

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

MINUTES OF THE MEETING ON

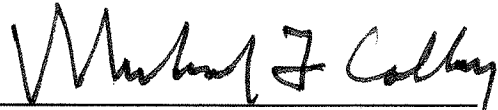
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APPROVED ON 10/13/08

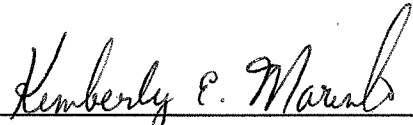
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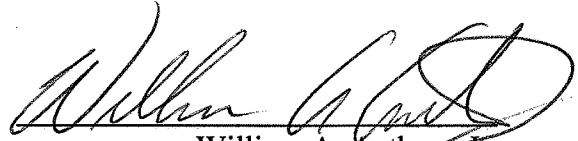
Douglas J. Preisse, Chairman



Michael F. Colley, Esq.

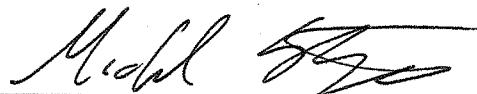


Kimberly E. Marinello



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. 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>
Page 7	Page 9
<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>

<p style="text-align: right;">Page 10</p> <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 style="text-align: right;">Page 12</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>
<p style="text-align: right;">Page 11</p> <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 style="text-align: right;">Page 13</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

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1 that somebody has to be able to enact on behalf of
 2 the petitioners, somebody has to be able to make
 3 the decision to voluntarily withdraw an issue from
 4 the ballot. But without a committee, that can't
 5 be done.
 6 And then there's one more statutory
 7 provision that is specific to municipal
 8 initiatives, and this is 731.32. The law says --
 9 and you're probably familiar with this, but it
 10 says, "Whoever seeks to propose a municipal
 11 ordinance by initiative petition must first --"
 12 before they begin circulating "-- must first file
 13 a certified copy of the proposed ordinance with
 14 the city." So "Whoever seeks to propose the
 15 ordinance."
 16 Well, so you have somebody walk in, they
 17 file a certified copy, they say, "I plan to seek
 18 to propose this ordinance," but then an initiative
 19 petition is later filed, you know, two weeks, four
 20 weeks later, there's no committee named on there.
 21 Is that the same petition that is connected to the
 22 person who came in and said, "I seek to propose
 23 this."
 24 These two sections go together, they're

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1 linked together, and the Supreme Court has said
 2 over and over that this requirement to file a
 3 certified copy beforehand is absolutely mandatory.
 4 The court considers it to be an extremely
 5 important statutory provision.
 6 Well, what's also important is them
 7 being able to link that to the petition that's
 8 subsequently filed. You can't do that if the
 9 committee isn't named on the petition. We can
 10 guess that it might be the same people, but you
 11 can't legally tell.
 12 So if you take all that into
 13 consideration, I think it's fairly clear that this
 14 is a mandatory requirement to have a committee
 15 named of at least three of the petitioners, three
 16 of the people that signed this petition name a
 17 committee.
 18 Now, I want to move to the next three
 19 parts of our protest, which is Items 2, 3, and 4
 20 And this has to do with something that I've
 21 already kind of touched on, and that is the
 22 subject nature of this proposed ordinance.
 23 And maybe I should refer to it as a
 24 proposed measure, because sometimes our brains are

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1 trained to think ordinance means legislation or
 2 law, and that's not true. Sometimes it is, but
 3 often times it's not. And in this case it's not.
 4 This proposed measure is not legislative in
 5 nature.
 6 Now, as I said, the Supreme Court has
 7 ruled for, I don't know, probably 50 years now,
 8 that initiatives have to propose something that's
 9 legislative in nature.
 10 And what do we mean by that? Well, a
 11 law is something that creates new rights or new
 12 duties, new obligations, or takes away existing
 13 rights, existing duties. What it does not do is
 14 simply implement provisions that already exist in
 15 law.
 16 And most of these cases deal with the
 17 distinction between legal action and
 18 administrative action -- or I should say
 19 legislative action and administrative action.
 20 And the basic distinction is that
 21 administrative action is an action taken by the
 22 city council which is in furtherance or pursuant
 23 to existing statutory, or in this case, the city
 24 code, codified ordinances.

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1 And what we have in the case of Upper
 2 Arlington is a very clear example of the ordinance
 3 that the council adopted authorizing the city
 4 manager to enter into a contract with Inland
 5 Services Corporation for waste collection, that
 6 that is administrative and not legislative.
 7 It's very clear under the existing
 8 procurement code, which is part of the codified
 9 ordinances of the city, those ordinances
 10 specifically permit the city manager to enter in
 11 contracts for waste disposal, collection, without
 12 council's approval, if sufficient funds have
 13 already been appropriated. In other words, in the
 14 budget.
 15 And I've outlined all of this. I'm not
 16 going to read you word-for-word. It's all out
 17 lined in the memo. It's very clear that the
 18 contract here that the city manager signed,
 19 she had the ability to do in accordance with the
 20 existing procurement code.
 21 Essentially, the action by council in
 22 adopting an ordinance authorizing the city manager
 23 to do this wasn't required, it wasn't legally
 24 required under their existing code, because their

<p style="text-align: right;">Page 22</p> <p>1 existing code already gives that authority to the 2 city manager. 3 But obviously there are times where the 4 city manager might choose for, you know, reasons 5 related to good government, to go to her bosses 6 and say, "I would like your approval before I do 7 something, before I enter into this contract," and 8 thereby get some direction one way or the other 9 whether the council approves of this course of 10 action. 11 But that doesn't change anything in 12 terms of changing it from administrative to 13 legislative, it is still purely administrative 14 because it wasn't required. All of the actions 15 are being taken in accordance with an existing 16 code. 17 So the Supreme Court has said in these 18 situations -- and kind of a good example of this, 19 a lot of the Supreme Court cases deal with 20 zoning-type issues. 21 You come before council to approve a 22 PUD, plan year development, or a final development 23 plat or development contract or development 24 agreement. When those agreements or the request</p>	<p style="text-align: right;">Page 24</p> <p>1 city council by repealing the ordinance that 2 council adopted authorizing the city manager to 3 enter into the contract. 4 Well, if that is what this does, that's 5 just administrative. If council was to do it, it 6 would be administrative. And if it's 7 administrative for the council, it's 8 administrative for the petitioners. It doesn't 9 change anything in terms of becoming legislative. 10 So there's another why of looking at 11 this, one level, maybe, deeper, and that is the 12 proposed ordinance actually seeking to cancel the 13 contract. 14 Canceling a contract is administrative 15 in all cases. And what happens then is you pay 16 damages. If you cancel a contract and you've 17 breached the contract, you pay damages. That all 18 happens by tradition of law, which makes it 19 administrative. 20 Now, beyond the question of comparing 21 whether or not a measure is legislative or 22 administrative, leaving aside the administrative 23 issue for a second, you still have to have 24 something that when you propose a measure, for it</p>
<p style="text-align: right;">Page 23</p> <p>1 for a variance or what-have-you has come before 2 council as a result of procedures that already 3 exist, the court has said over and over that those 4 are administrative and not legislative. 5 A lot of things that city councils do 6 are administrative. So I think in this particular 7 case, it is very clear that in the case of Upper 8 Arlington, the action that council took was 9 administrative. 10 Which then gets us to what about then 11 trying to undo that action of council. Well, that 12 would also be administrative. In other words, if 13 council were to act to give approval and that was 14 administrative, and then council was to come back 15 and say, "Well, we've decided now against it," and 16 they adopt a new resolution or a new ordinance or 17 measure, that would be equally administrative. 18 And essentially what this proposed 19 ordinance, the initiated ordinance, apparently is 20 seeking to do -- although, you will see I will 21 argue shortly that it actually does nothing. 22 But I think what people thought and 23 maybe what they were told this was going to do was 24 to undo the contract that had been approved by</p>	<p style="text-align: right;">Page 25</p> <p>1 to be a law, it actually has to accomplish 2 something. 3 We have here a proposed ordinance or 4 measure that is extremely poorly written, that I 5 think doesn't actually accomplish anything for 6 several reasons. And in our memo we give you five 7 reasons why this actually doesn't accomplish 8 anything. 9 But let's start out by pointing out a 10 few things. Where it says, for example, the 11 residents of Upper Arlington do not want the 12 third-party contract, they do not want to 13 privatize refuse collection. The residents of 14 Upper Arlington don't want the city administration 15 to enter into the contract. The residents of 16 Upper Arlington do not desire privatization. 17 These are all phrases. 18 Well, that actually makes it look sort 19 of like a public opinion poll, that they're 20 putting forward, "We want to have the people vote 21 on how they feel about this issue." 22 Now, the problem with that, of course, 23 is that you can't use the right of initiative to 24 take the pulse of the voting public. You have to</p>

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1 propose something that's legislative.
 2 I think that when you read everything
 3 here in this proposal, we are left with the
 4 conclusion that they're actually not proposing
 5 anything that is going to become effective. All
 6 it's going to do is take kind of a poll of how
 7 people feel about an issue, and that may depend on
 8 how the ballot language ends up, except that I
 9 hope we don't have ballot language.
 10 Now, let's go to another part of this,
 11 that when I say, "It won't accomplish anything,"
 12 you see here that it says in Section II -- Section
 13 II, I think it attempts to accomplish something,
 14 but it falls short.
 15 The only concrete thing that it attempts
 16 to do is in the sentence here that says, "In the
 17 event that the City chooses to ignore this
 18 initiative process and enter into a contract with
 19 Inland Services Corporation, such resolution
 20 and/or ordinance shall be hereby repealed."
 21 So I think they attempt to accomplish
 22 something. The problem is, of course, first of
 23 all, that's administrative, if it actually
 24 accomplishes anything; but second, it doesn't

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1 accomplish anything because of the contingency.
 2 The contingency here is, "In the event
 3 that the city chooses to ignore the process." As
 4 I point in the memorandum, that is something that
 5 since this is a proposed measure, it's not going
 6 to take effect until after this is adopted, five
 7 days after the results of the election are
 8 certified.
 9 The contract has already been entered
 10 into, was entered into January 31st, so this
 11 provision, which is made contingent, the
 12 contingency will never kick in, never kick in, so
 13 it accomplishes nothing. Again, we're left simply
 14 with a proposal that, again, seeks to take a
 15 public opinion poll.
 16 Now, let me move onto number five
 17 DEPUTY DIRECTOR DAMSCHRODER:
 18 Mr. McTigue?
 19 MR. McTIGUE: Yes?
 20 DEPUTY DIRECTOR DAMSCHRODER: Just
 21 before you move on. I think we're kind of looking
 22 at some of the Board members and questioning time,
 23 so that we have to give both sides equal amount of
 24 time, and I know you have several more points you

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1 want to address.
 2 I don't know if we want to establish an
 3 additional allotment of time or ask Mr. McTigue to
 4 sum up or continue through all of his points.
 5 CHAIRMAN PREISSE: Why don't we suggest
 6 that you continue with the point you're about to
 7 take, and then maybe take five minutes to
 8 summarize, and nothing would prohibit us from
 9 revisiting with you. But perhaps, what, with the
 10 material before us and your articulate
 11 presentation thus far, I think we got a lot of
 12 ground to cover.
 13 Go ahead and take another couple of
 14 minutes to finish that thought.
 15 MR. McTIGUE: Okay. Thank you, Mr.
 16 Chairman. And certainly some of you have been
 17 here before, you should have known better, should
 18 have told me right off the bat. But let me get
 19 right to a couple quick points here.
 20 There's a significant problem here in
 21 terms of this petition does not contain enough
 22 signatures, and that has to do with the 10 percent
 23 requirement. The law says you have to have 10
 24 percent -- signatures equal to 10 percent of the

