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BEFORE THE BOARD OF ELECTIONS
OF FRANKLIN COUNTY, OHIO

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IN RE: :

Board Meeting :

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Proceedings before Board Chairman William
A. Anthony, Jr., and Board Members Michael F.
Colley, Kimberly E. Marinello, with Director
Matthew M. Damschroder, and Deputy Director
Dennis L. White, taken at Board of Elections,
280 East Broad Street, Columbus, Ohio, on
Friday, January 18, 2008, at 2:56 o'clock
p.m.

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1 APPEARANCES:

2 Franklin County Prosecuting Attorney
3 373 South High Street
4 13th Floor
5 Columbus, Ohio 43215
6 By Mr. Patrick J. Piccininni,
7 Assistant Prosecuting Attorney,

8
9 On behalf of the Board.

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11
12 Buckley King
13 One Columbus
14 Suite 1300
15 10 West Broad Street
16 Columbus, Ohio 43215
17 By Mr. Chris O. Papparodis,

18 On behalf of Maghreb, Inc.

19
20
21 Jones Law Offices
22 Suite 800
23 175 South Third Street
24 Columbus, Ohio 43215
By Ms. Robyn R. Jones,

On behalf of Smooth Night.

ALSO PRESENT:

Ms. Carla Patton

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P R O C E E D I N G S
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CHAIRMAN ANTHONY: I'd like to call the Franklin County Board of Elections meeting to order.

MR. DAMSCHRODER: Mr. Colley?

MR. COLLEY: Here.

MR. DAMSCHRODER: Ms. Marinello?

MS. MARINELLO: Here.

MR. DAMSCHRODER: Chairman Anthony?

CHAIRMAN ANTHONY: Here.

MR. DAMSCHRODER: We have a quorum. Mrs. Petree is not able to be with us today. The only two items on the agenda are to revisit two local option petitions that the Board had previously certified when the Board sent the ballot language to the Secretary of State's office for approval.

The Secretary of State returned -- the Secretary of State's office returned the language for the three questions to this office rejecting the language as it was submitted. So I think our counsel -- the

1 Board's counsel has talked with
2 representatives from the Secretary of State's
3 office, and we have contacted the petitioners
4 for both of the petitions, and they are both
5 present today and represented by counsel.

6 CHAIRMAN ANTHONY: Okay. Who would
7 like to speak?

8 MR. PAPARODIS: My name is Chris
9 Paparodis. I'm here on behalf of Maghreb,
10 Inc., d/b/a Hallmart. I have a document I'd
11 like to approach and pass out.

12 CHAIRMAN ANTHONY: Yes.

13 MR. COLLEY: Could you speak a
14 little louder?

15 MR. PAPARODIS: Absolutely, sir.
16 It's my understanding that the concern is
17 that there's not an adequate description and
18 that the language for off-premise only is the
19 language that's contested.

20 If you search 4301, which is the
21 liquor portion of the Revised Code, for
22 off-premise is not defined there. In this
23 particular case we use the word "carryout."
24 Carryout is also not defined there and it's

1 not defined in the general provisions of the
2 Revised Code, but it is defined in Webster's
3 dictionary, "prepared food packaged to be
4 consumed away from the place of sale."

5 According to the Rules of Statutory
6 Construction, if something is not defined you
7 fall back to the common usage. In this
8 particular case we use "carryout." And
9 you'll note on the first page, even the
10 Division of Liquor Control in this letter
11 advising somebody about their Sunday sales
12 status tells them it's carryout only. They
13 don't say, for off-premise only.

14 Now, there is language in 4301 on
15 certain ballot issues that says for
16 off-premise, but this one does not require
17 that specific language. All it requires you
18 to do is to identify the type of business.
19 There was no concealing this from the voters
20 or the signatories of the petition.

21 This business had been there under
22 the same owner for 12 years. It's been in
23 the same neighborhood for over 30 from what I
24 understand. They've never had tables or

1 chairs in there, it has always been a
2 carryout location where you went and bought
3 items and left. So nobody was fooled by this
4 and the requirement for off-premise is
5 promulgated nowhere.

6 I don't know where the Secretary of
7 State felt that this was important to have
8 this particular language at this particular
9 time, but they've come up with this. They
10 haven't promulgated it, they haven't had a
11 statutory change with regard to the language
12 in the section.

13 And, quite frankly, this language
14 did not in any way impinge on the
15 signatories' right to know exactly what they
16 were signing. Thank you.

17 CHAIRMAN ANTHONY: Thank you so
18 much. Any questions?

19 MR. PICCININNI: I don't think the
20 issue is to the carryout issue. Carryout --
21 we can all agree, I think, that a carryout is
22 off-premises consumption. I think more the
23 fundamental issue here is what the C1 and C2
24 liquor permits exactly do.

