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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.

INDEX

| | Agenda Item | Page No. |
|----|------------------------------------|----------|
| 1 | | |
| 2 | Agenda Item | Page No. |
| 3 | Approval of Minutes | 3 |
| 4 | City of Westerville Election Issue | 3 |
| 5 | Charles Morrison Protest Hearing | 4 |
| 6 | Employee Full-Time Status | 74 |
| 7 | | |
| 8 | | |
| 9 | | |
| 10 | | |
| 11 | | |
| 12 | | |
| 13 | | |
| 14 | | |
| 15 | | |
| 16 | | |
| 17 | | |
| 18 | | |
| 19 | | |
| 20 | | |
| 21 | | |
| 22 | | |
| 23 | | |
| 24 | | |

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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12 so that issue has been withdrawn and will be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

1 affiliated with a political party.

2 That is simply not a requirement set
3 forth in the statute. Rather, what the
4 protesters would have you do here is to pull
5 the definition from a different statute and
6 plug it into the point in 3513.257 where
7 Independent candidate is used, so it would
8 then read: Each person desiring to become a
9 candidate who has claimed, and so forth. You
10 would superimpose that definition into there.

11 Whether it's the two words or the
12 definition, it doesn't matter. What matters
13 is what follows that: Someone who desires to
14 become this must do X, Y, and Z.

15 There is no question that Mr.
16 Morrison complied to the letter with X, Y, and
17 Z, and, therefore, by operation of law, is an
18 Independent candidate, regardless of whether
19 or not he meets this so-called definition of
20 an Independent candidate.

21 So there is no need -- all of the
22 discussion about Mr. Morrison's past voting
23 record and having been on the ballot for this
24 and having been on the ballot for that is

1 completely irrelevant, because there is no
2 requirement in order to satisfy 3513.257 that
3 one meet the definition of Independent
4 candidate, because it's not used in that way.

5 In essence, it is lifeless. It is
6 merely a descriptive term used to describe
7 someone that has met the qualifications set
8 forth in 3513.257.

9 Now, the protesters argue,
10 otherwise, obviously, and they -- granted,
11 they don't give you the entire definition, but
12 they point to part of the definition of
13 Independent candidate.

14 But I think it's very important,
15 and, as a side note, the protesters have
16 actually urged you in their memorandum,
17 they've presented to you a fundamental rule of
18 statutory construction that you're to examine
19 all of the words in a particular statute, not
20 just some words. And yet, in their brief, we
21 don't get the full definition of Independent
22 candidate, in their Writ of Protest or in
23 their memorandum; they conveniently excluded a
24 very important part of the definition, and we

1 don't ever see it in any of the papers. You
2 do see the full definition in my papers. It's
3 a two-part requirement.

4 Now, of course, all of this assumes
5 that it's even relevant, which it's not, but
6 assuming for the sake of argument that it is,
7 if we examine the definition, what it says is,
8 an Independent candidate means a candidate who
9 claims not to be affiliated with a political
10 party and -- this is part two -- has been
11 certified to be an Independent candidate; in
12 other words, has been certified pursuant to
13 Revised Code 3513.257.

14 What the protesters are suggesting
15 is that Mr. Morrison can't be an Independent
16 candidate because he's not an Independent
17 candidate at the time he sets out to comply
18 with 3513.257, if that makes sense.

19 It becomes somewhat circular, and
20 frankly, the more you look at it, the more
21 your brain starts to hurt. It really does
22 happen; I can attest to that. Because it's a
23 vicious circle that you get in, and it's very
24 incoherent.

1 But ultimately one cannot become an
2 Independent candidate until one is certified
3 as an Independent candidate. Yet, the
4 protesters would have you, in essence, create
5 this dichotomy in the definition that says,
6 you first have to meet this first part, the
7 part that works in our favor, the part of
8 claiming not to be affiliated with a political
9 party, but you don't have to meet the second
10 part. And then if you do that, then you're
11 eligible to go to 3513.257 and follow the
12 various requirements that are in there, and,
13 by the way, if you meet all of those, then
14 you're an Independent candidate.

15 So it's very confusing as to what
16 they're suggesting. Are you an Independent
17 before? Or are you an Independent candidate
18 afterwards?

19 The statute also has tense issues.
20 If you notice, looking very carefully at the
21 definition, it says a candidate who claims not
22 to be affiliated. Well, that is present
23 tense, which leaves us in a quandary: Well,
24 when must they claim that?

1 And then the second part says, who
2 has been certified. Past tense. Again
3 putting us back in this sort of vicious circle
4 where we don't know which comes first.

5 Ultimately, I point you back to my
6 initial argument, and that is that it's
7 irrelevant, because it has no meaning within
8 3513.257 other than merely describing someone
9 who has complied with the various requirements
10 in there.

11 But the standard, and I realize it's
12 been suggested to you that you're not being
13 asked to create a standard, but, in essence,
14 you are. You are being asked to apply the
15 law, and they're asking you to come up with a
16 very novel, brand new interpretation of the
17 law on this particular issue, which means, by
18 default, you are required to establish a
19 standard of what it means. Okay?

20 So let's now address this question
21 of someone claiming not to be affiliated with
22 a political party. What does that mean?

23 If you follow the protesters' line
24 of thought, it means that, if a particular

1 person who desires to be a candidate has done
2 a number of things in connection with a
3 particular party -- they've voted in that
4 party's primary, they've appeared on the
5 ballot as a candidate for election to the
6 Central Committee, and so on and so forth --
7 that apparently by law, they then are deemed
8 to be affiliated with a political party.

9 Now, of course, there's nothing in
10 the Revised Code or any case that will suggest
11 that that is the case. There's nothing there.
12 It's a fabrication.

