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BEFORE THE
FRANKLIN COUNTY BOARD OF ELECTIONS
OF THE STATE OF OHIO

IN RE: :

Board Meeting :

:

Proceedings before Chairman William A.
Anthony, Jr., Board Members Michael F. Colley,
Carolyn C. Petree, Kimberly E. Marinello,
Deputy Director Dennis L. White, and Executive
Director Matthew Damschroder, taken at the
Franklin County Board of Elections, 280 East
Broad Street, Columbus, Ohio, on Wednesday,
June 21, 2006, at 3:20 o'clock p.m.

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2 P R O C E E D I N G S
3 - - - - -

4 CHAIRMAN ANTHONY: I'd like to call
5 the Franklin County Board of Elections meeting
6 to order.

7 (Role call vote taken.)

8 MR. DAMSCHRODER: All members are
9 present, Mr. Chairman. The first item of
10 business is to quickly approve the minutes of
11 the board meetings of May 1, May 17, and
12 May 22 of this year.

13 CHAIRMAN ANTHONY: Do we have a
14 motion?

15 MS. PETREE: Mr. Chairman, I would
16 move that the minutes of the May 1st, 2006,
17 May 17th, 2006, and May 22nd, 2006 meetings of
18 the Franklin County Board of Elections be
19 approved as submitted.

20 CHAIRMAN ANTHONY: Is there a
21 second?

22 MS. MARINELLO: Second.

23 CHAIRMAN ANTHONY: All those in
24 favor, say aye.

1 (A vote was taken.)

2 MR. DAMSCHRODER: And motion
3 carries.

4 The next item, Mr. Chairman, is just
5 to enter into the record of the Board that the
6 special election to be held in August for the
7 city of Westerville was pulled by the city of
8 Westerville; they're going to refile that for
9 the November election instead of having a
10 special election. They wanted to change some
11 of the aspects of the tax they're proposing,
12 so that issue has been withdrawn and will be
13 resubmitted to the Board for certification for
14 the fall election. I wanted to let you know,
15 so the only August special will be city of
16 Reynoldsburg.

17 CHAIRMAN ANTHONY: Thank you.

18 MR. DAMSCHRODER: And the next item
19 on the agenda, Mr. Chairman and Board members,
20 is the protest hearing on the candidacy of Mr.
21 Morrison, who filed petitions seeking to be an
22 independent candidate for Congress of the 15th
23 Congressional District.

24 CHAIRMAN ANTHONY: Okay. I guess we

1 have folks representing both sides?

2 MR. DAMSCHRODER: That's correct.
3 Maria Armstrong is present representing the
4 committee of protesters, and David Langdon is
5 present representing Mr. Morrison.

6 CHAIRMAN ANTHONY: Okay. So I guess
7 we should call Mrs. Armstrong.

8 MS. ARMSTRONG: Thank you, Mr.
9 Chairman and Members of the Board. On behalf
10 of the protesters, we appreciate the
11 opportunity to be here today to address you.

12 The facts here are very
13 straightforward. They're uncontroverted. We
14 believe at the end of the testimony hearing
15 today that there will be no dispute as to the
16 factual basis before you. This basically
17 turns into a point of law.

18 The record here, much of which is
19 already before this Commission, shows that
20 Mr. Morrison has a long history of affiliation
21 with the Republican Party, and, most
22 specifically, in the months and days leading
23 to and following May 1st, when he filed the
24 petitions that are challenged here before you,

1 he ran for two offices, not just -- as a
2 Republican and not just any offices but
3 offices to become a Member of the Central
4 Committee within the state and county parties.

5 To do so, he signed affirmations on
6 petitions in two places, both as a circulator
7 and as the candidate, in both places affirming
8 that he was a member of the Republican Party.

9 And then on May 2nd, he not only
10 stood for election in those two capacities
11 without having made any attempt to withdraw
12 his candidacy, but he also appeared before the
13 Madison County Board at the polling place and
14 voted in the primary as a Republican, once
15 again affirming his affiliation with the
16 Republican Party.

17 So the facts, I think, will be
18 fairly straightforward. This will boil down
19 to a legal issue. I trust that I'll have an
20 opportunity to address the legal issues a
21 little bit later on in the proceedings so I
22 won't go into great detail here, but we would
23 respectfully request that this Board keep
24 several things in mind on the legalities as we

1 listen to the testimony and consider the
2 evidence that you're about to see.

