec. 3511.10). The bill would change the mailing date to 35 days prior to a primary or general election.

Qualifications for casting an absent voter's ballot include a voter's being absent from his polling place on the day of an election due to his entry into a hospital for medical or surgical treatment, due to his confinement in a jail or workhouse under sentence for a misdemeanor or awaiting trial, or due to his absence from the county (secs. 3509.02 and 3509.04). The bill would abolish these standards and permit any elector to cast an absent voter's ballot who has a physical disability or illness or who is unable to travel to his polling place on election day.

Once a voter has cast his absentee ballot, current law requires him to mail or personally deliver it to the director of the board of elections (sec. 3509.05). The bill would permit the voter to allow any of the following people to deliver the ballot to the director: the elector's spouse, father, mother, mother-in-law, father-in-law, grandfather, grandmother, brother or sister of the whole or half blood, son, daughter, adopting parent, adopted child, stepparent, stepchild, uncle, aunt, nephew, or niece (sec. 3509.05).

In addition, the bill states that whenever any person applies for registration as a voter on a form adopted in accordance with federal regulations relating to armed services absent voter ballots, this application is to be sufficient for voter registration and as a request for an absentee ballot. This

provision is consonant with recent efforts of the Congress and the Department of Defense to standardize absentee voting procedures for members of the armed services.

Residence requirements for members of municipal legislative authorities

Present law requires that members of municipal legislative authorities be electors and have resided in their respective districts (ward, village, or city) for at least one year prior to their election (secs. 731.02 and 731.12). The bill would reduce the minimum period of residence from 1 year to 30 days.

Candidates for State Board of Education

Currently, candidates for the State Board of Education are nominated only by nominating petition and are elected from districts (sec. 3513.259). The bill would eliminate a requirement that if the district consists of more than one county, the candidate's petition must contain the signatures of at least 100 electors from each of at least one-half of the counties in the district.

Withdrawal of candidates nominated by petition

The bill would provide for filling a vacancy on the ballot caused by the withdrawal of any candidate nominated by petition (sec. 3513.31). If such a candidate withdrew before the 80th day preceding the general election, the vacancy could be filled by the committee of five designated in the nominating petition to represent the candidate. A majority of the committee would be required to certify their choice to the same election officials with whom the original nominating petition was filed, not later than 65 days before the general election. The certificate would have to be accompanied by the written acceptance of the nomination by the person named in it. This is the same as the procedure currently used in the event of the death of such a candidate. The Revised Code presently contains no procedures for filling a vacancy caused by withdrawal of such a candidate.

Powers and duties of the Secretary of State

The bill would expand the list of statutory duties of the Secretary of State by requiring him to approve ballot language for any local question or issue, to prescribe to boards of elections the form of registration cards, blanks, and records (rather than recommending the form as in present law), and to edit and issue pamphlets, brochures, and other publications or forms of media "relating to the election process." The bill would permit the Secretary, in any judicial proceedings in which he is a party, to request a change of venue as a substantive right and have the case removed to the common pleas court of an adjoining county or of Franklin County (sec. 3501.05). Presently, the Secretary may request a change of venue only to the common pleas court of an adjoining county.

Ohio Ballot Board

The bill would add to the duties of the Ohio Ballot Board, by requiring it to prescribe ballot language for constitutional amendments on questions and issues proposed by initiative and referendum petitions (sec. 3505.062). Current law makes no provision for the prescribing of this language.

The bill also would require that legal advertisements appearing in newspapers regarding referenda and initiative-proposed laws must contain a headline entitled "referendum," or, when appropriate, "proposed law," printed in not smaller than 30 point type (sec. 7.101).

Other changes

The bill would transfer certain current statutory provisions from one section of the Elections Law to another, without changing their substance. In addition, the bill would: require the Secretary of State to forward a copy of each law to the clerk of the court of common pleas within 60 days after each engrossed bill is filed with his office (rather than forwarding ten copies of the engrossed bill within ten days after "passage" of a "law," as in current law); reconcile two different definitions of "political party" in the Elections Law, and clarify the distinctions between "party," "independent," and "nonpartisan" candidates; require all candidates for county commissioner to designate the starting date of the term of office they seek, in their declarations of candidacy; and alter certain penalties pertaining to election offenses, to conform to the structure of penalties in the criminal code. The act would take effect on January 1, 1981.

* * *

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	3-04-80	pp. 1998-1999
Reported, H. Elections	4-15-80	p. 2264
Passed House (68-30)	4-23-80	pp. 2343-2348

Sub. H.B. 1062

(As Reported by S. Elections, Fin. Inst., & Ins.)

Reps. Maddux, Camera, Rankin, Williams, Zehner, Crossland

Sens. Butts, Vallquette

Standardizes filing deadlines for nominating, initiative, and referendum petitions at 75 days before an election.

Renames officers of boards of elections, and changes the role of the Secretary of State in selecting directors and deputy directors of these boards.

Standardizes requirements for the form and circulation of election petitions.

Permits voter registration at the offices of a board of elections at any time the offices are open.

Permits an elector to update his registration in order to avoid having his registration cancelled for failure to vote.

Modifies standards of eligibility for a voter who wishes to cast an absent voter's ballot, and permits specified relatives of the voter to deliver the ballot to the director of the board of elections.

Requires the Ohio Ballot Board to prescribe ballot language for constitutional amendments or questions and issues proposed by initiative and referendum petitions.

Makes various other changes in the Elections Laws.

CONTENT AND OPERATION

The bill makes numerous changes in the Election Law. These changes are discussed below under topical headings.

Conforming filing deadlines

One hundred and four sections of Ohio law would be amended by the bill to standardize the deadlines for filing various petitions, including nominating, initiative, referendum, and local option petitions, with boards of elections. The bill would establish a standard filing deadline of 75 days before the election at which the issue or candidacy in question would appear on the ballot.

The bill would also increase from 60 to 75 days, the amount of time prior to an election that a committee named in an initiative petition proposing a law or constitutional amendment would have to file its argument or explanation with the Secretary of State (sec. 3519.03). The effect would be to make this filing

deadline the same as the current deadline for filing such arguments with the Secretary of State by members of the General Assembly after the legislature adopts a resolution proposing a constitutional amendment.

Board of elections officers and employees

The bill would change the titles of various officers of county boards of elections. The clerk of a board of elections would be renamed the "director" of the board, and the deputy clerk would be renamed "deputy director." All other persons employed by a board would be referred to as "employees" of the board.

The bill would make a number of other changes in the law concerning officers and employees of boards of elections. Presently, if, after five ballots, three board members are unable to agree on a person to serve as director, the names of all persons nominated are turned over to the Secretary of State, who then chooses both a director and deputy director from the names submitted (sec. 3501.09). The bill would require instead that the Secretary of State select only a director at that point (and not a deputy director). If he had reason to believe that no nominee was qualified for the directorship, though, he would have to state this in writing to the board, which would have to nominate other persons and make a selection from among these new nominees. If, however, the board then fails to select a director after five ballots, the bill would require the board to certify to the Secretary of State the names of all persons who received votes on the fifth ballot, together with the names of the board members who nominated them. The Secretary of State would have to designate from the names so certified one of the nominees to serve as director and another nominee to serve as deputy director. If the board fails to nominate a person for the office of director, the Secretary of State would appoint the director.

The bill emphasizes, in conformity with present practice, that officers and employees of a board are not public officers and that they serve at the pleasure of the board (sec. 3501.14). The director or deputy director could be removed by a vote of at least three members of a board and any other employee could be removed by a majority vote of its membership (boards of elections have four members).

Currently, the deputy clerk and assistant clerks must take the same oath of office as is required of the clerk of the board (sec. 3501.14). The bill expands this oath of office requirement to include: (1) employees of the Secretary of State serving in the Division of Elections, (2) employees of the boards of elections, and (3) precinct polling place judges and clerks.

Form and circulation of petitions

Various sections of law govern nominating, initiative, referendum, and local option petitions filed with the Secretary of State or a board of elections. These sections regulate such matters as who may sign a petition, how signatures must be affixed, and the responsibilities of petition circulators. One elections statute (section 3501.38) initially enacted in 1974 establishes general requirements for petitions. The bill would make the petitions mentioned in various statutes throughout the law subject to these general requirements.

The bill would amend the general requirements to require the circulator of a petition to indicate on each petition paper the number of signatures contained on it; the bill would also provide that if a petition contained the signature of an elector two or more times, only the first such signature would be counted.

