

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

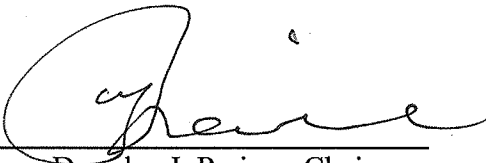
MINUTES OF THE MEETING ON

3/6/10

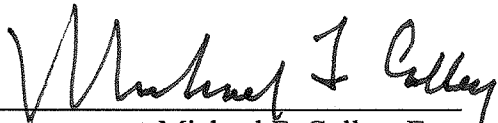
APPROVED ON

4/5/10


BY:



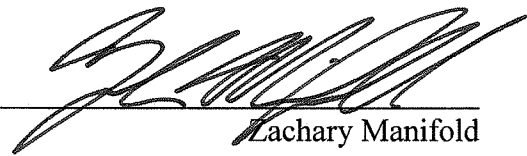
Douglas J. Preisse, Chairman



Michael F. Colley, Esq.

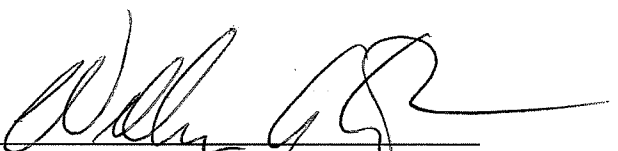


Kimberly E. Marinello



Zachary Manifold

ATTEST:



William A. Anthony, Jr., Director

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

BEFORE THE
FRANKLIN COUNTY BOARD OF ELECTIONS

- - - - -

IN RE: :
Special Meeting :
:

- - - - -

Proceedings before Chairman Douglas J.
Preisse, Board Members Michael F. Colley,
Kimberly E. Marinello, and Zachary E.
Manifold, and Deputy Director Matthew
Damschroder, taken at the Franklin County
Board of Elections, 280 East Broad Street,
Columbus, Ohio, on Saturday, March 6, 2010, at
9:11 o'clock a.m.

- - - - -

Page 2

1 APPEARANCES:

2 Mr. Anthony E. Palmer, Jr.
Assistant Prosecuting Attorney
Franklin County Prosecutor's Office
3 373 South High Street
4 13th Floor
Columbus, Ohio 43215

5 On behalf of the Board.

6 Chester, Willcox & Saxbe
7 65 East State Street
Columbus, Ohio 43215

8 By Mr. Donald C. Brey,
9 On behalf of Michael Duffey.
10 The Law Firm of Hayman & Kelley, LLC
3010 Hayden Road
11 Columbus, Ohio 43235

12 By Mr. Larry Hayman and
13 Ms. Megan C. Kelley,
On behalf of Protesters
Beardman and Graham.

14

15

16 ALSO PRESENT:

17 Mr. William A. Anthony, Jr.,
Director

18

19 Mr. Ben Piscitelli,
20 Media Relations
21 Judge Laurel A. Beatty
22
23
24

Page 4

1 INDEX, CONT'D

2 Exhibits Page No.

3 A - Salaries as of March 5th,
2010 10

4

5 B - Amendment to Remove Candidate
from Certified Candidate List --

6 C - Write-ins Recommended for
Certification 13

7

8 D - Write-ins Not Recommended for
Certification 15

9 D1 - Franklin County Board of
Elections Voting Machine
10 Allocation Schedule, May 4th,
2010 Primary Election --

11
12
13
14
15
16
17
18
19
20
21
22
23
24

Page 3

1 INDEX

2 Agenda Item Page No.

3 Call To Order/Roll Call 5

4 Board Nominations 5

5 Certification of Write-In
Candidates 12

6

7 Protest Hearings:

8 Beardman vs. Board of Elections 16

9

10 Constitution Party of Ohio
vs. Board of Elections 46

11 Zukowski vs. Board of
Elections I 71

12 Zukowski vs. Board of
Elections II 77

13 Appeals:

14 Benjamin Snedecker 83

15 Mindy Lambert 93

16 Christopher Gill 99

17 Michael Taylor 107

18 Robert Wayne 108

19 Procurement Policy 110

20 Voting Machine Assignments 112

21 Fraud Referrals 114

22 Compensation of Public Employees 115

23 Amendments to the Minutes 116

24 Adjourn 118

Page 5

1 -----

2 PROCEEDINGS

3 -----

4 MR. DAMSCHRODER: We'll call the
5 meeting of the Franklin County Board of
6 Elections to order.

7 Mr. Colley.

8 MR. COLLEY: Here.

9 MR. DAMSCHRODER: Mr. Preisse.

10 CHAIRMAN PREISSE: Here.

11 MR. DAMSCHRODER: Mr. Manifold.

12 MR. MANIFOLD: Here.

13 MR. DAMSCHRODER: Ms. Marinello.

14 MS. MARINELLO: Here.

15 MR. DAMSCHRODER: And all four
16 members are present.

17 This being the first meeting after
18 the new appointment of two board members, the
19 first order of business is to reorganize the
20 board, and the first step of that is to
21 appoint a temporary chairman. Is there a
22 motion?