13 So we are also left with the
14 question, in addition to what does it mean to
15 be affiliated with a political party, of when
16 -- as you're coming up with this standard,
17 when does one need to be claiming not to be
18 affiliated, or at what point in time do you
19 apply this standard?

20 They argue in their motion -- excuse
21 me, in their memorandum, that he would have to
22 meet this test when he files his petitions.
23 Now, they also, however, point to things that
24 happened after his petitions were filed the

1 next day, May 2nd, when he voted in the
2 Republican Party primary, as being relevant.
3 So that sends at least a confusing message to
4 me: Well, which is it? Is it the day he
5 turned them in? Or is it afterwards? Is it
6 today?

7 It would seem to me that, assuming
8 we're going to apply this definition, which is
9 again extratextual, it's not -- you can't find
10 any support or basis to apply to this
11 definition, but assuming we do, it would seem
12 to me that the reasonable test to apply would
13 be, is that, at any point prior to
14 certification, i.e., a protest hearing of this
15 nature, if this proposed candidate says, "I
16 hereby claim not to be affiliated with a
17 political party," then he's not affiliated
18 with a political party.

19 The same way that a person who is
20 desiring to run as a party candidate is
21 required, by law, mind you, this is specific
22 to a statute, someone who wants to be a party
23 candidate is required to specify in their
24 petition papers, "I am a member of the

1 Republican Party." They declare it. It
2 doesn't matter that they may have been a
3 lifelong Democrat, or a Republican; and
4 they're wanting to run for the opposite party.
5 Ohio law allows you to do that.

6 One can be a -- one can have gone to
7 every Republican club event in their entire
8 life, have not missed one single Lincoln Day
9 dinner their entire life, voted in every
10 single Republican primary, even in the same
11 year they can vote in a Republican Party
12 primary, and yet, they can pick up a party
13 candidate petition to be nominated and
14 self-declare, "I am a Democrat," and the law
15 allows them to run as a Democrat.

16 It's now being suggested that Mr.
17 Morrison can't claim to be an Independent
18 candidate? It's rather absurd, really, when
19 you think about it.

20 So, point number one is, is that the
21 definition is inoperable. It's not giving any
22 force and effect in any language, any
23 operative statute. Like 3513.257 gives it no
24 force and effect and, therefore, the

1 definition is wholly irrelevant. That's point
2 number one.

3 Point number two is, assuming that
4 you find that one must meet this definitional
5 standard, we have to decide, okay, what are
6 the rules, what is one required to do.

7 Clearly, the form, which is
8 prescribed by the Secretary of State, which in
9 turn complies to the letter with the form
10 that's set forth in the Revised Code, the form
11 leaves no blanks to say, "I claim not to be
12 affiliated with a political party." There's
13 no such blank space on the form for that.

14 Arguably, if somebody were to
15 handwrite that in, then the challenge would be
16 that you've gone outside the rules for what
17 the form is supposed to say. So it's neither
18 required nor, arguably, allowed to do
19 something like that.

20 So when does this claim have to be
21 made? You have to look at this outside of
22 just the context of Mr. Morrison and realize
23 that there are -- even this year, there are a
24 number of proposed candidates out there that

1 want to run as Independent candidates.

2 You received fairly recently from
3 the Secretary of State a number of directives
4 for closing petitions for candidates that want
5 to be Independent candidates to run for
6 Governor and Secretary of State and so on and
7 so forth. Same test applies. Is this Board
8 going to be required to investigate whether or
9 not these folks are claiming not to be
10 affiliated with a particular political party?

11 And if so, how are you going to go about doing
12 that? When are you going to go about doing
13 that? Is it when they file their petition?

14 Mr. Morrison, when he filed his
15 petitions, the woman at the desk, or the man
16 at the desk or whoever it was, didn't say,
17 "Raise your hand and claim not to be
18 affiliated with a political party," nothing of
19 the sort.

20 Now, as kind of a side note, I think
21 this is sort of ironic, he was asked, when he
22 submitted his petitions, how he wanted his
23 name to appear on the ballot. They asked him,
24 "Do you want your name to appear with the

1 designation 'nonparty,' 'other party,' or
2 blank?" And the comedy here is the other
3 party.

4 You have the protesters who are
5 asserting that in order to be an Independent
6 candidate, you have to disclaim affiliation
7 with any political party -- Republican,
8 Democrats -- there's no other group out there
9 that meets the definition of a political
10 party.

11 Yet, he could, arguably, have next
12 to his name on the ballot -- keep in mind the
13 definition here, you're disaffiliating
14 yourself from any political party; he could
15 have on the ballot next to his name "other
16 party." It's inherently contradictory, which,
17 of course, is the nature of the way this
18 entire statutory scheme is written.

19 But, nonetheless, when he submitted
20 his petitions, he was asked that question. In
21 this particular instance, he said no
22 designation whatsoever.

23 Now, if you would permit me, I would
24 like to call Mr. Morrison to the stand and ask

1 him a few questions.

2

3

CHARLES MORRISON

4

being first duly sworn, testifies

5

and says as follows:

6

7

DIRECT EXAMINATION

8

BY MR. LANGDON:

9

Q. Good afternoon.

10

A. Good afternoon. I'm Charlie

11

Morrison.

12

Q. Could you spell your name for the

13

record, Mr. Morrison.

14

A. Morrison, M-o-r-r-i-s-o-n.

15

Q. Mr. Morrison, today we're here,

16

you're obviously aware your petitions are at

17

issue. If you could very briefly describe for

18

the Board the conversations that you had with

19

people when you were circulating your

20

candidate petitions to be an Independent

21

candidate for Congress.

22

A. Certainly. I collected about 2,316

23

signatures, and those 2,316 signatures, I

24

needed 1,422 to qualify for an Independent.