Election officials

Present law requires each board of elections to appoint six competent electors as election officials for each precinct by September 15th of each year (sec. 3501.22). Those appointed must reside in the county of their appointment. Four are designated as judges and two as clerks, and no more than two of the judges and one of the clerks may be members of the same political party. The bill would permit a board at any time to designate any number of election officers, equally divided between the major political parties, to perform their duties at any precinct in any election. A board would have to adopt a resolution providing for not more than two judges and two clerks as election officials at any special election at which no candidates are to be elected, or at any primary election when only one party primary is to be held for the nomination of candidates for municipal office (sec. 3501.23). This action is allowed, but not required, by current law. Boards would have to select all election officials for primary, general, or special elections from those officials appointed each year by September 15th, as mentioned above. As in current law, though, a board could appoint additional officials when necessary to expedite voting.

On the Monday preceding each primary or general election, election judges meet to hear challenges to the right of any person whose name appears on the registration list to vote. Present law requires that, in the event of a challenge, three judges are required to agree to sustain or overrule the challenge (sec. 3501.31). The bill would require that a "majority" of judges concur, thus allowing for the appointment of varying numbers of election officials at each election.

Election falsification

In 1974 the General Assembly established the offense of "election falsification," commission of which is a first degree misdemeanor (sec. 3599.36). This offense includes purposely stating a falsehood regarding an election in a proceeding before a court, tribunal, or officer, or in a matter in which an oath or statement under penalty of election falsification is authorized by law, such as is required on a nominating, initiative, referendum, or recall petition. While many sections were amended at that time to replace affidavit requirements (notarization) with the requirement that statements be made "under penalty of election falsification," not all such sections were amended. The bill would make this change in most of the remaining elections statutes that require affidavits.

Voter registration

Presently, a person may register to vote at the offices of the board of elections or at any of its permanent or temporary branch registration offices, any time these offices are open, except after nine p.m. of the 30th day preceding any election (sec. 3503.11). While retaining the 30-day registration requirement contained in current law, the bill would permit registration at the board's offices or at any permanent branch registration offices any time they are open, and would permit registration at temporary branch registration offices any time they are open except after nine p.m. of the 29th day before a primary or general election. The bill expressly provides that any registration made after such 30th or 29th day is invalid for that election, but is valid for any subsequent election for which the registrant qualifies as an elector.

The bill would permit a board of elections to designate any school governed by a county, city, exempted village, or local board of education to distribute registration forms (sec. 3503.11). The school would, during its regular hours, be required to supply registration forms upon request to prospective voters.

Present law requires that every year each board of elections cancel the registration of all registered electors who have not voted at least once in the four preceding calendar years (sec. 3503.21). The bill would require cancellation if the person has not voted during this period or "has not registered a change of name or change of address or otherwise updated his registration during that period." Thirty days prior to cancellation the board would be required to send to each such person a notification of cancellation and a notice that the person must update his registration in order to be eligible to vote. The board would not be required, as it presently is, to send a registration form and instructions for reregistration. The person would not have to register again, but would only have to "update" his registration to remain eligible to vote.

Compensation of registration and election officials

Present law requires that each election or registration official be paid at the same hourly rate, but not less than the minimum wage established by the federal Fair Labor Standards Act, as amended, and not more than \$55 per day (sec. 3501.28). The bill would remove all references to registration officials in the present law, thus removing these provisions relating to their salaries.

In regard to the compensation of precinct election officials who deliver election materials from a polling place to the board of elections, or vice-versa, on the day of an election, the bill would permit compensation of each such official at not more than \$5 per trip (the present rate is \$3), plus mileage at the rate provided by rules governing travel adopted by the Office of Budget and Management (the present rate is \$1 if the distance is not more than 10 miles, \$1.50 if the distance is between 10 and 15 miles, \$2 if between 15 and 20 miles, and \$2.50 if more than 20 miles).

Polling places

Current law requires two or more small U.S. flags to be placed "at a distance of" 100 feet from a polling place on the thoroughfare leading to the polling place on election day to mark off an area in which no loitering or congregating is allowed (sec. 3501.30). The bill would retain this requirement, but provide that where the flags cannot reasonably be placed at this distance, the presiding election judge would have to place them as near to 100 feet from the entrance to the polling place as is physically possible.

Voting assistance

Present law permits two election officials of different political parties to assist any elector who is unable to mark his ballot because of a physical infirmity (sec. 3505.24). The bill would permit similar assistance to any elector who declares to the presiding judge that he is unable to mark his ballot by reason of illiteracy. It would also prohibit any candidate whose name appears on the ballot from assisting any person in marking that person's ballot.

Appointment of engineers

Whenever a county considers the purchase or lease of voting machines, marking devices, or automatic tabulating equipment, the Secretary of State must appoint a board of examiners consisting of an experienced election officer and two competent and experienced mechanical engineers, to examine the equipment and make recommendations (secs. 3506.05 and 3507.04). The bill would eliminate the requirement that mechanical engineers be appointed, and would require instead the appointment of two persons "knowledgeable about the operation" of the equipment.

Absentee voting

Absent voter's ballots are required by law to be printed and ready for use on the 45th day before an election (sec. 3509.01). The bill would change this date to the 35th day before an election. Present law also requires the board of elections to mail armed services absent voter's ballots on the 45th day before a primary or general election (sec. 3511.04), but if after that time a valid application for an armed service absent voter's ballot is received, the director of the board is to deliver the ballot to the applicant (sec. 3511.10). The bill would change the mailing date to 35 days prior to a primary or general election.

Once a voter has cast his absentee ballot, current law requires him to mail or personally deliver it to the director of the board of elections (sec. 3509.05). The bill would permit the voter to allow any of the following people to deliver the ballot to the director: the elector's spouse, father, mother, mother-in-law, father-in-law, grandfather, grandmother, brother or sister of the whole or half blood, son, daughter, adopting parent, adopted child, stepparent, stepchild, uncle, aunt, nephew, or niece (sec. 3509.05).

In addition, the bill states that whenever any person applies for registration as a voter on a form adopted in accordance with federal regulations relating to the "Overseas Citizens Voting Rights Act of 1975," this application is to be sufficient for voter registration and as a request for an absentee ballot. This provision is consonant with recent efforts of the Congress and the Department of Defense to standardize absentee voting procedures for members of the armed services.

Residence requirements for members of municipal legislative authorities

Present law requires that members of municipal legislative authorities be electors and have resided in their respective districts (ward, village, or city) for at least one year prior to their election (secs. 731.02 and 731.12). The bill would retain the one-year period of residence, but would expressly state that the purpose of this residency requirement "is to recognize that the state has a substantial and compelling interest in encouraging qualified candidacies for election to" municipal legislative authorities "by ensuring that a candidate for such office has every opportunity to become knowledgeable with and concerned about the problems and needs of the area he seeks to represent." The bill continues by providing that, "(i)n enacting this requirement, the General Assembly finds that the one-year period is reasonably related to this purpose, while leaving unimpaired a person's right to travel, to vote, and to be a candidate for public office."

The proposed statement of purpose and findings is in response to federal court decisions that have ruled unconstitutional residency requirements of one year or more for various municipal offices. In Headlee v. Franklin County Board of Elections, 368 F. Supp. 999 (S.D. Ohio 1973), the United States District Court for the Southern District of Ohio ruled R.C. 731.12 (qualifications of members of village legislative authorities) "unconstitutional in so far as it establishes a one-year residency requirements for candidates." In that case, the plaintiff filed a valid nominating petition for the office of Village Council for the Village of Dublin, Ohio, within one year after becoming a resident of Dublin by virtue of an annexation of her property by that village. The Board of Elections of Franklin County challenged the placement of her name on the election ballot, contending that she had not met the residency requirement of R.C. 731.12.

The Court agreed with the plaintiff's contention that the one-year provision contained in R.C. 731.12 violated the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution. It found that this requirement infringed upon the First Amendment rights of freedom of expression and freedom of association, and that the Board of Elections could show no "compelling state interest" to justify it. In reaching its decision, the Court considered the "somewhat unique" nature of this case in that the statute would have barred almost one-half of the village from seeking public office as a result of the annexation within the one-year period prior to the election. The Court stated, however, that "We do not reach the question of whether a lesser period of time would be constitutional. We also recognize that other courts have upheld candidate residency requirements one year or more . . . Of course, these cases do not accurately reflect the law of this circuit. See Green v. McKeon"

In the Green case cited by the District Court, (468 F.2d 883 (6th Cir. 1972)), the Sixth Circuit Court of Appeals, which includes Ohio within its jurisdiction, declared unconstitutional a provision of the city charter of Plymouth, Michigan, which required two years' residence in that city as a condition of eligibility for holding local elective office. The Court reasoned that the provision constituted a denial of equal protection, since it was too broad for the achievement of the city's goal of promoting familiarity with the local form of government and the problems peculiar to the municipality.