23 MS. MARINELLO: I move that Douglas
24 J. Preisse be appointed temporary chairman for

Page 6

1 the purpose of reorganization.
 2 MR. MANIFOLD: And I'll second that.
 3 MR. DAMSCHRODER: All in favor, say
 4 aye.
 5 MEMBERS: Aye.
 6 MR. DAMSCHRODER: Opposed?
 7 All right. Mr. Chairman, Mr.
 8 Temporary Chairman, the next item is to
 9 adjourn into executive session to interview
 10 candidates.
 11 MR. MANIFOLD: I move that the board
 12 adjourn into executive session to interview
 13 candidates for Director or Deputy Director of
 14 the Board of Elections.
 15 MR. DAMSCHRODER: Is there a second?
 16 MS. MARINELLO: Second.
 17 MR. DAMSCHRODER: Do a roll call
 18 vote.
 19 Mr. Colley.
 20 MR. COLLEY: Yes.
 21 MR. DAMSCHRODER: Chairman Preisse.
 22 CHAIRMAN PREISSE: Yes.
 23 MR. DAMSCHRODER: Mr. Manifold.
 24 MR. MANIFOLD: Yes.

Page 7

1 MR. DAMSCHRODER: Ms. Marinello.
 2 MS. MARINELLO: Yes.
 3 MR. DAMSCHRODER: And we are in
 4 executive session.
 5 -----
 6 Thereupon, Executive Session was
 7 held from 9:14 o'clock a.m. to
 8 10:17 o'clock a.m.
 9 -----
 10 MR. DAMSCHRODER: Let's go back into
 11 public session. Is there a motion to
 12 reconvene?
 13 MR. MANIFOLD: I move that the board
 14 reconvene in public session and note for the
 15 record that no votes were taken nor decisions
 16 made during executive session.
 17 MS. MARINELLO: Second.
 18 MR. DAMSCHRODER: A roll call vote.
 19 Mr. Colley.
 20 MR. COLLEY: Yes.
 21 MR. DAMSCHRODER: Chairman Preisse.
 22 CHAIRMAN PREISSE: Yes.
 23 MR. DAMSCHRODER: Mr. Manifold.
 24 MR. MANIFOLD: Yes.

Page 8

1 MR. DAMSCHRODER: Ms. Marinello.
 2 MS. MARINELLO: Yes.
 3 MR. DAMSCHRODER: And we are back in
 4 public session of the reorganization phase of
 5 our meeting. Is there a motion for Director
 6 of the Franklin County Board of Elections?
 7 MS. MARINELLO: Mr. Chairman, I
 8 nominate William A. Anthony for the position
 9 of Director of Franklin County Board of
 10 Elections at the compensation rate of \$4,292
 11 per biweekly pay period.
 12 MR. DAMSCHRODER: Is there a second?
 13 MR. COLLEY: Yes.
 14 MR. DAMSCHRODER: We'll do a roll
 15 call vote.
 16 Mr. Colley.
 17 MR. COLLEY: Yes.
 18 MR. DAMSCHRODER: Mr. Preisse.
 19 CHAIRMAN PREISSE: Yes.
 20 MR. DAMSCHRODER: Mr. Manifold.
 21 MR. MANIFOLD: I'm going to abstain.
 22 MR. DAMSCHRODER: Ms. Marinello.
 23 MS. MARINELLO: Yes.
 24 MR. DAMSCHRODER: And the motion

