

IN THE SUPREME COURT OF OHIO

STATE OF OHIO, ex rel.	:	
FRANK MORRIS, et al.,	:	
	:	
<i>Relators,</i>	:	Case No. 2015-1277
	:	
- vs -	:	
	:	
STARK COUNTY BOARD	:	An Original Action in Prohibition
OF ELECTIONS, et al.,	:	
	:	
<i>Respondents.</i>	:	

**MERIT BRIEF OF INTERVENOR
RESPONDENT THOMAS M. BERNABEI**

MICHAEL DEWINE (0009181)
OHIO ATTORNEY GENERAL
SARAH E. PIERCE (0087799)*
*Counsel of Record
ZACHERY P. KELLER (0086930)
NICOLE M. KOPPITCH (0082129)
Assistant Attorneys General
Constitutional Offices Section
30 East Broad Street, 16th Floor
Columbus, Ohio 43215
Telephone: 614.466.2872
Facsimile: 614-728-7592
sarah.pierce@ohioattorneygeneral.gov
zachery.keller@ohioattorneygeneral.gov ni-
cole.koppitch@ohioattorneygeneral.gov

RAYMOND V. VASVARI, JR. (0055538)*
*Counsel of Record
K. ANN ZIMMERMAN (0059486)
VASVARI & ZIMMERMAN
1301 East Ninth Street
1100 Erieview Tower
Cleveland, Ohio 44114-1844
Telephone: 216.458.5880
Telecopier: 216.928.0016
vasvari@vasvarilaw.com
zimmerman@vasvarilaw.com

*Counsel for Putative Intervenor
Respondent Thomas M. Bernabei*

*Counsel for Respondent
Ohio Secretary of State Jon Husted*

List of Counsel Continues on the Next Page

LEE E. PLAKAS (0008628)*

*Counsel of Record
TZANGAS PLAKAS MANNOS LTD.
220 Market Avenue South, 8th Floor
Canton, Ohio 44702
Telephone: 330-455-6112
Facsimile: 330-455-2108
lplakas@lawlion.com

ROBERT S. PECK (PHV 7590-2015)

CENTER FOR CONSTITUTIONAL
LITIGATION, P.C.
777 6th Street NW, Suite 520
Washington, D.C. 20001
Telephone: 202-944-2803
Facsimile: 202-965-0920
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*

N. ZACHARY WEST (0087805)*

*Counsel of Record
THE OHIO DEMOCRATIC PARTY
340 East Fulton Street
Columbus, Ohio 43215
Telephone: 614-221-6563
Facsimile: 614-221-0721
zwest@ohiodems.org

*Counsel for Relator
The Ohio Democratic Party*

DEBORAH A. DAWSON (0021580)*

*Counsel of Record
STEPHAN P. BABIK (0080165)
JOHN D. FERRERO (0018950)
THE STARK COUNTY
PROSECUTING ATTORNEY
110 Central Plaza South, Suite 510
Canton, Ohio 44702
Telephone: 330-451-7865
Facsimile: 330-451-7225
dadawson@starkcountyohio.gov
spbabik@starkcountyohio.gov

*Counsel for Respondent
Stark County Board of Elections*

– TABLE OF CONTENTS –

TABLE OF AUTHORITIES V

INTRODUCTION1

STATEMENT OF THE FACTS4

LAW & ARGUMENT10

 I. When the Secretary of State Breaks the Tie Vote of a County Board of Elections, in Favor of Allowing a Putative Candidate to Appear on the Ballot, the Secretary’s Decision Is Entitled to Great Deference, and Should Only Be Disturbed By This Court in Instances of Fraud, Corruption or Abuse of Discretion12

 II. The Secretary of State Did Not Abuse His Discretion, nor Act in a Manner Contrary to Law, When He Found that the Petitioners Had Failed to Establish – By Clear and Convincing Evidence – that Tom Bernabei Was Not a Resident of Canton, and thus Ineligible to Run for Mayor, on May 4, 2015.....14

 III. The Secretary of State Did Not Abuse His Discretion, nor Act in a Manner Contrary to Law, When He Found that the Petitioners Had Failed to Establish – By Clear and Convincing Evidence – That Tom Bernabei Had Failed to Disaffiliate Himself From the Democratic Party in Good Faith20

 A. The General Assembly Adopted R.C. 3513.257 As a Measured and Deliberately Modest Response to a Specific Set of Public Policy Concerns, and this Court Should Resist the Invitation to Tread Upon the Legislature’s Prerogative, and to Depart from Its Own Well Reasoned Precedents By Adopting a More “Rigorous” Interpretation of that Statute.....20

 B. Pre and Post Declaration Activity Are Only Germane in Disaffiliation Cases to the Extent That They Support or Refute, By Inference, The Good Faith of the Putative Candidate in Making His Declaration. The Law Requires No Action Besides the Declaration Itself, and Petitioners Suggestion that Bernabei Should Have Done More to Demonstrate His Newly Independent Status is Meritless24

 C. The Overwhelming Direct Evidence in the Record Demonstrates that Tom Bernabei Disaffiliated Himself from the Democratic Party in Good Faith, and the Petitioners Have Adduced No Evidence of Post-Petition Partisan Activity to Undermine that Conclusion25

CONCLUSION32

APPENDIXNone, Pursuant to S. CT. PRAC. R. 16.03(B)(3).



– TABLE OF AUTHORITIES –

– Cases –

Cablevision of the Midwest, Inc. v. Gross, 70 Ohio St.3d 541, 1994-Ohio-505, 639 N.E.2d 115423

Cooker Restaurant Corp. v. Montgomery Cty. Bd. of Elections, 80 Ohio St.3d 302, 686 N.E.2d 238 (1997)13

Cox v. Village of Union City, 84 Ohio App. 279, 87 N.E.2d 374 (2nd Dist.1948)19

Cross v. Ledford, 161 Ohio St. 469, 120 N.E.2d 118 (1954)12

Fuller v. Hofferbert, 204 F.2d 592 (6th Cir. 1953)19

Gazan v. Heery, 183 Ga. 30 (1936)11

Jolivette v. Husted, 694 F.3d 760 (6th Cir. 2012)26, 27

Morrison v. Colley, 467 F.3d 503 (6th Cir.2006)21, 23, 24, 25, 26, 27

Pike–Delta–York Local School Dist. Bd. of Edn. v. Fulton Cty. Budget Comm., 41 Ohio St.2d 147, 324 N.E.2d 566 (1975).....23

Rock v. Cabral, 67 Ohio St.3d 108 616 N.E.2d 218 (1993)13

Schill v. Cincinnati Ins. Co., 141 Ohio St.3d 382, 2014-Ohio-4527, 24 N.E.3d 1145 (2014)19

Seeley v. Expert, Inc., 26 Ohio St.2d 61, 269 N.E.2d 121 (1971)23

State ex rel. Allen v. Warren Cty. Bd. of Elections, 115 Ohio St.3d 186, 2007-Ohio-4752, 874 N.E.2d 50711

State ex rel. Armstrong v. Davey 130 Ohio St. 160, 4 O.O. 38, 198 N.E. 180 (1935)14

State ex rel. Bitter v. Missig, 72 Ohio St.3d 249, 1995-Ohio-147, 648 N.E.2d 1355 (1995)13

State ex rel. Brown v. Butler Cty. Bd. of Elections, 109 Ohio St.3d 63, 66, 2006-Ohio-1292, 846 N.E.2d 813

<i>State ex rel. Davis v. Summit Cty. Bd. of Elections</i> , 137 Ohio St.3d 222, 2013-Ohio-4616, 998 N.E.2d 1093	24, 27 29, 30, 31
<i>State ex rel. Democratic Executive Committee of Lucas Cty. v. Brown</i> , 39 Ohio St.2d 157, 314 N.E.2d 376 (1974)	14
<i>State ex rel. Duncan v. Portage Cty. Bd. of Elections</i> , 115 Ohio St.3d 405, 2007-Ohio-5346, 875 N.E.2d 578	14, 16, 17
<i>State ex rel. Herdman v. Franklin Cty. Bd. of Elections</i> , 67 Ohio St.3d 593, 1993-Ohio-24, 621 N.E.2d 1204	14
<i>State ex rel. Higgins v. Brown</i> , 170 Ohio St. 511, 166 N.E.2d 759 (1960)	18
<i>State ex rel. Husted v. Brunner</i> , 123 Ohio St.3d 288, 2009-Ohio-5327, 915 N.E.2d 1215	11, 14, 17, 18, 25
<i>State ex rel. Ins. Co. v. Moore</i> , 42 Ohio St. 103 (1884)	14
<i>State ex rel Klink v Eyrich</i> , 157 Ohio St. 338, 105 N.E.2d 399 (1952)	17
<i>State ex rel Livingston v. Miami Cty. Bd. of Elections</i> , 196 Ohio App.3d 263, 2100-Ohio-6126, 963 N.E.2d 187	26, 27, 29
<i>State ex rel Lorenzi v. Mahoning County Bd. of Elections</i> , 7th Dist. Mahoning No. 07 MA 127, 2007-Ohio-5879, 2007 WL 3227667	27
<i>State ex rel. Monroe v. Mahoning Cty. Bd. of Elections</i> , 137 Ohio St.3d 62, 2013-Ohio-4490, 997 N.E.2d 524	12, 28, 29
<i>State ex rel. Purdy v. Clermont Cty. Bd. of Elections</i> , 77 Ohio St.3d 338, 1997-Ohio-278, 673 N.E.2d 1351	22
<i>State ex rel. Reese v. Cuyahoga Cty. Bd. of Elections</i> , 115 Ohio St.3d 126, 2007-Ohio-4588, 873 N.E.2d 1251	14
<i>State ex rel. Schenck v. Shattuck</i> , 1 Ohio St. 3d 272, 439 N.E.2d 891 (1982)	11, 23
<i>State ex rel. Spangler v. Bd. of Elections of Cuyahoga Cty.</i> , 7 Ohio St.3d 20, 455 N.E.2d 1009 (1983)	18, 19