1 Are they given this -- the person an
2 issue or are they letting the voter know
3 exactly what the C1 and C2 allow them to do
4 already. Now, all it says -- all the
5 petition says is a C1 and C2 permit for
6 carryout sales, okay?

7 And then you're asking at the
8 beginning, beer, wine, and mixed beverages,
9 an applicant for a C1, C2 liquor permit.
10 Again, that's the same issue that I think
11 we've got with -- that we had with Mariachi
12 last week. And I think that's where it's
13 coming from.

14 MR. PAPARODIS: If I may, this asks
15 for the sale of beer, wine, and mixed
16 beverages with a C1, C2. The C1, C2 are
17 attached here and it allows for carryout
18 sales. If you read that together -- and then
19 it goes on to say Monday through Saturday,
20 carryout liquor permits.

21 So what you have there is you're
22 identifying the type of alcoholic beverages,
23 you're identifying that this is for
24 off-premise consumption during the week, and

1 that it is carryout liquor permits operating
2 a neighborhood carryout. The word "carryout"
3 appears three times, the type of alcoholic
4 beverage appears in this.

5 I think we hit our marks with
6 regards to their requirements in 333. And by
7 virtue of that I -- unless they want to sit
8 down and define specific language, if you're
9 just going to give directions as to what
10 you're trying to do, it's hard to discern as
11 a petitioner -- in this case an individual
12 put together his own petition -- unless you
13 are a lawyer yourself, it's hard to discern
14 what you're missing or if you're missing
15 anything.

16 CHAIRMAN ANTHONY: Any questions
17 from anybody?

18 MR. PICCININNI: It's the Board's
19 decision -- the Board has let this -- this is
20 on -- to make sure everything complies with
21 the law, we're taking a second look at this
22 so --

23 CHAIRMAN ANTHONY: Now, what does
24 the Secretary of State say?

1 MR. WHITE: Secretary of State --
2 who had the conversation with Secretary of
3 State's office from staff? Matt, did you
4 have conversation with the Secretary of
5 State?

6 MR. DAMSCHRODER: No. The
7 conversations with the Secretary of State's
8 office were --

9 MR. WHITE: Who from staff had
10 Secretary of -- conversation with Secretary
11 of State's office pertaining to this?

12 MS. PATTON: I had a conversation
13 with the Secretary of State's office last
14 election pertaining to the same issues, and
15 their comments to us was it is up to the
16 Board whether or not to certify them and they
17 were already certified. It's the Board's
18 decision to pull it off or leave it on, but
19 they were not legally approving the language.

20 MR. WHITE: And when was this
21 conversation that they told you they were not
22 --

23 MS. PATTON: This was last election
24 or the general election.

1 MR. PICCININNI: This was before
2 November.

3 MR. WHITE: See, I thought somebody
4 had a conversation with the Secretary of
5 State's office this last week saying --

6 MR. PICCININNI: I have.

7 MR. WHITE: -- that we should --

8 MR. PICCININNI: You guys cannot
9 approve anything that does not comply with
10 the law, because I asked them the specific
11 question on, look, my Board has already
12 approved this.

13 They said, well, you can't approve
14 anything that violates the law or appears to
15 violate the law, so you may want to take a
16 look at it again. And that's why we're here
17 today.

18 MR. WHITE: And they're saying it
19 violates the law in its present form?

20 MR. PICCININNI: They're saying
21 consult with us, what's here is that there's
22 no description of what the C1 is. C1 allows
23 beer in closed containers for off-premises
24 consumption, okay?

1 MR. WHITE: So what --

2 MR. PICCININNI: C2 allows for
3 packaged -- sell wine in sealed containers,
4 off-premise consumption. I mean, I'm
5 paraphrasing here, okay? This particular
6 permit said -- we've got the carryout, we
7 know it's off-premise consumption.

8 And then they're asking shall beer,
9 wine, and mixed beverages be permitted an
10 applicant for a C1 and C2 liquor permit. And
11 I -- the way we applied this to Mariachi last
12 week, if we would have said C1 which allows
13 beer, C2 which allows wine in sealed
14 packages, as a carryout I think you'd be
15 fine.

16 Then everybody who's signing this
17 knows exactly what you're doing. That's
18 where we're coming from on this, and I think
19 that's where the problem is.

20 MR. WHITE: I just want to back up a
21 little bit here. The Board previously
22 approved this. Then we sent this over to the
23 Secretary of State's office to approve the
24 language?

1 MR. PICCININNI: Yeah.

2 MR. WHITE: They're the ones
3 objected to us --

4 MR. PICCININNI: That is correct.

5 MR. WHITE: -- approving it?

6 MR. PICCININNI: That is correct.

7 MR. WHITE: So I think it's in the
8 best interest of the Board to listen to what
9 the Secretary of State is saying. And if
10 counsel has a problem with what the Secretary
11 of State is saying, he should take that
12 someplace else. I don't think it's --

13 MR. PICCININNI: That's the same
14 issue as Mariachi.

15 MR. WHITE: I don't think it would
16 be smart for our Board to do something the
17 Secretary of State is telling you not to do.
18 She's the head election official in the State
19 of Ohio.

