

FRANKLIN COUNTY BOARD OF ELECTIONS
280 EAST BROAD STREET
COLUMBUS, OHIO 43215
(614) 462-3100

MINUTES OF THE MEETING ON

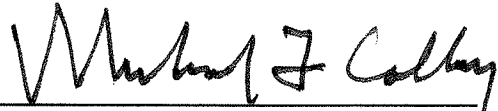
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APPROVED ON 10/13/08

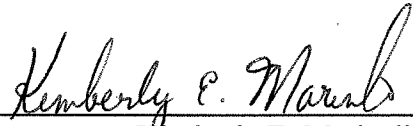
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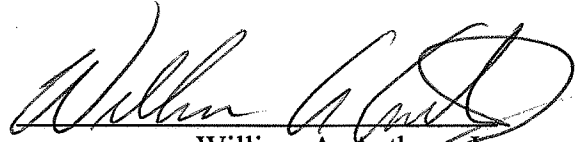
Douglas J. Preisse, Chairman



Michael F. Colley, Esq.

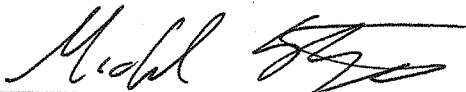


Kimberly E. Marinello



William A. Anthony Jr.

ATTEST:



Michael Sinziano, Director

1 BEFORE THE FRANKLIN COUNTY BOARD OF ELECTIONS

2 - - - - -

3 IN RE: :

4 Board Meeting :

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6 Proceedings before Chairman Douglas J.
7 Preisse, Board Member William A. Anthony, Jr,
8 Board Member Michael F. Colley and Board Member
9 Kimberly E. Marinello, taken at Franklin County
10 Board of Elections, 280 East Broad Street, Room
11 100, Columbus, Ohio on Tuesday, September 9, 2008,
12 at 7:07 o'clock p.m.

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1 APPEARANCES:
 2 Law Offices of James C. Becker
 3 4380 Braunton Road
 4 Columbus, Ohio 43220
 By Mr. James C. Becker,
 5
 On behalf of Mr. Schadek.
 6
 McTigue Law Group
 7 550 East Walnut Street
 8 Columbus, Ohio 43215,
 By Mr. Donald J. McTigue,
 On behalf of the City of Upper Arlington
 and Margaret Concilla.
 9
 10 ALSO PRESENT:
 11 Mr. Michael Stinziano, Director
 Mr. Matthew M. Damschroder, Deputy Director
 12 Ms. Suzanne Brown
 Ms. Karen Cotton, Manager of Elections
 13 Operations
 Mr. Ben Piscitelli, Public Information
 14 Officer
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1 and August 14th, 2008 at 6:40 p.m. be approved as
 2 submitted.
 3 BOARD MEMBER COLLEY: Second.
 4 DIRECTOR STINZIANO: All in favor?
 5 (Board votes unanimously.)
 6 DIRECTOR STINZIANO: All opposed?
 7 Meetings have been approved.
 8 And the next item is the withdraw of
 9 Tommy Lynn Doris. The Board received a letter on
 10 September 4th with her formal withdraw from the
 11 race for Franklin County Prosecutor.
 12 BOARD MEMBER ANTHONY: It is with regret
 13 I move that the Board memorialize the withdraw of
 14 candidacy from Tommy Lynn Doris for the Franklin
 15 County Prosecutor and direct the Director and
 16 Deputy Director to remove her name from the
 17 November 2008 general election ballot, pursuant to
 18 Board policy.
 19 BOARD MEMBER COLLEY: Second.
 20 DIRECTOR STINZIANO: All in favor?
 21 (Board votes unanimously.)
 22 DIRECTOR STINZIANO: All opposed?
 23 Next item is we received a timely-filed
 24 petition from Travis Casper to be a write-in

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1 -----
 2 PROCEEDINGS
 3 -----
 4 CHAIRMAN PREISSE: I think we're all
 5 here; therefore, we will call this meeting of the
 6 Franklin County Board of Elections to order. And
 7 we'll have a roll call, please.
 8 DIRECTOR STINZIANO: Mr. Colley?
 9 BOARD MEMBER COLLEY: Here.
 10 DIRECTOR STINZIANO: Mr. Preisse?
 11 CHAIRMAN PREISSE: Here.
 12 DIRECTOR STINZIANO: Mr. Anthony?
 13 BOARD MEMBER ANTHONY: Here.
 14 DIRECTOR STINZIANO: Ms. Marinello?
 15 BOARD MEMBER MARINELLO: Here.
 16 DIRECTOR STINZIANO: First item we have
 17 is approval of minutes for the meetings held on
 18 July 22nd; July 31st; August 4th; and August 14th,
 19 both an 11 o'clock on August 14th and the 6:40
 20 p.m. meeting on August 14th.
 21 BOARD MEMBER MARINELLO: Mr. Chairman,
 22 I move that the minutes of the meetings that the
 23 Board held on July 22nd, 2008; July 31st, 2008;
 24 August 4th, 2008; August 14th, 2008 at 11 o'clock;