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1 total vote for governor at the last gubernatorial
 2 election.
 3 In this case, the number that the
 4 petitioners used, which I'm sure they received
 5 from the Board of Elections, was 10 percent of the
 6 people who voted at the polls. It did not include
 7 the people who voted by absentee ballot, and there
 8 were over 4,000 valid absentee ballots cast in
 9 Upper Arlington in that election.
 10 Now, the reason for that is because the
 11 Board in 2006 was using a county-wide precinct for
 12 absentee, so the Board is not readily able to say
 13 how many people from Upper Arlington voted for
 14 governor. They can say how many people from Upper
 15 Arlington cast absentee ballots; however, that
 16 doesn't actually give the Board the leeway to
 17 completely ignore a statutory requirement.
 18 You have no authority to lower the
 19 signature requirement just because it becomes more
 20 difficult to compute it when you use a county-wide
 21 absentee precinct.
 22 I have set forth in my memo a
 23 reasonable, rational method for computing the
 24 probable percentage of Upper Arlington absentee

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1 voters who voted in the gubernatorial race. And
 2 once you calculate that and follow my
 3 computations, you will see they end up actually
 4 110 signatures short on this petition.
 5 One final point on that, and that is
 6 Boards say, "Well, it's not the petitioner's fault
 7 the Boards gave them a certain number." Actually,
 8 that happens fairly frequently, and what happens
 9 just as frequently is the courts of Ohio saying,
 10 "Doesn't matter."
 11 You can't use estoppel just because you
 12 got the wrong number. The Board of Elections
 13 doesn't have the ability to change what the legal
 14 requirement is in terms of minimum signatures.
 15 Now, next point has to deal with
 16 part-petition is -- the allegation in protest
 17 ground six is that part-petition is invalid when
 18 the circulator knowingly permits a person to sign
 19 a name other than their own.
 20 There's, I think, six or seven
 21 part-petitions that you have in your packet that I
 22 have -- what I've done is I've given you the
 23 part-petition, and we have in the protest -- in
 24 ground six of the protest, we have given you the

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1 petition number and the line numbers where we are
 2 saying that just looking at those, it is apparent
 3 that one person signed for another person. And
 4 they're almost all spouse, probable spouse
 5 situations.
 6 And each of those cases, I believe, the
 7 Board staff threw out one of the signatures as
 8 being not genuine, meaning it didn't match the
 9 registration card of that person. But the problem
 10 is the Board staff should have gone one step
 11 further. Because when you compare the handwriting
 12 of the two signatures, it is clear that they are
 13 in the same handwriting.
 14 And the law here is clear that if a
 15 circulator knowingly permits a person to sign more
 16 than one name, then that part-petition is gone.
 17 And Ohio Supreme Court has also said that a Board
 18 can make that determination, based upon comparing
 19 the signatures and comparing the voter
 20 registration cards, and I would ask that you do
 21 that.
 22 What I've given you in my packet of
 23 evidence is I've given you, behind each petition
 24 page that has the two signatures on it, I've put

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1 the voter registration cards that go with it. And
 2 I'd ask you to review those and make a
 3 determination.
 4 The next ground has to deal with a
 5 circulator listing their correct city. The law of
 6 Ohio was recently changed to require circulators
 7 of initiative petitions to put the address of
 8 their permanent residence in the State of Ohio.
 9 This was part of a number of reforms adopted by
 10 the General Assembly to combat what was perceived
 11 as being fraud among circulators.
 12 Now, the issue here is that we have a
 13 group of petitions by Mr. Schadek, one of the
 14 bigger circulators here. On some of the
 15 part-petitions he puts his city as Upper
 16 Arlington, on other parts of the petitions he puts
 17 his city as Columbus.
 18 The law says that you have to put the
 19 address of your permanent residence. The fact of
 20 the matter is his permanent residence is not in
 21 Columbus, his permanent address is in Upper
 22 Arlington.
 23 It may be his mailing address, because I
 24 think probably most people understand that Upper

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1 Arlington does not have its own post office, it's
 2 a few streets away, I think, from within the
 3 Columbus city limits. But that doesn't change
 4 what his address is, what the physical location of
 5 his residence is.
 6 And so I think the law is pretty clear
 7 that it requires that you put the location of your
 8 permanent residence. And that's, in Mr. Schadek's
 9 case, Upper Arlington. And so the petitions where
 10 it says "Columbus" are invalid.
 11 Then we have on ground nine, this is
 12 just pointing out that there's one signature that
 13 just does not list an apartment number. You're
 14 required to list an apartment number. It's part
 15 of your address. We have given you the
 16 registration card that shows that the person is
 17 registered at that particular apartment.
 18 Next is a group of -- not a group, but a
 19 couple petitions, part-petitions, where the
 20 circulator signed their own name. The Board threw
 21 out that person's signature, but our contention is
 22 the Board should throw out that entire
 23 part-petition.
 24 It's been established for quite some

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1 time now in Ohio, since the 1970s, that a
 2 circulator may not sign their own petition.
 3 That gets back to the law I mentioned
 4 earlier, that if a circulator knowingly permits an
 5 unqualified person to sign, that part-petition is
 6 invalid. You obviously know, if you're the
 7 circulator, you know you're signing your own
 8 petition, so they know the facts.
 9 The law says that they're an unqualified
 10 person. The result is that they have knowingly
 11 permitted someone to sign who's not permitted to
 12 sign, and that petition should be rejected.
 13 Then in one part-petition, there is a
 14 group of signatures that has no date. I think
 15 it's about five or six signatures near the end of
 16 a petition.
 17 And the statute which we've cited
 18 specifically requires date. What's filled in
 19 there is the ZIP codes, not the dates. So those
 20 signatures clearly don't comply with the law.
 21 And then the last ground -- it's
 22 probably maybe something relatively new -- but
 23 there is one signature that was signed by power of
 24 attorney, and we have indicated that on here. And

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1 I've given you copies of that, plus two
 2 registration cards.
 3 I think, again, it's a husband signing
 4 for his spouse. He writes by POA, Power of
 5 Attorney. The problem is that that makes the
 6 petition invalid, for the the same statute that
 7 I've already mentioned several times, a circulator
 8 may not knowingly permit a person to sign someone
 9 else's name. That obviously is what happened
 10 here.
 11 There is a relatively new law that
 12 allows for appointment of attorney in fact --
 13 which we can call power of attorney if we want,
 14 but the law calls it attorney in fact -- for
 15 disabled people to name someone to sign their
 16 signature to petitions. However, there are
 17 specific statutory requirements for accomplishing
 18 that. Personally I think it was probably made
 19 overly complicated, but that's what the law is.
 20 And the bottom line on that legal
 21 requirement is there's a form that has to be filed
 22 with the Board of Elections, one of two different
 23 forms. You can pick which one you want to file,
 24 but you have to file it. And my understanding is

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1 that there is no such form filed for these
 2 individuals.
 3 In fact, Ms. Cotton indicated to me that
 4 she is not aware that any such form has yet been
 5 filed in Franklin County. So it's clear that that
 6 petition has to go out, based on the statutory
 7 requirements.
 8 So I tried to get through that as
 9 quickly as possible, and I'll be happy to try to
 10 answer any questions.
 11 CHAIRMAN PREISSE: Let's do that now,
 12 and then we can call to see if anyone wishes to
 13 speak in addition to your presentation.
 14 Do we have any questions for
 15 Mr. McTigue?
 16 BOARD MEMBER ANTHONY: I don't have one
 17 for Don, but I do have one, when we get this over,
 18 for our staff.
 19 CHAIRMAN PREISSE: Okay.
 20 BOARD MEMBER ANTHONY: Should I ask that
 21 now, or should I wait?
 22 CHAIRMAN PREISSE: As it may relate
 23 to the presentation, let's go ahead and do that
 24 now.

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1 BOARD MEMBER ANTHONY: Okay. Based on
 2 all that, these 12 points that Don McTigue brought
 3 up, has the Board looked at all of those?
 4 DIRECTOR STINZIANO: We have our
 5 operations manager, Karen Cotton, here, and I've
 6 asked her to speak to the validity of the 12
 7 points raised in the protest -- or 14 points
 8 raised in the protest.
 9 BOARD MEMBER ANTHONY: And what did you
 10 find?
 11 MS. COTTON: I find that I, as manager
 12 of election operations, cannot speak to Items 1
 13 through 4. That's the bottom line. So I think
 14 the problem's with the City of Upper Arlington.
 15 Item No. 5, did calculate the governor's
 16 vote using the precinct count on governor vote,
 17 which is the way we have always done it, since
 18 absentee at that time was a separate precinct.
 19 And the total number that we gave them was 1,354,
 20 and did validate 1,716 signatures on the
 21 part-petitions.
 22 On Item 6 of the complaint, I've gone
 23 back through the part-petitions, and on page 10 of
 24 Complaint No. 6, I agree that the person checking

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<p>1 that petition should not have considered the 21 2 signatures on that petition as being valid because 3 of the nongenuine signatures that they had marked. 4 I went back through Petition No. 34 and 5 Complaint 6 and agree that Ken Bale and Gwen 6 Bale's signature were, in fact, signed by the same 7 individual. Both of those signatures had been 8 marked valid by the individual who checked that 9 part-petition. There were 20 valid signatures on 10 that part-petition, which I grant should not have 11 been given credit for. 12 BOARD MEMBER ANTHONY: That whole 13 petition should have been thrown out? 14 MS. COTTON: That whole part-petition 15 should have been taken off. So 21 signatures on 16 page 10 and 20 signatures on page 34. 17 BOARD MEMBER ANTHONY: Should have been 18 thrown out? 19 MS. COTTON: Should have been thrown 20 out, yes. 21 On page 108, Complaint 6, there should 22 have been seven signatures on that part petition 23 thrown out, because it does appear that Joyce 24 Rhinehart did sign for her husband, Wayne</p>	<p>1 invalidate the one signature only. 2 BOARD MEMBER ANTHONY: Not the whole 3 part-petition? 4 MS. COTTON: Not the whole 5 part-petition, just the one signature. 6 BOARD MEMBER ANTHONY: Okay. 7 MS. COTTON: That's all my directives 8 from the Secretary of State on the last five sets 9 of statewide petitions that we're checking. We're 10 currently on the fifth batch of petitions. 11 Complaint 11, page 32 there were four 12 signatures on that part-petition that were 13 previously marked valid. There are a total of 14 five lines at the end of that part-petition, 15 and the person checking the petition didn't notice 16 the fact that the signers had entered their ZIP 17 code rather than the date of signing, but only 18 four of those five had been previously given 19 credit. 20 So in all, the only question I did not 21 review, again, was the power of attorney, because 22 I was having trouble finding that at the time. 23 And since then, Mr. McTigue has pointed that one 24 out to me. That's the only one I did not address.</p>
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<p>1 Rhinehart. Now, I have those copies I'll mark for 2 you so you can look at them yourself. 3 BOARD MEMBER ANTHONY: Hold on for a 4 minute. Does that mean that that whole petition 5 should have been thrown out? 6 MS. COTTON: Seven signatures. 7 BOARD MEMBER ANTHONY: It only had seven 8 on there? 9 MS. COTTON: It only had seven on it. 10 BOARD MEMBER ANTHONY: Okay. All right. 11 MS. COTTON: And then on Complaint No. 12 10, one invalid where we had previously given 13 credit for Jane W. Mack, who is also the 14 circulator of that part-petition. We did subtract 15 one signature from that part-petition. 16 The reason I only subtracted one part 17 petition is, since I've been the manager of the 18 department which is responsible for checking 19 petitions, I've received five directives from the 20 Secretary of State on five different sets of 21 statewide petitions that we have received; and in 22 every single case, they tell me, when I come 23 across a signature of a person who circulated 24 petitions who also signed the petition, to</p>	<p>1 But there were 35 signatures that I 2 would concede that our staff gave credit by 3 mistake. 4 BOARD MEMBER ANTHONY: Mr. Chairman, 5 what about the signing on the back of the 6 petitions where they use a different address, the 7 Columbus and Upper Arlington? 8 MS. COTTON: That's the address that we 9 have on file, that is Columbus, Ohio 43221. 10 BOARD MEMBER ANTHONY: What about the 11 one -- 12 MS. COTTON: Somebody didn't determine 13 the residency of the individual. 14 BOARD MEMBER ANTHONY: There was one 15 that was signed with the same name that had an 16 Upper Arlington address. I thought I saw that. 17 MS. COTTON: People who live in Bexley 18 will write Bexley 43209, people in Upper Arlington 19 will write Upper Arlington 43221, but the mail 20 actually goes to 221, 43209. 21 BOARD MEMBER ANTHONY: So you didn't see 22 anything wrong with those? 23 MS. COTTON: No. 24 BOARD MEMBER ANTHONY: Okay.</p>

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1 MS. COTTON: We can determine that the
 2 person is the same person that it purports to be
 3 from our registration file.
 4 CHAIRMAN PREISSE: Why don't we allow
 5 Mr. Schadek to address the Board at this time
 6 then.
 7 Thank you, Mr. McTigue.
 8 MR. SCHADEK: If it's okay, my attorney,
 9 Jim Becker, who I have hired to represent me, will
 10 speak on my behalf. If that's okay.
 11 DIRECTOR STINZIANO: Yeah, that's fine.
 12 MR. BECKER: Did you want to take a
 13 break, as you mentioned earlier, before we go?
 14 CHAIRMAN PREISSE: No, I think we're
 15 fine.
 16 DIRECTOR STINZIANO: And also we're
 17 going to add to the record the protest file by
 18 Mr. McTigue and memorialize that previously, but
 19 we will have it.
 20 MR. BECKER: If I might approach the
 21 court reporter. I'd like to make Mike
 22 Schadek's -- we're making it today an exhibit with
 23 the court reporter, because it says Michael
 24 Schadek, 1537 Guilford Road, Columbus, Ohio.