20 MS. MARINELLO: It's because the
21 description of the C1 and C2 weren't in
22 there?

23 MR. PICCININNI: That's what I'm
24 thinking. I mean, my conversation with Bryan

1 is we didn't have much of an argument about
2 carryout. It's that it didn't have the -- I
3 said, well, it does track it. Carryout means
4 off-premises consumption.

5 But, I mean, I think where I'm
6 having the issue with this is that it's not
7 describing what the -- which is the same
8 question you brought up a week -- last Friday
9 when Mariachi, is I don't know what a D5 and
10 a D6 are. I mean, I -- until I received
11 this, until I looked at Title 43, I didn't
12 know what a C1 and C2 were.

13 MS. MARINELLO: And no one else
14 would either?

15 MR. PICCININNI: Right. And I think
16 that becomes the fun -- I think that's what
17 the issue is.

18 MR. WHITE: And that's the issue
19 that the Secretary of State is raising?

20 MR. PICCININNI: I believe that it
21 is.

22 MR. WHITE: Their counsel is saying
23 by statute they feel they've met the legal
24 requirements?

1 MR. PICCININNI: That is correct.

2 MR. WHITE: And you all aren't in a
3 court of law here, so the arguments he's
4 making should be in a court of law.

5 MR. PICCININNI: That may be the
6 case.

7 CHAIRMAN ANTHONY: Sir, do you have
8 something else to add?

9 MR. PAPARODIS: Well, my concern is,
10 are you now saying that the issue is -- that
11 they should have defined C1 beer, C2 wine,
12 and mixed beverages? Is that what you're
13 saying?

14 MR. PICCININNI: I think that's what
15 it is. You've listed the type of permit that
16 you have, that's fine. We're not arguing
17 with that. But then 333B3a does not set
18 forth on its face a description of the actual
19 type of beer or intoxicating liquor sales
20 authorized by each permit.

21 C1, which authorizes sales of beer
22 -- and the carryout at issue is not the
23 issue. It's what the permits actually do
24 themselves.

1 MR. PAPARODIS: Well, the permits
2 allow beer, wine, and mixed beverages, which
3 are low proof spirits liquor and they allow
4 for carryout only. Or, if you want to read
5 the technical definition, it's in containers
6 and not for consumption on the premises where
7 sold in the original container.

8 But I think if you read this, I
9 don't think there's any deception here at all
10 or possibility for misunderstanding, because
11 at no time does it say anything but this is
12 carryout and it is beer, wine, and spirits,
13 and it's a C1 and a C2 permit. And if you
14 read all of them together I don't think --

15 MR. PICCININNI: If you read all of
16 them together where?

17 MR. PAPARODIS: On the document
18 itself that was circulated, if you read the
19 entirety of that, you identify the three
20 types of beverages, you identify the permits,
21 you identify that it's only carryout, and it
22 lists carryout three times. So I don't think
23 --

24 MR. PICCININNI: I think -- and this

1 is the argument that we had with Mariachi
2 last week and I'm not going to belabor the
3 point. Does the vote -- the question that
4 would a voter know, are you trying to get
5 something more, are you changing what you
6 already have? And the voter does not know
7 that when they're signing the permit.

8 MR. PAPARODIS: I don't think --

9 MR. PICCININNI: Or may not know
10 that when they're signing the permit. And I
11 think that's the rationale for the reason for
12 the description of the permit. That's what's
13 missing here. The carryout issue that it's
14 off-premises consumption is not the issue.

15 You're asking -- they're asking for
16 beer, wine, and mixed beverages because they
17 hold the C1 and C2 permit for carryout sales,
18 fine. But what does the -- and I think
19 what's missing is the C1 and C2 already allow
20 us to sell this. And I think that's where
21 the issue is coming into and that's the issue
22 that the Board needs to decide.

23 MR. PAPARODIS: In this particular
24 case, if I may, they're telling you they're

1 an applicant, they're not a permit holder.
2 And that's what they're required to do by the
3 statute. They say I'm an applicant, I don't
4 hold a permit, I am trying to get these.

5 And I don't know that there's -- you
6 know, I think that if the Board quizzed some
7 of its employees, I would suggest to you that
8 the fact of the matter is that this petition
9 would probably -- anyone that had read it
10 that usually reads these would know exactly
11 what was being requested here.

12 And this person is not hiding
13 anything, they're telling them they're an
14 applicant. If they were a permit holder,
15 they'd be required to say they're a permit
16 holder. But the actual language in 30 -- or
17 the actual language requires you to put
18 certain information in there, but it doesn't
19 tell you exactly how to put it in there.