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1 candidate for the 15th Congressional District.
 2 BOARD MEMBER MARINELLO: Mr. Chairman, I
 3 move that Travis Casper, having timely filed a
 4 valid declaration of intent to be a write-in
 5 candidate for the office of the 15th Congressional
 6 District, be certified to the November 4th, 2008
 7 general election ballot as such.
 8 BOARD MEMBER COLLEY: Second.
 9 DIRECTOR STINZIANO: All in favor?
 10 (Board votes unanimously.)
 11 DIRECTOR STINZIANO: All opposed?
 12 The office also received candidates for
 13 the Village of Obetz Charter Commission. We
 14 received six, and they all had valid signatures.
 15 Staff recommendation is that they had the
 16 signatures for valid access.
 17 BOARD MEMBER MARINELLO: I move that the
 18 following candidates for the Village of Obetz
 19 Charter Commission be certified to the November
 20 4th, 2008 general election ballot: Jerry Benson,
 21 1716 Chillicothe Street, Columbus, Ohio 43207;
 22 Ralph Hubner, 2480 East Howard Road, Columbus,
 23 Ohio 43207; Robert M. Jones, 4383 Lancaster
 24 Street, Columbus, Ohio 43207; Virginia K. Peters,

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<p>1 1787 West Arcadia Avenue, Columbus, Ohio 43207; 2 Bonnie L. Wylie, 4277 Orchard Lane, Columbus, Ohio 3 43207; and Gary D Weaver, 2210 Poplar Street, 4 Columbus, Ohio 43207.</p> <p>5 BOARD MEMBER COLLEY: Second. 6 DIRECTOR STINZIANO: All in favor? 7 (Board votes unanimously.) 8 DIRECTOR STINZIANO: Any opposed? 9 I wanted to memorialize that the green 10 and natural law candidates will be filed through 11 the Ohio Secretary of State's office and will be 12 provided for on our official ballot form. 13 Next item on the agenda is the 14 challenges of the City of Upper Arlington 15 Initiative petition on Solid Waste. And we have 16 parties that are here to speak on the issue. 17 DEPUTY DIRECTOR DAMSCHRODER: We'll hear 18 from McTigue first. 19 CHAIRMAN PREISSE: Welcome, and please 20 state your name for the record. 21 MR. McTIGUE: Good evening, Mr. Chairman 22 and members of the Board. I'm Donald McTigue, and 23 I'm here on behalf of the City of Upper Arlington 24 and Margaret Concilla, who jointly filed a protest</p>	<p>1 that not every would-be candidate makes the 2 ballot, not every would-be issue makes the ballot, 3 not every petition is valid. There are legal 4 processes for gaining access to the ballot, 5 whether it be candidates or issues, and these 6 legal processes exist for specific reasons. 7 They exist in part to protect the 8 integrity of the electoral process, in terms of 9 how one gains access to the ballot. They also 10 exist for purposes of protecting the public 11 treasury, because elections are no small matter, 12 in terms of the cost of holding elections. 13 And therefore it's been well-established 14 in Ohio that requirements for gaining access 15 to the ballot are to be strictly applied by 16 election authorities. 17 Now, some of the restrictions on gaining 18 access are procedural, such as how many signatures 19 you need, what constitutes a valid signature; and 20 some of them are subject matter limitations. 21 And in that vain, it's important to keep 22 in mind that not every action that a city council 23 takes, not every action that a city council could 24 take is subject to citizen referendum or citizen</p>
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<p>1 regarding an initiative petition related to the 2 subject of a solid waste collection and disposal. 3 You should have received earlier today 4 copies of a legal memorandum, eight-page legal 5 memorandum, and my exhibits. One of the exhibits 6 that I did not email because of the size -- I'll 7 just tender it right now to the court reporter -- 8 is actually a copy of the petition that I received 9 from Karen Cotton, so you have it as a matter of 10 your official record, of your records. 11 But for purpose of the record of this 12 proceeding, I would like to offer that, as well. 13 This is Exhibit I. 14 So just to review what you should have 15 is you should have an affidavit, in addition 16 to the legal memorandum. In terms of evidence, 17 what you have is an affidavit of the city manager, 18 Virginia Barney, City Manager of Upper Arlington; 19 and you should have Exhibits A through N. 20 And I'll discuss some of those in a few 21 minutes, but I thought it would be easier to kind 22 of get that out of the way, in terms of making 23 sure that we have all of that in the record. 24 I think it's important to say initially</p>	<p>1 initiative; there is specific constitutional 2 limitations. 3 The same part of the Ohio Constitution 4 that grants the right to citizens of a 5 municipality to do initiatives and referenda, also 6 restricts subject matters; at least it limits it 7 to matters that are legislative in nature. 8 And there's been a slew of cases, 9 especially in recent years, from the Ohio Supreme 10 Court, addressing the issue of what types of 11 municipal issues are entitled to make the ballot. 12 And it doesn't matter whether you're a charter 13 municipality or whether you're a statutory 14 municipality, the Supreme Court has specifically 15 held that a charter cannot be broader than the 16 Constitution. 17 And so we're going to talk this evening 18 a little bit about the subject matter of 19 limitations, because that is one of the issues 20 that we protest on. 21 With all due respect to the citizens who 22 signed the initiative petition to submit the 23 ordinance that is contained on the face of the 24 petition, in order to submit that, with all due</p>