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1 Members of the Board, my name's Jim
 2 Becker. I'm an attorney here in Columbus, Ohio.
 3 I want to thank the Board and the Board's staff
 4 for this process over the last week.
 5 Mr. Stinziano, Mr. Damschroder, Karen, have been
 6 very, very helpful, answered telephone calls, got
 7 us documents.
 8 You have a fine staff here that really
 9 has always helped people get their issues on the
 10 ballot, been instructive, and you can be very,
 11 very proud of them.
 12 Regarding Mr. McTigue's, in essence,
 13 four challenges. First, let me give you a little
 14 bit of history on why we're here. On December
 15 10th and then on December 14th Upper Arlington
 16 City Council passed not one, but two ordinances,
 17 both with emergency-like consequences.
 18 The one on December 10th prevented a
 19 referendum because it said it was an appropriation
 20 and a bidding issue, matters outside the Emergency
 21 Clause of Chapter 7 of the Ohio Revised Code,
 22 preventing people from taking the December 10th
 23 issue to referendum.
 24 On December 14th they rescinded that,

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1 made it an emergency and re-enacted it again under
 2 Ordinance 126.207, again, authorizing the city
 3 manager to enter into a contract for the
 4 privatization of trash system in Upper Arlington.
 5 Now, if none of you live in Upper
 6 Arlington, you've probably heard of our legendary
 7 trash service. We have garage-side pick up,
 8 we had people in buggies, we had our own workforce
 9 that was background checked.
 10 If people went on vacation, they could
 11 call early and say, "My normal trash day is Friday
 12 or Thursday, could you come get me on Tuesday?
 13 I'm going to be out of town, and I don't want my
 14 can down there."
 15 We instituted a recycling program which
 16 the city has touted as national in scope, with the
 17 amount of recyclables that we end up putting at
 18 the curb and picking up. That all went away on
 19 December the 14th when we privatized trash.
 20 Now, we're not just here on the
 21 privatization of trash, we're here -- Mr. McTigue
 22 forgot to mention, the \$30 fee that council put on
 23 residents in mid January, again, as an emergency.
 24 One, two, three emergencies; two in December and

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1 one in January with a \$30 fee. Again, emergency,
 2 no referendum.
 3 That put a \$30 fee on each resident to
 4 help offset recyclables. That's part of this
 5 initiative petition where it says, "There shall be
 6 no annual fee placed upon the voters for trash
 7 service."
 8 We have two things, they have that fee
 9 that comes into the city, and then they have the
 10 sticker system, where you buy the stickers at
 11 Kroger, Giant Eagle, or the grocery store to go
 12 put on your cans. The citizens said we keep the
 13 sticker system, but we go ahead and we bring city
 14 employees back with garage-side pick up.
 15 This isn't administrative. Mr. McTigue
 16 doesn't give you one single case that approaches
 17 these facts. Why? Because there is none.
 18 Mr. McTigue first talks about that the
 19 petitions are somehow defective because we didn't
 20 have a committee. On January 16th and again on
 21 January 28th, Mr. Schadek hand-delivered, under
 22 Chapter 7 of the Ohio Revised Code, a certified
 23 copy of the initiative petition, of the initiative
 24 language that's on each and every petition, to the

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1 city finance director. No questions from the city
 2 at that point.
 3 Mr. Schadek could have pulled this any
 4 time. He's the one person. Nowhere in the Ohio
 5 Constitution, nowhere under Title 35, nowhere
 6 under Chapter 7 of the Ohio Revised Code does it
 7 say that Mike Schadek, as an individual, can't
 8 take something to initiative. Nowhere does it say
 9 that he can't take something to referendum.
 10 And indeed if this Board buys what
 11 Mr. McTigue is selling tonight, we will have
 12 disqualified countless candidates, because the
 13 same committee thing appears on those nominating
 14 petitions. The law is clear under the statute,
 15 and it says "may," in the very next sentence it
 16 says that.
 17 Ms. Armstrong sitting back here has to
 18 hold the petitions, must, shall, hold the
 19 petitions open for public inspection for 10 full
 20 days. The legislature knew the difference between
 21 "may" and "shall." And it's in our memorandum
 22 that this type of situation, that you don't
 23 substitute it back and forth.
 24 There's no case that he can point to

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1 that holds that you must have a committee. Why?
 2 Because you don't.
 3 The next one, "Not subject to the power
 4 of initiative. It's not legislative in nature."
 5 It's clearly legislative in nature. They passed
 6 two ordinances to get rid of it, both of them by
 7 emergency, and then they enacted a third one in
 8 January to slap a \$30 fee generating \$360,000 --
 9 roughly, 12,000 driveways, \$30 a drive way --
 10 to the treasury.
 11 In this particular case I would direct
 12 you -- and I don't mean to read to the Board, but
 13 Justice Zimmerman put it probably best in the
 14 history of Ohio jurisprudence back in 1951, "The
 15 Electors of a municipality made by the initiative
 16 an act of measure conflicting with or repealing
 17 legislation previously passed by the municipal
 18 council, so long as the subject matter of such
 19 initiative ordinance is within the powers of the
 20 municipality controlled by legislative procedure."
 21 They did it three times, so it must be
 22 within the power.
 23 Continuing, Justice Zimmerman said "In
 24 adopting the initiative and referendum provisions

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1 of Section 1F of Article 2 of the Ohio
 2 Constitution, it was certainly not the intention
 3 of the people to leave the voters of a
 4 municipality powerless to override legislation
 5 which might be obnoxious to them."
 6 "Powerless to override legislation which
 7 might be obnoxious to them."
 8 "Even though the referendum is not
 9 available because an objectionable ordinance was
 10 passed by emergency measure --" we have three of
 11 those here "-- perhaps arbitrarily, the initiative
 12 always, always, remains as an authorized remedy;
 13 otherwise, the people who elect the members of
 14 council and pay their salaries would occupy a
 15 place below the council in legislative power.
 16 "Surely such was not the design and
 17 purpose of Section 1F, Article 2 of the Ohio
 18 Constitution."
 19 More importantly than that, this issue,
 20 and it's been addressed by numerous courts, the
 21 city took a position on this saying, "We have a
 22 contract with Inland. Under Middletown versus
 23 Ferguson, even if you pass this initiative, we get
 24 to keep our contract with Inland."

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1 The courts have held that at this stage
 2 tonight that we're in, that this decision isn't
 3 right for you to decide. What they've said on
 4 this is let the people vote and let's see if they
 5 approve this initiative. And if they approve it,
 6 then we'll determine these legislative attacks
 7 which Mr. McTigue is trying to have you jump the
 8 starter begun and decide tonight. That would be
 9 very, very dangerous.
 10 Again, in Middletown versus Ferguson
 11 where they wanted to set aside road widening on a
 12 construction project, the court let them vote, and
 13 then the seven cases that are cited, every single
 14 one let the residents vote. They'll let them
 15 vote, and if they want to go into mandamus after
 16 November the 4th, then they can go do that.
 17 "Improper undervote," this one wasn't in
 18 the initial 14. We just learned about this today.
 19 But this hypothetical improper undervote is a
 20 pretty dangerous thing. We think so many people
 21 may have voted, and we hope that they may have
 22 checked the box for governor, so apply a
 23 mathematical formula and strike these people's
 24 petition down.

<p style="text-align: right;">Page 50</p> <p>1 That one isn't going to sail in any 2 court of appeals or the Ohio Supreme Court. If 3 you want to hit a vote with numbers, you must show 4 the numbers. 5 In this particular case, we had 6 Mr. Damschroder's 13,536, which is attached as one 7 of the exhibits to our memorandum, from the summer 8 of '07. Obviously the last gubernatorial election 9 was Governor Strickland in 2006, so the number 10 hasn't changed. We hit that number. 11 And estoppel, by the way, does come into 12 play, as the Ohio Supreme Court held in Ormet 13 versus Lindley, when you have a signed written 14 letter from an agent of the state and you're 15 acting upon that, that is enforceable. 16 The claim, "Oh, so and so down at the 17 Board of Elections told me such and such" is never 18 going to fly, but the written, "Here's the vote," 19 Mr. Schadek and the circulators were certainly 20 entitled to rely on. 21 This hypothetical, there's not one case 22 that he cites showing, "We think there was an 23 undervote, apply a percentage, the petitions 24 fail." That one I'd really like to see.</p>	<p style="text-align: right;">Page 52</p> <p>1 statewide referendum petition --" that's not what 2 we have here "-- the circulator shall identify the 3 circulator's name and the address of the 4 circulator's permanent residence." 5 This second clause in bold applies to 6 statewide issues for referendums and initiatives. 7 This is not a statewide issue, this is an Upper 8 Arlington issue. And all that needed to be at the 9 bottom of that petition was Mr. Schadek's name or 10 any of the circulators. The Upper Arlington 11 Columbus thing is mute, doesn't have anything to 12 do here. It didn't have to be on there, it's not 13 a requirement. 14 The legislature put that in on statewide 15 issues, not on local municipal issues, and it's 16 right there on page 11 of our memorandum. 17 The actual allegations by Mr. McTigue in 18 1 through 14, if you do the math, even if Karen 19 had granted everything in there, they still don't 20 win, that's because 1,354 would be valid. 21 The Board determined that there were 22 1,716 valid signatures, and even if every one of 23 their challenges under 6 through 14 is sustained, 24 that would have still contained 1,386 valid</p>
<p style="text-align: right;">Page 51</p> <p>1 Arguments regarding the petition. He's 2 right, we agree with Mr. McTigue, 3501 got amended 3 in 2006. Let's read the whole statute. It's on 4 Page 11 of our memorandum. 5 The first half not bolded talks about 6 petition papers that we have here, "The 7 circulators shall indicate the number of the 8 signatures obtained on it; shall sign a statement 9 made under penalty of election falsification that 10 the circulator witnessed the affixing of every 11 signature; that all signers were, to the best of 12 the circulator's knowledge and belief, qualified 13 to sign; and that every signature is, to the best 14 of the circulator's knowledge and belief, the 15 signature of the person whose signature purports 16 to be or an attorney in fact." 17 They did the new power of attorney under 18 3501.382. 19 The next sentence is the one that he'd 20 like to have here, "On the circulator's statement 21 for a declaration of candidacy or nominating 22 petition for a person seeking to become a 23 statewide candidate --" that's not what we have 24 here "-- or for a statewide initiative or a</p>	<p style="text-align: right;">Page 53</p> <p>1 signatures. So if they win every one, we still 2 have 1,386. We only needed 1,354. 3 Now, Karen has said that she struck 54. 4 We're certainly not going to contest the ones -- 5 in fact, we agree, the ones where there were four 6 ZIP codes and they missed the dates, those are 7 out. 8 The ones where there are duplicate 9 signatures, we've met with your staff on the 10 challenges, and I think I'm correct -- Karen, am I 11 correct on this -- that you kept those in because, 12 remarkably, this husband and wife's handwriting 13 was virtually identical, and those are on the 14 registration cards that are here with the Board. 15 So the fact that something looks the 16 same, okay, doesn't necessarily mean it was 17 written by the same party. And this particular 18 case, the husband's and wife's signatures were 19 remarkably similar, and they've gone ahead and 20 included those. Those haven't been stricken. 21 One of the challenges -- and I'm not 22 sure which petition that is, we couldn't respond 23 to it. There was a Challenge 12 made, an argument 24 regarding one of the petitions, but didn't say</p>

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1 which petition it was, it just had a line on it,
 2 so we weren't able to determine that.
 3 Interestingly, Mr. McTigue, we would
 4 direct his attention to Jennifer Brewer's recent
 5 August 2008 directive regarding circulators. In
 6 the Secretary of State's own directive, which this
 7 Board has, she states that where a circulator
 8 makes a mistake of signing their own petition,
 9 that does not disqualify the petition. What you
 10 do is you strike the circulator's name.
 11 That is on, I believe, page five of her
 12 memorandum attached to our memorandum under CIR,
 13 "Circulator signed the petition paper, he or she
 14 was circulating. This invalidates the
 15 circulator's signature as a signer, but does not
 16 invalidate the entire part-petition."
 17 So in those instances where we had a
 18 circulator sign, scratch it off. Your staff
 19 correctly did that.
 20 In summary, we're not going to contest
 21 the 50-some signatures that your staff tonight
 22 said should not have been allowed. Those, to me,
 23 seem fairly insignificant. We still have a
 24 significant overage that we have turned in here.