20 And I think this client -- or I
21 think this petitioner has hit his marks on
22 every count. There's been no deception and I
23 don't believe that if you take a look at this
24 compared to 333 that there is -- that he's

1 missed a single item.

2 MR. WHITE: The other thing I think,
3 historically, the Secretary of State didn't
4 view it this way, so there's been a history
5 of applicants filing them this way. Now the
6 Secretary of State views it to not be proper
7 language.

8 So I think we're going to have many
9 more of these to deal with in the future
10 until someone challenges the Secretary of
11 State's position on this. And I think it's
12 the applicant's right to do that if this
13 Board follows the Secretary of State's
14 recommendations.

15 And I hope someone does that because
16 we have other things that we should be doing
17 around here in preparing for election than
18 dealing with an issue that keeps coming up
19 and puts the Board members in a real awkward
20 position. Because I really think they should
21 listen to their Secretary of State no matter
22 who it is.

23 MR. PAPARODIS: If I may, my only
24 concern is that we're now being asked to use

1 the terminology of a "half a dozen" and we
2 used the word "six," and "half a dozen" will
3 cut it but the word "six" doesn't. And I'm
4 just concerned is that what's happening here
5 is that by use of words that mean effectively
6 the same thing, this person is being knocked
7 off.

8 CHAIRMAN ANTHONY: I understand.
9 Ma'am, do you have -- did you want to say
10 something?

11 MS. JONES: I was just trying to see
12 around him that time, but I would like to
13 speak if I could.

14 CHAIRMAN ANTHONY: Yes, ma'am.

15 MS. JONES: Please the Court, my
16 name is Robyn Jones. I'm here on behalf of
17 Smooth Night. The two members of that
18 company are here with me. They have taken
19 what was a go-go bar and converted it into an
20 Ethiopian restaurant.

21 They passed the petition themselves,
22 the neighbors were thrilled to know that they
23 were changing this place from a go-go bar to
24 a family restaurant. Since they were doing

1 it themselves, they did get some assistance
2 from Board of Elections employees who assumed
3 that, as you said, it's always been done this
4 way so this is the way to do it. They
5 followed instructions from people who have
6 always done it that way and should know.

7 And so for them to be penalized for
8 doing something that meets the intent of the
9 law, and that is to communicate to the people
10 signing this petition what it is they're
11 signing, would be a miscarriage.

12 They said that it was a restaurant,
13 they said their D5 was a liquor permit, and a
14 D5 is all encompassing so it covers all of
15 those things which they listed -- wine, mixed
16 beverages, and spirits liquor.

17 So everything that they needed to
18 communicate to these people is on the
19 petition. So I hope you'll take that into
20 account.

21 CHAIRMAN ANTHONY: Thank you very
22 much.

23 MR. PICCININNI: I have a question.
24 What's the name of the restaurant?

1 MS. JONES: It's going to be Smooth
2 Night. And they're here, they can --

3 MR. PICCININNI: Is that exactly
4 what it's going to be called?

5 SMOOTH NIGHT OWNER: Yes.

6 CHAIRMAN ANTHONY: Thank you, ma'am.

7 MR. PICCININNI: Here's the issues
8 that the Secretary of State had with this
9 one. The permit lacked a DBA, the official
10 company that owns the permit is Smooth Night,
11 Inc., they're doing business -- and I
12 understand is doing business as Smooth Night.
13 I think that was one issue with them.

14 And, again, the lack of a
15 description on the permit similar to
16 Mariachi, which we've already turned down or
17 would not allow to make the ballot for these
18 reasons. I think the issue is similar so --

19 CHAIRMAN ANTHONY: Ma'am, did you
20 have something else to add?

21 MS. JONES: No. Just wanted to know
22 what you're saying. Could you help me out --

23 CHAIRMAN ANTHONY: No, ma'am. I can
24 understand your predicament. I mean, just a

1 few days ago we ended up turning down a
2 Mexican restaurant on the east side because
3 of the same language in there. It puts us in
4 a bit of a quandary because of the new way
5 that they're interpreting that language. All
6 right. Any other questions?

7 (No audible response.)

8 CHAIRMAN ANTHONY: So what has to
9 happen?

10 MR. WHITE: If you're in agreement
11 with your Secretary of State, you need to
12 vote a motion to decertify these and take
13 them off the ballot. And it's not, do you
14 agree with -- you're not voting you agree
15 with her legal interpretation of the law, but
16 she has the say in what the language --
17 ballot language is going to be. And right
18 now she's saying this should not be on the
19 ballot.

20 CHAIRMAN ANTHONY: So then the
21 motion should read as follows.

22 MR. WHITE: And I would hope that
23 some petitioner would take this to a court of
24 law so that we don't have to keep dealing