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<p>1 respect to them, the problem here is that that is 2 not an ordinance that the Ohio Constitution or the 3 Charter of the City of Upper Arlington permits to 4 go on the ballot. 5 And without legal authority to put 6 something on the ballot, then the Board of 7 Elections should not certify it for the ballot. 8 It's also helpful to keep in mind that 9 when we talk about not everything that a council 10 does or could do would be subject to these rights, 11 that calling something an ordinance does not make 12 it legislative in nature. 13 Whether you call it a resolution, a 14 motion, an ordinance, whatever, it doesn't matter. 15 The Supreme Court of Ohio has said the label 16 doesn't control. What controls is the content 17 and the nature of the proposal or the action of 18 the council. 19 So with that, I'd like to now address 20 some of the specifics of the -- actually address 21 all of the specifics of the protest. And I can 22 kind of combine the first three -- or I'm sorry, 23 the first ground. 24 The first ground is kind of a distinct</p>	<p>1 BOARD MEMBER ANTHONY: Hold on a minute. 2 Where are you looking at? 3 MR. McTIGUE: Well, this is just one 4 copy of the petition itself. 5 BOARD MEMBER ANTHONY: Do we have that? 6 MR. McTIGUE: Do you have a copy of the 7 petition? 8 BOARD MEMBER ANTHONY: Is this the 9 petition? 10 MR. McTIGUE: Yeah, that's it. That's, 11 of course, the second page of the petition. 12 Karen, do you have some extras? 13 I can distribute some of these, if you 14 want. 15 BOARD MEMBER ANTHONY: We probably got 16 it, I just have to find it. 17 All right. I found one, right here. Go 18 ahead. 19 MR. McTIGUE: All right. Sorry about 20 that. 21 BOARD MEMBER ANTHONY: That's okay. 22 Ours is longer than yours. 23 MR. McTIGUE: Well, that's true. Mine 24 is shrunk down a little bit.</p>
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<p>1 issue by itself, and I think we can start out by 2 talking about -- because if the Board upholds the 3 protest on this ground, it's sort of a threshold 4 issue. 5 And there's several threshold issues, 6 but this is one of them. And I tried to put these 7 issues up closer to the front. But the first is 8 the failure to name a committee on the face of the 9 petition. 10 Now, the petition -- I just have a 11 sample page here -- has right below where the 12 ordinance is proposed, there is some spaces on the 13 prescribed form, and those spaces provide that, 14 "We hereby designate the following petitioners as 15 a committee to be regarded as filing the 16 petition." 17 And then it says, "Committee of not 18 less than three petitioners." You can see that 19 it's blank. This was not completed on any of the 20 part-petitions. 21 And when it says, "We hereby designate 22 the following petitioners --" 23 BOARD MEMBER ANTHONY: McTigue? Don? 24 MR. McTIGUE: Yes?</p>	<p>1 Okay. So this is a prescribed form, 2 prescribed by the Secretary of State. It has a 3 place to put in a petitioner's committee. 4 And the Secretary of State didn't just 5 make this up and stick it in there because he or 6 she thought this was a good idea. There's 7 actually a statute, and the statute provides 8 that -- 731.34, and it provides that petitioners 9 may designate a committee of at least three of 10 their number who shall be regarded as filing the 11 petition. 12 Okay. Now, this is the statute, the 13 specific statute, that governs municipal 14 initiative and referendum petitions. It starts 15 out, you will notice, with the word "may." 16 It says, "The petitioners may designate 17 a committee up to three of their number to 18 represent them with respect to the filing of the 19 petition." 20 Normally we would think of the word 21 "may" as being permissible. However, the law in 22 Ohio, the law in every state, is that sometimes 23 "may" means "shall," and sometimes "shall" means 24 "may." This is what the courts cause us to do</p>