Candidates for State Board of Education

Currently, candidates for the State Board of Education are nominated only by nominating petition and are elected from districts (sec. 3513.259). The bill would eliminate a requirement that if the district consists of more than one county, the candidate's petition must contain the signatures of at least 100 electors from each of at least one-half of the counties in the district.

Powers and duties of the Secretary of State

The bill would expand the list of statutory duties of the Secretary of State by requiring him to approve ballot language for any local question or issue. The bill would also permit the Secretary, in any judicial proceedings in which he is a party, to request a change of venue as a "substantive right" and have the case removed to the common pleas court of an adjoining county, or, where there are cases pending in more than one jurisdiction that involve the same or similar issues, of Franklin County (sec. 3501.05). Presently, the Secretary may request a change of venue only to the common pleas court of an adjoining county.

Ohio Ballot Board

The bill would add to the duties of the Ohio Ballot Board, by requiring it to prescribe ballot language for constitutional amendments on questions and issues proposed by initiative and referendum petitions (sec. 3505.062). Current law makes no provision for the prescribing of this language.

The bill also would require that legal advertisements appearing in newspapers regarding referenda and initiative-proposed laws must contain a headline entitled "referendum," or, when appropriate, "proposed law," printed in not smaller than 30 point type (sec. 7.101).

Nomination of write-in candidates

Presently, Ohio statutory law (sec. 3513.23) requires write-in candidates at primary elections, where there are no names printed on the ballot for the office sought, to receive votes at least equal to 15% of the total number of electors who vote such primary election ballot in order to be nominated as a candidate. In 1972, the Ohio Supreme Court in State, ex rel. McIntyre, v. Mininni (1972), 32 Ohio St. 2d 17, ruled that this requirement violated the equal protection clauses of the Ohio and U.S. Constitutions, since it created "invidious distinctions between write-in candidates and candidates whose names are printed on the ballot."

The bill would statutorily adopt the holding of the McIntyre case, by eliminating the 15% standard, and requiring instead that the write-in candidate, in order to be nominated, receive a total number of votes not less than that number of petition signatures that would have been required for the printing of the person's name on the primary ballot under Ohio election law.

Other changes

The bill would transfer certain current statutory provisions from one section of the Elections Law to another, without changing their substance. In addition, the bill would: require the Secretary of State to forward a copy of each law to the clerk of the court of common pleas within 60 days after each engrossed bill is filed with his office (rather than forwarding ten copies of the engrossed bill within ten days after "passage" of a "law," as in current law); reconcile two different definitions of "political party" in the Elections Law, and clarify the distinctions between "party," "independent," and "nonpartisan" candidates; provide general definitions of "officer of a political party" and "election officer or official"; require all candidates for county commissioner to designate the starting date of the term of office they seek, in their declarations of candidacy; permit an individual who is entitled to a recount to designate "any person" (instead of being limited to the designation of an attorney) to attend and witness the recount; and alter certain penalties pertaining to election offenses, to conform to the structure of penalties in the criminal code. The act would take effect on January 1, 1981.

* * *

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	3-04-80	pp. 1998-1999
Reported, H. Elections	4-15-80	p. 2264
Passed House (68-30)	4-23-80	pp. 2343-2348
Reported, S. Elections, Fin. Inst., & Ins.	9-17-80	p. 2147



OHIO LEGISLATIVE BUDGET OFFICE

Fiscal Note on Sub. H.B. 1062	Date April 22, 1980
Status of Bill As Reported by House Elections	Sponsor Rep. Maddux

FISCAL EFFECT:	STATE	LOCAL
Revenues:	-0-	-0-
Expenditures:	\$5,000 absorbable GRF annual increase	Possible minimal increase*
Appropriations:	-0-	-0-

*See Explanation of Estimate

This bill expands the duties of both the Secretary of State and the Ohio Ballot Board in regard to the elections laws. The bill also modifies eligibility requirements of persons wishing to cast an absentee voter's ballot, and revises certain other procedures and requirements relating to the state's elections process and voting laws.

EXPLANATION OF ESTIMATE:

The bill should cause a minimal increase in costs to local boards of election. Many of the revisions it makes have the effect of clarifying the current procedures now in use or codifying the present practices of most county boards of election. Some minimal increase in spending could result from raising the maximum compensation of precinct counties currently reimburse at a rate of four dollars per trip. Inasmuch as reimbursement at the maximum is discretionary on the part of board officials, this amendment should have a minimal effect, if any.

The office of the Secretary of State indicates that the cost of printing identification cards for volunteer voter registrars would be minimal and easily absorbable in the office's current budget. There are 500 volunteer registrars in Franklin County alone. Assuming that there are 10,000 registrars statewide for whom the Secretary of State will be required to print and issue an identification card, the cost of so doing could amount to \$5,000 in GRF money annually based on past printing and postage costs. However, this can be absorbed within the Secretary of State's current budget, and will not necessitate an expanded budget in future years.

Finally, the bill's authorization to the Secretary of State to issue and edit pamphlets and other materials on various ballot issues amounts to a codification of current practice at the office of the Secretary of State, and thus will not cause an increase in costs.

Therefore, the bill could have some minimal fiscal effect in the way of increased expenses to county boards of election. However, there should be no fiscal effect on the state.

AB

EXHIBIT

I

FILE

As Introduced	1.4
113th General Assembly	1.6
Regular Session	H. B. No. 1062 1.7
1979-1980	1.8
MR. MADDUX	1.10

A BILL

To amend sections 7.101, 124.11, 131.23, 133.09,	1.15
133.16, 133.17, 133.18, 139.02, 149.08, 302.03,	1.16
303.11, 303.25, 305.31, 305.32, 305.36, 306.32,	1.17
306.321, 306.70, 306.71, 307.791, 322.02,	1.18
322.021, 324.02, 324.021, 339.21, 345.02, 345.03,	1.19
505.13, 505.14, 505.15, 511.01, 511.08, 511.22,	1.20
511.25, 511.27, 511.28, 511.33, 513.06, 513.13,	1.21
513.18, 517.05, 519.11, 519.25, 705.01, 709.17,	1.22
709.29, 709.39, 709.45, 709.46, 718.01, 731.01,	1.23
731.02, 731.12, 731.28, 731.29, 731.31, 731.35,	1.24
749.03, 757.02, 759.25, 1515.26, 1515.28,	1.25
1545.21, 1545.36, 1711.15, 1711.17, 1907.051,	1.26
2101.43, 3311.052, 3311.21, 3311.22, 3311.231,	1.27
3311.26, 3311.37, 3311.38, 3318.06, 3354.02,	1.28
3354.12, 3355.02, 3357.02, 3357.11, 3501.02,	1.29
3501.05, 3501.09, 3501.11, 3501.12, 3501.13,	1.30
3501.14, 3501.15, 3501.16, 3501.17, 3501.22,	1.31
3501.23, 3501.24, 3501.25, 3501.26, 3501.28,	1.32
3501.30, 3501.31, 3501.35, 3501.36, 3501.38,	1.33
3503.06, 3503.11, 3503.111, 3503.12, 3503.14,	1.34
3503.16, 3503.21, 3503.22, 3503.23, 3503.33,	1.35
3504.04, 3505.021, 3505.062, 3505.18, 3505.19,	1.36
3505.24, 3505.26, 3505.31, 3506.02, 3506.05,	2.1
3506.16, 3507.01, 3507.04, 3507.14, 3507.16,	2.2
3509.01, 3509.02, 3509.04, 3509.05, 3509.06,	2.3
3509.08, 3511.02, 3511.04, 3511.05, 3511.06,	2.4
3511.07, 3511.08, 3511.09, 3511.10, 3511.11,	2.5
3513.03, 3513.05, 3513.09, 3513.131, 3513.19,	2.6
3513.251, 3513.252, 3513.253, 3513.257, 3513.259,	2.7