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1 Let me caution the Board -- your lawyer
 2 has told you this many, many times -- the
 3 presumption on these is that you get to vote.
 4 We haven't missed the 30-some trip wires
 5 that the legislature has built into each one of
 6 these petitions. To name a few, signing this more
 7 than once is a fifth degree felony, certain
 8 language has to be in red ink put in in 1953.
 9 Think about that requirement back then and how you
 10 fulfilled that. Was it Atlas Blueprint? Because
 11 you didn't do it with a color laser printer. We
 12 cleared that one.
 13 We cleared the circulator statement,
 14 even additional language. Because, again, it's
 15 not statewide, we didn't have to have a residence
 16 on any of these. The fact that we have put it on
 17 doesn't make any difference. And the fact that
 18 your own staff views Upper Arlington as Columbus,
 19 as we see from Mr. Schadek's own Board mailing
 20 today and from their internal records, tells you
 21 there is no distinction.
 22 We don't have one post office in Upper
 23 Arlington that's dedicated to UA. We're the same
 24 as Bexley. We have three post offices that serve

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1 us, one on Henderson, one down on Fishinger Road,
 2 one in Grandview. So we have a lot of them, but
 3 we don't have our own.
 4 We have asked for it, postal authorities
 5 never saw fit to do it. We don't have one
 6 designated post office. Most mail that I get,
 7 and the Board knows it, goes to Columbus.
 8 And there's no statute that says you
 9 have to put your suburb in over a municipality.
 10 It doesn't exist, none is cited to you. Reason
 11 is, the Supreme Court and Secretary of State have
 12 never held that.
 13 If there are no further questions. I
 14 want to thank the Board for its time, attention,
 15 and again reiterate that your staff's been very,
 16 very cooperative, and I want to thank them too.
 17 CHAIRMAN PREISSE: I don't think we got
 18 to the first question yet, if there are any.
 19 Are there any questions from the Board?
 20 DEPUTY DIRECTOR DAMSCHRODER: I have one
 21 question for Mr. McTigue, but obviously want to
 22 defer to the Board if you have any questions.
 23 CHAIRMAN PREISSE: If there aren't any,
 24 I want to thank the gentleman for the

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1 presentations.
 2 MR. BECKER: Thank you very much.
 3 DIRECTOR STINZIANO: Do you want to let
 4 the next protest speak first before we go back to
 5 Mr. McTigue?
 6 DEPUTY DIRECTOR DAMSCHRODER: Yeah.
 7 DIRECTOR STINZIANO: There's another
 8 protest from Mr. Robert Albright, and we will
 9 submit that protest into the record, as well.
 10 MR. LINDSEY: May it please the Board,
 11 Tom Lindsey. I just wanted to notify, in case
 12 Mr. Albright was unable to reach the Board, he did
 13 contact me late in the day to indicate that
 14 because of his health, he was not going to make it
 15 tonight, he was sick and wasn't going to make it
 16 down.
 17 And so in case the Board hadn't been
 18 notified about that, he had asked me to notify
 19 you. So for that purpose, I'm simply letting the
 20 Board know that.
 21 CHAIRMAN PREISSE: Okay. Thank you for
 22 that notification.
 23 And did we have another person or not?
 24 DIRECTOR STINZIANO: If you want to ask

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1 your question.
 2 DEPUTY DIRECTOR DAMSCHRODER: Question
 3 for Mr. McTigue. It's my understanding of the
 4 petition process that once the petitioners are
 5 completed with those petitions, they're submitted
 6 to the City of Upper Arlington, transmitted to the
 7 Board of Elections for signature validation, Board
 8 of Elections then certifies the number of ballot
 9 signatures back to the city, that then decides to
 10 certify it back to the Board of Elections to place
 11 it on the ballot.
 12 And my question would be: If your
 13 analysis for Issue No. 1, Issue No. 2, and frankly
 14 even Issue No. 3 is correct, is the burden on the
 15 City of Upper Arlington to then not certify an
 16 invalid petition to the Board of Elections to put
 17 on the ballot, or is it the Board of Election's
 18 burden to determine those issues?
 19 MR. McTIGUE: Mr. Chairman, the Board,
 20 Mr. Damschroder, that's a very fair question. And
 21 a couple years ago I might have said that for
 22 certain types of defects, like not having a
 23 committee or it being administrative, not
 24 legislative, that the city wouldn't certify it.

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1 However, the Ohio Supreme Court has recently told
 2 us in the Oberlin case that it was an abuse, that
 3 the failure of a city to certify based on a
 4 conclusion that the proposal was administrative as
 5 opposed to legislative was outside of the power of
 6 the city officials to do.
 7 The court spelled out very clearly that
 8 the city acted purely in an administrable capacity
 9 in terms of certifying back to the Board of
 10 Elections for placement on the ballot the issue.
 11 The court was also very clear that the
 12 proper place to decide issues regarding whether
 13 something was legislative or administrative or
 14 whether there were other defects in the petition
 15 is with the Board of Elections through the filing
 16 of a protest. The Board of Elections has the
 17 power to act.
 18 The Court's reasoning was that the Board
 19 of Elections has the power to act in a quasi
 20 judicial capacity, the city does not. The city
 21 acts only and purely in administrable fashion, and
 22 that gets to, you know, the issue here.
 23 I mean, we have a couple broad-based or
 24 across-the-board issues here. I know that the

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1 issues Ms. Cotton addressed are kind of
 2 piecemeal -- specific signatures, specific
 3 petitions -- but let me just briefly mention two
 4 of the across-the-board issues.
 5 One is the thing about not having a
 6 committee. When the chairman -- and when I was
 7 called for Mr. Schadek, Mr. Schadek said, "Well,
 8 I'm going to have --" you know, "I've retained
 9 Mr. Becker to represent the committee," that's
 10 what he said.
 11 And I assumed that Mr. Becker came up
 12 here and was, as a lawyer, representing the
 13 committee. Well, why isn't there a committee
 14 named on the petition?
 15 The second across-the-board issue has to
 16 do with this legislative, whether it's legislative
 17 or not. And Mr. Becker quoted a very eloquent
 18 passage from an Ohio Supreme Court case that I've
 19 quoted before. And you know what? You got to
 20 listen to it very carefully, very, very carefully.
 21 Because what it said was that the
 22 citizens have the right by initiative to repeal
 23 legislation, not to repeal administrative actions.
 24 It said that the legislative -- that whatever the

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1 citizens can do in terms of whatever council can
 2 do in terms of legislative power, there is the
 3 right of citizens to seek redress through a
 4 referendum.
 5 That is true, whatever they can do
 6 through legislative power. But you know what?
 7 The court has also said in other cases -- and
 8 there's a long series of cases where they've
 9 struck down actions adopted by council as being
 10 administrative. The court has said the remedy for
 11 citizens then is a judicial remedy.
 12 That's the distinction. If it's
 13 legislative, citizens have a remedy to put it on
 14 the ballot. If it's administrative action by
 15 council, citizens have a remedy by way of going to
 16 court. That's what the Supreme court has said.
 17 And so to get up here and simply say,
 18 "Of course it's legislation, they did it three
 19 times." No, what they did three times was adopt
 20 administrative measures.
 21 And the cases that I've cited show that
 22 council's routinely acted in an administrative
 23 capacity, and there's no right to get on the
 24 ballot.

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1 And in that connection, I think he also
 2 really -- and I think this is important to point
 3 out now, especially with media here. There were
 4 several statements made -- they're misleading, I
 5 believe -- about what this ordinance does.
 6 He said that this ordinance provides
 7 that there shall be no annual fee. That is not
 8 what it says. It does not say there shall be no
 9 annual fee. It says that the citizens don't want
 10 an annual fee. But that's, again, a public
 11 opinion poll. It doesn't actually do it.
 12 He said that there's been all these
 13 changes and that that's what all this is about,
 14 recycling, changes on recycling, about the fee,
 15 and garage-side pick up, and all that. The fact
 16 of the matter is, that all still exists under the
 17 contract situation. The difference is we're using
 18 a contract, as opposed to using municipal
 19 employees.
 20 So I think it's important to get that on
 21 the record, that none of that is in play.
 22 And what we have here simply is a
 23 proposal which, at best, apparently is attempting
 24 to repeal authority, and it doesn't accomplish

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1 that.
 2 CHAIRMAN PREISSE: Thank you. I'm
 3 afraid if we continue this, we're going to have to
 4 continue this.
 5 The records here show that there may
 6 have been yet another person, other than
 7 Mr. Albright. Is that the case? Am I reading
 8 this correctly? Ms. Concilla?
 9 DIRECTOR STINZIANO: Mr. McTigue was
 10 representing both the City of Upper Arlington and
 11 Ms. Concilla in his protest.
 12 CHAIRMAN PREISSE: Okay. Anybody else
 13 wish to speak to the issue?
 14 MR. SCHADEK: Could I just make one
 15 comment I saw?
 16 CHAIRMAN PREISSE: In light of the
 17 length of the answer, I'll say yes, if you can
 18 keep your comments brief, as well.
 19 MR. SCHADEK: Yes. This issue
 20 Mr. McTigue keeps coming back to about no
 21 committee, no committee. This started with me. I
 22 was the lone individual who saw what I considered
 23 an injustice by our city council, and this was me
 24 filing this petition. I wish at the time there

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1 was a committee.
 2 Now, when I originally filed that,
 3 hundreds and hundreds of people now have come on
 4 board and are helping with this initiative now.
 5 And as a matter of fact, we have a committee now.
 6 And so when I spoke before saying "the committee,"
 7 we do have an Upper Arlington Solid Waste
 8 Committee.
 9 But going back when this originally
 10 started in January, this was Mike Schadek, this
 11 was me. And I see, again, what I saw was an
 12 injustice. I filed this, and I had nobody else at
 13 the time.
 14 So I hope that answers, you know, some
 15 of the question about why no committee members
 16 were listed.
 17 CHAIRMAN PREISSE: So you're a committee
 18 of one?
 19 MR. SCHADEK: Committee of one, exactly.
 20 Thank you.
 21 CHAIRMAN PREISSE: I'm going to ask for
 22 just a five-minute recess, since this has gone
 23 long enough for a break for everyone and for a
 24 chance to think about this for a minute, without

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1 objection.
 2 BOARD MEMBER ANTHONY: No objection.
 3 (A recess was taken.)
 4 CHAIRMAN PREISSE: Let's come out of
 5 recess here. We have heard from both sides of
 6 this issue, and I appreciate their weighing in.
 7 Procedurally review, what could have been done.
 8 DIRECTOR STINZIANO: I believe the Board
 9 decides to make a motion on the protest, then they
 10 would be seeking to remove the question from the
 11 ballot. If there are no motions made, then the
 12 issue would remain on the ballot as previously
 13 approved by the Board.
 14 CHAIRMAN PREISSE: Well, we've heard
 15 from both sides of this interesting and difficult
 16 matter, so I will ask the Board it's favor, if
 17 there is any expression or any motion.
 18 Any Board member at this time?
 19 I don't hear a motion from the Board;
 20 therefore, I think we move to the next matter of
 21 business.
 22 DEPUTY DIRECTOR DAMSCHRODER: And one of
 23 the questions that has arisen out of this petition
 24 is what should be the proper language on the

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1 ballot.