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1 somersaults.
 2 But the fact of the matter is that the
 3 object of courts when they say that is to discern
 4 what the legislative intent was; because we have a
 5 law written by the general assembly, the role of
 6 courts and the role of administrative bodies or
 7 executive branch bodies, such as yourself, is to
 8 follow the law. So sometimes that means
 9 determining what the intent of the law is.
 10 And the rule is, rule of statutory
 11 construction, that you determine whether something
 12 is mandatory -- in other words, does "may" mean
 13 "shall" -- based on the context, the context of
 14 the statute and the related statutes that go
 15 together as an overall statutory package, and take
 16 into consideration -- in doing so, the Ohio
 17 Supreme is saying you take into consideration
 18 whether there's a public interest served.
 19 Now, the statutes here, I think once you
 20 look at the statutes that apply with respect to
 21 this committee, you have to come to the conclusion
 22 that this is a mandatory requirement.
 23 First of all, it says that, "They may
 24 designate the committee who shall be regarded as

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1 filing the petition." So within the very same
 2 sentence, we have the word "may" and the word
 3 "shall."
 4 Without a committee being designated,
 5 there is actually no way to tell who is
 6 responsible for that committee, which in and of
 7 itself raises an issue tonight, for example.
 8 Note that the Board sent notice to one
 9 of the circulators, Mr. Schadek, but he's only one
 10 of several circulators. Is he a member of a
 11 committee? Well, there's no committee designated
 12 to represent the petitioners. So at most,
 13 Mr. Schadek can only represent himself and maybe
 14 speak about the petitions that he's circulated.
 15 I'm just showing how that highlights the
 16 problem here in not naming a committee. Keeping
 17 in mind, well, maybe the General assembly meant
 18 this to be filled in.
 19 The next sentence in that same section,
 20 the section that says you can name a committee,
 21 the very next sentence actually, then gives a
 22 mandatory duty to this committee.
 23 It says that, "After the petition is
 24 filed, if the city council adopts the proposed

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1 ordinance or if the council adopts a different
 2 version after being approved by the committee,
 3 then committee shall notify the Board of
 4 Elections, and the Board of Elections shall not
 5 submit the issue to the voters."
 6 Same paragraph, next sentence, "a clear
 7 duty imposed by the general assembly on this
 8 committee." Well, if you didn't name a committee,
 9 then who is there to do the duty that the general
 10 assembly has mandated?
 11 They have two roles there: One is to
 12 approve an alternate version if the council is
 13 considering one; second, to notify the Board of
 14 Elections. What that does is it removes an issue
 15 from the ballot. Because why? Because there's no
 16 reason to hold an election. The proposed law has
 17 been adopted, or an amended form approved by the
 18 committee who represent the petitioners has been
 19 adopted. There's no reason to hold an election.
 20 But the Board of Elections does not have
 21 any authority, as I know you know, you have no
 22 authority to remove an issue from the ballot on
 23 your own, based on the fact that council has
 24 already adopted the same ordinance that was

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1 offered by the petitioners. You have no authority
 2 to do that. Only the committee can tell you to do
 3 that, but there is no committee here.
 4 And so what would happen then is without
 5 a committee, we'd have an election, we'd have a
 6 vote on the exact same ordinance that's already on
 7 the books, because council has adopted it.
 8 And, in fact, let's say, the people
 9 actually turn it down. Well, they turned down the
 10 proposed ordinance, but the ordinance that was
 11 adopted by council is still there, because the
 12 issue never got removed from the ballot. So you
 13 can see results results in a waste of public funds
 14 in conducting the election and clearly can lead to
 15 a lot of voter confusion as to, "Why are we voting
 16 on this?"
 17 Now, there's another right that this
 18 committee has. And this is relatively new, but it
 19 was enacted by the General Assembly a couple years
 20 ago, and that is a majority of the committee may
 21 request to voluntarily withdraw an issue from the
 22 ballot, okay? But obviously that right can't be
 23 exercised if there's no committee.
 24 Clearly the General Assembly intended