<i>State ex rel. Stine v. Brown Cty. Bd. of Elections</i> , 101 Ohio St.3d 252, 2004-Ohio-771, 804 N.E.2d 415	14, 15, 17
<i>State ex rel. Summit Cty. Republican Party Executive Comm. v. Brunner</i> , 118 Ohio St.3d 515, 2008-Ohio-2824, 890 N.E.2d 888	14
<i>State ex rel. Wilkerson v. Trumbull Cty. Bd. of Elections</i> , 11th Dist. Trumbull No. 2007–T–0081, 2007-Ohio-4762, 2007 WL 2696769	27
<i>State ex rel. Wolfe v. Delaware Cty. Bd. of Elections</i> , 88 Ohio St.3d 182, 724 N.E.2d 771 (2000)	14
<i>Sweezy v. State of New Hampshire by Wyman</i> , 354 U.S. 234, 77 S.Ct. 1203, 1 L.Ed.2d 1311 (1957)	10
<i>Timmons v. Twin Cities Area New Party</i> , 520 U.S. 351, 117 S.Ct. 1364, 137 L.Ed.2d 589 (1997)	21
<i>Whitman v. Hamilton Cty. Bd. of Elections</i> , 97 Ohio St.3d 216, 2002-Ohio-5923, 778 N.E.2d 32	12

– Constitutional Provisions –

U.S. CONST. AMEND. I	10, 21, 22, 26
U.S. CONST. AMEND. XIV	21

– Statutes –

42 U.S.C. § 1983	21
OHIO R.C. § 1.49	23
OHIO R.C. § 733.02	18
Ohio R.C. § 3503.02.....	15, 16, 17
Ohio R.C. § 3503.02(A).....	16, 17, 19
Ohio R.C. § 3503.02(B)	16
Ohio R.C. § 3503.02(C)	16
Ohio R.C. § 3503.02(D)	18

OHIO R.C. § 3513.257 *passim*
OHIO R.C. § 3513.261 11, 17, 22

– Administrative Rules & Regulations –

S. CT. PRAC. R. 16.03(B)(3) iv
SEC. OF STATE OP. 2007-05 25, 26



– INTRODUCTION –

This is a simple case, the resolution of which turns on the answers to two straightforward questions. Tom Bernabei, the Intervenor-Respondent, wants to run for mayor of Canton, as an independent, in the upcoming general election. Toward that end, he filed the requisite petitions with the Stark County Board of Elections on May 4, 2015.

Bernabei has lived in Canton and in suburban Jackson Township for more than forty years. During that time he has held a number of public offices, both elected and appointed, in the city of Canton, and countywide. He presently serves as a Stark County Commissioner.

No one disputes that for forty years, Bernabei was an active member of the Democratic Party. He served as assistant to a Law Director who ran for office as a Democrat, ran for Canton Law Director, and for County Commissioner, as a Democrat, belonged to various Democratic Clubs, served on the Central Committee of the Stark County Democratic Party, and donated generously. His sense of loyalty to the party waned sharply in April 2015, when he concluded that both the mayoral candidates running in the Democratic primary were, in his well-informed opinion, not up to the job, a sentiment echoed by an editorial in the Canton Repository.

After considerable reflection, and discussions with trusted advisors, Bernabei decided to run for mayor as an independent.

Over a two week period in late April and early May, he began to systematically sever his ties with the party, and take the other steps necessary to appear on the ballot.

One of those steps was to reestablish residency in Canton, where Bernabei and his wife had long owned a house. Because that house was occupied by tenants, who were relocating to a new home of their own at some indeterminate point in May, Bernabei decided to rent another house, on a month-to-month basis, to ensure that he would be a Canton resident on the date his nominating petitions were due.

The Relators – Democratic Party officials – claim that Bernabei is ineligible to run for mayor as an independent because (a) he did not disaffiliate himself from their party, in good faith, prior to filing his petitions, and (b) he was not a genuine resident of Canton on the date those petitions were filed. Neither contention has merit.

As demonstrated below, Tom Bernabei took systematic, open and unambiguous steps to sever his relations with the Democratic Party prior to May 4, 2015, the date his petitions were filed. Over a few days he irrevocably severed his ties to the party, and in the process set fire to political bridges which it took him forty years to build.

Against these clear manifestations of an intent to disaffiliate, the Relators have interposed a mountain of trivia – Bernabei sent his resignation letters to the party chairman through an intermediary, not the mail, his picture still hangs on the wall at party headquarters, his name appeared as treasurer on the yard signs of candidates that were printed before he chose to leave the party – all of it based on his pre-petition activity. The Secretary of State correctly found that the Relators failed to meet their burden of demonstrating, by clear and convincing evidence, that Bernabei had not disassociated himself from the Party in good faith.

Bernabei also testified that, beginning on May 3, 2015, and continuing to this day, he has resided in the city of Canton. Relators fixate on the fact that he relocated to a rental home before taking possession of his own house after his tenants had vacated, in an effort to cast Bernabei as some sort of carpetbagger.

But the overwhelming weight of the evidence says otherwise. As shown below, Bernabei never returned to his suburban house after moving to Canton, has retained a realtor to sell that house, and has reestablished a home in Canton, along with his wife, that he intends to occupy for the long term, whether he is elected mayor or not. And while he did relocate – from the Canton house he rented to the Canton house he owned – after his petitions were filed, the Relators have offered no good reason why such a move should make any difference at all, nor articulated how that move discredits his stated intention to relocate to Canton prior to becoming a candidate.

Here, too, the Secretary of State correctly concluded that the evidence favored Bernabei, and that the Relators had failed to demonstrate, by clear and convincing evidence, that he was not a genuine Canton resident on May 4, 2015.

Unable to carry their burden under well established law, Relators effectively urge the Court to adopt stricter standards for ballot access, lest carpetbaggers seize our public offices, and independent candidates bring the two party system to its knees.

Their warnings are unwarranted, shrill, disingenuous, and self serving, and invite the Court to substitute its judgment for that of the General Assembly. The legislature has carefully considered the maladies which the Relators say are lurking in this case, and has prescribed a precise set of statutory medicines to inoculate against them.

The Revised Code prescribes what a putative independent must do to disaffiliate himself from his former party, when he must do so, and how long a candidate must reside in a jurisdiction in order to seek office there. Tom Bernabei met every requirement imposed on him. Relators, intent on thwarting his candidacy, seek to upset the law in order get the result they want. The Court should deny them that opportunity.

This is a simple case, because it requires only that the Court confirm that the Secretary of State properly applied the law to the facts. The Relators, below, failed utterly to meet their burden of demonstrating – by clear and convincing evidence – that Bernabei is ineligible to run for mayor. The Secretary was altogether justified in finding as much.

This is also an important case. Ohio law and public policy have long favored a liberal construction of the election laws, allowing candidates to gain ballot access not for their benefit, but in the belief that democracy functions best when the People have a broad range of choices. The Relators would thwart that access, and are seeking to thwart it now, so that their partisan candidate can run unopposed in November. Their short term goals are undemocratic, and the long term effects of permitting them to achieve those goals would be profoundly so.

The Relators would allow past partisan activity to cast a long shadow over the future lives of the party faithful, and turn loyalty pledges into the sort of political-blood-oaths extracted from Maoist cadres. Democracy demands better. This is a simple case, because the Relators would have the Court move heaven and earth to ensure their candidate does not face a fair fight in November. Democracy, free association and Ohio law as it stands would abhor such a result.

– STATEMENT OF THE FACTS –

In their prolix Complaint, and in a Merit Brief fixated on minutia, the Relators weave a web of extraneous detail, in an effort to paint this as a scheme designed to skirt the law.

Concealed within this mountain of distraction are the few material facts that explain what Tom Bernabei did to disaffiliate himself from the Democratic Party, why he did it (which speaks to his good faith) and how, which includes his moving to Canton.

A. Disaffiliation from the Democratic Party

The Relators have dutifully documented the offices held, campaigns run, and monies donated during the long years in which Tom Bernabei was a Democrat. The significance of those facts is another matter, but the facts themselves are a matter of record, and are largely, but not always, admitted in our Answer.¹ To the extent these allegations have been denied, it has been where the Relators have misstated the record.

None of this, of course, amounts to the sort of post-petition partisan activity that has been used to find bad-faith disaffiliation in every Ohio case to have considered the question. But it does beg the prosaic questions of why Tom Bernabei left the party of his youth, and how he went about doing so. His own testimony at the protest hearing held on July 6, 2015 provides direct answers to both questions.

At the outset, and to put to rest the suggestion that he is a sore loser, it bears emphasis that Bernabei – a sitting County Commissioner – did not did not consider running for mayor during the May 2015 Democratic primary. That was not an oversight or a careless omission. It was the choice of a public servant with other things on his mind.

Q: Why didn't you run in the primary?

* * *

¹ See generally, Complaint and Proposed Answer of the Intervenor Respondent, respectively, at ¶¶ 65, 72 (offices held), 66 (contributions made), (donated money in April 2015, of which, more will be said later in this Brief), 68 (designated a Democrat treasurer to his County Commission campaign committee prior to May 4, 2015), 71 (spoke to Alliance Democratic Club in February 2015), 73 (voted as in Democratic primaries over many years). *But c.f.* ¶ 70 (resignations submitted prior to nominating petitions).