2 The City of Upper Arlington has

3 submitted letters to the Board of Elections

4 proposing, I think, two policy; one is language

5 that it believes is a proper reflection of the

6 initiative, and then the other proposal would be

7 to simply just provide on the ballot the language

8 as it appears on the petition.

9 So it would be staff recommendation that

10 we submit to the Secretary of State the language

11 that appears in Sections 1, 2, and 3 of the

12 petition language, the things that are after the

13 "Now therefore," the pre-action items from the

14 petition.

15 And I don't know if we want to ask the

16 representative from The city of Upper Arlington

17 who filed the letter with us to make any

18 additional comments, or if that's an accurate

19 summary of the letter, but that would be my

20 recommendation, that we do Sections 1, 2, and 3

21 from the petition itself as the ballot language to

22 be presented to the voters on election day and

23 obviously be submitted to the Secretary of State

24 for approval.

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1 BOARD MEMBER ANTHONY: Does that need

2 the vote of the Board?

3 DEPUTY DIRECTOR DAMSCHRODER: I think

4 given the circumstances, we probably should have a

5 vote of the Board on that.

6 CHAIRMAN PREISSE: Reiterate and

7 capsulize, if you will, what you just said. Is

8 there a request before the Board from the City?

9 DEPUTY DIRECTOR DAMSCHRODER: Yes, the

10 process for submitting ballot language is the

11 Board of Elections -- there's a form subscribed by

12 the Secretary of State and the Board of

13 Elections -- crafts that language and submits

14 to the Secretary of State for approval.

15 We did that, we sent it to the City of

16 Upper Arlington as part of our procedure to notify

17 them of the proposed language. We also submitted

18 it to Secretary of State for review. And when the

19 protest by Mr. McTigue on behalf of the City and

20 when the electors was filed, we asked the

21 Secretary of State to hold off on that approval

22 process for this one question only.

23 The City of Arlington then sent a letter

24 to us asking that we reconsider the ballot

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1 language that our staff had developed and proposed

2 two options; one is what it viewed as an accurate

3 representation of the question, and another

4 proposal to just simply put the language from the

5 petition itself on the ballot.

6 So it be staff recommendation that we

7 resubmit new language to the Secretary of State

8 for approval that would be simply the language

9 from the petition Sections 1, 2, and 3.

10 BOARD MEMBER ANTHONY: I make a motion

11 that the Board direct the Deputy Director and the

12 Director to submit to the Secretary of State for

13 full approval a certified ballot language for the

14 text of Section 1, 2, and 3 appearing in the

15 initiative petition narrative relative to the

16 refuse collection, having been previously been

17 certified in the ballot by this Board on August

18 the 25, 2008.

19 CHAIRMAN PREISSE: Okay. We have a

20 motion.

21 DEPUTY DIRECTOR DAMSCHRODER: Is there a

22 second to that?

23 BOARD MEMBER MARINELLO: Second.

24 DIRECTOR STINZIANO: All in favor?

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1 (Board votes unanimously.)

2 DIRECTOR STINZIANO: Any opposed?

3 Okay. We will move on to the next item

4 on the agenda.

5 DEPUTY DIRECTOR DAMSCHRODER: we May

6 just want to pause. That concludes our --

7 DIRECTOR STINZIANO: It concludes the

8 Upper Arlington trash collection.

9 All right. The next item on the agenda

10 regards the condensed ballot language policy that

11 the Board had previously approved.

12 We received two different opinions from

13 the Secretary of State's office. First one, when

14 we put the policy before the Board, stated that we

15 could reduce -- the initial advice when we drafted

16 the policy was that the Board did have the

17 authority to reduce language for ballot issues.

18 Subsequently we received further advice

19 saying that we could not reduce it on bond issues,

20 which was the whole reason. And it's staff's

21 recommendation that we rescind it in its entirety,

22 the policy, because essentially it doesn't change

23 anything. All of the language on the bonds will

24 be on, in the Board's efforts to understand the

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1 ballot language.
 2 BOARD MEMBER ANTHONY: All right. I
 3 move that the Board rescind in its entirety its
 4 policy governing condensed ballot language, which
 5 was unanimously adopted on August the 4th of 2008.
 6 CHAIRMAN PREISSE: Is there a second?
 7 BOARD MEMBER COLLEY: Second.
 8 DIRECTOR STINZIANO: All in favor?
 9 (Board votes unanimously.)
 10 DIRECTOR STINZIANO: Any opposed?
 11 DEPUTY DIRECTOR DAMSCHRODER: The next
 12 item on the agenda is the request for
 13 reconsideration filed on behalf of the petitioners
 14 for local option in Columbus Ward 45 Precinct H.
 15 The Board previously had not certified the ballot
 16 because there appeared to be nongenuine signatures
 17 on the part-petitions. And as we discussed in the
 18 previous session, in those cases, that knocks the
 19 entire part-petition off consideration. Without
 20 those part-petitions, the petitioner did not have
 21 sufficient ballot signatures. I don't know if
 22 Brook Mollenkopf, who is here.
 23 MS. MOLLENKOPF: Hi.
 24 CHAIRMAN PREISSE: Welcome. Please take

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1 five minutes or less and describe to us and
 2 explain.
 3 And I think, for the record, we want you
 4 to state your name and address and county here.
 5 MS. MOLLENKOPF: Brook Mollenkopf. I
 6 also have an affidavit. Do you want me to submit
 7 that in?
 8 DIRECTOR STINZIANO: Sure.
 9 MS. MOLLENKOPF: Okay. I circulated a
 10 precinct-wide petition for Columbus Ward 45
 11 Precinct H in which I had to circulate three
 12 separate petitions for beer, wine, mixed beverages
 13 and spirituous liquor on and off premises.
 14 And at this particular residence -- it
 15 was at 3306 Yozauri Drive -- two out of the three
 16 petitions, Sonequea Forrest and Jacqueline Forrest
 17 signed their own names on two out of the three.
 18 And on the third one, for whatever reason,
 19 Sonequea Forrest signed for Jacqueline Forrest.
 20 In the process, I had two separate
 21 clipboards, three separate petitions. In the
 22 process of passing them back and forth, I
 23 knowingly witnessed them sign, but did not realize
 24 that the one lady had signed for the other family

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1 member on the third one.
 2 And the law states that if I knowingly
 3 permit one person to sign for another person, that
 4 petition paper is invalid. If I did not knowingly
 5 witness the one person sign for her family member,
 6 just the one signature should be thrown out and
 7 not the whole petition paper.
 8 CHAIRMAN PREISSE: Okay. Do we have any
 9 questions from the Board on this matter? Or any
 10 comments from the staff?
 11 MS. COTTON: I've prepared a report. I
 12 have copies of the original part-petition which we
 13 determined to have signatures signed by one
 14 individual on two separate lines, lines 22 and 23.
 15 I have copies of the registrations on file for
 16 those individuals that shows their signatures.
 17 I also have a copy of one of the other
 18 part-petitions which was the Sunday sales
 19 petition, where both of the individuals signed
 20 their own signatures, so that you can compare the
 21 signatures and see why we, as a Board, ruled out
 22 the whole part-petition because of the nongenuine
 23 signature and the guidelines as established from
 24 the Secretary of State's office.

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1 CHAIRMAN PREISSE: Okay. I believe
 2 that, not unlike the previous issue, we would
 3 require a motion to undo the action of the Board.
 4 Are there any motions from the Board at
 5 this point?
 6 That's sufficient time. I'm afraid
 7 I didn't hear any, so we will move on to the next
 8 order of business, and you will probably move on
 9 to the next election.
 10 MS. MOLLENKOPF: Okay. Thank you.
 11 CHAIRMAN PREISSE: Best of luck.
 12 MS. MOLLENKOPF: Thank you.
 13 DIRECTOR STINZIANO: Next we have a
 14 challenge of right to vote correction of
 15 registration list. It was filed by Lisa Cisco
 16 6205 Memorial Drive against Jennifer Duritis, also
 17 reportedly at 6205 Memorial Drive. It's my
 18 understanding that Ms. Cisco states that the
 19 registration comes to her house, and that Ms.
 20 Duritis has never resided at that address --
 21 CHAIRMAN PREISSE: Okay.
 22 DIRECTOR STINZIANO: -- and that Ms.
 23 Cisco built the house, so no one has ever lived
 24 there with Ms. Duritis's name.

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1 CHAIRMAN PREISSE: Okay.
 2 DEPUTY DIRECTOR DAMSCHRODER: We sent
 3 the notices about this by mail, which we've
 4 followed all the different states of the directive
 5 that was recently issued from the Secretary of
 6 State's office, so staff feels comfortable
 7 recommending that the Board take this action to
 8 cancel Ms. Duritis's registration.
 9 CHAIRMAN PREISSE: Okay. Do we have a
 10 motion?
 11 BOARD MEMBER MARINELLO: Yes, Mr.
 12 Chairman, I move the Board grant the challenge of
 13 right to vote in correction of registration list
 14 filed by Lisa Cisco of 6205 Memorial Drive,
 15 Dublin, Ohio, against Jennifer L. Duritis,
 16 reportedly of 6205 Memorial Drive, and order that
 17 Jennifer L. Duritis's registration be immediately
 18 canceled in Franklin County and the name stricken
 19 from the registration list.
 20 CHAIRMAN PREISSE: Is there a second?
 21 BOARD MEMBER COLLEY: Second.
 22 DIRECTOR STINZIANO: All in favor?
 23 (Board votes unanimously.)
 24 DIRECTOR STINZIANO: Any opposed?

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1 Thank you.
 2 DEPUTY DIRECTOR DAMSCHRODER: The next
 3 policy that we'd like to submit to you deals with
 4 the overlap period between when in-person absentee
 5 voting begins and when voter registration closes.
 6 There has been some angst on the part of
 7 some individuals who are concerned about whether
 8 or not the Board of Elections will be able to
 9 fulfill its statutory obligations and duties
 10 relative to the mailing of acknowledgment cards
 11 after individual registers vote in person at Vets
 12 Memorial and also cast an absentee ballot at that
 13 same time.
 14 What this policy does is it establishes
 15 in writing that our Board will follow all of the
 16 normal statutory procedures relative to mailing
 17 acknowledgment cards, and also it provides that in
 18 the event that someone registers to vote in person
 19 and cast a ballot in person at the exact same time
 20 at Vets, that the acknowledgment card is mailed,
 21 is returned as undeliverable, that that ballot
 22 will be held out from the unofficial canvass so
 23 that the Board of Elections has sufficient time to
 24 investigate the registration and determine whether

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1 or not it is a valid registration.
 2 BOARD MEMBER ANTHONY: How long of a
 3 time are you talking?
 4 DEPUTY DIRECTOR DAMSCHRODER: Well, the
 5 overlap period?
 6 BOARD MEMBER ANTHONY: Yeah.
 7 DEPUTY DIRECTOR DAMSCHRODER: Is
 8 September the 30th through October the 6th.
 9 BOARD MEMBER ANTHONY: Well, I know
 10 that. Okay. September 30th to October 6th?
 11 DEPUTY DIRECTOR DAMSCHRODER: If
 12 somebody comes down to Vets Memorial on September
 13 30th --
 14 BOARD MEMBER ANTHONY: And they register
 15 to vote.
 16 DEPUTY DIRECTOR DAMSCHRODER: -- and
 17 they register to vote the first time and also vote
 18 absentee, this policy establishes a manner by
 19 which we will mail that person an acknowledgment
 20 card, which is our standard practice for voter
 21 registration.
 22 If that notice is not returned to the
 23 Board of Elections, based on that information,
 24 we'll presume that that person is indeed a