3513.262, 3513.263, 3513.31, 3515.03, 3515.04, 2.8
 3517.10, 3517.12, 3599.03, 3599.13, 3599.14, 2.9
 3599.16, 3599.36, 3709.051, 3709.071, 3709.29, 2.10
 4301.33, 4301.331, 4301.34, 4303.29, 4305.14, 2.11
 4305.15, 4504.02, 4504.021, 4951.44, 4955.05, 2.12
 5705.19, 5705.194, 5705.195, 5705.20, 5705.21, 2.13
 5705.22, 5705.23, 5705.24, 5705.25, 5705.261, 2.14
 5705.27, 5739.021, 5739.022, 6105.18, 6117.311, 2.15
 6119.31, and 6119.32, to enact section 3503.011, 2.16
 and to repeal section 731.37 of the Revised Code 2.17
 to require the certification of most petitions 2.18
 and resolutions to the board of elections at 2.19
 least seventy-five days before an election, to 2.20
 standardize procedural requirements for petitions 2.21
 filed with the board of elections, to shorten the 2.22
 time of residence in the municipality required of 2.23
 members of municipal legislative authorities, to 2.24
 authorize the Ohio Ballot Board to prescribe 2.25
 ballot language for constitutional amendments and 2.26
 measures proposed by initiative and referendum 2.27
 petitions, to permit the Secretary of State to 2.28
 approve ballot language for any local question or 2.29
 issue, to change the titles of officials of the 2.30
 board of elections, to remove voter registration 2.31
 officials from the statute fixing the maximum and 2.33
 minimum compensation for certain elections 2.34
 officials, to permit voter registration or 2.35
 changes of registration at any time any office of 2.36
 a board of elections is open, to authorize
 identification cards for voter registrars, to 3.1
 permit designated relatives of an absentee voter 3.2
 to return absentee ballots to the board of 3.3
 elections, and to make other changes in the 3.4
 Elections Law. 3.5

levy, not to exceed five, after their issuance. If such notes 111.26
 have been issued, the amount necessary to pay the interest and 111.27
 principal thereon shall be deemed appropriated for such purposes 111.28
 from the proceeds of such levy and appropriation from such levy 111.29
 by the technical college district shall be limited each year to 111.30
 the balance available in excess of such amount. Such notes may 111.31
 be issued subject to call and redemption prior to maturity at not 111.32
 more than par and accrued interest. 111.33

The board of elections of the county or counties comprising 111.34
 the district shall cause to be published in a newspaper of 111.35
 general circulation in each county, an advertisement of the 111.36
 proposed tax levy question, once each week for three weeks 112.1
 immediately preceding the election at which the question is to 112.2
 appear on the ballot. 112.3

All necessary expenses for the operation of such technical 112.4
 college may be paid from any gifts, from grants of the state or 112.6
 federal government, from student fees and tuition collected
 pursuant to division (G) of section 3357.09 of the Revised Code, 112.7
 or from unencumbered funds from any other source of the technical 112.8
 college income, not prohibited by law. 112.9

Sec. 3501.02. General elections in the state and its 112.11
 political subdivisions shall be held as follows: 112.12

(A) For the election of electors of president and vice- 112.13
 president of the United States, in the year of 1952 and every 112.14
 four years thereafter; 112.15

(B) For the election of a member of the senate of the 112.16
 United States, in the years 1952 and 1954, and every six years 112.17
 after each of such years; except as otherwise provided for 112.18
 filling vacancies; 112.19

(C) For the election of representatives in the congress of 112.21
 the United States and of elective state and county officers,
 INCLUDING MEMBERS OF THE STATE BOARD OF EDUCATION, in the even- 112.23
 numbered years; except as otherwise provided for filling 112.24
 vacancies;

(D) For municipal and township officers, members of board 112.25
 BOARDS of education, ~~members of the state board of education,~~ 112.26
 judges and clerks of municipal courts, in the odd-numbered years; 112.27

(E) Proposed constitutional amendments or proposed 112.28
 measures submitted by the general assembly or by initiative or 112.29
 referendum petitions to the voters of the state at large may be 112.31
 submitted to the general election in any year occurring at least 112.32
 sixty days, in case of a referendum, and ninety days, in the case 112.33
 of an initiated measure, subsequent to the filing of the 112.34
 petitions therefor. Proposed constitutional amendments submitted 112.35
 by the general assembly to the voters of the state at large may 112.36
 be submitted at a special election occurring on the first Tuesday 113.1
 after the first Monday of June in any year, when a special 113.2
 election on that date is designated by the general assembly in 113.3
 the resolution adopting the proposed constitutional amendment. 113.4
 Unless provision is made by law or charter for the submission of 113.5
 a question or issue to the voters of a county, township, city, 113.6
 village, or school district at a special election, no special 113.7
 election shall be called, and the question or issue shall be 113.8
 submitted at a general election 7.

(F) Any question or issue, except a candidacy, to be voted 113.10
 upon at an election shall be certified, for placement upon the 113.11
 ballot, to the board of elections not less than ~~sixty~~ SEVENTY-
 FIVE days before the day of the election. 113.12

Sec. 3501.05. The secretary of state shall: 113.14

(A) Appoint all members of boards of elections; 113.15

(B) Advise members of such boards as to the proper methods 113.16
 of conducting elections; 113.17

(C) Prepare rules and instructions for the conduct of 113.18
 elections; 113.19

(D) Publish and furnish to the boards from time to time a 113.20
 sufficient number of indexed copies of all election laws then in 113.21
 force; 113.22

(E) Edit and issue all pamphlets concerning proposed laws 113.23
 or amendments required by law to be submitted to the voters; 113.24

(F) Recommend to boards the form of registration cards,	113.25
blanks, and records;	113.26
(G) Determine and prescribe the forms of ballots and the	113.27
forms of all blanks, cards of instructions, pollbooks, tally	113.28
sheets, certificates of election, and all forms and blanks	113.29
required by law for use by candidates, committees, and boards;	113.30
(H) Prepare the ballot title or statement to be placed on	113.31
the ballot for any proposed law or amendment to the constitution	113.32
to be submitted to the voters of the state;	113.33
(I) Certify to the several boards the forms of ballots and	113.34
names of candidates for state offices, and the form, and wording	113.35
of state referendum questions and issues, as they shall appear on	113.36
the ballot;	114.1
(J) APPROVE BALLOT LANGUAGE FOR ANY LOCAL QUESTION OR	114.2
ISSUE;	114.3
(K) Receive all initiative and referendum petitions on	114.4
state questions and issues and determine and certify to the	114.5
sufficiency of such petitions;	114.6
(H) (L) Require such reports from the several boards as are	114.7
provided by law, or as he deems necessary;	114.8
(L) (M) Compel the observance by election officers in the	114.9
several counties of the requirements of the election laws;	114.10
(H) (N) Investigate the administration of election laws,	114.11
frauds, and irregularities in elections in any county, and report	114.12
violations of election laws to the attorney general or	114.13
prosecuting attorney, or both, for prosecution;	114.14
(H) (O) Make an annual report to the governor containing	114.15
the results of elections, cost of elections in the various	114.16
counties, a tabulation of the votes in the several political	114.17
subdivisions, and such other information and recommendations	114.18
relative to elections as he deems desirable;	114.19
(O) (P) Prescribe and distribute to boards of elections a	114.20
list of instructions indicating all legal steps necessary to	114.21
petition successfully for local option elections under sections	114.22

4301.32 to 4301.41, 4303.29, 4305.14, and 4305.15 of the Revised Code: 114.23

(Q) EDIT AND ISSUE PAMPHLETS, BROCHURES, AND OTHER PUBLICATIONS OR FORMS OF MEDIA RELATING TO THE ELECTION PROCESS; 114.24

~~(P)~~(R) Perform such other duties as are required by law. 114.25

In the performance of his duties as the chief election officer, the secretary of state may administer oaths, issue subpoenas, summon witnesses, compel the production of books, papers, records, and other evidence and fix the time and place for hearing any matters relating to the administration and enforcement of the election laws. 114.26

In any controversy involving or arising out of the adoption of registration or the appropriation of funds therefor the secretary of state may, through the attorney general, bring an action in the name of the state in the common pleas court of the county where the cause of action arose or in an adjoining county thereto, to adjudicate the question. 114.27

In any action involving the election laws in Title XXXV 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 his motion, be made a party. 114.28

The secretary of state may apply to the ANY court THAT IS HEARING A CASE IN WHICH HE IS A PARTY, for a change of venue AS A SUBSTANTIVE RIGHT and such change of venue shall be allowed, and the cause removed to the common pleas court of an adjoining county OR FRANKLIN COUNTY, AS named in the application. IN ANY CASE IN WHICH THE SECRETARY OF STATE IS A PARTY AND ONE OR MORE BOARDS OF ELECTIONS ARE ALSO PARTIES, THE ATTORNEY GENERAL, AT THE REQUEST OF THE SECRETARY OF STATE, SHALL REPRESENT THE BOARDS THAT ARE PARTIES. 114.29