A: You know, again hindsight says that [I] probably should have chosen to run in the primary. The answer is that during the primary season I was not focused on the issue of the mayoral race in the City of Canton. My focus at that time was with regard to county government which was always my primary function or focus, whatever office may be involved. It was a determination. At the time prior to filing, I did not know who may or who may not file. I did not know that a Republican was not going to file. Those all became issues later on. The straight answer is that that was not my focus at the time. And either I chose – and I did not make a choice because it was conscious decision; it was just an item that I did not contemplate at the time. It was a choice that I did not contemplate at the time.²

Bernabei became concerned about the mayoral race in April, when he realized that the Republican Party would not field a candidate, and that the Democratic contenders were both, in his mind, unprepared to handle the responsibilities of office.

Q: Did there come a time when you began to think seriously, not in passing, but seriously about the prospect of seeking the mayoralty as an Independent?

A: I was aware during the primary election season, of course; you know, received some literature, reading the newspapers, gossip, conversations, you know, as to the quality and the nature of the campaign. But, again, that's discussed not to belabor the point.

Two focal points or galvanizing points occurred. They occurred late. One I believe was on April 22. This was a Wednesday. That was the day of the debate.

* * *

In short follow up to that, immediately following Sunday, which was April the 26th I believe – that was the date of the [Canton] Repository editorial – I had already contemplated in my own mind; I thought that the Repository probably would not and could not endorse either candidate based upon everything that I had personally seen. When the editorial came out and did not do so and was critical as to the choice and made a call to an Independent, that was the second galvanizing point.³

The poor quality of the Democratic candidates in the primary debate weighed heavily on Bernabei. He knew both Democratic candidates, William J. Healy and Kim Perez, and had worked with both in the past.

² Pet. Ex. B, Transcript of the hearing held before the Stark County Board of Elections, July 6, 2015 (“Tr.”), at 227-28 (Bernabei, direct).

³ Id., at 229-30.

⁴ Id., at 230.

Bernabei had hoped that Perez might grow into a better public servant, but the debate convinced him that he had not.⁴

At the July 6, 2015 hearing, witness after witness – Democrats, Republicans, and several of the Protestors themselves – testified that Bernabei is a man of strong character, who approaches public service with great seriousness. Several testified as to the seriousness with which he approached the decision to run as an independent.⁵

Bernabei himself testified that his decision to run as an independent was made both from a sense of civic duty, and a sense that the Democratic Party had failed to provide the citizens of Canton with any suitable candidate for mayor.⁶

The decision was a difficult one, over which Bernabei ruminated. In the process he consulted not only with Democratic Chairman Giavasis, but also Commissioner Creighton, and Judges Forchione and Reinbold.⁷ Asked what finally pushed him into running, he testified:

And it was a combination or convergence of that state of mind with the, again, the debate and the editorial that led me to seriously under-take this decision and to ultimately make it. I know that sounds ho-key. But it was made for reasons of what I believe to be good government and our obligations as citizens to participate in good government.

Bernabei reached the decision to run on Saturday, May 2, 2015, while vacationing with his wife in Clearwater Beach, Florida. He cut the trip short to return to Stark County earlier than planned the next day, and began finalizing the acts necessary to disassociate from the Democrats.

⁴ Id., at 230.

⁵ See e.g. Tr. at 308-09 (Common Pleas Judge Frank Forchione); 334-35 (Visiting Judge Richard Reinbold); 315-16 (County Commission Janet Creighton, a Republican); 178-80 (Councilman Thomas West, one of the Relators herein, who testified as to Bernabei being an honest, serious, and very circumspect man); 187 (former Stark County Democratic Party Chair Randy Gonzales, who testified Bernabei had disassociated in good faith); 202-08 (Phil Giavasis, Chairman of the Stark County Democratic Party, testified that Bernabei gave serious consideration to running as an independent candidate, discussed it at length with Giavasis before deciding to run, and recognized that it was a weighty and irrevocable decision).

⁶ Tr. at 229, 231-33.

⁷ Tr. at 205 (Giavasis, direct); 309 (Forchione, direct); 329-30 (Reinbold, direct); and 318 (Creighton).

In the week prior to leaving for Florida, Bernabei was leaning more-and-more toward the idea of an independent run for Mayor, but had yet to make a final decision. After consulting with Columbus attorney Don McTigue, to learn what steps he should take to properly disassociate from the party, he began to set up the steps necessary to disaffiliate in advance of his vacation, so that he would have his “ducks in a row” should he decide to run while out of town.

Before he left, Bernabei drafted letters resigning his membership in the three democratic clubs to which he belonged, and from the County Democratic Central Committee. He intended to hand those letters directly to Phil Giavasis, but failed to connect with him before leaving the state. Instead, he passed the letters along to Jeannette Mullane, an employee of the Board of Elections, with whom he met on April 30, 2015.⁸ Bernabei asked her to hold the letters for him until he contacted her regarding his final decision, in which event he would ask that she pass the letters along to Giavasis. Mullane agreed.⁹

Bernabei returned from Florida on Sunday, May 3, 2015, prepared nominating petitions in support of his independent candidacy, and distributed them to friends and associates to be circulated.¹⁰ The next day, he made two visits to the Board of Elections.

During the first, at about 2:00 p.m., Bernabei voted a provisional non-partisan ballot, submitted letters resigning as the treasurer to the three Democratic campaigns which he served in that capacity, and submitted the paperwork necessary to replace the treasure of his own (County Commissioner) campaign committee with a non-partisan.¹¹

⁸ Bernabei met Mullane after he had signed the month-to-month lease on the University Avenue rental home, into which he moved on the evening of Sunday, May 3, 2015, after returning from Clearwater Beach. The circumstances of the meeting, viz his moving back to Canton, are discussed latter in this Brief.

⁹ Tr. at 249-50 and Bernabei Ex. B, submitted herein as Pet. Ex. E, Tab Resp. Ex. B. Bernabei agreed that the process by which the letters were submitted was inelegant and hurried, and that he would have been better off using postal mail. But his unambiguous intent in having vouchsafed the letters to Mullane was that they reach Giavasis should Bernabei decide to run for mayor, and he was ensured that they would, which they did.

¹⁰ Tr. at 256-57 (Bernabei, direct).

¹¹ Tr. at 77 (Bernabei, cross, non-partisan ballot) and 264 (Bernabei, direct)(provisional ballot); 265 and Pet. Ex. E, Tabs Resp. Ex. D and E (substitution of Michael Hanke as Bernabei

Later that afternoon, Bernabei filed his own nominating petitions, as an independent candidate for Mayor of Canton.¹²

B. The Move to Canton

Bernabei understood that, as a matter of law, he would have to establish residency in Canton prior to submitting his nominating petitions in order to run for mayor.

To prepare for this eventuality, on April 29, 2015, Bernabei signed a lease for a home on University Avenue in Canton. He paid the owner of that house, Bob Johns, \$1,000.00 rent for the month of May 2015. The lease was on a month-to-month basis, with an option to renew.¹³

During his meeting with Mullane the next day, Bernabei filled out a change-of-address form, which he gave to Mullane (Deputy Director of the Board of Elections) to be filed with the Board in the event he should decide to run for mayor.

Mullane, who stated that she would be working that Sunday in preparation for the upcoming primary, agreed to hold the form, and to file it with the Board should Bernabei inform her that he intended to run.¹⁴ He asked her to file the form in a phone call made on either Saturday, May 2, 2015 or the next morning.¹⁵

The Relators (Merit Brief, at 4-5) fix upon the notion that the home in which Bernabei lived on May 4, 2015, the date his petitions were filed, was not his permanent residence, but only someplace he lived while waiting for another home he owned, also in Canton, to become vacant so that he could move in. That is true, and, as we will demonstrate below, entirely immaterial to the question of whether Bernabei is eligible to run for mayor.

The reason for the unusual move, however, bears telling, if only to dispel the overblown claims of political chicanery recklessly laid by the Relators.

campaign treasure); 266 and Pet. Ex. E, Tab Resp. Ex. F (letters of resignation from the three Democratic campaigns).

¹² Id at 265-66 (Bernabei, direct).

¹³ Tr. at 240-41 and Pet. Ex. E, Tab Resp. Ex. A (Bernabei, direct, and lease).

¹⁴ Tr.

¹⁵ Tr. at 255 (Bernabei, direct).

The uncontroverted evidence adduced before the Board demonstrated that Tom Bernabei last slept in his home in Jackson Township prior to leaving for Florida for the first weekend in May. Bernabei returned from Florida on Sunday, May 3, 2015, moved a few possessions into that the University Avenue house that evening, slept there that night, and has never since returned to sleep in Jackson Township.¹⁶

Bernabei, who long owned and still owns a house on Lakecrest Street in Canton (in which he and his wife have lived since May), rented the University Avenue house only because the tenants in the Lakecrest home were scheduled to close on a home of their own at some point in the month of May. Bernabei had no way of knowing when that closing would occur, and had no control over when in May his tenants would vacate the Lakecrest property. As it happened, the tenants closed on their own home sooner than expected, and he was able to move to Lakecrest Street on May 7th. But he had no way of knowing that when he rented the University Avenue house, in which he was prepared to stay for a month , or longer, if need be.¹⁷

Visiting Judge Reinbold visited Bernabei at the University Avenue home during his stay there and found from the surroundings that is was “obvious that he was in that place to live.”¹⁸

On that date that matters, May 4, 2015, University Avenue was the place to which Tom Bernabei intended to return when absent. As we will demonstrated below, it met the statutory definition of his residence on that date, and would have for many days to come, had it not been for the happenstance that his tenants vacated the Lakecrest home sooner than expected.