3 First is that the Ohio General
4 Assembly established a very clear pathway for
5 Independent candidates to get to the ballot.
6 It is a faster, less expensive, less
7 cumbersome pathway than a contested primary
8 is, certainly. There was one catch: The
9 General Assembly required that in order to
10 avail oneself of that process, of that
11 pathway, that one be an Independent candidate.

12 Contrary to what Mr. Morrison
13 suggests in his brief, that definition of
14 Independent candidate is not some lifeless
15 lamp looking for a plug; rather, the plain
16 language of Revised Code 3513.257 relies upon
17 that language, incorporates it, and that
18 definition of Independent candidate actually
19 controls the application of that statute.

20 Mr. Morrison, who does not meet, and
21 we would respectfully ask this Board to find
22 that he does not meet, that statutory
23 definition, simply cannot avail himself of
24 that procedure that's reserved for Independent

1 candidates in 3513.257.

2 Second, I would ask this Board to
3 simply listen to the facts that are presented
4 here and apply those to the laws, as it does
5 in every other situation. In his brief, Mr.
6 Morrison suggested that it was either the
7 protesters' burden or perhaps the Board's duty
8 to set some sort of a test or a standard or
9 formula for measuring independence. That is
10 simply not the law, it's not your duty, nor
11 ours; rather, we would ask that this Board
12 simply apply the facts as you're about to hear
13 them to the law that's before it.

14 With that, I understand that Mr.
15 Langdon does not have an opening. I'd like to
16 call Mr. Kitchen to the stand.

17 - - - - -
18 CHARLES KITCHEN
19 being first duly sworn, testifies
20 and says as follows:

21 - - - - -
22 DIRECT EXAMINATION

23 BY MS. ARMSTRONG:

24 Q. Mr. Kitchen, if you would, please,

1 say your name for the court reporter and spell
2 your last name into the record.

3 A. Charles Kitchen, K-i-t-c-h-e-n.

4 Q. And are you the same Charles
5 Kitchen who signed the protest letter on May
6 22nd that brings us here today?

7 A. Yes, ma'am.

8 Q. And, sir, are you a registered
9 elector?

10 A. Yes, ma'am.

11 Q. And are you a registered elector in
12 15th Congressional District of Ohio?

13 A. Yes, ma'am.

14 Q. Can you please tells tell us, you
15 hold several political positions in Madison
16 County in addition to your normal work; would
17 you please explain for this Board what those
18 positions are?

19 A. I'm chairman of the Central
20 Committee, and also chairman of the Board of
21 Elections.

22 Q. And those are both in Madison
23 County?

24 A. Yes, ma'am.

1 Q. And is that the Republican Central
2 Committee?

3 A. Yes, ma'am.

4 Q. In Madison County. Can you explain
5 -- let's turn first to your role with the
6 Republican Party in Madison County. What are
7 just briefly some of the duties that that
8 party operates under?

9 A. Handle all the business of the
10 Republican Party in the county. I'm chairman
11 of the Executive and the Central Committee.

12 Q. And can you explain to me what the
13 role of the Central Committee is in Madison
14 County?

15 A. We appoint people to positions when
16 there's a death or a resignation or someone
17 that moves out the county or moves out of
18 their precinct.

19 Q. Would it be fair to say that the
20 Central Committee is the governing body for
21 the Republican Party in Madison County?

22 A. Yes, ma'am.

23 Q. And is responsible for its operation
24 and policies?

1 A. Yes, ma'am.

2 Q. Can you explain for us what your
3 position is on the Board of Elections in
4 Madison County?

5 A. I'm chairman of the Board of
6 Elections.

7 Q. Do you know Charles Morrison?

8 A. Yes, ma'am.

9 Q. And how do you know him?

10 A. I've know him for a number of years.
11 He comes to most all the Lincoln Day dinners
12 and number of our other functions in the
13 county.

14 Q. How long have you known him?

15 A. I suppose five years, at least.

16 Q. Now, has Mr. Morrison run for office
17 in Madison County before?

18 A. Yes, he has.

19 Q. And can you explain just briefly for
20 us some of that history?

21 A. He has -- when we've had, I think, a
22 death and a couple of retirements, that he
23 asked to be appointed to a couple of
24 positions.