Sec. 3501.09. Biennially, within five days after the appointments to the board of elections are made by the secretary of state, the members of the board shall meet and organize by 114.30

of the general election, provided that no such nominating 188.9
 petition shall be accepted for filing or filed if it appears to 188.10
 contain signatures aggregating in number more than twice the 188.11
 minimum aggregate number of signatures required by this section. 188.12

Sec. 3513.257. Each person desiring to become an 188.14
 independent candidate for an office for which candidates may be 188.15
 nominated at a primary election, except persons desiring to 188.16
 become independent joint candidates for the offices of governor 188.17
 and lieutenant governor, shall file no later than four p.m. of 188.19
 the seventy-fifth day before the ~~first Tuesday after the first~~
~~Monday in June~~ DAY OF THE PRIMARY ELECTION immediately preceding 188.20
 the general election at which such candidacy is to be voted for 188.21
 by the voters, a statement of candidacy and nominating petition 188.22
 as provided in section 3513.261 of the Revised Code. Persons 188.23
 desiring to become independent joint candidates for the offices 188.24
 of governor and lieutenant governor shall file, not later than 188.25
 four p.m. of the seventy-fifth day before the ~~first Tuesday after~~ 188.26
~~the first Monday in June~~ DAY OF THE PRIMARY ELECTION, one 188.27
 statement of candidacy and one nominating petition for the two of 188.28
 them. The prospective independent joint candidates' statement of 188.29
 candidacy shall be filed with the nominating petition as one 188.30
 instrument. The nominating petition shall contain signatures of 188.31
 qualified electors of the district, political subdivision, or 188.32
 portion of a political subdivision in which the candidacy is to 188.33
 be voted for in an amount to be determined as follows: 188.34

(A) If the candidacy is to be voted for by electors 188.35
 throughout the entire state, the nominating petition, including 188.36
 the nominating petition of independent joint candidates for the 189.1
 offices of governor and lieutenant governor, shall be signed by 189.3
 no less than five thousand qualified electors, provided that no 189.4
 petition shall be accepted for filing if it purports to contain 189.5
 more than fifteen thousand signatures.

(B) If the candidacy is to be voted for by electors in any 189.6
 district, political subdivision, or part thereof in which less 189.7
 than five thousand electors voted for the office of governor at 189.8

the next preceding election for that office, the nominating petition shall contain signatures of not less than twenty-five qualified electors of the district, political subdivision, or part thereof, or a number of qualified signatures equal to at least five per cent of that vote, if this number is less than twenty-five.

(C) If the candidacy is to be voted for by 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 per cent of those electors.

All nominating petitions of candidates for offices to be voted by electors throughout the entire state shall be filed in the office of the secretary of state. No nominating petition for the offices of president and vice-president of the United States shall be accepted for filing unless there is submitted to the secretary of state, at the time of filing the petition, a slate of presidential electors sufficient in number to satisfy the requirement of the United States Constitution. The secretary of state shall not accept for filing the statement of candidacy of a person who desires to be an independent candidate for the office of governor unless it also shows the joint candidacy of a person who desires to be an independent candidate for the office of lieutenant governor, shall not accept for filing the statement of candidacy of a person who desires to be an independent candidate for the office of lieutenant governor unless it also shows the joint candidacy of a person who desires to be an independent candidate for the office of governor, and shall not accept for filing the statement of candidacy of a person who desires to be an independent candidate to the office of governor or lieutenant governor who has already been shown as an independent candidate for governor or lieutenant governor on a statement of candidacy previously filed and accepted during the filing period preceding the same primary election.

Nominating petitions of candidates for offices to be voted 190.7
 on by electors within a district or political subdivision 190.8
 comprised of more than one county but less than all counties of 190.9
 the state shall be filed with the boards of elections of that 190.10
 county or part of a county within the district or political 190.11
 subdivision which had a population greater than that of any other 190.12
 county or part of a county within the district or political 190.13
 subdivision according to the last federal decennial census. 190.14

Nominating petitions for offices to be voted by electors 190.15
 within a county or district smaller than a county shall be filed 190.16
 with the board of elections for such county. 190.17

No petition other than the petition of a candidate whose 190.18
 candidacy is to be considered by electors throughout the entire 190.19
 state shall be accepted for filing if it appears on its face to 190.20
 contain more than five times the minimum number of signatures. 190.21

Sec. 3513.259. Nominations of candidates for the office of 190.23
 member of the state board of education shall be made only by 190.24
 nominating petition. The nominating petition of a candidate for 190.26
 the office of member of the state board of education shall be 190.27
 signed by not less than one per cent of the number of electors
 who voted for governor at the next preceding regular state 190.28
 election for the office of governor in the district, or five 190.29
 hundred electors, whichever is the lesser number. 190.30

No such nominating petition shall be accepted for filing or 190.32
 filed if it appears on its face to contain signatures aggregating 190.33
 in number more than twice the minimum aggregate number of 190.34
 signatures required by this section. ~~If the district consists of~~ 190.35
~~more than one county, such petition shall contain the signatures~~ 190.36
~~of at least one hundred electors from each of at least one-half~~ 191.1
~~of the several counties of such district.~~ Such petition shall be 191.2
 filed with the board of elections of the most populous county in 191.3
 such district not later than four p.m. of the ninetieth SEVENTY- 191.4
 FIFTH day before the day of the general election at which state 191.5
 board of education members are elected.

Each nominating petition shall be signed by qualified 191.6
 electors residing in the district in which the candidate 191.7
 designated therein would be a candidate for election to the 191.8
 office of member of the state board of education. Each candidate 191.9
 shall be a qualified elector residing in the district in which he 191.11
 seeks election to such office.

As the word "district" is used in this section, it refers 191.12
 to a district created under ~~the provisions of~~ section 3301.011 of 191.14
 the Revised Code.

Sec. 3513.262. The nominating petitions of all candidates 191.16
 required to be filed before four p.m. of the seventy-fifth day 191.17
 before the ~~first Tuesday after the first Monday in June~~ DAY OF 191.18
 THE PRIMARY ELECTION immediately preceding the general election 191.19
 shall be processed as follows: 191.20

If such petition is filed with the secretary of state, he 191.22
 shall, not later than the fifteenth day of June following the
 filing of such petition, transmit to each board such separate 191.23
 petition papers as purport to contain signatures of electors of 191.24
 the county of such board. If such petition is filed with the 191.25
 board of the most populous county of a district or of a county in 191.26
 which the major portion of the population of a subdivision is 191.27
 located, such board shall, not later than such fifteenth day of 191.28
 June, transmit to each board within such district such separate 191.29
 petition papers of the petition as purport to contain signatures 191.30
 of electors of the county of such board. 191.31

All petition papers so transmitted to a board and all 191.32
 nominating petitions filed with a board shall, under proper 191.33
 regulations, be open to public inspection from the fifteenth day 191.35
 of June until four p.m. of the thirtieth day of that month. Each
 board shall, not later than the next fifteenth day of July, 191.36
 examine and determine the sufficiency of the signatures on the 192.1
 petition papers transmitted to or filed with it, and the validity 192.2
 of the petitions filed with it, and shall return to the secretary 192.3
 of state all petition papers transmitted to it by him, together 192.4
 with its certification of its determination as to the validity or 192.6

EXHIBIT

J

FILE

As Reported by House Elections Committee	1.4
113th General Assembly	1.6
Regular Session	1.7
Sub. H. B. No. 1062	1.7
1979-1980	1.8
MESSRS. MADDUX-CAMERA-MRS. RANKIN-MESSRS. WILLIAMS-ZEHNER	1.10