Tom Bernabei testified that he has no intention of returning to Jackson Township if he loses the mayoral election, and intends to remain in Canton at the Lakecrest Street home for the foreseeable future.

¹⁶ Tr. at 260-61 (Bernabei, direct). The Relators best efforts to refute the permanency of this move are underwhelming. They contend that Tom Bernabei secretly intends to return to Jackson Township (they never say when), which they infer from the fact that he sought a residency waiver from Canton City Council, allowing him to live in Jackson Township, while a city employee. (Merit Brief, at 6). Bernabei was last a Canton employee in 2008. (Complaint, ¶ 65).

¹⁷ Tr. at 237-44 (Bernabei, direct).

¹⁸ Tr. at 332-33 (Reinbold, direct).

At the hearing, Tom Bernabei testified that he and his wife had retained the services of a realtor and were preparing to list their Jackson Township house for sale, and would do so as soon as it was ready to be shown to potential buyers. Bernabei intends to sell the Jackson Township house, and does not intend, and has never intended, to return there.¹⁹

– LAW & ARGUMENT –

The two simple questions presented in the matter sub judice cast an enormous shadow over political freedoms that Tom Bernabei, and those who support his candidacy, have the right to take for granted as Americans. Every one of us has the right to shape his own political identity, by choosing to associate with a major political party, or by choosing not to.

Our form of government is built on the premise that every citizen shall have the right to engage in political expression and association. This right was enshrined in the First Amendment of the Bill of Rights. Exercise of these basic freedoms in America has traditionally been through the media of political associations. Any interference with the freedom of a party is simultaneously an interference with the freedom of its adherents. All political ideas cannot and should not be channeled into the programs of our two major parties.

Sweezy v. State of New Hampshire by Wyman, 354 U.S. 234, 250-51, 77 S.Ct. 1203, 1 L.Ed.2d 1311 (1957)(plurality).

No less important is the right of those who support Tom Bernabei to vote for the candidate of their choice. In defense of their interests – those of the voters – this Court has required that state election laws, including those governing ballot eligibility, be liberally construed in favor of putting putative candidates on the ballot.

“Words limiting the right of a person to hold office are to be given a liberal construction in favor of those seeking to hold office, in order that the public may have the benefit of choice from all those who are in fact and in law qualified.”

¹⁹ Tr. at 98-100 (Bernabei, cross), 260-61 (Bernabei, direct). Mrs. Bernabei was delayed in this move only because (a) she had a scheduled vacation with friends in Hilton Head during a week in early May, and (b) because she insisted that fairly extensive cleaning and painting be done before she began to move furniture and other possessions into the Lakecrest home. Bernabei, Tr. at 261-63. It may be that Relators live among people for whom moving house is a speedy single-day affair. For a couple in their sixties, with a lifetime of accumulated possessions, who own two homes and are downsizing into the smaller of them, the reality is self-evidently more protracted.

State ex rel. Schenck v. Shattuck, 1 Ohio St. 3d 272, 274, 439 N.E.2d 891 (1982) (quoting *Gazan v. Heery*, 183 Ga. 30, 42 (1936)); *Accord: State ex rel. Allen v. Warren Cty. Bd. of Elections*, 115 Ohio St.3d 186, 2007-Ohio-4752, 874 N.E.2d 507, ¶ 20. A liberal construction of Revised Code Sections 3513.257 (governing disaffiliation) and 3513.262 (addressing residency) is accordingly appropriate in this case, because both those statutes are being invoked by the Relators to preclude Bernabei from appearing on the ballot.

The Relators assert that *State ex rel. Husted v. Brunner*, 123 Ohio St.3d 288, 2009-Ohio-5327, 915 N.E.2d 1215, ¶ 14, requires a strict construction of election statutes unless the statute itself provides for substantial compliance. But *Brunner* does not provide a contrary rule of decision, that trumps *Shattuck*, for two reasons.

First, the portion of *Brunner* upon which the Relators rely deals with the construction of electoral statutes, and the discharge of technical requirements by boards of election generally, while *Shattuck* applies to cases such as this, where a statute is being invoked to limit a candidate's access to the ballot. *Id.*, at ¶ 14, 16. It is axiomatic that the specific case precludes a contrary application of the more general.

Second, the language from *Brunner* on which the Relators rely was used in a very different context, that is, to prevent a board of elections from exercising extra-statutory power, as opposed to using the statutory mechanisms vouchsafed to it by the Ohio Revised Code. The liberal construction rule of *Shattuck*, and not the general rule of *Brunner*, governs this case.

Finally, even if *Brunner* were to provide the rule of interpretation in this case, the record, as explained below, demonstrates that Bernabei strictly complied with the stated requirements of Sections 3513.257 and 3513.261 in any event, by declaring his disaffiliation in good faith, and by moving to Canton (for the long term) prior to filing his petitions.

Relators must demonstrate, by clear and convincing evidence, that Bernabei is not eligible to run for mayor as an independent, in order for a writ of prohibition to issue. *State ex rel. Monroe v. Mahoning Cty. Bd. of Elections*, 137 Ohio St.3d 62, 2013-Ohio-4490, 997 N.E.2d 524, ¶ 25 (applying a clear and convincing evidence standard to deny a writ of prohibition based on claims an independent mayoral candidate had failed to disaffiliate from the Democratic party prior to running for mayor of Youngstown).

Clear and convincing evidence is that measure or degree of proof which is more than a mere ‘preponderance of the evidence,’ but not to the extent of such certainty as is required ‘beyond a reasonable doubt’ in criminal cases, and which will produce in the mind of the trier of facts a firm belief or conviction as to the facts sought to be established.

Cross v. Ledford, 161 Ohio St. 469, 120 N.E.2d 118 (1954), syllabus ¶ 3.

Secretary Husted found that the Relators had failed to demonstrate, by clear and convincing evidence, either that Bernabei had not disaffiliated from the Democratic Party in good faith, or that he was not an elector in the city of Canton when his nominating petitions were filed.²⁰ His decision is entitled to substantial deference, and was, in any event, altogether correct.

I. WHEN THE SECRETARY OF STATE BREAKS THE TIE VOTE OF A COUNTY BOARD OF ELECTIONS, IN FAVOR OF ALLOWING A PUTATIVE CANDIDATE TO APPEAR ON THE BALLOT, THE SECRETARY’S DECISION IS ENTITLED TO GREAT DEFERENCE, AND SHOULD ONLY BE DISTURBED BY THIS COURT IN INSTANCES OF FRAUD, CORRUPTION OR ABUSE OF DISCRETION.

This Court reviews tie-breaking votes by the Secretary of State for an abuse of discretion. *Whitman v. Hamilton Cty. Bd. of Elections*, 97 Ohio St.3d 216, 2002-Ohio-5923, 778 N.E.2d 32, ¶ 11. Relators have not alleged fraud or corruption, but rather have charged (Merit Brief, at 2) that Secretary Husted abused his discretion because he “applied a less than rigorous standard” in determining whether Bernabei complied with state election laws. The gravamen of this seems to be that Secretary Husted interpreted the ballot access provisions in this case liberally, rather than strictly. Of course, as previously demonstrated, such an interpretation is not erroneous, but rather in keeping with established precedent.

²⁰ Pet. Ex. A, at 2-3.

But making an error of law – which is what the Relators claim the Secretary did – is and of itself is not an abuse of discretion. “The term ‘abuse of discretion’ connotes more than an error of law or judgment; it implies that the court’s attitude is unreasonable, arbitrary or unconscionable. *State ex rel. Bitter v. Missig*, 72 Ohio St.3d 249, 253, 1995-Ohio-147, 648 N.E.2d 1355, 1358 (1995)(quoting *Rock v. Cabral*, 67 Ohio St.3d 108, 112, 616 N.E.2d 218, 222 (1993)). *Accord: State ex rel. Brown v. Butler Cty. Bd. of Elections*, 109 Ohio St.3d 63, 66, 2006-Ohio-1292, 846 N.E.2d 8, ¶ 23 (2006) (applying the “unreasonable, arbitrary or unconscionable standard in a prohibition action related to a contested election); *Cooker Restaurant Corp. v. Montgomery Cty. Bd. of Elections*, 80 Ohio St.3d 302, 305, 686 N.E.2d 238 (1997) (same). As the late Chief Justice Moyer observed, the standard is not easily met, nor should it be.

The abuse-of-discretion standard affords great deference to the secretary of state's decision. “An abuse of discretion *** must be more than an error of law or an error of judgment. It means discretion exercised to an end or purpose not justified by, and clearly against, reason and evidence.” “Before the judiciary will interfere in such a case, it must clearly appear that such officer has so far departed from the line of his duty under the law that it can be said he has in fact so far abused such discretion that he has neglected or refused to exercise any discretion.” It is important that our review of the conduct of public officials in the performance of their duties not reflect our personal opinions regarding the desirability of the decision produced by a reasonable exercise of their discretion, nor should it be our purpose to weigh the credibility of the evidence of competence submitted to the secretary.

Public officials, from high-ranking officers such as the secretary of state to trial court judges, are elected because the voters of this state trust them to use their discretion for the public good. “Wrong” decisions may occasionally be made and go uncorrected, but that is the reality of the abuse-of-discretion standard. As this court stated in 1884, “the principle is too firmly established to be questioned, that where a public officer is invested with discretionary power concerning the performance of a public duty required at his hands, or, wherever in determining the course of official action he is called upon to use official judgment and discretion, his exercise of them, in the absence of bad faith, fraud and gross abuse of discretion, will not be controlled or directed by mandamus.”