1. Now, that's not compared to Republics or
2. Democrats, but I did 2,316 signatures.

3. About 2,000 of those I did on my
4. own. I had other circulators, some Democrats
5. and some Independents and some Republicans
6. helping me collect these signatures.

7. But the 2,000, approximately 2,000
8. that I had, I explicitly walked up to each one
9. of them, stuck out my hand, shook their hand,
10. and in the process say, "Hi. I'm Charlie
11. Morrison. I'm running as an Independent for
12. Congress. I need about 2,000 signatures to
13. get my name on the ballot, and I wonder if you
14. could help me out and sign my petition."

15. And that is the phrase that I used
16. at virtually all of the 2,000 signatures that
17. I collected.

18. Q. Mr. Morrison, did you hand-deliver,
19. hand-file your petitions with the Board of
20. Elections?

21. A. Yes. I personally hand-delivered
22. and hand-filed those petitions.

23. Q. And can you explain to the Board the
24. conversation that you had with the person that

1 you filed those with?

2 A. Yes. I believe her name is Marlene,
3 asked me if I wanted to have my name put on as
4 non, other, or blank, and I thought about it
5 for a moment and chose blank.

6 Q. When you turned these in, did they
7 ask you if you claimed not to be affiliated
8 with any particular political party?

9 A. No. That question was never asked.

10 Q. Okay. And there was no blank on the
11 form for you to put anything like that in; is
12 that correct?

13 A. That's correct. The forms they use
14 explicitly do not have the word "Independent"
15 on them at all. I did not have to solemnly
16 swear that I was an Independent candidate at
17 any time.

18 Q. Mr. Morrison, are you affiliated
19 with any particular political party as you sit
20 here today?

21 A. No. As of May 3rd, I have no party
22 affiliation.

23 Q. And would that include Republican
24 Party and/or Democratic Party?

1 A. It's both Republican and Democrat
2 and all the others.

3 MR. LANGDON: I have no further
4 questions of Mr. Morrison. I'm guessing that
5 Ms. Armstrong does.

6 MS. ARMSTRONG: I do have a few.

7 - - - - -

8 CROSS-EXAMINATION

9 BY MS. ARMSTRONG:

10 Q. Good afternoon, Mr. Morrison.

11 A. Good afternoon.

12 Q. I understood from your counsel that
13 you don't have any dispute with any of the
14 factual bases that you heard Mr. Kitchen speak
15 about.

16 A. Absolutely not. I do not dispute
17 any of those records.

18 Q. I did hear you also state that you
19 were -- as you were circulating your
20 Independent petitions, you walked up to all
21 those 2,000-some individuals and you
22 identified yourself as an Independent
23 candidate?

24 A. Yes.

1 Q. Based on petitions that are on file
2 here, I believe that you were circulating that
3 petition from roughly --

4 CHAIRMAN ANTHONY: Excuse me, sir.
5 Excuse me, sir.

6 Go ahead, please.

7 BY MR. DAMSCHRODER:

8 Q. You were circulating as an
9 Independent candidate from roughly December
10 31st through April 28th, and then you filed
11 your petition on May 1st?

12 A. That's correct.

13 Q. So during that time frame, you were
14 approaching people saying, "I'm an
15 Independent; please sign my petition." During
16 that time frame, is it also correct that you
17 were circulating for county party seat as a
18 Republican?

19 A. Yes.

20 Q. And that would have been from
21 roughly December 14th through January, also
22 approaching people and also asking them to
23 sign a petition stating that you were a
24 Republican?

1 A. That's correct.

2 Q. And during that same time frame, you
3 were also running for state party for longer,
4 an extra week on there, asking people to sign
5 the petition, saying that you were a
6 Republican?

7 A. Yes.

8 Q. And then towards the end of that
9 time frame, you were advertising and
10 campaigning and holding yourself out as a
11 Republican to many of those same individuals
12 and advertising in the newspaper claiming you
13 were a Republican?

14 A. Yes. And each person who did sign
15 both of those forms, because I carried them
16 around together, most of them knew me
17 personally, and I explained exactly why I was
18 doing what I was doing. They all understood.

19 Q. So you were asking people to sign,
20 representing yourself as a Republican and as
21 an Independent at the same time?

22 A. You can't run on a Republican
23 Central Committee without being a Republican,
24 and that's the way I typically voted.

1. Q. Thank you. I'm going to ask you to
2 take a look at the document -- first, I
3 presume that you do have a campaign committee?

4 A. Yes.

5 Q. You've had one in place for several
6 years?

7 A. Yes.

8 Q. For your federal candidacy?

9 A. Right.

10 Q. And that's also the campaign
11 committee that you're using here?

12 A. Yes.

13 Q. For this campaign committee?

14 A. Right.

15 Q. What is the name of that committee,
16 please?

17 A. Charlie Morrison for Congress.

18 MS. ARMSTRONG: I'm going to ask
19 that this be marked as Exhibit H.

20 - - - - -

21 Thereupon, Exhibit H was marked
22 for purposes of identification.

23 - - - - -

24 Q. Mr. Morrison, would you please take

1 a look at Exhibit H and identify that for the
2 Board.