1 Q. Were you familiar or did you see Mr.
2 Morrison's current campaign prior to May 2nd?

3 A. Yes, ma'am, I saw it in the
4 newspaper.

5 Q. Okay. Let's turn to some of the
6 exhibits, if we could. And once again, I
7 understand that will be no objection at least
8 to the first several exhibits. I'll move
9 rather quickly but count on Mr. Langdon to
10 stop me if there's some objection or concern.

11 I'd like to have this marked as
12 Exhibit A, please.

13 - - - - -
14 Thereupon, Exhibit A was marked
15 for purposes of identification.

16 - - - - -
17 MS. ARMSTRONG: And I have copies
18 for the Board.

19 Q. Will you please take a look at
20 Exhibit A, Mr. Kitchen, and explain for the
21 Board what that is.

22 A. It's a certificate of registration
23 for Mr. Charles Morrison, 581 Markley Road,
24 London, Ohio.

1 Q. And can you explain, please, what
2 that shows?

3 A. It shows that he is a Republican,
4 and it shows since 19 -- since 2000 and --
5 well, actually, '99, that he voted Republican.

6 Q. Is that a certified copy?

7 A. Yes, ma'am, it is.

8 Q. And this is from the Madison County
9 Board of Elections?

10 A. Yes, ma'am.

11 Q. Let's turn to Exhibit B, please.

12

13 Thereupon, Exhibit B was marked
14 for purposes of identification.

15

16 Q. Can you please examine Exhibit B
17 and tell me, is that a certified copy?

18 A. Yes, ma'am.

19 Q. Can you explain to the Board what
20 that is?

21 A. Copy of the official Republican
22 primary ballot, primary election of March 7th,
23 2000.

24 Q. And does that show Mr. Morrison as a

1 candidate?

2 A. For the 74th District.

3 Q. And for what party, please?

4 A. For the Republican Party.

5 MS. ARMSTRONG: In the interest of
6 time, there being no objections, I'm going to
7 ask Mr. Kitchen about some exhibits that were
8 attached to the protest letter, and I'll ask
9 the court reporter to mark those as D and E.

10 Q. Mr. Kitchen, are you also aware
11 that Mr. Morrison ran for Republican office in
12 2002 and 2004?

13 A. Yes, ma'am.

14 Q. And can you briefly explain for what
15 offices?

16 - - - - -

17 Thereupon, Exhibit C and D were marked
18 for purposes of identification.

19 - - - - -

20 Q. I'm sorry, can you briefly explain
21 for what offices?

22 A. Official Republican primary ballot,
23 primary election, May 7th, 2002, he ran for
24 representative of Congress for the 15th

1 district.

2 Q. And in '04?

3 A. In '04, official Republican primary
4 ballot, primary election, March 2nd, 2004, he
5 ran for representative of Congress, 15th
6 District.

7 Q. And both of those were as a
8 Republican?

9 A. Yes, ma'am.

10 Q. Let's turn to 2006, and I'm going to
11 ask that this be marked as Exhibit E.

12 - - - - -
13 Thereupon, Exhibit E was marked
14 for purposes of identification.

15 - - - - -
16 Q. I'm sorry, the prior two exhibits,
17 were those both certified copies?

18 A. Yes, ma'am, they were.

19 Q. Can you explain, please, what is
20 Exhibit E?

21 A. This exhibit is the official
22 Republican primary ballot.

23 Q. I'm sorry, you said it was for the
24 Republican Party?

1 A. It's Republican primary ballot, 2004
2 -- 2006, excuse me.

3 Q. And again, that's a certified copy?.

4 A. Yes, ma'am, it is.

5 Q. And do you see Mr. Morrison's name
6 on there?

7 A. He ran for State Central Committee,
8 and he ran for Member of the County Central
9 Committee.

10 Q. So his name actually appears on
11 there twice?

12 A. Yes, ma'am.

13 Q. We'll move to Exhibit F.

14

15 Thereupon, Exhibit F was marked
16 for purposes of identification.

17

18 Q. Will you please take a look at
19 Exhibit F and explain for this Board what that
20 document is.

21 A. It's a declaration of candidacy for
22 party primary election for Member of the
23 County Central Committee.

24 Q. And once again, is that a certified

1 document?

2 A. Yes, ma'am, it is.

3 Q. And the top of that document or
4 maybe about a third of the way down, there is
5 an affirmation for the candidate to sign. Can
6 you tell me, based on that document, who is
7 the candidate?