State ex rel. Summit Cty. Republican Party Executive Commt. v. Brunner, 118 Ohio St.3d 515, 537-38, 2008-Ohio-2824, 890 N.E.2d 888, ¶¶ 105-106 (twice in ¶ 105 quoting *State ex rel. Democratic Executive Committee of Lucas Cty. v. Brown*, 39 Ohio St.2d 157, 161 and 161-62, 314 N.E.2d 376 (1974) (in turn quoting *State ex rel. Armstrong v. Davey* 130 Ohio St. 160, 163, 4 O.O. 38, 198 N.E. 180 (1935)) and in ¶ 106 quoting *State ex rel. Ins. Co. v. Moore*, 42 Ohio St. 103, 108 (1884)).

Finally, as to this point, an abuse of discretion never consists in choosing between conflicting evidence. “We will not substitute our judgment for that of a board of elections if there is conflicting evidence on an issue.” *State ex rel. Reese v. Cuyahoga Cty. Bd. of Elections*, 115 Ohio St.3d 126, 2007-Ohio-4588, 873 N.E.2d 1251, ¶ 32 (quoting *State ex rel. Wolfe v. Delaware Cty. Bd. of Elections*, 88 Ohio St.3d 182, 185, 724 N.E.2d 771 (2000)). As demonstrated next, this principal – while applicable to both the arguments advanced by the Relators – in in and of itself fatal to the arguments regarding Tom Bernabei residency.

II. THE SECRETARY OF STATE DID NOT ABUSE HIS DISCRETION, NOR ACT IN A MANNER CONTRARY TO LAW, WHEN HE FOUND THAT THE RELATORS HAD FAILED TO ESTABLISH – BY CLEAR AND CONVINCING EVIDENCE – THAT TOM BERNABEI WAS NOT A RESIDENT OF CANTON, AND THUS INELIGIBLE TO RUN FOR MAYOR, ON MAY 4, 2015.

This Court has consistently refused to find an abuse of discretion in cases where boards of elections decided a contested residency claim based upon conflicting evidence. *State ex rel. Duncan v. Portage Cty. Bd. of Elections*, 115 Ohio St.3d 405, 407, 2007-Ohio-5346, 875 N.E.2d 578, 581, ¶ 16 (denying mandamus in an expedited election case where the some record evidence favored finding that the putative candidate lived in a city, and some did not); *State ex rel. Stine v. Brown Cty. Bd. of Elections*, 101 Ohio St.3d 252, 255, 2004-Ohio-771, 804 N.E.2d 415, 418, ¶ 21 (2004) (refusing mandamus when record contained conflicting evidence as to putative candidate’s intentions regarding his residence) *State ex rel. Herdman v. Franklin Cty. Bd. of Elections*, 67 Ohio St.3d 593, 596, 1993-Ohio-24, 621 N.E.2d 1204, 1206 (1993)(refusing mandamus where the board of elections found that he weight of contested evidence demonstrated a putative candidate’s non-residency, despite conflicting evidence).

It would be an act of charity to the Relators to call the evidence of residency in this case conflicted. Bernabei established – and the Relators do not contest – that he rented the house on University Avenue in Canton on April 29th, moved into that house on the May 3d, and returned to sleep there on the date his petitions were filed, May 4th.

The record, summarized above, demonstrated that Bernabei never thereafter returned to live in his Jackson Township house, has retained a realtor to sell that house, and intends to live in Canton, on Lakecrest Street, for the foreseeable future, barring a move South after retirement.²¹

The record further established that Bernadette Bernabei – Tom’s wife – moved into the Lakecrest home in mid May, and that the delay in her doing so was based on the fact that she spent a portion of early May out of state, and insisted that various repairs and repainting be done at Lakecrest before she moved the family furniture there.²²

The Revised Code provides, in relevant part:

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.

OHIO R.C. § 3503.02 (West 2015). This Court has held expressly held that questions of residency are governed by Section 3503.02, and that in considering the requirements of the statute, “the person’s intent is of great import.” *Stine*, 101 Ohio St. 3d at 254. There can be no serious question that Bernabei (and his wife) intended to make Canton their home, and that Bernabei moved into the city on May 3rd.

Relators (a) urge a technical reading of the statutes regarding residency, (b) insist that Tom Bernabei was technically a resident of Jackson Township as long as his wife remained there, (c) fixate upon what they call the temporary nature of the University Avenue house, and (d) urge a technical reading of Title XXXV, emphasizing the supposedly (but not really) critical distinction between his residence and his domicile. None of these arguments, alone or in combination, suffices to show that the Secretary of State abused his discretion.

²¹ See *Supra*, Notes 18 and 19 and accompanying text, and Tr. at 92 (Bernabei, cross).

²² Tr. at 261-63 (Bernabei, direct).

As an initial matter, this Court has not read the residency requirements of Title XXXV rigidly, but rather with enough slack in the joints to reflect the realities of a mobile electorate. Section 3503.02 “emphasizes the person’s intent to make a place a fixed or permanent place of abode.” *Duncan*, 115 Ohio St. 3d 405, 407, ¶ 11.

The Relators excitedly seize on the word “permanent,” as if the fact that Bernabei moving from University Avenue to Lakecrest Street invalidates the fact that his place of residence, from May 3, 2015 onward, has been in Canton. They also insist that while a person may have many residences, he can have only one domicile for purposes of election law, and that on May 4, 2015, Bernabei did not have the intent to stay on University Avenue sufficient to make that his domicile. These are very clever arguments, especially the use of the word domicile, which in the vernacular, if not the legal sense, connotes a house.

But these arguments depend upon an unspoken assumption: that the “place” to which Section 3503.02(A) refers is a house, or an apartment, or a street address. But that is not true. The statute itself, and the cases applying, consistently treat “place” as referring **not** to a given street address or building, **but** to a particular jurisdiction - a county, city or village.

- (B) A person shall not be considered to have lost the person’s residence who leaves the person’s home and goes into **another state or county** of this state, for temporary purposes only, with the intention of returning.
- (C) A person shall not be considered to have gained a residence in any **county** of this state into which the person comes for temporary purposes only, without the intention of making **such county** the permanent place of abode.

R.C. § 3503.02 (B) and (C)(West 2015)(emphases added).

In case after case, this Court has considered evidence of place in which a person resides, for purposes of Section 3503.02, in light of the **jurisdiction** in he lives, intends to live, or to which he intends to return.

In *Brunner*, the Court taught that when a candidate has two homes, but repeatedly emphasized his intention to make his permanent residence in one county, and not the other, the board of election was bound to afford great weight and deference to his profession of intent. Applying Section 3503.02(A), the Court concluded that then-State-Senator Husted had a fixed place habitation: Montgomery County.

[T]he secretary of state failed to accord proper weight to Husted’s intent that his Kettering home remain his permanent residence for purposes of voting. R.C. 3503.02 “provides that the person’s intent is of great import,” and thus “emphasizes the person’s intent to make a place a fixed or permanent place of abode.”

Brunner, 123 Ohio St.3d 288, ¶ 30 (citing, seriatim: *Stine*, 101 Ohio St.3d 252, ¶ 15; *Duncan*, 115 Ohio St.3d 405, ¶ 11.

[T]he evidence before the secretary of the state and the board of elections established that **Montgomery County is the place in which Husted’s habitation is fixed** and to which he has the intention of returning.

Brunner, 123 Ohio St.3d 288, ¶ 31 (citing R.C. 3503.02(A)(emphasis added).

In *State ex rel Klink v Eyrich*, 157 Ohio St. 338, 105 N.E.2d 399 (1952), this Court held that a man living in Franklin County, whose family lived in Franklin County, could be considered a resident of Hamilton County, for purposes of the predecessor to Section 3503.02 (General Code § 4785-32), because he maintained a house in Cincinnati to which, in the long term, he ultimately intended to return. *Klink*, 157 Ohio St. at 342 (Taft, J., concurring in the judgment).

The Relators argue Bernabei filed his petitions while living on University Avenue, but moved to Lakecrest thereafter (Merit Brief, at 3), thereby changing precincts, and imply that this somehow negates his status as an elector on May 4, 2015. Their argument is opaque.

For one thing, while the general form of a change of address outlined by R.C. § 3513.261 contains an affirmation as to precinct, the actual form signed by Bernabei, reproduced on Page 4 of Relator’s Merit Brief, does not, but only specifies his address. That comports with what the Relators say was required of him, that he had the right to vote “then and there, and not at some future place and time.” On May 4, 2015, Tom Bernabei resided in Canton, and could vote there.

The focus on precinct is plainly an effort to create a distinction without a difference. The Relators never tell us why it matters that Bernabei moved from one Canton precinct to another, because it matters not at all. R.C. § 733.02 requires only that a mayoral candidate be an elector within the city in which he runs for office. Bernabei has been exactly that since May 3rd.²³

Nor do the Relators ask this Court to craft a remedial rule, or propose any solution to the (non-existent) problem of a candidate moving from one place, to another, within the same jurisdiction, between the time he files a nominating petition and . . . when?

How long was Bernabei required to remain at University Avenue? Relators claim that his moving to Lakecrest on May 7, 2015 is evidence of a sham.

But the uncontroverted direct evidence demonstrates that it was the result of happenstance – Lakecrest becoming available sooner than anyone imagined. Would Relators protest if he had stayed until June? Or was he required to stay at University Avenue until the General Election? Why? What public policy purpose would be served by that?

Nor can one infer that Bernabei “really” resided in Jackson Township from the fact that Mrs. Bernabei did not move into the Lakecrest house until middle May.