3 A. Statement of organization, FEC
4 Form 1.

5 Q. And is that the statement of
6 organization for your campaign committee?

7 A. Appears to be, yes.

8 Q. The campaign committee that you're
9 operating under today?

10 A. Yes.

11 Q. And would you go to page 2 of that?

12 A. Yes.

13 Q. And do you see there where it says
14 party affiliation?

15 A. Yes.

16 Q. And what does the party affiliation
17 say?

18 A. Republican.

19 Q. Have you ever changed that
20 affiliation?

21 A. No.

22 Q. So you are currently operating your
23 campaign committee for federal office as a
24 Republican?

1 A. As soon as I become a candidate,
2 yes, I will change it.

3 Q. You are currently operating your
4 committee as a Republican; is that correct?

5 A. No.

6 Q. Are you soliciting contributions to
7 that committee?

8 A. No.

9 Q. I'm --

10 A. I have asked some people to
11 contribute to this lawsuit.

12 Q. And how are you taking those funds
13 in?

14 A. That would be through my campaign
15 committee, yes.

16 Q. So you are soliciting funds to this
17 campaign committee, which has you designated
18 as a Republican?

19 A. Yes.

20 MS. ARMSTRONG: Thank you. I have
21 no further questions.

22 CHAIRMAN ANTHONY: Any redirect?

23 - - - - -

24 REDIRECT EXAMINATION

1 BY MR. LANGDON:

2 Q. Just a few additional questions, Mr.
3 Morrison. You filed this, it appears, in
4 2001; is that correct?

5 A. Yes, that's correct, in 2001.

6 Q. Switching gears a little bit, on to
7 the point of which your circulating different
8 kinds of petitions. In your petition for
9 State Central and County Central Committee,
10 you indicated you were a member of the
11 Republican Party in that petition, correct?

12 A. That's correct, yes.

13 Q. Did at any time, either on that
14 petition or in conversations, did you say the
15 words "I am affiliated with the Republican
16 Party"?

17 A. No.

18 MR. LANGDON: I don't have any
19 further questions.

20 CHAIRMAN ANTHONY: Thank you. Ms.
21 Armstrong, do you have any questions based on
22 those?

23 MS. ARMSTRONG: No, I have no
24 further questions, thank you.

1 CHAIRMAN ANTHONY: Does anyone on
2 the Board have any questions for Mr. Morrison?

3 MR. PICCININNI: Are there any other
4 exhibits to be admitted?

5 MS. ARMSTRONG: Yes. We move to
6 have Exhibit H admitted.

7 MR. LANGDON: I'll just note an
8 objection to the admission of that.

9 THE WITNESS: Any other questions
10 of me?

11 CHAIRMAN ANTHONY: I just have one.

12 THE WITNESS: Yes, sir.

13 CHAIRMAN ANTHONY: Maybe more than
14 one question.

15 - - - - -

16 EXAMINATION

17 BY CHAIRMAN ANTHONY:

18 Q. On the statement of organization?

19 A. Yes.

20 Q. It was filed in 2001?

21 A. Yes. As a matter of fact, I didn't
22 even realize that I had declared a party until
23 it was brought up to me about 15 minutes ago.

24 Q. Have you ever revised that statement

1 of organization?

2 A. No. I didn't know that I had to
3 until 15 minutes ago. I will.

4 CHAIRMAN ANTHONY: Based on my
5 questions, do you guys have anything
6 additional?

7 MS. ARMSTRONG: I have nothing
8 further.

9 MR. LANGDON: No.

10 CHAIRMAN ANTHONY: That's all I
11 have.

12 MR. PICCININNI: I do have one
13 question.

14 - - - - -

15 EXAMINATION

16 BY MR. PICCININNI.

17 Q. Did you file any papers this year
18 with the Federal Election Commission through
19 this committee?

20 A. Yes. My campaign treasurer files,
21 even though we aren't required to.

22 Q. And that last filing would have been
23 of April of this year?

24 A. I don't know. I'd have to ask him.

1 Q. Okay. But something was filed this
2 year?

3 A. I'm sure it was, yes.

4 Q. Prior to the primary?

5 A. Couldn't tell you.

6 - - - - -

7 EXAMINATION

8 BY MS. PETREE:

9 Q. Mr. Morrison?

10 A. Yes.

11 Q. I understand that you passed your
12 petition the Independent candidate starting
13 January 7th of this year?

14 A. That's about right, yes.

15 Q. And then am I correct that you voted
16 in the primary as a Republican in May of this
17 year?

18 A. Yes, that's correct. I had to vote
19 for myself.

20 MS. PETREE: Okay. Thank you.

21 THE WITNESS: Any other questions?

22 CHAIRMAN ANTHONY: That's it. Thank
23 you very much.

24 Do you guys have a closing?

1 MS. ARMSTRONG: Yes, I would like
2 the opportunity.

3 CHAIRMAN ANTHONY: Okay.

4 MS. ARMSTRONG: As expected, the
5 facts were fairly cut and dry here. There was
6 no dispute as to the factual basis here, I
7 won't reiterate them again, the protest letter
8 certainly and all the exhibits before this
9 Board, but I would like to address some of the
10 legal issues that are involved here.

11 First, Mr. Morrison claims that this
12 Board should only look to the parameters of
13 3513.257, that it need not go outside of the
14 confines of that law, and that since
15 Mr. Morrison complied with that law, this
16 Board must certify it. That is absolutely
17 erroneous.

18 This Board has a duty and an
19 authority to look beyond the confines of that
20 law, that's given to them by the very section
21 that gives foundation to this protest.
22 3513.262, which is the section on which the
23 protesters filed their protest letter, allows
24 this Board to determine all other matters

1 affecting validity.

2 In the Foster versus Cuyahoga County
3 Board of Elections case, in the Herdman versus
4 Franklin County Boards of Elections case, in
5 the Kelly versus Cuyahoga County Board of
6 Elections case, and numerous others, courts
7 have upheld that authority and that duty by
8 this Board to look beyond the four corners of
9 the very statute which gives rise to this
10 particular challenge to make sure that all
11 legal requirements are met.

12 Taking Mr. Morrison's argument at
13 its face, if he were not 25 years old, he
14 would be eligible to run, because there's
15 nothing in 3513.257 which says you have to be
16 25 years old to run for Congress. That's in
17 another section, but that section is as
18 equally applicable to him and to his candidacy
19 as is the definition of an Independent
20 candidate.