A BILL

To amend sections 7.101, 124.11, 131.23, 133.09,	1.15
133.16, 133.17, 133.18, 139.02, 149.08, 302.03,	1.16
303.11, 303.25, 305.31, 305.32, 305.36, 306.32,	1.17
306.32i, 306.70, 306.71, 307.791, 322.02,	1.18
322.021, 324.02, 324.021, 339.21, 345.02, 345.03,	1.19
505.13, 505.14, 505.15, 511.01, 511.08, 511.22,	1.20
511.25, 511.27, 511.28, 511.33, 513.06, 513.13,	1.21
513.18, 517.05, 519.11, 519.25, 705.01, 709.17,	1.22
709.29, 709.39, 709.45, 709.46, 718.01, 731.01,	1.23
731.02, 731.12, 731.28, 731.29, 731.31, 731.35,	1.24
731.99, 749.03, 757.02, 759.25, 1515.26, 1515.28,	1.25
1545.21, 1545.36, 1711.15, 1711.17, 1901.07,	1.26
1907.051, 2101.43, 3311.052, 3311.21, 3311.22,	1.27
3311.231, 3311.26, 3311.37, 3311.38, 3318.06,	1.28
3354.02, 3354.12, 3355.02, 3357.02, 3357.11,	1.29
3501.01, 3501.02, 3501.05, 3501.09, 3501.11,	1.30
3501.12, 3501.13, 3501.14, 3501.15, 3501.16,	1.31
3501.17, 3501.22, 3501.23, 3501.24, 3501.25,	1.32
3501.26, 3501.28, 3501.30, 3501.31, 3501.35,	1.33
3501.36, 3501.38, 3503.06, 3503.11, 3503.111,	1.34
3503.12, 3503.14, 3503.16, 3503.21, 3503.22,	1.35
3503.23, 3503.33, 3504.04, 3505.021, 3505.04,	1.36
3505.062, 3505.18, 3505.19, 3505.24, 3505.26,	2.1
3505.31, 3505.32, 3506.02, 3506.05, 3506.16,	
3507.01, 3507.04, 3507.14, 3507.16, 3509.01,	2.2
3509.02, 3509.04, 3509.05, 3509.06, 3509.08,	2.3
3511.02, 3511.04, 3511.05, 3511.06, 3511.07,	2.4
3511.08, 3511.09, 3511.10, 3511.11, 3513.02,	2.5
3513.03, 3513.05, 3513.07, 3513.08, 3513.09,	2.6

3513.131, 3513.19, 3513.251, 3513.252, 3513.253, 2.7
 3513.254, 3513.255, 3513.257, 3513.259, 3513.262, 2.8
 3513.263, 3513.28, 3513.31, 3515.03, 3515.04, 2.9
 3517.10, 3517.12, 3599.03, 3599.13, 3599.14, 2.10
 3599.16, 3599.24, 3599.36, 3709.051, 3709.071, 2.11
 3709.29, 4301.33, 4301.331, 4301.34, 4303.29, 2.12
 4305.14, 4305.15, 4504.02, 4504.021, 4951.44, 2.13
 4955.05, 5705.19, 5705.20, 5705.21, 5705.22, 2.14
 5705.23, 5705.24, 5705.25, 5705.261, 5705.27, 2.15
 5739.021, 5739.022, 6105.18, 6117.311, 6119.31, 2.16
 and 6119.32, to enact section 3503.011, and to 2.17
 repeal section 731.37 of the Revised Code to 2.18
 require the certification of most petitions and 2.19
 resolutions to the board of elections at least 2.20
 seventy-five days before an election, to 2.21
 standardize procedural requirements for petitions 2.22
 filed with the board of elections, to shorten the 2.23
 time of residence in the municipality required of 2.24
 members of municipal legislative authorities, to 2.25
 authorize the Ohio Ballot Board to prescribe 2.26
 ballot language for constitutional amendments and 2.27
 measures proposed by initiative and referendum 2.28
 petitions, to permit the Secretary of State to 2.29
 approve ballot language for any local question or 2.30
 issue, to change the titles of officials of the 2.31
 board of elections, to remove voter registration 2.32
 officials from the statute fixing the maximum and 2.34
 minimum compensation for certain elections 2.35
 officials, to permit voter registration or 2.36
 changes of registration at any time any office of 3.1
 a board of elections is open, to authorize
 identification cards for voter registrars, to 3.2
 permit designated relatives of an absentee voter 3.3
 to return absentee ballots to the board of 3.4

elections, and to make other changes in the 3.5
Elections Law. 3.6

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO: 3.9

Section 1. That sections 7.101, 124.11, 131.23, 133.09, 3.11
133.16, 133.17, 133.18, 139.02, 149.08, 302.03, 303.11, 303.25, 3.12
305.31, 305.32, 305.36, 306.32, 306.321, 306.70, 306.71, 307.791, 3.13
322.02, 322.021, 324.02, 324.021, 339.21, 345.02, 345.03, 505.13, 3.15
505.14, 505.15, 511.01, 511.08, 511.22, 511.25, 511.27, 511.28, 3.16
511.33, 513.06, 513.13, 513.18, 517.05, 519.11, 519.25, 705.01, 3.17
709.17, 709.29, 709.39, 709.45, 709.46, 718.01, 731.01, 731.02, 3.18
731.12, 731.28, 731.29, 731.31, 731.35, 731.99, 749.03, 757.02, 3.19
759.25, 1515.26, 1515.28, 1545.21, 1545.36, 1711.15, 1711.17, 3.20
1901.07, 1907.051, 2101.43, 3311.052, 3311.21, 3311.22, 3311.231, 3.22
3311.26, 3311.37, 3311.38, 3318.06, 3354.02, 3354.12, 3355.02, 3.24
3357.02, 3357.11, 3501.01, 3501.02, 3501.05, 3501.09, 3501.11, 3.25
3501.12, 3501.13, 3501.14, 3501.15, 3501.16, 3501.17, 3501.22, 3.27
3501.23, 3501.24, 3501.25, 3501.26, 3501.28, 3501.30, 3501.31, 3.28
3501.35, 3501.36, 3501.38, 3503.06, 3503.11, 3503.111, 3503.12, 3.29
3503.14, 3503.16, 3503.21, 3503.22, 3503.23, 3503.33, 3504.04, 3.30
3505.021, 3505.04, 3505.062, 3505.18, 3505.19, 3505.24, 3505.26, 3.31
3505.31, 3505.32, 3506.02, 3506.05, 3506.16, 3507.01, 3507.04, 3.33
3507.14, 3507.16, 3509.01, 3509.02, 3509.04, 3509.05, 3509.06, 3.34
3509.08, 3511.02, 3511.04, 3511.05, 3511.06, 3511.07, 3511.08, 3.35
3511.09, 3511.10, 3511.11, 3513.02, 3513.03, 3513.05, 3513.07, 4.1
3513.08, 3513.09, 3513.131, 3513.19, 3513.251, 3513.252, 4.2
3513.253, 3513.254, 3513.255, 3513.257, 3513.259, 3513.262, 4.3
3513.263, 3513.28, 3513.31, 3515.03, 3515.04, 3517.10, 3517.12, 4.5
3599.03, 3599.13, 3599.14, 3599.16, 3599.24, 3599.36, 3709.051, 4.6
3709.071, 3709.29, 4301.33, 4301.331, 4301.34, 4303.29, 4305.14, 4.8
4305.15, 4504.02, 4504.021, 4951.44, 4955.05, 5705.19, 5705.20, 4.9
5705.21, 5705.22, 5705.23, 5705.24, 5705.25, 5705.261, 5705.27, 4.10
5739.021, 5739.022, 6105.18, 6117.311, 6119.31, and 6119.32 be 4.11
amended, and section 3503.011 of the Revised Code be enacted to 4.12
read as follows: 4.13

levy, not to exceed five, after their issuance. If such notes 116.3
 have been issued, the amount necessary to pay the interest and 116.4
 principal thereon shall be deemed appropriated for such purposes 116.5
 from the proceeds of such levy and appropriation from such levy 116.6
 by the technical college district shall be limited each year to 116.7
 the balance available in excess of such amount. Such notes may 116.8
 be issued subject to call and redemption prior to maturity at not 116.9
 more than par and accrued interest. 116.10

The board of elections of the county or counties comprising 116.11
 the district shall cause to be published in a newspaper of 116.12
 general circulation in each county, an advertisement of the 116.13
 proposed tax levy question, once each week for three weeks 116.14
 immediately preceding the election at which the question is to 116.15
 appear on the ballot. 116.16

All necessary expenses for the operation of such technical 116.17
 college may be paid from any gifts, from grants of the state or 116.19
 federal government, from student fees and tuition collected
 pursuant to division (G) of section 3357.09 of the Revised Code, 116.20
 or from unencumbered funds from any other source of the technical 116.21
 college income, not prohibited by law. 116.22

Sec. 3501.01. As used in the sections of the Revised Code 116.23
 relating to elections and political communications as ~~set~~ forth 116.25
 in ~~section 3599.09 of the Revised Code:~~ 116.26

(A) "General election" means any election held on the 116.27
 first Tuesday after the first Monday in November. 116.28

(B) "Regular municipal election" means the election held 116.29
 on the first Tuesday after the first Monday in November in odd- 116.31
 numbered years.