8 A. Charles Morrison.

9 Q. And would you please read into the
10 record that affirmation starting with "I,
11 Charles Morrison."

12 A. "I, Charles Morrison, the
13 undersigned, hereby declare under penalty of
14 election falsification that my voting
15 residence is in Somerford Precinct of the
16 township, that my voting residence address on
17 file with my county board of elections is 581
18 Markley Road, London, Ohio, 43140, and I am a
19 qualified elector in my precinct.

20 "I hereby declare that I desire to
21 be a candidate for election to the office of
22 Member of the County of Central Committee as a
23 member of the Republican Party from Somerford
24 Township at the primary election to be held on

1 the 2nd day of May, 2006.

2 "I further declare that, if elected
3 to this office, I will qualify therefor.

4 "Dated this 14th day of December,
5 2005. Signature, Charles R. Morrison."

6 Q. Thank you. Further down that
7 petition, underneath petition for candidate,
8 where people start to sign, there is a
9 statement on that form in parentheses. Can
10 can you please read that into the record.

11 A. "This petition shall be circulated
12 only by a member of the same political party
13 as stated above by the candidate."

14 Q. And on the back, is there a place
15 for the circulator to sign that petition?

16 A. Yes, there is.

17 Q. Who is the circulator?

18 A. Charles Morrison.

19 Q. And once again, did the circulator
20 declare under penalty of election
21 falsification that they were qualified and
22 that they were a member of the Republican
23 Party?

24 A. Yes, he did say that.

1 Q. Thank you. I'm going to ask you now
2 to take a look at Exhibit G.

3

- - - - -

4 Thereupon, Exhibit G was marked
5 for purposes of identification.

6

- - - - -

7 Q. Can you please explain to the Board
8 what that exhibit is?

9 A. It's a declaration of candidacy for
10 Member of State Central Committee to be
11 elected at party primary election.

12 Q. And basically, that's the same form
13 that we just spoke about in Exhibit F?

14 A. Basically the same.

15 Q. Once again, is the candidate Charles
16 Morrison?

17 A. Yes, ma'am.

18 Q. And did he also sign under penalty
19 of election falsification that he is a member
20 of the Republican Party?

21 A. Yes, he did.

22 Q. On the second page, is there a place
23 for the circulator to give an attestation as
24 before?

1 A. Yes, there is.

2 Q. And once again, is that circulator
3 Charles Morrison?

4 A. Yes, it is.

5 Q. And once again, did he sign under
6 penalty of election falsification that he is a
7 member of the Republican Party?

8 A. Yes, ma'am.

9 Q. And do you see on the bottom there
10 the Greene County Board of Elections' stamp
11 that this is a certified document?

12 A. Yes.

13 Q. I'm going to ask you, Mr. Kitchen,
14 to please turn back to Exhibit A. I'm going
15 to talk a little bit about what happened in
16 the recent days leading up to the May 2nd
17 election. I think you mentioned earlier on
18 that you were aware of Mr. Morrison running
19 some ads?

20 A. Yes, ma'am.

21 Q. Can you please explain for the Board
22 what those ads for?

23 A. They were ads for the race of the
24 Central Committee.

1 Q. For county or state or both?

2 A. For the state, and for the county is
3 the same too.

4 Q. And where did you see those ads?

5 A. In the Madison Press.

6 Q. Did they declare to the reader that

7 Mr. Morrison was a Republican?

8 A. Yes, ma'am.

9 Q. Seeking office for that position?

10 A. Yes, ma'am.

11 Q. And when did those ads run?

12 A. I believe three weeks before the
13 election.

14 Q. So through the end of April, end of
15 May, very end of May?

16 A. Actually, I'm not sure whether it
17 was the 2nd day of May, I don't whether it was
18 there on the 1st or not, but I believe for
19 three weeks it was in the paper.

20 Q. On May 2nd, can you please turn to
21 Exhibit A and tell the Board what that exhibit
22 tells us about how Mr. Morrison voted on
23 May 2nd.

24 A. On 5-2-06, he voted as a Republican

1 in the primary election.

2 MS. ARMSTRONG: I have no further
3 questions for Mr. Kitchen at this point. I
4 would move to admit Exhibits A through G.