The basis for her delay has a prosaic explanation, which the Secretary of State chose to accept. The Relators urge the Court to elevate the language of R.C. § 3503.02(D) over the remainder of the statute. This Court rejected precisely that invitation in *Brunner*, 123 Ohio St.3d 288, ¶¶ 28-32, and should reject it here. Section 3503.02(D) is to be construed in light of all the circumstances of residency, and not applied mechanically. *State ex rel. Spangler v. Bd. of Elections of Cuyahoga Cty.*, 7 Ohio St.3d 20, 21, 455 N.E.2d 1009 (1983)(weighing the intentions of family members living outside the jurisdiction for purposes of determining residency).

²³ Relators rote citation to *State ex rel. Higgins v. Brown*, 170 Ohio St. 511, 512, 166 N.E.2d 759 (1960) provides no support for their claim that precinct matters here. Precinct mattered in *Brown* because the Burke, the putative delegate in that case, sought to represent the 23rd Congressional District at the Democratic national convention, but lived in precinct that fell outside the boundaries of that district. Beyond that, *Brown* stands for the proposition that a truthful declaration of an elector’s residence is of great importance. But Bernabei truthfully declared his address on May 3rd, and the Relators have not shown otherwise.

In *Spangler*, the Court cited *Cox v. Village of Union City*, 84 Ohio App. 279, 87 N.E.2d 374 (2nd Dist.1948) as an example of a case in which a spouse living outside the jurisdiction did not negate the eligibility of her husband to run for village marshal.

[I]n *Cox* . . . a married man was not denied a voting residence in Union City, Ohio because his wife temporarily lived in Union City, Indiana due to a housing shortage, having the intention of joining her husband as soon as accommodations could be located.

The same result should obtain here, where the evidence demonstrated that Mrs. Bernabei intended to join, and did join her husband in Canton as soon as it was practical.

The previously mentioned distinction between residence and domicile does nothing to alter the foregoing analysis. The very authority upon which the Relators rely (Merit Brief, at 7) demonstrates as much.

In *Schill v. Cincinnati Ins. Co.*, 141 Ohio St.3d 382, 389, 2014-Ohio-4527, 24 N.E.3d 1145, ¶ 30 (2014) considered the question of where an insured was domiciled for purposes of insurance coverage. The court explained that:

Because “domicile” and “residence” are usually in the same place, they are frequently used as if they had the same meaning. “Domicile,” however, means living **in a locality with intent to make it a fixed and permanent home**, while “residence” simply requires bodily presence as an inhabitant in a given place.

Schill, 141 Ohio St.3d 382, ¶ 25 (2014)(quoting *Fuller v. Hofferbert*, 204 F.2d 592, 597 (6th Cir. 1953)(emphasis added). This puts the lie to the unspoken assumption of the Relators that, as a residence or a domicile, the “place” to which R.C. §3503.02(A) refers is a house. That is parsing the geography too fine, and for no good reason. The place to which Tom Bernabei intended to return after May 3, 2015, and both his residence and domicile, was Canton, Ohio.

Relators have one more argument *viz* residency, that is scurrilous and bears passing refutation: the claim that to allow Bernabei on the ballot would be to encourage carpetbaggers unfamiliar with a given place to run for office there. A complete refutation of this may be found in Paragraph 65 of the Relator’s Complaint, which thoughtfully details the four decades of public service which Tom Bernabei has rendered to Canton and Stark County.

III. THE SECRETARY OF STATE DID NOT ABUSE HIS DISCRETION, NOR ACT IN A MANNER CONTRARY TO LAW, WHEN HE FOUND THAT THE RELATORS HAD FAILED TO ESTABLISH – BY CLEAR AND CONVINCING EVIDENCE – THAT TOM BERNABEI HAD FAILED TO DISAFFILIATE HIMSELF FROM THE DEMOCRATIC PARTY IN GOOD FAITH.

Relators devote nearly half their Merit Brief to a lengthy exegesis about the perils Tom Bernabei brings to the two party system. The merits of that system, the scourge of independent candidates and the interest in intra-party discipline are explained by political scientists, reporters and law review editors. We are told cautionary tales about Charlie Crist and Donald Trump. It is lengthy, in places interesting, and altogether irrelevant to this matter.

The actions needed to disaffiliate from a political party in Ohio are not up for grabs in this case. The General Assembly has specified the steps required, the Sixth Circuit has narrowly construed its handiwork, and this Court has repeatedly found evidence of pre-petition partisan activity – of the sort with which the record is bloated – to be inadequate to the task of proving disaffiliation in bad faith.

The system, created by the legislature, narrowed by the Sixth Circuit, and refined by this Court, works. It should not be altered to allow the Relators to run an unopposed candidate for mayor in November. The record is replete with evidence that Tom Bernabei irrevocably, actively and in good faith disaffiliated himself from the Democratic party in late April and early May, and the Secretary of State was abundantly justified in finding that the Relators had failed to provide otherwise by clear and convincing evidence.

A. The General Assembly Adopted R.C. 3513.257 As a Measured and Deliberately Modest Response to a Specific Set of Public Policy Concerns, and this Court Should Resist the Invitation to Tread Upon the Legislature’s Prerogative, and to Depart from Its Own Well Reasoned Precedents, By Adopting a More “Rigorous” Interpretation of that Statute.

Relators write at length about the importance of the two party system and the perils associated with independent candidates. In the process, they identify various public policy evils which the state has a constitutionally cognizable interest in legislating to prevent.

Those are some of the same evils identified by the Sixth Circuit as constitutionally permissible interests which might justify restrictions on ballot access in *Morrison v. Colley*, 467 F.3d 503, 508 (6th Cir. 2006), which makes *Morrison* an appropriate point of departure for the analysis that follows. In that case, Morrison sought to run as an independent candidate for Congress. The Franklin County Board of Elections determined that he was affiliated with the Republican Party, and was thus ineligible to stand for office as an independent. *Id.*, at 504.

Morrison sued under 42 U.S.C. § 1983 alleging that the Board had violated his First and Fourteenth Amendment rights by limiting his access to the ballot. The Sixth Circuit, noting then-recent developments in the law, reasoned that not all restrictions on electoral participation merit strict scrutiny. Rather “[w]hen a state electoral provision places no heavy burden on associational rights, ‘a State’s important regulatory interests will usually be enough to justify reasonable, non-discriminatory restrictions.’” *Morrison*, 467 F.3d at 507 (quoting *Timmons v. Twin Cities Area New Party*, 520 U.S. 351, 358, 117 S.Ct. 1364, 137 L.Ed.2d 589 (1997)).

Morrison was excluded from the ballot under the provisions of R.C. § 3513.257 which, then-as-now, required putative independent candidates “to claim, no later than 4:00 p.m. of the day before the primary elections, that they are free of affiliation with any political party.”

In order to assess the constitutionality of that restriction, the Sixth Circuit had to identify the state interests in support of which those restrictions were enacted. That was an easy task, since, then-as-now, the asserted state interest was spelled out, verbatim, in the statute itself.

The purpose of establishing a filing deadline for independent candidates prior to the primary election immediately preceding the general election at which the candidacy is to be voted on by the voters is to recognize that the state has a substantial and compelling interest in protecting its electoral process by encouraging political stability, ensuring that the winner of the election will represent a majority of the community, providing the electorate with an understandable ballot, and enhancing voter education, thus fostering informed and educated expressions of the popular will in a general election. The filing deadline for independent candidates required in this section prevents splintered parties and unrestrained factionalism, avoids political fragmentation, and maintains the integrity of the ballot.

Morrison, 467 F.3d at 508 (quoting R.C. § 3513.257).

A list of possible state interests in limiting independent finds its way into the Relators Merit Brief (at 16-17) through a circuitous path, an unreported Tenth Circuit decision, which the Relators cite before stating that Ohio has “embraced” the goals in adopting Section 3513.257.

An examination of their list, however, reveals that the asserted interests are not at all the same as those recited by the General Assembly as its bases for adopting Section 3513.257, and this Court should not fall for the bait-and-switch. Ohio has expressly articulated the reasons behind the adoption of its non-affiliation statute. They do not include:

- a desire to exclude independents who opt to run late in the game;
- precluding candidates motivated by personal pique;
- thwarting political parties from fielding sham independent candidates to bleed votes from their rivals;
- reserving the general election ballot for major struggles.

The point is not to launch a comparative discussion of the merits of the interests asserted by Colorado and those asserted by Ohio.²⁴ The point is to underscore that the General Assembly has considered the problems posed by independent candidates. It has diagnosed the malady, and it has prescribed a cure, all in R.C. § 3513.257, which reads in part:

Each person desiring to become an independent candidate for an office for which candidates may be nominated at a primary election . . . shall file no later than four p.m. of the day before the day of the primary election immediately preceding the general election at which such candidacy is to be voted for by the voters, a statement of candidacy and nominating petition as provided in section 3513.261 of the Revised Code.

* * *

The deadline, one day prior to the primary election, is the **least drastic or restrictive means of protecting these state interests**. The general assembly finds that the filing deadline for independent candidates in primary elections required in this section is reasonably related to the state’s purpose of ensuring fair and honest elections **while leaving unimpaired the political, voting, and associational rights secured by the first and fourteenth amendments to the United States Constitution**.

²⁴ This Court has recognized the legitimacy of these interests, and others, as **potential** justifications for limiting ballot access. *State ex rel. Purdy v. Clermont Cty. Bd. of Elections*, 77 Ohio St.3d 338, 344, 1997-Ohio-278, 673 N.E.2d 1351. They are constitutionally cognizable choices, but they are not the choices on which the General Assembly has chosen to hang its’ hat.

Two things about the last paragraph quoted above bear mention.