21 In addition, Section 3501.39(A)
22 allows this Board to reject petitions if the
23 candidacy or the petition violates the
24 requirements of this chapter, referring to

1 3501, Chapter 3513, or any other requirements
2 established by law.

3 Coincidentally, the definition of an
4 Independent candidate is found in Chapter
5 3501; the particular section which governs
6 Independent candidacy is found in 3513.257.
7 So that section also gives this Board the
8 authority and the duty to examine this issue
9 and to go beyond the four corners of 3513.257.

10 Mr. Morrison argues that, since
11 there was no clear test, there is a circular
12 argument that's ambiguous or confusing, that
13 there's no way that he can not be found to be
14 an Independent or that particular statute
15 could be applied to him. He asks, what does
16 it mean not to be affiliated?

17 The protesters aren't asking this
18 Board to define what does it mean not to be
19 affiliated. We're asking this Board to find
20 that under the facts that are presented here,
21 which are the facts before you, that Mr.
22 Morrison has not proven that he's not
23 affiliated.

24 We're not asking this Board to set a

1 test or a standard that will convey some sort
2 of information on hypothetical situations that
3 may be presented to this Board at sometime in
4 the future. We're asking this Board to look
5 at the facts that are before us here and to
6 find that he did not meet the definition of
7 Independent candidate.

8 We believe that the no test needs to
9 be set. This Board needs to only apply the
10 facts to the law. However, since Mr. Morrison
11 seems to advocate a test, I would note just
12 briefly that the four-point test that he sets
13 out in his own brief, every single point of
14 those fails.

15 There are also other tests in the
16 code that apply to other portions of -- to
17 other ways to tell if someone is partisan or
18 unaffiliated.

19 As far as circulating and signing,
20 Revised Code 3513.05 sets forth the test and
21 it tells you that if you voted in the party's
22 primary within the two preceding calendar
23 years, you are considered to be affiliated --
24 considered to be a member of that party.

1 As for voting, that same test is
2 applied, in Revised Code 3516.19. And most
3 specifically here, as to voting in a primary,
4 3503.011 sets forth the qualifications to vote
5 in a primary. As Mr. Morrison did on May 2nd
6 when he had to file his petitions. I'd like
7 to read that definition to you.

8 3503.01 provides: "At a primary
9 election, every qualified elector who is or
10 will be on the day of the next general
11 election 18 or more years of age and who is a
12 member of or is affiliated with a party, a
13 political party, whose primary election ballot
14 he desires to vote, shall be entitled to vote
15 at that primary election."

16 When Mr. Morrison went to his
17 polling place in Madison County on May 2nd and
18 he voted a primary ballot, he absolutely
19 complied with this section of law, and he
20 declared thereby he's a member and affiliated
21 with the political party whose ballot he
22 voted. He didn't deny that. He very
23 definitely affiliated himself in that manner
24 on May 2nd.

1 And we are not claiming or
2 suggesting that Mr. Morrison cannot be an
3 Independent. We're just saying that he
4 doesn't meet the tests here. He didn't meet
5 the test this time.

6 Given all the facts that are before
7 this Commission, it's difficult to see how he
8 could have possibly done more to affiliate
9 himself with the Republican Party.

10 Given that, if this Board were to
11 find that he is unaffiliated or that he does
12 not meet the test of an Independent candidate,
13 that would essentially gut the purpose of the
14 statute.

15 Another question asked by Mr.
16 Morrison was, when does he need to claim
17 Independence? Is it okay for him to claim it
18 now? Can he claim it at some point after he
19 refiles his FEC election, or after he refiles
20 his FEC statement of organization? Is it on
21 general election day?

22 Fortunately for us, 3513.257 answers
23 that question for us. The General Assembly
24 took the rare step in that section of telling

1 us what the purpose for that entire law was.

2 And that is articulated in that language:

3 The purpose for establishing a
4 filing deadline for Independent candidates
5 prior to the primary election is to avoid
6 fractionalization, party fragmentation, to
7 maintain the integrity of the ballot --
8 there's a long paragraph there, which is cited
9 in our brief, which tells you exactly why the
10 cutoff point, the timing of this needs to be
11 claimed as the day before the election in
12 filing petitions.

13 Now, certainly this Board is not
14 limited to those factors; this Board can look
15 at any number of factors. But we would ask
16 this Board to consider what was Mr. Morrison's
17 status on the filing of petitions. And you
18 can certainly look at the day before, the day
19 after, the months before, the months after.

20 Here, the overwhelming weight of the
21 evidence, in fact I would submit all the
22 evidence, was that he never stated that he was
23 unaffiliated, he never claimed, not by words
24 or deeds, not explicitly, not implicitly,

1 there was nothing that he did or said that he
2 would lead him to be unaffiliated with a
3 party.

4 At times, perhaps, he walked up to
5 someone and said, "I'm running as an
6 Independent candidate," and on the same day he
7 turned to another person and said, "I'm
8 running as a Republican." Or he ran an ad.
9 Any such claim was certainly dispelled by not
10 only his actions at the time, but his actions,
11 his numerous actions before and after any such
12 circulation of the petitions.

13 Finally, I'd ask this Board to
14 consider the argument that the Independent
15 candidate definition is a passive one, that it
16 has no force or effect or meaning.

17 As is set forth in our memorandum,
18 the Moss case ran into exactly that problem.
19 In that situation, which was factually similar
20 to this, the Moss court found that the
21 definition of an Independent candidate, which
22 did not exist in law at that point, was merely
23 meant that a person was seeking election to an
24 office as an Independent candidate. In Moss,

1 that definition had no meaning. Since Moss,
2 the General Assembly has put it into the code
3 and referred to it in .257. Now, that type of
4 problem, that type of argument is completely
5 dispelled by the General Assembly's adoption
6 of the definition there.