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1 qualified elector, that is their residence, and
 2 their ballot will be count.
 3 If the acknowledgment card is returned
 4 as undeliverable, we will then send a confirmation
 5 card by forwardable mail, which is the exact same
 6 process that we do use for a person registering to
 7 vote, whether it's in July or that overlap period.
 8 And if that confirmation card comes back as
 9 undeliverable or with a different address, then
 10 we'll know that we have a absentee ballot that is
 11 probably not going to be able to happen.
 12 BOARD MEMBER ANTHONY: This is only
 13 absentee, not the in-person?
 14 DEPUTY DIRECTOR DAMSCHRODER: This is
 15 in-person, absentee at Vets.
 16 BOARD MEMBER ANTHONY: At Vets. So if I
 17 walk up to Vets and it's October 5th and I want to
 18 vote, what happens? You going to mail me a card
 19 before I can vote?
 20 DEPUTY DIRECTOR DAMSCHRODER: No, you
 21 will register to vote in person there at Vets.
 22 BOARD MEMBER ANTHONY: Suppose I vote
 23 there at Vets?
 24 DEPUTY DIRECTOR DAMSCHRODER: And we'll

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1 then key that information information over to our
 2 registration system, and then you will complete an
 3 absentee application. We'll then key that into
 4 the system and issue you an absentee ballot that
 5 you will then go over to a privacy booth, mark,
 6 place inside a sealed identification envelope,
 7 sign, and deposit it in the ballot box.
 8 BOARD MEMBER ANTHONY: What about all
 9 this other stuff you were just talking about?
 10 DEPUTY DIRECTOR DAMSCHRODER: In the
 11 event that your -- when you register, we will mail
 12 you an acknowledgment card, which is required by
 13 Ohio law, just like we do whether you register to
 14 vote in June or July. We fully expect that that
 15 acknowledgment card will not come back to us as
 16 undeliverable. Sometimes they do, sometimes
 17 because the person truly isn't registered to vote,
 18 hasn't resided at that address, or sometimes
 19 because the postal system for some other reason.
 20 Whether it's the overlap period, whether
 21 it's June or July, our policy then is to issue a
 22 confirmation card to that person which is
 23 forwardable mail. That helps us determine if the
 24 person has moved. Maybe they were temporarily at

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1 that address or something else.
 2 What this policy says is if all those
 3 things are undeliverable and we have reason to
 4 believe the person is not a resident at that
 5 address, then we'll hold the ballot out from the
 6 unofficial election night canvass so the Board of
 7 Elections has sufficient time to investigate
 8 whether or not an individual is indeed a qualified
 9 register elector at that address.
 10 I don't believe that this is going to
 11 happen and we're going to have this problem. But
 12 the Secretary of State in directive -- I don't
 13 have it here in front of me -- said the Board of
 14 Elections -- I think the exact phraseology was
 15 strongly recommended, may, shall adopt a policy --
 16 the Board of Elections should adopt a policy to
 17 make sure that we follow and dot our I's and cross
 18 our T's during that window of time that we will be
 19 under a great deal of scrutiny.
 20 And it is a memorandum, I apologize, it
 21 was not a directive.
 22 MS. BROWN: It's a directive.
 23 DEPUTY DIRECTOR DAMSCHRODER: There's
 24 the directive part, Directive 200863. So that is

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1 what we are doing, is adopting a policy to make
 2 sure that everyone -- so everyone's expectations
 3 are equal, going into the process.
 4 BOARD MEMBER ANTHONY: A lot of stuff.
 5 CHAIRMAN PREISSE: If I understand the
 6 policy, it is to merely hold aside those votes,
 7 those registrations and votes cast in that short
 8 window, to be subject to the regular registration
 9 mail confirmation.
 10 DEPUTY DIRECTOR DAMSCHRODER: Precisely.
 11 And there is already built into Ohio law a
 12 provision for challenging absentee ballots up
 13 until the 20th day before the election. And so
 14 because of that challenge, when a person casts
 15 their absentee ballot, we're putting them in
 16 sealed envelopes, sealed identification envelopes,
 17 that has the voter's name, address, signature, et
 18 cetera.
 19 So whether it's because of challenge or
 20 because of this policy, the person's
 21 acknowledgment card is returned as undeliverable,
 22 we can take that identification envelope with the
 23 ballot still sealed inside and hold it out from
 24 the unofficial election canvass so that the Board

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1 can do any additional verification of the person's
 2 residency before separating the ballot from the
 3 envelope and tallying it in the unofficial
 4 canvass.
 5 BOARD MEMBER ANTHONY: So we're looking
 6 at everyone who votes between September 30th --
 7 everyone that registers -- every newly registered
 8 voter who votes from September 30th to October
 9 6th, their votes will be put in a -- they will be
 10 held until we verify the address, is what I'm
 11 hearing.
 12 DEPUTY DIRECTOR DAMSCHRODER: Yes, but
 13 so will everyone who votes between September the
 14 20th, regardless of when they register, and
 15 whatever the 20th day before the election is.
 16 Everyone's going to be put into -- everyone --
 17 BOARD MEMBER ANTHONY: Every newly
 18 registered voter?
 19 DIRECTOR STINZIANO: Yes. Newly
 20 registered voter and anyone voting absentee or
 21 early during that time period, because of the
 22 challenge period.
 23 BOARD MEMBER ANTHONY: Okay. And how
 24 have we done it in the past?

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1 DEPUTY DIRECTOR DAMSCHRODER: The policy
 2 for the mailing, Bill, is only to people who
 3 register to vote. And, frankly, the same thing
 4 will happen in terms of the mailing to someone who
 5 registers to vote but doesn't also cast an
 6 absentee ballot at the exact same time.
 7 If you register at Broad and High or the
 8 BMV on October 1st, we're still going to mail an
 9 acknowledgment card to your house, and we'll still
 10 do the confirmation card if it comes back
 11 undeliverable.
 12 So what we're saying is we're not going
 13 to change our procedure those six days, we're
 14 still doing it, we're just putting it on paper
 15 because of the potentially litigious nature of
 16 this issue, that we're putting our procedure on
 17 paper so that everyone has full expectations of
 18 what will happen during that time frame.
 19 BOARD MEMBER ANTHONY: I bet you think
 20 I'm pretty dense, don't you?
 21 DEPUTY DIRECTOR DAMSCHRODER: Not at
 22 all, I think you're an intelligent man who wants
 23 to know all the facts.
 24 BOARD MEMBER ANTHONY: All right. Thank

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1 you for that last comment.
 2 DEPUTY DIRECTOR DAMSCHRODER: You got
 3 it.
 4 CHAIRMAN PREISSE: Are there any other
 5 questions?
 6 BOARD MEMBER ANTHONY: No.
 7 CHAIRMAN PREISSE: Okay. Do I hear a
 8 motion on the suggestion?
 9 I move that the Board accept the policy
 10 submitted by the Director and the Deputy Director
 11 governing the issuance of verification of
 12 acknowledgment cards sent to all voters who
 13 register to vote and vote in person at Vets
 14 Memorial during the overlap period.
 15 BOARD MEMBER COLLEY: I second that
 16 motion.
 17 BOARD MEMBER ANTHONY: I got a question
 18 for you both? Is this the policy?
 19 DEPUTY DIRECTOR DAMSCHRODER: That is
 20 the policy.
 21 BOARD MEMBER ANTHONY: Okay. All right.
 22 No more questions.
 23 CHAIRMAN PREISSE: Okay. We have a
 24 motion and a second.

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1 DIRECTOR STINZIANO: Roll call vote.
 2 Mr. Colley?
 3 BOARD MEMBER COLLEY: Yes.
 4 DIRECTOR STINZIANO: Mr. Preisse?
 5 CHAIRMAN PREISSE: Yes
 6 DIRECTOR STINZIANO: Mr. Anthony?
 7 BOARD MEMBER ANTHONY: Yes.
 8 DIRECTOR STINZIANO: Ms. Marinello?
 9 BOARD MEMBER MARINELLO: Yes.
 10 DIRECTOR STINZIANO: Motion passes.
 11 CHAIRMAN PREISSE: I'm going to ask the
 12 Board to, if there's no significant reason not to,
 13 to skip to the second to the last matter at hand,
 14 because I note that I think I've been told that
 15 Don Brown, the Franklin County administrator is
 16 here.
 17 I want to apologize to him that some of
 18 these proceedings took longer, I think in great
 19 part because of my indulgence of those giving
 20 testimony earlier, but I do appreciate your
 21 presence and don't want to keep you any longer.
 22 So without objection, we'll revert to
 23 the second to the last order of business, which is
 24 to welcome County Commissioner Mr. Don Brown

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1 Franklin County Administrator, for the purpose of
 2 addressing the Board.
 3 MR. BROWN: Thank you, Chairman, members
 4 of the Board.
 5 I appreciate the opportunity to address
 6 you tonight on behalf of the Board of the County
 7 Commissioners who have asked me to come before you
 8 to ask you to consider revising the compensatory
 9 time policy, the overtime policy that you adopted
 10 for the Board of Elections employees in April of
 11 2008, earlier this year.
 12 At that time, the Board elected a policy
 13 that did not recognize that there were employees
 14 who in most other comparable organizations in
 15 Boards of Elections around the State and in the
 16 other organizations of the same employer, Franklin
 17 County, that there are nonexempt employees and
 18 exempt employees.
 19 And exempt employees are those that
 20 under Department of Labor standards would not
 21 qualify, would not be eligible for overtime.
 22 We're asking that the Board consider amending its
 23 policy currently in place to recognize that there
 24 are employees who are exempt from the provisions

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1 of fair labor standards policy because of the
 2 duties and responsibilities, because of the fact
 3 that they are salaried, and because of the fact
 4 that they are highly compensated already.
 5 And those facts in combination would
 6 lead to the conclusion that in another
 7 organization, such as the Cuyahoga County Board of
 8 Elections, Hamilton County Board of Elections,
 9 Lucas County Board of Elections, Montgomery County
 10 Board of Elections, it would lead to the
 11 conclusion if these employers were employed by the
 12 Board of County Commissioners or by many other
 13 organizations of the same employer, Franklin
 14 County, that they would not be eligible for
 15 overtime.
 16 At the very least we believe because of
 17 the combination of tests, again, salaried,
 18 executive responsibilities, administrative and
 19 supervisory duties, and highly compensated. And
 20 by highly compensated, under the Department of
 21 Labor standards means, last time I checked,
 22 something like salaried in excess of 68,000 or so.
 23 So under a Variety of tests, the
 24 organization would, at the very least, in our

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1 view, recognize that the Director and Deputy
 2 Director are not eligible for overtime.
 3 They may be granted compensatory time or
 4 additional vacation time or other time off at the
 5 discretion of the Board, but we do not, in our
 6 view, believe they should be eligible for
 7 overtime, and that's because it's taken into
 8 consideration already, in our view, given the
 9 compensation of the positions themselves.
 10 There may be other positions in the
 11 organization similarly who could be qualified as
 12 exempt from the provisions of the Fair Labor
 13 Standards Act based on their supervisory
 14 responsibilities, their executive
 15 responsibilities, the level of compensation, the
 16 fact that they are salaried at all.
 17 But all of these, we believe, would
 18 bring the Board of Elections' compensatory time
 19 and overtime policy back into line with standard
 20 prevailing practice in the industry. And by that,
 21 I mean Board of Elections around the state in
 22 comparably-sized, similarly situated counties, as
 23 well as bring it back into line with the
 24 compensation policy for the same employer,