The first is that the General Assembly desired to advance the interests which it deemed worth protecting in the fashion which least diminished the First Amendment rights of potential candidates. The second is that the Relators are urging this Court to upset that balance, arguing, as they do, for a strict interpretation of the election laws generally, and a stricter interpretation of the disaffiliation requirements.

That suggestion runs counter to the rule articulated in *Shattuck*, 1 Ohio St. 3d at 274, which requires law limiting ballot access to be liberally construed in favor of putative candidates. And while this Court might alter that rule, it ought not. The General Assembly has expressed a public policy preference for protecting the state interests articulated in R.C. § 3513.257 in the least restrictive possible manner.

It is the responsibility of courts to enforce the literal language of a statute whenever possible. A court's role is to interpret, not legislate. Absent ambiguity, the court must give effect to the plain meaning of a statute even when a court believes that the statute results in an unfavorable outcome.

Cablevision of the Midwest, Inc. v. Gross, 70 Ohio St.3d 541, 544, 1994-Ohio-505, 639 N.E.2d 1154 (1994) (citing *Pike-Delta-York Local School Dist. Bd. of Edn. v. Fulton Cty. Budget Comm.*, 41 Ohio St.2d 147, 324 N.E.2d 566 (1975); *Seeley v. Expert, Inc.*, 26 Ohio St.2d 61, 269 N.E.2d 121 (1971); R.C. § 1.49).

It is not this court's role to establish legislative policies or to second-guess the General Assembly's policy choices. "[T]he General Assembly is responsible for weighing [policy] concerns and making policy decisions; we are charged with evaluating the constitutionality of their choices."

Stetter v. R.J. Corman Derailment Servs., L.L.C., 125 Ohio St.3d 280, 297, 2010-Ohio-1029, 927 N.E.2d 1092, ¶ 93 (2010)(quoting *Arbino v. Johnson & Johnson*, 116 Ohio St.3d 468, 2007-Ohio-6948, 880 N.E.2d 420, ¶ 113).

In *Morrison*, the Circuit rejected the contention that R.C. § 3513.257 was vague because it did not specify whether a putative candidate could run by disingenuously claiming to be an independent. The Circuit rejected this argument with all the respect it merited, and held that to be effective, claims of disaffiliation had to be made in good faith. *Morrison*, 467 F.3d at 510.

B. Pre and Post Declaration Activity Are Only Germane in Disaffiliation Cases to the Extent That They Support or Refute, By Inference, The Good Faith of the Putative Candidate in Making His Declaration. The Law Requires No Action Besides the Declaration Itself, and Relators Suggestion that Bernabei Should Have Done More to Demonstrate His Newly Independent Status is Meritless.

Relators point out any number of things they say Tom Bernabei might also have done, in the process of disaffiliating himself from the Democratic Party.

Foremost among these is his having not resigned as Stark County Commissioner, which Relators stress “he could have done” while ignoring that it is something which the law does not require. They fault him for failing to ask a primary candidate for municipal judge to desist from using a radio ad he taped for her in the week before he declared his disaffiliation. They complain he did nothing to prevent the distribution of yard signs and campaign literature previously printed, which bore his name, as treasurer to three Democratic primary candidates. (Merit Brief, at 29-30). But, of course, Bernabei was required to do none of this.

This Court rejected a similar argument in *State ex rel. Davis v. Summit Cty. Bd. of Elections*, 137 Ohio St.3d 222, 2013-Ohio-4616, 998 N.E.2d 1093 (2013). In that case, the Board of Elections refused to place a putative independent candidate on the ballot, in part because it found that she had not engaged in a sufficiently vigorous effort to disaffiliate from the Democratic Party. The Court rejected outright the implication that, beyond a good faith declaration, any such affirmative demonstration was required of her.

In addition, the board abused its discretion because it fundamentally misconstrued the relevant inquiry. Based on her past voting record, the board informs the court, “the Board determined that Relator did not make a good faith attempt to disaffiliate from the Democratic Party.” But the requirement imposed by R.C. 3513.257 and *Morrison v. Colley* is that a candidate must declare her lack of affiliation in good faith, not that she take affirmative action to disaffiliate in order to prove her good faith. In other words, the declaration of disaffiliation can, in some circumstances, be sufficient affirmative action.

Davis, 137 Ohio St.3d 222, ¶ 28.

The claims that Tom Bernabei could have done more to manifest his independence should be assessed in this light. In point-of-fact, however, the record demonstrates that Bernabei did quite a bit in late April and early May to demonstrate his independence.

As previously noted, he resigned from the Democratic clubs to which he belonged, as treasurer to the three Democratic campaigns he served in that capacity, and from the county party Central Committee. He also replaced the treasurer of his own (County Commissioner) campaign with an independent. In short, he took affirmative steps to sever his ties to the Democratic Party and its political machinery. These steps provided the Secretary of State with ample evidence of an intention to sever those ties irrevocably, and thus in good faith. Against this, the Relators adduced only evidence of pre-petition activity, and post-petition admissions, the shortcomings of which are discussed next.

C. The Overwhelming Direct Evidence in the Record Demonstrates that Tom Bernabei Disaffiliated Himself from the Democratic Party in Good Faith, and the Relators Have Adduced No Evidence of Post-Petition Partisan Activity to Undermine that Conclusion.

One year after *Morrison* was decided, then-Secretary-of-State Jennifer Brunner issued an advisory opinion to boards of elections – Opinion 2007-05 – recounting the holding in *Morrison*, and observing that the Circuit had failed to provide examples of the sort of conduct which would support a finding of disaffiliation in bad faith. Secretary Brunner provided two concrete examples of post declaration activity that would support a finding of bad faith: voting in a partisan primary after declaring independence, and serving on a party central committee contemporaneously, or after, such a declaration. She also recapitulated a number of pre-declaration actions which the Circuit in *Morrison* said might be probative of bad faith, but cautioned boards against relying too much on past partisan activity, and in the process denying candidates the fundamental right to change their political affiliation at will.

Additionally, as indicated by the *Morrison* court, indications of party affiliation such as past voting history, information submitted on required election-related filings, political advertisements, participation as a political party officer or member, or holding a public office for which the office holder was nominated through a political party's primary election and elected on a partisan ticket may serve as evidence, though not necessarily conclusive evidence, of party affiliation to support a protest against an independent candidate's candidacy. **For example, voting history, alone, is an insufficient basis on which to disqualify an independent candidate because Ohioans are freely entitled to change or revoke their party affiliation at any time.** However, voting history, together with other facts tending to indicate party affiliation, may be sufficient grounds to disqualify an independent.

SEC. OF STATE OP. 2007-05, June 4, 2007, at 4 (emphasis added).

The Sixth Circuit revisited the question of disaffiliation in *Jolivette v. Husted*, 694 F.3d 760 (6th Cir. 2012), in which it again sustained R.C. § 3513.257 against a First Amendment challenge. In doing so, the Circuit noted that Jolivette, like Morrison, had engaged in post-declaration activity of a decidedly partisan character, in his case, voting in the Republican primary after announcing his candidate as an independent. *Jolivette*, 694 F.3d at 768.

The Circuit held that considering pre-declaration actions was not, *per-se*, unconstitutional. But, collecting state law cases that had been decided in the years since *Morrison*, it observed that not one Ohio case had ever found a candidate to have declared his Independent status in bad faith based upon political activity which occurred prior to his declaration. *Id.*, at 768 (citing *State ex rel Livingston v. Miami Cty. Bd. of Elections*, 196 Ohio App.3d 263, 270, 2100-Ohio-6126, 963 N.E.2d 187, ¶ 31). While proof of post-declaration partisan activity is not a *sine qua non* of bad faith – this Court has held out the possibility that a sufficient quantum of pre-declaration acts could form the basis for a finding of bad faith – no such quantum has ever been found.

When courts have refused to allow an independent candidate unto the ballot, they have identified at least some postpetition evidence to undermine the disaffiliation claim.

* * *

This court has never held that a successful *Morrison* challenge requires postpetition evidence and we do not so declare today. But where the challenge is based solely on prepetition evidence, the evidence needs to be that much more substantial to warrant excluding an otherwise qualified candidate.

Davis, 137 Ohio St.3d 222, ¶ 26-27 (citing: *Jolivette*, 694 F.3d at 767, *Morrison*, 467 F.3d at 510; *State ex rel Lorenzi v. Mahoning County Bd. of Elections*, 7th Dist. Mahoning No. 07 MA 127, 2007-Ohio-5879, 2007 WL 3227667, ¶ 27; *State ex rel. Wilkerson v. Trumbull Cty. Bd. of Elections*, 11th Dist. Trumbull No. 2007-T-0081, 2007-Ohio-4762, 2007 WL 2696769, ¶ 24).

Consider the pre-declaration activity from which the Relators would have the Court infer bad faith. Relators cite Bernabei's long track record of voting as a Democrat. In *Davis*, this Court held that, on its own, past voting history cannot, as a matter of law, support a finding of disaffiliation in bad faith, and noted that such evidence to the record in that case did nothing "to strengthen" the claim for bad faith. *Davis*, 137 Ohio. St.3d 222, ¶ 9.

The reasoning animating that decision can be found in several of this Court's disaffiliation cases: partisans will be partisan, and past activity is – as investment prospectuses are bound to remind us – no guarantee of future performance.

That Thomas Bernabei was once a generous and enthusiastic Democrat does not divest him of his right to leave the party. Past campaign contributions should count for naught in the analysis of good faith, because this Court has held that pre-petition campaign contributions to one's former party do not support a claim of bad faith. In *Davis*, 137 Ohio St.3d 222, ¶¶ 24-35, this Court found claims regarding recent political donations technically relevant, but entitled to little weight in determining good faith, because "there is no necessary correlation between donations and political affiliation."