(C) "Regular state election" means the election held on 116.32
 the first Tuesday after the first Monday in November in even- 116.34
 numbered years.

(D) "Special election" means any election other than the 116.35
 elections required to be regularly held on the day of a general 116.36
 or primary election, provided that a special election may also be 117.1
 held on the day of a general or primary election. 117.2

(E) "Primary" or "primary election" means an election held 117.3
 for the purpose of nominating persons as candidates of political 117.4
 parties for election to offices, and for the purpose of electing 117.5
 persons as members of the controlling committees of political 117.6
 parties and as delegates and alternates to the conventions of 117.7
 political parties. Primary elections shall be held on the first 117.8
 Tuesday after the first Monday in June of each year. 117.9

(F) "Political party" means any ~~organization~~ GROUP OF 117.10
 VOTERS meeting the requirements set forth in ~~Title XXXV~~ SECTION 117.11
3517.01 of the Revised Code for the formation and existence of a 117.12
 political party.

(1) "Major political party" means any political party 117.13
 organized under the laws of this state whose candidate for 117.14
 governor OR NOMINEES FOR PRESIDENTIAL ELECTORS received no less 117.15
 than twenty per cent of the total vote cast for all ~~candidates~~ 117.16
~~for the~~ SUCH office of ~~governor~~ at the next LAST preceding 117.17
~~gubernatorial~~ REGULAR STATE election held ~~in this state~~.

(2) "Intermediate political party" means any political 117.18
 party organized under the laws of this state whose candidate for 117.19
 governor OR NOMINEES FOR PRESIDENTIAL ELECTORS received less than 117.20
 twenty per cent but not less than ten per cent of the TOTAL vote 117.21
 cast for all ~~candidates for the~~ SUCH office of ~~governor~~ at the 117.22
 next LAST preceding ~~gubernatorial~~ REGULAR STATE election.

(3) "Minor political party" means any political party 117.23
 organized under the laws of this state whose ~~candidate~~ CANDIDATE 117.24
 for ~~the office of~~ governor OR NOMINEES FOR PRESIDENTIAL ELECTORS 117.25
 received less than ten per cent but not less than five per cent 117.26
 of all ~~votes~~ THE TOTAL VOTE cast for such office at the last
 preceding regular STATE election or which has filed with the 117.27
 secretary of state, subsequent to any election in which it 117.28
 received less than five per cent of such vote, a petition signed 117.29
 by qualified electors equal in number to at least one per cent of 117.30
~~all the votes~~ TOTAL VOTE cast for such office in the last 117.31
 preceding regular STATE election. ~~except~~ that a newly formed 117.32
 political party shall be known as a minor political party until 117.33

the time of the first election for governor OR PRESIDENT which 117.34
 occurs not less than twelve months subsequent to the formation of 117.35
 such party, after which election the status of such party shall 117.36
 be determined by the vote for the office of governor OR 118.1
 PRESIDENT.

(G) "Dominant party in a precinct" or "dominant political 118.2
 party in a precinct" means that political party whose candidate 118.3
 for election to the office of governor at the next preceding 118.4
 regular state election at which a governor was elected received 118.5
 more votes than any other person received for election to said 118.6
 office in such precinct at such election. 118.7

(H) "Candidate" means any qualified person certified in 118.8
 accordance with the provisions of the Revised Code for placement 118.9
 on the official ballot of a primary, general, or special election 118.10
 to be held in this state, or any qualified person who represents 118.11
 himself to be a write-in candidate, or who knowingly assents to 118.12
 such representation by another at either a primary, general, or 118.13
 special election to be held in this state. 118.14

(I) "INDEPENDENT CANDIDATE" MEANS ANY CANDIDATE WHO DOES 118.15
 NOT CONSIDER HIMSELF AFFILIATED WITH A POLITICAL PARTY, AND WHO 118.16
 HAS HIS NAME CERTIFIED ON THE OFFICE-TYPE BALLOT AT A GENERAL OR 118.17
 SPECIAL ELECTION THROUGH THE FILING OF A STATEMENT OF CANDIDACY 118.18
 AND NOMINATING PETITION, AS PRESCRIBED IN SECTION 3513.257 OF THE 118.19
 REVISED CODE. 118.20

(J) "NONPARTISAN CANDIDATE" MEANS ANY CANDIDATE WHOSE NAME 118.22
 IS REQUIRED, PURSUANT TO SECTION 3505.04 OF THE REVISED CODE, TO 118.23
 BE LISTED ON THE NONPARTISAN BALLOT, INCLUDING ALL CANDIDATES FOR 118.24
 JUDICIAL OFFICE, FOR MEMBER OF ANY BOARD OF EDUCATION, FOR 118.25
 MUNICIPAL OR TOWNSHIP OFFICES IN WHICH PRIMARY ELECTIONS ARE NOT 118.26
 HELD FOR NOMINATING CANDIDATES BY POLITICAL PARTIES, AND FOR 118.27
 OFFICES OF MUNICIPAL CORPORATIONS HAVING CHARTERS THAT PROVIDE 118.28
 FOR SEPARATE BALLOTS FOR ELECTIONS FOR THESE OFFICES. 118.29

(K) "PARTY CANDIDATE" MEANS ANY CANDIDATE WHO CONSIDERS 118.30
 HIMSELF A MEMBER OF A POLITICAL PARTY, WHO HAS HIS NAME CERTIFIED 118.32
 ON THE OFFICE-TYPE BALLOT AT A GENERAL OR SPECIAL ELECTION 118.33

THROUGH THE FILING OF A DECLARATION OF CANDIDACY AND PETITION OF 118.34
 CANDIDATE, AND WHO HAS WON THE PRIMARY ELECTION OF HIS PARTY FOR 118.35
 THE PUBLIC OFFICE HE SEEKS OR IS SELECTED BY PARTY COMMITTEE IN 118.36
 ACCORDANCE WITH SECTION 3513.31 OF THE REVISED CODE. 119.1

(L) "Question or issue" means any question or issue 119.2
 certified in accordance with the provisions of the Revised Code 119.3
 for placement on an official ballot of AT a primary, general or 119.4
 special election to be held in this state. 119.5

(M) "Elector" or "qualified elector" means a person 119.6
 having the qualifications provided by law to entitle him to vote. 119.7

(N) "Voter" means an elector who votes at an election. 119.9

(O) "Voting residence" means that place of residence 119.12
 of an elector which shall determine the precinct in which he may 119.13
 vote.

(P) "Precinct" means a district within a county 119.16
 established by the board of elections of such county within which 119.18
 all qualified electors having a voting residence therein may vote 119.20
 at the same polling place. 119.21

(Q) "Polling place" means that place provided for each 119.24
 precinct at which the electors having a voting residence in such 119.25
 precinct may vote. 119.26

(R) "Board" or "board of elections" means the board of 119.29
 elections appointed in a county pursuant to sections SECTION 119.31
 3501.06 and ~~3501.07~~ of the Revised Code. 119.32

(S) "Political subdivision" means "county," township," 119.35
 "city," "village," or "school district." 119.36

Sec. 3501.02. General elections in the state and its 120.2
 political subdivisions shall be held as follows: 120.3

(A) For the election of electors of president and vice- 120.4
 president of the United States, in the year of 1932 and every 120.5
 four years thereafter; 120.6

(B) For the election of a member of the senate of the 120.7
 United States, in the years 1932 and 1934, and every six years 120.8
 after each of such years; except as otherwise provided for 120.9
 filling vacancies; 120.10