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1 Franklin County. We would ask you to consider
 2 these revisions.
 3 You may wish to further consider a
 4 policy change that would encourage employees who
 5 are eligible for overtime to first take
 6 compensatory time, if that meets the
 7 organization's needs, throughout the year, outside
 8 of, where possible, it doesn't impact your
 9 organization's ability to conduct elections.
 10 So that, for example then, the first 120
 11 hours, for example, might be accumulated and
 12 granted in terms of compensatory leave before paid
 13 overtime is given for any hours accumulated in
 14 excess of that standard, whether it's set at 120
 15 hours, 240 hours or whatever.
 16 I believe that these changes, again,
 17 would draw the Board of Elections' policy more in
 18 line with the prevailing practice for the same
 19 industry, for similarly situated organizations,
 20 and for the same employer, Franklin County.
 21 I appreciate your consideration of these
 22 thoughts. We always appreciate the Board of
 23 Election's continued cooperation and the fine work
 24 of your staff in conducting elections, both past

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1 and those to come.
 2 Any questions? Mr. Chairman? Members
 3 of the Board?
 4 CHAIRMAN PREISSE: Any questions from
 5 the Board?
 6 BOARD MEMBER ANTHONY: Wrote it all
 7 down.
 8 MR. BROWN: Thank you.
 9 CHAIRMAN PREISSE: Thank you. You've
 10 asked for consideration, and you shall certainly
 11 have that. I appreciate your patience in waiting.
 12 Maybe you learned, as we do every day, a little
 13 more about the election process we're facing. I
 14 know that you paid close attention to it.
 15 Thanks very much for your testimony.
 16 BOARD MEMBER ANTHONY: Thank you, Don.
 17 CHAIRMAN PREISSE: Well, then let's
 18 revert back to the --
 19 DIRECTOR STINZIANO: I think the next
 20 item is the pending voter registration policy.
 21 Our staff had contacted the Secretary of State's
 22 office with the question of how long invalid
 23 registration applicants must be main obtained.
 24 Secretary of State's office suggested

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1 that we adopt a policy that allows the Franklin
 2 County Board of Elections to purge incomplete or
 3 never valid applications after one year.
 4 The Secretary of State's office also
 5 suggested that we maintain a file of those
 6 incomplete applications that were purged so that
 7 that there will be a record in case there's ever
 8 one requested.
 9 BOARD MEMBER ANTHONY: Did she say how
 10 long to hold the record?
 11 DIRECTOR STINZIANO: She did not, or her
 12 staff did not.
 13 BOARD MEMBER ANTHONY: Okay. So we will
 14 hold a -- so we can purge a record within one
 15 year, and then we need to hold onto that purged
 16 record for indefinitely?
 17 DIRECTOR STINZIANO: If that's what the
 18 Board like.
 19 BOARD MEMBER ANTHONY: Can we get a
 20 clarification on that?
 21 DIRECTOR STINZIANO: Yes.
 22 BOARD MEMBER ANTHONY: Is there a --
 23 now, we purge -- what's the federal law say about
 24 purging records?

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1 DIRECTOR STINZIANO: I'd defer to my
 2 deputy director for that clarification.
 3 BOARD MEMBER ANTHONY: The federal law
 4 for purging records?
 5 DEPUTY DIRECTOR DAMSCHRODER: Well, I
 6 think the -- today I won't even come close to
 7 involve you in Q and A on this, but I think part
 8 of the challenge that this policy would seek to
 9 amend is that we often get registrations in that
 10 don't have the signature of the voter, don't have
 11 the person's address or date of birth or something
 12 else that doesn't make them a qualified elector,
 13 and put them on our rolls.
 14 We have a procedure that in the past
 15 what we used to do is timestamp the card, mail the
 16 original card back to the voter for them to
 17 complete and mail back to us.
 18 Secretary of State over the summer
 19 decided to tell all Boards of Elections that they
 20 need to keep the original card, mail a new blank
 21 card to the voter to complete.
 22 So we have all of these incomplete cards
 23 that are sort of languishing. They're not in our
 24 system, they're not qualified electors, they're

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1 not registered voters because they haven't
 2 completed all of the information.
 3 But we just need a policy for retaining
 4 these and disposing of them so they're not
 5 actually being purged, like under the National
 6 Registration Act. Does that make sense?
 7 BOARD MEMBER ANTHONY: Of course not.
 8 DEPUTY DIRECTOR DAMSCHRODER: Okay.
 9 DIRECTOR STINZIANO: I think you can
 10 describe them as fatal pending registrations.
 11 They are pending because the information isn't
 12 there to processes, and they're fatal because that
 13 information is never going to be there.
 14 BOARD MEMBER ANTHONY: How many of these
 15 do we get?
 16 BOARD MEMBER COLLEY: Pardon me?
 17 BOARD MEMBER ANTHONY: How many do we
 18 get?
 19 MS. CHLOE: My name is Renae Chloe. I'm
 20 the manager of voters services, Franklin County
 21 Board of Elections. At the moment we're getting
 22 about 200 to 500 a day of fatal flawed
 23 registrations.
 24 We have some on the books. I can't

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1 remember the exact number. I don't have the exact
 2 number that we already have that are like five
 3 years old just taking up space.
 4 BOARD MEMBER ANTHONY: Okay.
 5 CHAIRMAN PREISSE: They're not
 6 electronically on the rolls, it's material sitting
 7 around?
 8 MS. CHLOE: No, there's some that we
 9 used to put them in pending in an electronic file.
 10 Those are about five years old. Those are
 11 non-voting people. They're in a non-voting
 12 status. They're not registered voters
 13 BOARD MEMBER ANTHONY: Mr. Chairman,
 14 Deputy Director, and Director, normally you have a
 15 retention period of some sort. Can we ascertain
 16 from the Secretary what that retention period
 17 would be?
 18 DIRECTOR STINZIANO: The Secretary of
 19 State's office is still working on updating the
 20 retention schedule since the new administration
 21 has taken over, and I believe that is a topic on
 22 that retention schedule, but we do not know the
 23 timeline of when that retention schedule will be
 24 shared.

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<p>1 BOARD MEMBER ANTHONY: So we'll be back 2 again for another to add to this then, maybe? 3 DIRECTOR STINZIANO: We currently don't 4 have it in our retention schedule, and we follow 5 the most current version, which I believe is '98, 6 '99. 7 BOARD MEMBER ANTHONY: All right. Thank 8 you. That's your recommendation? 9 DIRECTOR STINZIANO: Yes. 10 BOARD MEMBER ANTHONY: All right then. 11 DIRECTOR STINZIANO: If the Board would 12 be more comfortable, they can clarify on how long 13 the whole -- 14 BOARD MEMBER ANTHONY: I would like to 15 get a clarification on it, whenever it comes. I 16 understand we're in that kind of waiting period. 17 I got no more questions. So with that, sir, I 18 think I'll make a motion. 19 I move that the Franklin County Board of 20 Elections authorize the Director and Deputy 21 Director of Franklin County Board of Elections, 22 per direction of the Secretary of State's office, 23 to establish a policy that allows Board staff to 24 purge incomplete/never valid registration</p>	<p>1 challenged, what would happen to them? 2 DEPUTY DIRECTOR DAMSCHRODER: I think we 3 can probably post four notices at the polling 4 place. 5 BOARD MEMBER ANTHONY: You know what I'm 6 talking about? 7 DIRECTOR STINZIANO: We can draft 8 something saying that when you vote during the 9 challenge period, that voter receives a unique 10 identifier when casting a ballot on the DRE 11 machine. 12 BOARD MEMBER ANTHONY: All right then, 13 no other questions, Mr. Chairman. 14 CHAIRMAN PREISSE: Well, okay. It is my 15 suggestion you make the motion. Your questions 16 need to be satisfied. 17 BOARD MEMBER ANTHONY: Yes, sir. 18 And I move that the Board use all paper 19 absentee ballots at Veterans Memorial in order to 20 maximize our machine allocation on election day, 21 and that two of the 88 DRE machines be allocated 22 to the Vets for the 88 voters. And when not 23 occupied by 88 voters, for those in-person 24 absentee voters who prefer to vote on a DRE</p>
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<p>1 applications after one year. This policy should 2 maintain a file of those incomplete applications 3 that were purged so that there is a record. 4 BOARD MEMBER MARINELLO: Second. 5 DIRECTOR STINZIANO: All in favor? 6 (Board votes unanimously.) 7 DIRECTOR STINZIANO: Okay. No opposed. 8 Next agenda item is the voting machine 9 assignment allocation for Vets Memorial. We are 10 working hard to get before the Board a voting 11 machine allocation on election day. 12 We are suggesting, as a staff, that Vets 13 Memorial rely on paper ballots with only two -- 14 with implementation of two 88 machines to be down 15 at Vets Memorial for 88 voters that may decide to 16 vote early during the early absentee period. 17 We also would suggest to the Board that 18 those 88 machines who are sitting idle and not 19 being used by an 88 voter could be used by any 20 early absentee voter that desires to vote on a 21 machine rather than the paper ballot. 22 BOARD MEMBER ANTHONY: Will we let those 23 folks know that there's a good possibility that 24 their information could be -- if they're</p>	<p>1 machine. 2 BOARD MEMBER MARINELLO: Second. 3 DIRECTOR STINZIANO: All in favor? 4 (Board votes unanimously.) 5 DIRECTOR STINZIANO: Any opposed? 6 Next issue is the fair and impartial 7 ballot allocation. Staff received Secretary of 8 State's directive that suggests that a minimum 25 9 percent backup paper ballots should be produced in 10 the area counties. 11 The staff is recommending that the 12 Franklin County produce ballots equal to 51 13 percent of the precinct turnout in the 2004 14 general election. 15 We feel that there is a -- the word is 16 out on use of paper ballots, and that we'll have a 17 higher demand than we did in the primary. And 18 we are preparing as best we can for what that 19 turnout could be on election day and the reliance 20 on paper ballots. 21 BOARD MEMBER ANTHONY: Mr. Chairman, I 22 have no questions on this one. I will not prolong 23 this meeting any longer. 24 I move that the Board approve the</p>

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1 recommendations by the Director and Deputy
 2 Director to provide backup paper ballots equal to
 3 51 percent of the precinct turnout in the 2004
 4 general election.
 5 CHAIRMAN PREISSE: And I'll second the
 6 motion.
 7 DIRECTOR STINZIANO: All in favor?
 8 (Board votes unanimously.)
 9 DIRECTOR STINZIANO: Any opposed?
 10 Next agenda item is we received the
 11 Secretary of State's directive that established
 12 the base rate per diem for poll workers. Because
 13 of that, we need to enter into a memorandum of
 14 agreement with the Board of commissioners, and so
 15 we asked that the Board approve entering into that
 16 memorandum.
 17 BOARD MEMBER ANTHONY: They left.
 18 DEPUTY DIRECTOR DAMSCHRODER: Their
 19 Board will vote on that at a separate meeting, as
 20 well, of course, and we'll track all that with the
 21 signatures.
 22 BOARD MEMBER ANTHONY: Okay.
 23 DIRECTOR STINZIANO: Likely a week from
 24 tomorrow.

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1 DEPUTY DIRECTOR DAMSCHRODER: Well, I
 2 think the resolution for tomorrow regarding
 3 supplemental appropriation includes the funding
 4 for this payroll pay increase, so I think the
 5 commissioners, as they have been in the past, are
 6 very supportive of paying the maximum amount poll
 7 worker compensation available to Franklin's
 8 hard-working poll workers.
 9 BOARD MEMBER MARINELLO: And it's still
 10 very low compared to so many of them --
 11 DEPUTY DIRECTOR DAMSCHRODER: That's
 12 right.
 13 BOARD MEMBER MARINELLO: -- as I
 14 learned.
 15 DEPUTY DIRECTOR DAMSCHRODER: Relative
 16 to other states, yes.
 17 BOARD MEMBER MARINELLO: Mr. Chairman, I
 18 move that the Board enter into a memorandum of
 19 agreement with the Franklin County Board of
 20 Commissioners for the increase in poll worker pay,
 21 as provided in the Secretary of State directive
 22 2008-51, to establish the base rate per per diem
 23 of pay for judges of elections to be 120.81.
 24 CHAIRMAN PREISSE: Second?