5 CHAIRMAN ANTHONY: Mr. Langdon, do
6 you have any cross?

7 MR. LANGDON: I don't have any
8 questions.

9 CHAIRMAN ANTHONY: Does the Board
10 have any questions?

11 - - - - -

12 EXAMINATION

13 BY MS. PETREE:

14 Q. Mr. Kitchen, on voting history, it
15 says on 5-2 of '06 he voted Republican. And
16 then below that there are Xs. Does that mean
17 in your county that he voted each time, or is
18 that an X that he did not vote?

19 A. Well, he voted. That means he
20 voted, but you only have to give your politics
21 in the primary election.

22 Q. Right. But the Xs below, does that
23 mean that's a vote or he did not vote?

24 A. He voted.

1 MS. PETREE: He voted, thank you.

2 CHAIRMAN ANTHONY: Any other
3 questions for Mr. Kitchen? I don't have
4 anything either. Thank you, sir.

5 MS. ARMSTRONG: I have no other
6 witnesses at this time.

7 MR. LANGDON: Mr. Chairman, Members
8 of the Board, my name is David Langdon; I'm
9 here today on behalf of Charlie Morrison.

10 The way I'd like to, with your
11 permission, structure my argument is to break
12 it into two parts. The first part of my
13 argument is solely based on legal issues. I
14 do have one witness to call, that's Mr.
15 Morrison, for a very limited purpose, but
16 frankly, it's secondary to my argument on the
17 question of whether or not he claims to not be
18 affiliated with a particular political party.

19 So what I'd like to do is go ahead
20 and present to you my legal arguments and then
21 I will call Mr. Morrison to testify, if that's
22 acceptable.

23 CHAIRMAN ANTHONY: That's
24 acceptable.

1 MR. LANGDON: Mr. Chairman, Members
2 of the Board, today you are entrusted with a
3 very difficult decision, as you are every time
4 a proposed candidate submits a nominating
5 petition, whether it be for party nomination
6 or for Independent candidate nomination. You
7 are the gatekeepers to determine whether or
8 not candidates have met the qualifications
9 that are set forth in the Ohio Revised Code to
10 be candidates for a particular election.

11 Today, we are here as the as a
12 result of a protest that has been filed
13 against the proposed candidacy of Mr.
14 Morrison. Mr. Morrison has submitted
15 petitions to this Board to be a candidate for
16 election to United States House of
17 Representatives for the 15th Congressional
18 District.

19 I believe that there is no dispute
20 from a factual standpoint that Mr. Morrison's
21 petitions comply with the applicable statutes.
22 The only question, as has been presented by
23 the protesters, is whether or not he is an
24 Independent candidate, and certainly the

1 question for you to decide is whether that
2 matters or not. But from the standpoint of
3 did his petitions meet all the various
4 technical requirements, I don't believe that
5 that is in dispute. Certainly if the
6 protesters dispute that, they'd let you know.

7 Mr. Morrison obviously obtained
8 petitions from the -- prescribed by the
9 Secretary of State. Perhaps he got them from
10 here or directly from the Ohio Secretary of
11 State. He completed those petitions, the
12 statement of candidacy. He circulated those
13 petitions, both himself and others, and he
14 submitted those petitions to the Board.

15 In doing so, he was following Ohio
16 law. Revised Code 3513.257, in particular,
17 sets forth in very detailed fashion the
18 requirements for one to become an Independent
19 candidate.

20 Now, the language of 3513.257 is
21 very important, and there might be a tendency
22 to get lost in all of this discussion about
23 Independent candidate, but if you look
24 carefully, and as we pointed out in our memo,

1 at the language, it says: Each person
2 desiring to become an Independent candidate
3 shall do X, Y, and Z: File their petitions
4 and follow the various requirements.

5 Of course, some of those
6 requirements include complying with the
7 statute that sets forth in great detail the
8 form for the petition. That statute is
9 3513.261, which sets forth the minimum
10 qualifications.

11 Mr. Morrison is required to desire
12 to be a candidate for the office, and to be an
13 elector and qualified to serve in that
14 particular position. He has to meet the
15 constitutional requirements for a congressman,
16 be a certain age, so on and so forth. Again,
17 there is no dispute that he meets all of those
18 requirements.

19 But getting back to the specific
20 language of 3513.257, each person desiring to
21 become an Independent candidate must meet the
22 following specifications. Nowhere after that
23 language do we see any requirement in 3513.257
24 that this person has to claim not to be