7 Second, the definitions control the
8 statute, not the other way around. Mr.
9 Morrison would ask this body to find that one
10 just trips through the .257 process and
11 automatically some nebulous title of
12 Independent candidate is bestowed upon him.
13 That's not the case.

14 On the contrary, one can only go
15 through that process if one meets the
16 definition of an Independent candidate. The
17 term "Independent candidate" is used in the
18 title, it's used in the first sentence, it's
19 used throughout that code. That Independent
20 candidate definition is found elsewhere in the
21 code. Numerous cases in Ohio have all held
22 that where there's a definition in the
23 statute, that it's that definition that
24 controls the application of the statute; it's

1 not the other way around.

2 In a number of cases, I'll just read
3 you one quote that has been repeated over and
4 over again by the Supreme Court: Where a
5 statute defines terms used therein, which are
6 applicable to the subject matter affected by
7 legislation, such definition controls in the
8 application of the statute.

9 In other words, here the statute
10 sets forth the definition of an Independent
11 candidate. That definition controls the
12 application of the statute. If you don't meet
13 the definition, you don't get to .257. And
14 that is exactly what has happened here.

15 Mr. Langdon is right, there is a
16 two-part test set forth in the definition of
17 Independent candidate. You need to declare,
18 claim you're not affiliated, and you need to
19 be certified. Mr. Morrison's claim to not to
20 be affiliated, to the extent he made one at
21 all, is disingenuous, is over shadowed by his
22 numerous, numerous claims, both public and
23 repeated and under penalty of election
24 falsification, that he's a Republican.

1 The second portion of that statute
2 is that if you are certainly unaffiliated, you
3 can be certified. Mr. Morrison is not
4 affiliated. We asked this Board not to
5 certify him. As such, he was not properly
6 available to avail himself of the 2.57
7 processes and is not properly an Independent
8 candidate for this Board's consideration.

9 We would ask that you reject his
10 candidacy at this time.

11 CHAIRMAN ANTHONY: Thank you very
12 much. Are there any questions? Thank you.

13 MR. LANGDON: Thank you.

14 I want to pick up on one thing that
15 she just finished saying as the words are
16 hanging out there. She suggested that Mr.
17 Morrison's claim not to be affiliated with any
18 political party was disingenuous. And so my
19 arguments here were going to be addressed to
20 the second set or what I call my second tier
21 of arguments playing in this world where the
22 definition actually means something in this
23 statute, which it doesn't.

24 But, nonetheless, in that paradigm,

1 what she's suggesting to you as a Board, and
2 notwithstanding the suggestion that you should
3 only be focused on this case, you do have to
4 think about this in the context of there are
5 lots of other folks out there that file
6 petitions and, in fact, they are before you
7 presently for statewide office and so forth,
8 where this very issue will come up.

9 What they're suggesting is that you
10 play the role of determining whether or not's
11 claim not to be affiliated with a political
12 party is genuine. How do you go about doing
13 that? I have no idea. I honestly have no
14 idea, and I can't imagine any of you do
15 either.

16 You're just to bring these
17 candidates in and pepper them with questions
18 about what they have done over the last
19 umpteen years in connection with a particular
20 political party so that you can determine
21 whether or not their claim not to be
22 affiliated with a political party is genuine.
23 That certainly cannot be the test.

24 Now let me step back. Assuming that

1 there is ambiguity, and it's probably a fair
2 assumption. The statutory scheme is so
3 miserably written that I think we would all
4 agree it's ambiguous.

5 Being ambiguous, the Board is
6 obligated to apply a particular principle of
7 construction that has been announced many,
8 many years ago by the Supreme Court of Ohio
9 and has been reiterated year after year after
10 year after year, and I'll quote from a 1992
11 case, and I quote: Words limiting the right
12 of a person to hold office are to be given a
13 liberal construction in favor of those seeking
14 to hold office, in order that the public may
15 have the benefit of choice from all those who
16 are in fact qualified.

17 There is no dispute that Mr.
18 Morrison meets all of the qualifications. He
19 filed the petitions, he did all that. You've
20 heard him here today claim not to be
21 affiliated with a political party. So, even
22 assuming that is a political party, which I
23 won't concede, but assuming for the sake of
24 argument that it is, he's now satisfied that

1. requirement.

2. And what this principle of law is
3. saying, that you have to make all of your
4. decisions, being guided by the principle that
5. he should be on the ballot, that he should be
6. on the ballot, all -- to the extent you're
7. doing this, it needs to tip this way in favor
8. of him getting on the ballot. That is the
9. nature of our system.

10. It is the nature of a free and
11. constitutional republic that we be given
12. choice in terms of who we can select as
13. candidates and not just the two big party
14. nominated candidates, but we need to have a
15. choice. The voters in the 15th Congressional
16. District deserve, in fact have a
17. constitutional right, to have a choice for an
18. additional candidate. That would be Mr.
19. Morrison here today.

20. I want to respond to a couple of
21. other points that the protesters have made.

22. It was suggested that, if Mr.
23. Morrison wasn't 25 years of age, that you
24. wouldn't be able to certify him to the ballot.

1 Without getting into a debate about whether or
2 not that's true, I will suggest to you that if
3 Mr. Morrison turned 25 today, after filing his
4 petitions, he would absolutely be qualified to
5 be on the ballot.

6 In fact, case law interpreting the
7 constitutional provision, this is a U.S.
8 Constitutional provision, says as long as he
9 turns 25 by the day of the election he's
10 qualified. Well, that's something objective,
11 certainly, that we know. We would know that
12 he's going to turn 25 on such-and-such a date.

13 The point is, is that he doesn't
14 have to turn 25 as of the day he turns in his
15 petition. That is clearly not the standard
16 that he must satisfy all these requirements by
17 the date he turns in his petitions.