The court also found that donations made a few weeks before a declaration of disaffiliation “shed little light” on a candidate’s state of mind on the date she declared her independence. A fortiori, contributions made in the even-more-remote past are even less illuminating.

The claim that Bernabei, years ago, served in appointed offices under elected Democrats, associated in Democratic organizations, held leadership positions within the party, and held elective office as a Democrat, even taken together, should carry little given this Court’s decision in *Monroe*, 137 Ohio St.3d 62 (2013), in which a former Democrat, Kitchen, sought to run for mayor of as an independent.

A protest was filed, alleging that Kitchen had disaffiliated himself from the party in bad faith. Like Bernabei, Kitchen had been elected to public office as a Democrat, had served on the Executive Committee of the Mahoning County Democratic Party, and had been appointed to a high ranking position by an elected Democratic, in Kitchen’s case as a leading aide to the mayor of Youngstown, a position he held **after** disaffiliation, and apparently held **while** he was running for mayor. *Monroe*, 137 Ohio St.3d at 62, ¶¶ 3-12. This Court held the sum of Kitchen’s significant, past political activity inadequate to demonstrate that his disaffiliation was in bad faith.

Monroe argues that Kitchen’s voting history should be considered in tandem with the fact that he is the “number-two man” in the administration of a Democratic mayor. However, there is no evidence in the record as to Kitchen’s title, his duties, or the extent to which he has policy-making responsibilities or duties that are more administrative in nature. No Ohio court has ordered the disqualification of an independent candidate based on the fact that he or she holds a nonelective position in a branch of government. And even if a court were inclined to do so, it would take a stronger evidentiary record than the record in this case to show by clear and convincing evidence that the candidate’s claim to be an independent was false or not made in good faith.

Id., at ¶ 25.

Relators have argued that Bernabei has had no real ideological break with the party, maintains cordial relations with some democrats, and has wished his former compatriots well.

But disaffiliation does not require animus or ill will, and the fact that Bernabei has conducted himself as a gentlemen in no way supports a claim of bad faith disaffiliation. *Id.*, at ¶ 26.

A theme to which the Relators have returned again-and-again is that Bernabei should have run in the primary election, and that his failure to have done so somehow implies bad faith.

As an initial matter, Bernabei testified directly to the question of why he did not run in the primary, and how his disaffection with the party only reached a head late in April. His direct testimony on this question is more than sufficient to dispel any inference that his decision not to run in the primary was a stratagem.²⁵ But even if it was, as Relators imply, that would not constitute evidence of bad faith. In *Monroe*, 137 Ohio St.3d 62, ¶ 27, this Court directly rejected the notion that a calculated effort to sit out a primary in order to gain an advantage in the general election is evidence of disaffiliation in bad faith.

No decision has ever touched upon the validity of the party loyalty oaths which Bernabei signed before running as a Democrat. The Relators (Merit Brief, at 24) suggest that the oaths have no expiration, and bind him to the Democratic party as long as he hold elected office as a County Commissioner. This claim is of a piece with their repeated characterization of him as the Democratic Stark County Commissioner, or the Democratic Elected Stark County Commissioner, invented terms which not only have no foundation in case law or statute, but imply that, because Bernabei was elected on the Democratic ticket, the Party has some sort of lien upon him, or the public office in which he serves. That (repugnant) idea elevates the Party over the People.

In *Livingston*, which this Court has twice cited with approval (*Davis*, 137 Ohio St.3d 222, ¶ 27, and *Monroe*, 137 Ohio St.3d 62, ¶ 27) the court observed that “Ohioans are freely entitled

²⁵ Bernabei expressed regret for not having made his mind up early, and testified that he probably should have run in the primary. Regret is not evidence of bad faith. R.C. § 3513.04, the sore loser statute, compels a candidate to choose between a primary run and running as an independent. Bernabei made that choice, and the reason why does not matter. Having opted not to run in the primary, he preserved his right to run, post-disaffiliation, as an independent.

to change or revoke their party affiliation at any time.” Requiring candidates to honor loyalty oaths by remaining in the party during his term of office is inconsistent with this freedom.

No Ohio court has ever found a candidate to have disaffiliated from his party in bad faith absent some evidence of post-petition activity inconsistent with an earnest desire to sever those partisan ties. *Davis*, 137 Ohio. St. 3d 222, ¶ 26 (citations omitted). Relators – apparently mindful of this – characterize certain facts in the record as post-petition activity.

Some of these, like the claim that a picture of Bernabei still hangs on the wall at Party headquarters, are trivial on their face.

Others, like the claim that the heads of the three local democratic clubs still believe that Bernabei is a member, are irrelevant. Bernabei testified he submitted letters of resignation to Chairman Giavasis through a trusted intermediary, Mullane. Bernabei is not responsible for a breakdowns in intraparty communication, and it is his state of mind in seeking to resign from those clubs, and not the subjective belief of those he reasonably endeavored to notify regarding his resignation, that is evidence of good faith.

Beneath the surface of other supposedly post-partisan acts lie claims that Bernabei did not undo acts he had taken prior to filing his petitions. Foremost among these is the claim that Bernabei continued to endorse municipal court candidate Kristine Guardado, because he did not ask her not to run the radio spot he had taped for her in April. Bernabei testified, based on his own forty years in politics, that such a request would have been futile, and that his opinion of Guardado’s qualities was not dependent on his sharing a partisan affiliation with her.²⁶

And, in any event, requiring Bernabei to somehow squelch that ad would impose on a requirement to affirmatively act, alien to R.C. § 3513.257.

²⁶ Tr. at 273-74 (Bernabei, direct). Relators never explain how, even for an independent, backing one Democrat over another in a primary would be an act of partisanship.

The granddaddy of all the alleged post-petition activity in which Bernabei is said to have engaged is, of course, a failure to act.

Relators say that Bernabei cannot be considered to have disaffiliated from the Democratic Party because he has not resigned as County Commissioner, an office for which he ran as a Democrat. There is no authority for the proposition that such a resignation is required.²⁷

The General Assembly has imposed a single requirement on the putative independent: a good faith declaration of disaffiliation.

It could just as easily have imposed upon incumbents seeking to disaffiliate the requirement that they resign from offices which they won in partisan elections, but did not.

The idea that the failure to resign is strong, or conclusive evidence of bad faith, not only seeks to alter the scheme crafted by the legislature: it also runs afoul of the holding in *Davis*, which notes that no affirmative post-declaration act is required to demonstrate good faith.

Moreover, it suggests that the Party has some mortgage on the seat held by Bernabei, or that his duties as a Commissioner are to serve, or act in the best interest of the Party, and not the People of Stark County. One simply cannot infer, from his continued desire to serve the citizens of Stark County, that Bernabei remains loyal to, tied to or beholden to the Democratic Party in any way. Relators would have him lay his office upon the altar as the sacrifice needed to seal his disaffiliation. The law requires nothing of the sort, nor should it.

The proper question is whether Bernabei disaffiliated from the Party in good faith. He checked the only statutory box required of him in order to do so.

²⁷ This Court, in dicta, has hinted that continuing to hold a public office to which one was elected on a partisan ticket might be one factor to consider in assessing whether a party disaffiliation was made in bad faith. *Davis*, 137 Ohio St.3d 222, at ¶ 29 (noting that a putative candidate who had never held elective office has limited ways to show disaffiliation).

To the extent it matters at all, his remaining in public office matters because – along with a host of other things – it provides some insight into his sincerity and intentions. It is one point of data, among many.

All those facts, including his continued service, when taken together failed to impress the Secretary of State, by clear and convincing evidence, that Bernabei disaffiliated in bad faith. The record overwhelmingly supports a finding of good faith. But even if the evidence were in equipoise, the Secretary cannot be said to have abused his discretion by opting to draw a conclusion of good faith over bad.

– CONCLUSION –

Respondent respectfully submits that the Relators have failed to meet the requirements for a Writ of Prohibition, and that their petition should accordingly be denied.

Respectfully submitted,
/s/ Raymond V. Vasvari, Jr.
RAYMOND V. VASVARI, JR. (0055538)*
*Counsel of Record
K. ANN ZIMMERMAN (0059486)
VASVARI & ZIMMERMAN
1301 East Ninth Street
1100 Erieview Tower
Cleveland, Ohio 44114-1844
Telephone: 216.458.5880
Telecopier: 216.928.0016
vasvari@vasvarilaw.com
zimmerman@vasvarilaw.com

Counsel for Intervener
Respondent Thomas M. Bernabei

CERTIFICATE OF SERVICE

True and accurate copies of the foregoing Merit Brief were served today, August 20, 2015, via email attachment as PDF documents upon the following at the email addresses below.

Lee Plakas | lplakas@lawlion.com
Robert S. Peck | Robert.peck@cclfirm.com

*Counsel for Relators Morris, Smith, West,
Fisher, Dougherty, Mariol II & Mack*

N. Zachary West | zwest@ohiodems.org

Counsel for Relator the Ohio Democratic Party

Deborah A. Dawson | dadawson@starkcountohio.gov

*Counsel of Record for Respondent
Stark Country Board of Elections*

Sarah E. Pierce | sarah.pierce@ohioattorneygeneral.gov
Zachary P. Keller | zachery.keller@ohioattorneygeneral.gov
Nicole M. Koppich | Nicole.kopitch@ohioattorneygeneral.gov

*Counsel for Respondent Ohio
Secretary of State John Husted*

Respectfully submitted,

/s/ Raymond V. Vasvari, Jr.
RAYMOND V. VASVARI, JR. (0055538)*

*Counsel of Record for Intervener
Respondent Thomas M. Bernabei*