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1 BOARD MEMBER COLLEY: Second.
 2 DIRECTOR STINZIANO: All in favor?
 3 (Board votes unanimously.)
 4 DIRECTOR STINZIANO: No opposed.
 5 Next item is we had the -- I don't
 6 know --
 7 DEPUTY DIRECTOR DAMSCHRODER: This was
 8 part of a statute, a competitive bid process for
 9 the printing of paper ballots, both for absentee
 10 and for the election day provisionals and election
 11 day paper ballot option ballots. That competitive
 12 process resulted in two responses.
 13 The staff recommends ES&S as the ballot
 14 printing company, both as the lowest and best
 15 bidder for this project.
 16 BOARD MEMBER ANTHONY: Who was the other
 17 bidder?
 18 DEPUTY DIRECTOR DAMSCHRODER: The other
 19 bidder was Dayton Legal Blank.
 20 CHAIRMAN PREISSE: Who did we use last
 21 time?
 22 DEPUTY DIRECTOR DAMSCHRODER: We have
 23 used ES&S since the 2006 general election. Prior
 24 to that we used Dayton Legal Blank.

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1 BOARD MEMBER ANTHONY: What was the
 2 difference in the cost?
 3 DEPUTY DIRECTOR DAMSCHRODER: I can get
 4 the photocopy. It was like seven cents a ballot
 5 on average difference, ES&S was about seven cents
 6 per ballot less than Dayton Legal.
 7 CHAIRMAN PREISSE: All right. Any other
 8 concerns or comments or questions on that matter?
 9 Then we would look for a motion.
 10 BOARD MEMBER MARINELLO: Mr. Chairman, I
 11 move that the Board authorize the Director and
 12 Deputy Director to award the contract for ballot
 13 printing for the November 4th, 2008 general
 14 election to ES&S.
 15 CHAIRMAN PREISSE: Is there a second?
 16 BOARD MEMBER COLLEY: Second.
 17 DIRECTOR STINZIANO: All in favor?
 18 (Board votes unanimously.)
 19 DIRECTOR STINZIANO: Any opposed?
 20 Next there are personnel matters that
 21 the staff would like to discuss with the Board,
 22 and we ask that the Board move into executive
 23 session.
 24 BOARD MEMBER ANTHONY: Mr. Chairman, I

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1 move that the Board reconvene in executive session
 2 for purpose of discussing personnel matters.
 3 BOARD MEMBER COLLEY: Second.
 4
 5 DEPUTY DIRECTOR DAMSCHRODER: Roll call
 6 vote.
 7 DIRECTOR STINZIANO: Mr. Colley?
 8 BOARD MEMBER COLLEY: Yes.
 9 DIRECTOR STINZIANO: Mr. Preisse?
 10 CHAIRMAN PREISSE: Yes.
 11 DIRECTOR STINZIANO: Mr. Anthony?
 12 BOARD MEMBER ANTHONY: Yes.
 13 DIRECTOR STINZIANO: Ms. Marinello?
 14 BOARD MEMBER MARINELLO: Yes.
 15 DIRECTOR STINZIANO: We are now in
 16 executive session.
 17 (Board went into executive session.)
 18 BOARD MEMBER ANTHONY: Executive
 19 session, no votes were taken, no consensus were
 20 made, and no business was agreed upon, something
 21 like that.
 22 DIRECTOR STINZIANO: Is there a second?
 23 BOARD MEMBER MARINELLO: Second.
 24 DIRECTOR STINZIANO: Roll call vote.

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1 Mr. Colley?
 2 BOARD MEMBER COLLEY: Yes.
 3 DIRECTOR STINZIANO: Mr. Preisse?
 4 CHAIRMAN PREISSE: Yes.
 5 DIRECTOR STINZIANO: Mr. Anthony?
 6 BOARD MEMBER ANTHONY: Yes.
 7 DIRECTOR STINZIANO: Ms. Marinello?
 8 BOARD MEMBER MARINELLO: Yes.
 9 DIRECTOR STINZIANO: Back in public
 10 session.
 11 First item would be the establishing the
 12 hourly rate for the off-site in-person absentee
 13 voting coordinators down at Vets.
 14 BOARD MEMBER MARINELLO: All right. Mr.
 15 Chairman, I move that the Board establish the
 16 hourly rate for four off-site in-person absentee
 17 voting location coordinators at \$17 an hour,
 18 effective immediately.
 19 CHAIRMAN PREISSE: Is there a second?
 20 BOARD MEMBER COLLEY: Second.
 21 DIRECTOR STINZIANO: All in favor?
 22 (Board votes unanimously.)
 23 DIRECTOR STINZIANO: Any opposed?
 24 And the next item is the Board received

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1 the resignation letter Tina a Miller.
 2 BOARD MEMBER MARINELLO: Mr. Chairman, I
 3 move that the Board accept the resignation letter
 4 of Tina Miller, effective immediately.
 5 BOARD MEMBER ANTHONY: And I second
 6 that.
 7 DIRECTOR STINZIANO: All in favor?
 8 (Board votes unanimously.)
 9 DIRECTOR STINZIANO: Any opposed?
 10 Now the chairman would like to proceed,
 11 there are no items from the staff.
 12 CHAIRMAN PREISSE: Okay. I guess we
 13 have one person who's asked to address the Board.
 14 And the hours's late, but let's indulge this good
 15 citizen.
 16 Maybe take a few minutes to state your
 17 interest, ma'am, then we'll make a determination
 18 how to proceed.
 19 MS. SCHAEFFER: Okay. My name is Patty
 20 Schaeffer. I'm the director of the Ohio Election
 21 Justice Campaign, something that started with this
 22 state and has now moved into being a national
 23 group of election advocates across the country.
 24 In 2006, I ran the five candidate

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1 election observer project, so I had observers
 2 across the State of Ohio. It was an awkward
 3 beginning to the process because the Secretary of
 4 State's office refused to tell me how to do the
 5 procedure. The only thing they would tell me is
 6 what the law was on it.
 7 I called Matt, and Matt walked me
 8 through the steps, so he went far above the call
 9 of duty and is awesome, so kudos to Matt, that was
 10 really good. So I'm back here two years later
 11 ready to do another project with multiple
 12 candidates across the state.
 13 And because we have changes this year in
 14 what the poll policy will be with the early voting
 15 and stuff, one of the things that I wondered is,
 16 just for starters, with the idea of early voting.
 17 And, generally, I don't know how much of
 18 this you know, or the others in the room, but I
 19 would have one person that would be the Board of
 20 Elections person, and that person for the Board of
 21 Elections person would have the ability to be at
 22 the Board of Elections, be at any precinct in the
 23 whole county, and they would also be able to be
 24 here for tabulation. If there's a recount, they

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1 could be here.
 2 Now, with the early voting, if you think
 3 through a recount, it could go on five days or
 4 twenty days afterwards. With early voting, it
 5 takes it to where we have like 30 days in advance
 6 and the possibility of many days afterwards.
 7 So my question, the obvious person would
 8 be the Board of Elections person probably, but who
 9 do you -- where do you get a volunteer that's
 10 going to be available for like 50 or 60 or 70
 11 days.
 12 So within that, I wondered -- and I
 13 don't know if you have an answer yet. I've called
 14 Cuyahoga, I've called Hamilton, I've called
 15 several of the counties, no one has any idea what
 16 they're doing yet. And so I thought I'd run it
 17 past you.
 18 DIRECTOR STINZIANO: It's an issue that,
 19 as the Board members know that were on the
 20 conference call during the transitional support,
 21 we raised with the Secretary of State's office,
 22 and they told us they would clarify the concerns
 23 and the issue for us in the future, so we are
 24 awaiting Secretary of State clarification.

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1 MS. SCHAEFFER: Okay. So that would be
 2 one. The 216 and 217 forms for the due date. If
 3 the early voting pushes it up, generally they're
 4 due 11 days before the election.
 5 DIRECTOR STINZIANO: Correct, that's
 6 another issue.
 7 MS. SCHAEFFER: You don't know yet?
 8 DIRECTOR STINZIANO: That's where we
 9 started with the Secretary of State.
 10 MS. SCHAEFFER: Okay. Because that
 11 makes them due right away, which --
 12 DIRECTOR STINZIANO: We're awaiting.
 13 MS. SCHAEFFER: okay. The hours for
 14 early voting, what are they going to be?
 15 DIRECTOR STINZIANO: Monday through
 16 Friday, the hours are 8:00 to 7:00 on the
 17 weekdays, Saturday's hours are from 8:00 to 5:00,
 18 Sunday's the hours are from 1:00 to 5:00.
 19 MS. SCHAEFFER: Okay. Within the early
 20 voting and even parking at Vets Memorial, with the
 21 idea of me having people having to be there for
 22 days -- it's not like I'm just asking to be
 23 there one day -- will parking be provided for poll
 24 workers?

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1 And with that, can parking also be
 2 provided for observers, so that since it's 30
 3 days, that I'm not putting a hardship on
 4 volunteers that they got to pay to park for 30
 5 days.
 6 Is that something that you will
 7 consider?
 8 DIRECTOR STINZIANO: That is an issue
 9 we're still approaching with Vets Memorial. It's
 10 ongoing negotiations.
 11 MS. SCHAEFFER: Okay.
 12 DIRECTOR STINZIANO: Availability for
 13 parking both for poll workers and for any other
 14 people that will be there during the time.
 15 MS. SCHAEFFER: Well, I'd like to ask
 16 your consideration as you think about the poll
 17 workers or observers. Because it's not one day,
 18 one day's no biggie for someone to pay to park.
 19 But if we're going into 30 days and they're coming
 20 in, that's a lot to ask of a volunteer.
 21 With the observers, will they be able
 22 to -- my understanding is the ballots every
 23 evening will move from Vets Memorial back here to
 24 this building for secure storage. Will the

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1 observers be able to follow the coming back and be
 2 able to come in and watch them be locked down, or
 3 whatever the definition you would give?
 4 DEPUTY DIRECTOR DAMSCHRODER: I think
 5 that's to be determined as a part of the Secretary
 6 of State's -- whatever directive she'll issue on
 7 this matter.
 8 MS. SCHAEFFER: Okay. So you know, I'd
 9 like to be able to do that, that way we can see
 10 where they go and what that procedure is. I think
 11 that's it.
 12 And so when you hear back, you know, I'm
 13 very interested in nothing more.
 14 DIRECTOR STINZIANO: So are we.
 15 DEPUTY DIRECTOR DAMSCHRODER: I guess
 16 we'll all know at the same time.
 17 CHAIRMAN PREISSE: Well, thank you very
 18 much, Mrs. Schaeffer, for those thoughts and
 19 observations and for waiting until the end of the
 20 meeting, as well.
 21 MS. SCHAEFFER: And I'd like you all to
 22 think about the word "may" and "stay" and "have"
 23 and "will" and dream about them tonight, and
 24 "shall".

1 CHAIRMAN PREISSE: Thank you. We'll
 2 leave it at that. And I hope you shall have a
 3 nice evening.
 4 BOARD MEMBER ANTHONY: Mr. Chairman, I
 5 move that we adjourn.
 6 BOARD MEMBER MARINELLO: Second.
 7 CHAIRMAN PREISSE: Then, therefore, we
 8 may, if we have a second.
 9 BOARD MEMBER MARINELLO: I second it.
 10 DIRECTOR STINZIANO: All in favor?
 11 (Board votes unanimously.)
 12 DIRECTOR STINZIANO: Meeting is
 13 adjourned.
 14 -----
 15 Thereupon, the proceedings were.
 16 concluded at 9:43 o'clock p.m.
 17 -----
 18
 19
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 22
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 24

1 CERTIFICATE
 2 The undersigned do hereby certify that the
 3 foregoing proceedings were digitally recorded,
 4 electronically transmitted, and transcribed via
 5 audible playback, and that the foregoing
 6 transcript of such proceedings is a full, true and
 7 correct transcript of the proceedings as so
 8 recorded.
 9
 10 IN WITNESS WHEREOF, I have hereunto set my
 11 hand and affixed my seal of office at Columbus,
 12 Ohio, on this 12th day of September, 2008.
 13
 14
 15
 16 _____
 17 MICHELLE K. SALINAS
 18 Certified Digital Reporter
 19 Notary Public - State of Ohio.
 20 My commission expires July 17, 2013
 21
 22 _____
 23 CRYSTAL SIMPSON
 24 Certified Digital Transcriber