(C) For the election of representatives in the congress of the United States and of elective state and county officers, INCLUDING MEMBERS OF THE STATE BOARD OF EDUCATION, in the even-numbered years; except as otherwise provided for filling vacancies;	120.12 120.14 120.15
(D) For municipal and township officers, members of board BOARDS of education, members of the state board of education, judges and clerks of municipal courts, in the odd-numbered years;	120.16 120.17 120.18
(E) Proposed constitutional amendments or proposed measures submitted by the general assembly or by initiative or referendum petitions to the voters of the state at large may be submitted to the general election in any year occurring at least sixty days, in case of a referendum, and ninety days, in the case of an initiated measure, subsequent to the filing of the petitions therefor. Proposed constitutional amendments submitted by the general assembly to the voters of the state at large may be submitted at a special election occurring on the first Tuesday after the first Monday of June in any year, when a special election on that date is designated by the general assembly in the resolution adopting the proposed constitutional amendment. Unless provision is made by law or charter for the submission of a question or issue to the voters of a county, township, city, village, or school district at a special election, no special election shall be called, and the question or issue shall be submitted at a general election.	120.19 120.20 120.22 120.23 120.24 120.25 120.26 120.27 120.28 120.29 120.30 120.31 120.32 120.33 120.34 120.35
(F) Any question or issue, except a candidacy, to be voted upon at an election shall be certified, for placement upon the ballot, to the board of elections not less than sixty SEVENTY-FIVE days before the day of the election.	121.1 121.2 121.3
Sec. 3501.05. The secretary of state shall:	121.5
(A) Appoint all members of boards of elections;	121.6
(B) Advise members of such boards as to the proper methods of conducting elections;	121.7 121.8
(C) Prepare rules and instructions for the conduct of elections;	121.9 121.10

village boards BOARD of education ~~r shall be made only by~~ APPEAR 205.24
 ON THE NONPARTISAN BALLOT, EACH nominating ~~petitions and~~ 205.25
 PETITION shall be signed by twenty-five qualified electors of the 205.26
 school district, or not less than one per cent of the number of 205.27
 electors who voted for governor at the next preceding general 205.28
 election for the office of governor in the school district, 205.29
 whichever is the greater; and be filed with the board of 205.30
 elections not later than four p.m. of the seventy-fifth day 205.31
 before the day of the general election, provided that no such 205.32
 petition shall be accepted for filing or filed if it appears to 205.33
 contain signatures aggregating in number more than twice the 205.34
 minimum aggregate number of signatures required by this section. 205.35

Sec. 3513.255. ~~Nominations of candidates~~ THE NAME OF EACH 206.1
 CANDIDATE for election as ~~members~~ A MEMBER of A county ~~boards~~ 206.2
 BOARD of education shall ~~be made only by~~ APPEAR ON THE 206.3
 NONPARTISAN BALLOT, AND EACH nominating ~~petitions and~~ PETITION 206.4
 shall be signed by twenty-five qualified electors of the school 206.5
 districts over which the county board of education has 206.6
 jurisdiction or not less than one per cent of the number of 206.7
 electors who voted for governor at the next preceding general 206.8
 election for the office of governor in the school districts over 206.9
 which the board has jurisdiction, whichever is the greater; and 206.10
 be filed with the board of elections not later than four p.m. of 206.11
 the seventy-fifth day before the day of the general election, 206.12
 provided that no such petition shall be accepted for filing or 206.13
 filed if it appears to contain signatures aggregating in number 206.14
 more than twice the minimum aggregate number of signatures 206.15
 required by this section.

Sec. 3513.257. Each person desiring to become an 206.16
 independent candidate for an office for which candidates may be 206.17
 nominated at a primary election, except persons desiring to 206.18
 become independent joint candidates for the offices of governor 206.19
 and lieutenant governor, shall file no later than four p.m. of 206.21
 the seventy-fifth day before the ~~first Tuesday after the first~~
~~Monday in June~~ DAY OF THE PRIMARY ELECTION immediately preceding 206.22

the general election at which such candidacy is to be voted for 206.23
 by the voters, a statement of candidacy and nominating petition 206.24
 as provided in section 3513.261 of the Revised Code. Persons 206.25
 desiring to become independent joint candidates for the offices 206.26
 of governor and lieutenant governor shall file, not later than 206.27
 four p.m. of the seventy-fifth day before the ~~first Tuesday~~ after 206.28
~~the first Monday in June~~ DAY OF THE PRIMARY ELECTION, one 206.29
 statement of candidacy and one nominating petition for the two of 206.30
 them. The prospective independent joint candidates' statement of 206.31
 candidacy shall be filed with the nominating petition as one 206.32
 instrument. The nominating petition shall contain signatures of 206.33
 qualified electors of the district, political subdivision, or 206.34
 portion of a political subdivision in which the candidacy is to 206.35
 be voted for in an amount to be determined as follows: 206.36

(A) If the candidacy is to be voted for by electors 207.1
 throughout the entire state, the nominating petition, including 207.2
 the nominating petition of independent joint candidates for the 207.3
 offices of governor and lieutenant governor, shall be signed by 207.5
 no less than five thousand qualified electors, provided that no 207.6
 petition shall be accepted for filing if it purports to contain 207.7
 more than fifteen thousand signatures.

(B) If the candidacy is to be voted for by electors in any 207.8
 district, political subdivision, or part thereof in which less 207.9
 than five thousand electors voted for the office of governor at 207.10
 the next preceding election for that office, the nominating 207.11
 petition shall contain signatures of not less than twenty-five 207.12
 qualified electors of the district, political subdivision, or 207.13
 part thereof, or a number of qualified signatures equal to at 207.14
 least five per cent of that vote, if this number is less than 207.15
 twenty-five.

(C) If the candidacy is to be voted for by electors in any 207.17
 district, political subdivision, or part thereof in which five 207.18
 thousand or more electors voted for the office of governor at the 207.19
 next preceding election for that office, the nominating petition 207.20

shall contain a number of signatures equal to at least one per 207.21
cent of those electors.

All nominating petitions of candidates for offices to be 207.22
voted by electors throughout the entire state shall be filed in 207.23
the office of the secretary of state. No nominating petition for 207.24
the offices of president and vice-president of the United States 207.25
shall be accepted for filing unless there is submitted to the 207.26
secretary of state, at the time of filing the petition, a slate 207.27
of presidential electors sufficient in number to satisfy the 207.28
requirement of the United States Constitution. The secretary of 207.29
state shall not accept for filing the statement of candidacy of a 207.30
person who desires to be an independent candidate for the office 207.31
of governor unless it also shows the joint candidacy of a person 207.32
who desires to be an independent candidate for the office of 207.33
lieutenant governor, shall not accept for filing the statement of 207.34
candidacy of a person who desires to be an independent candidate 207.35
for the office of lieutenant governor unless it also shows the 207.36
joint candidacy of a person who desires to be an independent 208.1
candidate for the office of governor, and shall not accept for 208.2
filing the statement of candidacy of a person who desires to be 208.3
an independent candidate to the office of governor or lieutenant 208.4
governor who has already been shown as an independent candidate 208.5
for governor or lieutenant governor on a statement of candidacy 208.6
previously filed and accepted during the filing period preceding 208.7
the same primary election. 208.8

Nominating petitions of candidates for offices to be voted 208.9
on by electors within a district or political subdivision 208.10
comprised of more than one county but less than all counties of 208.11
the state shall be filed with the boards of elections of that 208.12
county or part of a county within the district or political 208.13
subdivision which had a population greater than that of any other 208.14
county or part of a county within the district or political 208.15
subdivision according to the last federal decennial census. 208.16

Nominating petitions for offices to be voted by electors 208.17
 within a county or district smaller than a county shall be filed 208.18
 with the board of elections for such county. 208.19

No petition other than the petition of a candidate whose 208.20
 candidacy is to be considered by electors throughout the entire 208.21
 state shall be accepted for filing if it appears on its face to 208.22
 contain more than five times the minimum number of signatures. 208.23

Sec. 3513.259. Nominations of candidates for the office of 208.25
 member of the state board of education shall be made only by 208.26
 nominating petition. The nominating petition of a candidate for 208.28
 the office of member of the state board of education shall be 208.29
 signed by not less than one per cent of the number of electors
 who voted for governor at the next preceding regular state 208.30
 election for the office of governor in the district, or five 208.31
 hundred electors, whichever is the lesser number. 208.32

No such nominating petition shall be accepted for filing or 208.34
 filed if it appears on its face to contain signatures aggregating 208.35
 in number more than twice the minimum aggregate number of 208.36
 signatures required by this section. ~~If the district consists of~~ 209.1
~~more than one county, such petition shall contain the signatures~~ 209.2
~~of at least one hundred electors from each of at least one-half~~ 209.3
~~of the several counties of such district.~~ Such petition shall be 209.4
 filed with the board of elections of the most populous county in 209.5
 such district not later than four p.m. of the ~~ninetieth~~ SEVENTY- 209.6
 FIFTH day before the day of the general election at which state 209.7
 board of education members are elected.

Each nominating petition shall be signed by qualified 209.8
 electors residing in the district in which the candidate 209.9
 designated therein would be a candidate for election to the 209.10
 office of member of the state board of education. Each candidate 209.11
 shall be a qualified elector residing in the district in which he 209.13
 seeks election to such office.

As the word "district" is used in this section, it refers 209.14
 to a district created under ~~the provisions of~~ section 3301.011 of 209.16
 the Revised Code.