18 In fact, the Ohio Supreme Court has
19 specifically rejected the suggestion that
20 candidate qualifications must be satisfied as
21 of the date that petitions are submitted.
22 They did this in the Walsh case. In the Walsh
23 case, they drew a distinction, in fact they
24 pointed to a statute, Revised Code 3501.38(A),

1 which sets forth the requirement that the
2 qualification of signers of a petition are to
3 be determined as of the date the petitions are
4 filed.

5 But there is no similar requirement
6 in Ohio law that says that the qualification
7 of a candidate must be established as of the
8 date the petitions are filed, and so what the
9 Supreme Court says is, we have one statute
10 that says signers must be qualified, the
11 Revised Code is silent on these other issues,
12 so we assume from that that they can be
13 qualified in at any time up to the point of
14 being certified, which would include today.

15 So again, operating in the paradigm
16 where this definition actually has teeth,
17 he's not qualified even under their
18 interpretation. He has sat before you, under
19 oath, and claimed not to be affiliated with a
20 political party.

21 Now, I want to make one final point
22 and then I'll put an exclamation point on it
23 and be done.

24 Mr. Morrison's integrity, perhaps,

1 has been questioned here in terms of when he's
2 submitting -- or circulating his petitions.
3 There is a distinction, clearly, in Ohio law
4 between being a member of and being affiliated
5 with a political party.

6 The very statute that the
7 protesters' counsel read to you, 3503.011,
8 which is the statute that delineates the
9 qualifications to be able to vote in a
10 primary, I'm paraphrasing here, but it says,
11 in order to be able to vote in a primary you
12 have to either be a member of or affiliated
13 with a political party.

14 And all counsel that are in here
15 will agree that when the legislature uses the
16 term "or," you can't ignore it, you can't turn
17 it into an "and." You can't make those two
18 terms have the same meaning. Proper rules of
19 statutory construction say that that "or" has
20 to be given meaning. That means "member of"
21 is different than "affiliated with."

22 Now, I've spent years on these types
23 of issues and can't figure out what "member
24 of" is and what "affiliated with" is. But

1 that's beside the point. The point is, there
2 is a difference, by law there is a difference
3 between "member of" or "affiliated with," so
4 one can be a member of a political party, but
5 by doing so he's not necessarily affiliated
6 with. And as Mr. Morrison testified, he's
7 never stated that he's affiliated with the
8 Republican Party.

9 Now, that may be a technical
10 distinction without a difference to all of you
11 on a point like this, but in light of the
12 protesters' argument, they're telling you you
13 have to pay attention to every single word in
14 these statutes. That's the argument they're
15 making, and I'm saying, yes, that I agree.
16 And by the way, there's a number of other
17 provisions in the Revised Code where you can
18 find "member of or affiliated with." So it's
19 not that one isolated instance; it appears in
20 numerous contexts.

21 So it is a consistent statement to
22 say that one may be a member of the Republican
23 Party, and that perhaps comes about by
24 operation of law. For example, if I voted in

1 the last Republican primary, I may, by
2 operation of law, be a member of the
3 Republican Party. That doesn't necessarily
4 mean by law I am affiliated with the
5 Republican Party.

6 So it is consistent for him to say,
7 yeah, I'm a member of the Republican Party, by
8 virtue of having gotten the Republican ballot,
9 on May 2nd, 2006. But it doesn't necessarily
10 mean on May 2nd, 2006, that he was affiliated
11 with the Republican Party.

12 And, more importantly, as we sit
13 here today, as he's testified to today, he is
14 disclaiming any affiliations with the
15 Republican Party, and thereby, again,
16 according to their interpretation, that makes
17 him eligible to be a candidate pursuant to
18 3513.257, and I would ask that you would deny
19 the protest. Thank you.

20 CHAIRMAN ANTHONY: Thank you very
21 much. Any questions?

22 Thank you, sir. So I guess the next
23 question is, what's our legal, their
24 recommendations?

1 MR. PICCININNI: This is an issue --
2 it is the opinion of the prosecutor's office
3 that this is an issue that transcends parts
4 and politics. It cuts across all aspects of
5 the spectrum, whether you're a Republican,
6 whether you're a Democrat, whether you're any
7 of the minor parties that may have status in
8 Ohio.

9 If you claim affiliation and you do
10 that by voting in the primary, one can be a
11 member and affiliated with. One does not -- a
12 member by operation subsumes the word
13 "affiliation." Affiliation does not
14 incorporate the word membership. Which is a
15 reasonable way to take Mr. Langdon's argument.
16 He's trying to say they're not necessarily one
17 and the same.

18 One can be affiliated and not be a
19 member of a party, saying, "I want to be a
20 registered Republican, Democrat, Green Party
21 candidate, Reformed Party candidate.

22 When he went in on May 2nd and said,
23 "I want a Republican ballot," he became
24 affiliated with the Republican Party. He

1 continues his affiliation with the Republican
2 Party, in addition to continuing his
3 membership with the Republican Party, because
4 he said, I was a member of the Republican
5 Party all before that." Based on the
6 testimony here on May 3rd, he says, "I am no
7 longer a Republican."

8 Well, finding a deadline to claim
9 that you're not affiliated with is -- was May
10 1st this year. If he wants to claim that he's
11 an Independent candidate, he can do that in
12 2008.

13 But at this point, it is our opinion
14 that based on the definitional section of
15 3501.01(I), that he claims not be affiliated
16 with a political party, his actions and his
17 deeds up until and including today, I mean
18 federally he's got a Republican -- a
19 Republican congressional committee going on,
20 he's got a congressional committee that's a
21 registered Republican, that operates under the
22 Republican Party auspices, based on his own
23 filings, as of -- I believe the FEC Web site
24 indicated the last filing in this matter was

1 April 14th.

2 Two weeks, eighteen days before the
3 primary, he was still holding himself as a
4 Republican, and that committee is still
5 soliciting donations as a committee for a
6 Republican candidate.

