

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

MINUTES OF THE MEETING ON

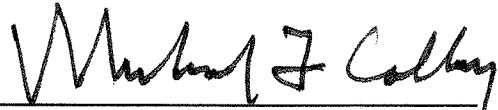
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APPROVED ON 10/13/08

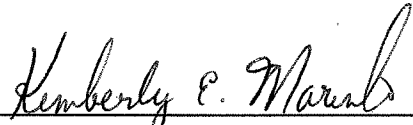
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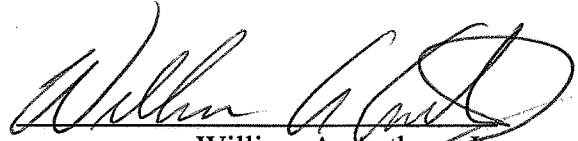
Douglas J. Preisse, Chairman



Michael F. Colley, Esq.

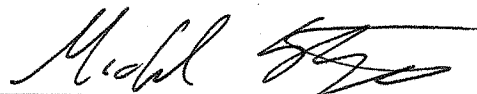


Kimberly E. Marinello



William A. Anthony Jr.

ATTEST:



Michael Sinziano, Director

1 BEFORE THE FRANKLIN COUNTY BOARD OF ELECTIONS

2 - - - - -

3 IN RE: :

4 Board Meeting :

5 - - - - -

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