7 The opinion that we submitted to the
8 Members of the Board based on the information
9 that was presented has not changed based on
10 the testimony here. He does not meet the
11 definition of Independent candidate. It is
12 the opinion of the prosecutor's office that
13 his candidacy should not be certified at this
14 point, and that is the status -- it is our
15 opinion that is the status of the law in the
16 state of Ohio at this time.

17 CHAIRMAN ANTHONY: Any questions of
18 our legal person?

19 So what's the next step? Any
20 discussion among ourselves about this?

21 MR. DAMSCHRODER: Certification
22 requires an appropriate motion.

23 CHAIRMAN ANTHONY: Before I do that,
24 I do have something I want to add to this, my

1. thoughts.

2. After listening to everybody speak,
3. both sides speak, I'm kind of compelled to
4. think that we must give a liberal instruction
5. on the certification in order to give voters
6. an opportunity to decide who they want to vote
7. for, as opposed us on the Board deciding that
8. person is with one party or another party.

9. And I just think that, as a Board
10. member, I would hate to have -- hate to have
11. folks not be able to vote for who they'd like
12. to vote for. And he did have a number of
13. people fill out a petition as an Independent
14. candidate, and I'm just saying that that's
15. outside of our realm to deny that opportunity
16. to people to vote for an Independent ballot.

17. That's the way I feel about it, so.
18. Any other Board members' feeling?

19. If not, then I will make a motion
20. that it be certified to the ballot of the 2006
21. general election the Independent candidacy of
22. Charles Morrison for the United States
23. Congress from the 15th District. Is there a
24. second?

1 MS. MARINELLO: Second.

2 CHAIRMAN ANTHONY: Could we have a
3 roll call vote.

4 MR. DAMSCHRODER: Chairman Anthony?

5 CHAIRMAN ANTHONY: Yes.

6 MR. DAMSCHRODER: Mr. Colley?

7 MR. COLLEY: I would like to vote
8 yes, but I have to vote no, based on law.

9 MR. DAMSCHRODER: Ms. Marinello?

10 MS. MARINELLO: Yes.

11 MR. DAMSCHRODER: Ms. Petree?

12 MS. PETREE: No.

13 MR. DAMSCHRODER: Okay. And the
14 motion results in a tie, and pursuant to
15 statute, we'll submit a letter from those
16 members voting yes, those members voting no,
17 to the Secretary of State along with a copy of
18 the briefs done by both sides and a copy of
19 today's record.

20 CHAIRMAN ANTHONY: Thank you. So
21 what's the other matter of business?

22 MR. DAMSCHRODER: The last item on
23 the agenda, Mr. Chairman, is a personnel
24 related administrative matter that we

1 discussed a couple weeks ago following the
2 election.

3 The question had to do with some
4 employees who worked during the day, some who
5 did not. The prosecuting attorney's office
6 thought that for purposes of this election
7 going back retroactively, that it would be
8 appropriate to do what the Board had planned
9 on doing, so that people who worked a portion
10 of the day would be granted a full day's pay
11 since they worked the entire night.

12 MR. WHITE: Is this going to be
13 retractive to --

14 MR. DAMSCHRODER: Yeah, to the May
15 2nd, 2006 election. And then we'll work
16 forward in a future board meeting of policy so
17 we don't have to do this retroactively in the
18 future.

19 CHAIRMAN ANTHONY: I will entertain
20 a motion.

21 MS. MARINELLO: Mr. Chairman, I move
22 that any and all full-time employees having
23 worked at any time during the normal business
24 hours of 8:00 a.m. to 5:00 p.m. of the

1 Franklin County Board of Elections on
2 Wednesday, May 3rd, 2006, shall be considered
3 as having worked a full eight hours.

4 CHAIRMAN ANTHONY: Is there a
5 second?

6 MS. PETREE: COLLEY: I will second
7 that.

8 CHAIRMAN ANTHONY: All those in
9 favor, say aye.

10 (A vote was taken.)

11 CHAIRMAN ANTHONY: Is that all for
12 today?

13 MR. DAMSCHRODER: Yes. Motion to
14 adjourn.

15 CHAIRMAN ANTHONY: Is there a motion
16 to adjourn?

17 MS. MARINELLO: Mr. Chairman, I
18 make a motion to adjourn.

19 CHAIRMAN ANTHONY: All in favor.

20 (A vote was taken.)

21 CHAIRMAN ANTHONY: We stand
22 adjourned.

23 (Thereupon, the proceedings were
24 concluded at 4:36 o'clock p.m.)

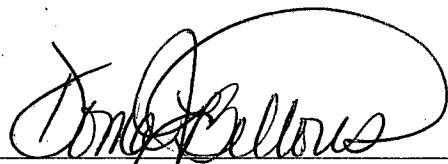
CERTIFICATE

1
2
3 The undersigned do hereby certify that
4 the foregoing proceedings were digitally
5 recorded, electronically transmitted, and
6 transcribed via audible playback, and that
7 the foregoing transcript of such proceedings
8 is a full, true and correct transcript of
9 the proceedings as so recorded.

10 IN WITNESS WHEREOF, I have hereunto set
11 my hand and affixed my seal of office at
12 Columbus, Ohio, on this 23rd day of
13 June, 2006.

14
15 

16 ELEGRA R. DAVIS
17 Certified Digital Reporter
18 Notary Public - State of Ohio.
19 My commission expires October 2, 2009.

20
21 

22 DONNA J. BELLOUS
23 Certified Digital Transcriber
24