Page 9

1 carries.
 2 Is there a nomination for the
 3 position of Deputy Director?
 4 CHAIRMAN PREISSE: I think you're
 5 going to do that one out of tradition,
 6 Michael.
 7 MR. COLLEY: I nominate Matthew M.
 8 Damschroder for the position of Deputy
 9 Director of the Franklin County Board of
 10 Elections at the compensation rate of \$4,292
 11 per biweekly pay period.
 12 MS. MARINELLO: Second.
 13 MR. DAMSCHRODER: We'll do a roll
 14 call vote.
 15 Mr. Colley.
 16 MR. COLLEY: Hmm...yes.
 17 (Laughter.)
 18 MR. DAMSCHRODER: Thank you.
 19 Mr. Manifold.
 20 MR. MANIFOLD: Yes.
 21 MR. DAMSCHRODER: Ms. Marinello.
 22 MS. MARINELLO: Yes.
 23 MR. DAMSCHRODER: And the motion
 24 carries. Is there a motion for permanent

Page 10

1 Chairman of the Board of Elections?
 2 MR. COLLEY: I nominate Douglas J.
 3 Preisse for the position of Chairman of the
 4 Franklin County Board of Elections.
 5 MR. MANIFOLD: I'll second that.
 6 MR. DAMSCHRODER: Mr. Colley.
 7 MR. COLLEY: Yes.
 8 MR. DAMSCHRODER: Mr. Preisse.
 9 CHAIRMAN PREISSE: Yes.
 10 MR. DAMSCHRODER: Mr. Manifold.
 11 MR. MANIFOLD: Yes.
 12 MR. DAMSCHRODER: Ms. Marinello.
 13 MS. MARINELLO: Yes.
 14 MR. DAMSCHRODER: And the motion
 15 carries.
 16 And the next is to reappoint all of
 17 the currently serving full-time clerks of the
 18 Board of Elections at their current hourly
 19 rate, which is Exhibit A in your brown
 20 folders.
 21 MR. MANIFOLD: I move that the board
 22 appoint the employees listed on Exhibit A as
 23 full-time clerks of the board and fix as their
 24 hourly compensation the rates listed with

Page 11

1 their respective names.
 2 MR. COLLEY: Second.
 3 MR. DAMSCHRODER: Mr. Colley.
 4 MR. COLLEY: Yes.
 5 MR. DAMSCHRODER: Mr. Preisse.
 6 CHAIRMAN PREISSE: Yes.
 7 MR. DAMSCHRODER: Mr. Manifold.
 8 MR. MANIFOLD: Yes.
 9 MR. DAMSCHRODER: Ms. Marinello.
 10 MS. MARINELLO: Yes.
 11 MR. DAMSCHRODER: All right. And
 12 why don't we take a moment to swear in the new
 13 Director and Deputy Director, since Judge
 14 Beatty is here for that purpose.
 15 -----
 16 Thereupon, William A. Anthony, Jr.,
 17 was sworn in, as follows:
 18 -----
 19 "I, William A. Anthony, Jr., do
 20 solemnly swear that I will support the
 21 Constitutions of the United States of America
 22 and the State of Ohio, that I will enforce the
 23 laws, protect and preserve the records and
 24 property pertaining to elections, and perform

Page 12

1 my duties as Director of the Franklin County
 2 Board of Elections to the best of my
 3 abilities."
 4 JUDGE BEATTY: Congratulations.
 5 MR. ANTHONY: Thank you so much.
 6 (Applause.)
 7 -----
 8 Thereupon, Matthew M. Damschroder was
 9 sworn in, as follows:
 10 -----
 11 "I, Matthew M. Damschroder, do
 12 solemnly swear that I will support the
 13 Constitutions of the United States of America
 14 and the State of Ohio, that I will enforce the
 15 laws, protect and preserve the records and
 16 property pertaining to elections, and perform
 17 my duties as Deputy Director of the Franklin
 18 County Board of Elections to the best of my
 19 abilities."
 20 JUDGE BEATTY: Congratulations.
 21 MR. DAMSCHRODER: Thank you.
 22 (Applause.)
 23 -----
 24 MR. DAMSCHRODER: The next item on

Page 13

1 the agenda is the certification of write-in
 2 candidates, which is Exhibit C in the packet.
 3 Karen, do you want to make a free
 4 presentation on that?
 5 MS. COTTON: Exhibit C of your
 6 packet represents those candidates who filed a
 7 timely declaration of write-in candidacy and
 8 were found to be registered electors at the
 9 given address that they presented on the
 10 application form and were residents of the
 11 jurisdictions that they sought to be a
 12 write-in candidate for.
 13 MR. DAMSCHRODER: Is there a motion
 14 to approve the write-in candidates?
 15 MR. MANIFOLD: I move that the list
 16 of electors appearing on Exhibit C be
 17 certified as valid write-in candidates for the
 18 May 4th, 2010 Primary Election.
 19 MR. DAMSCHRODER: Is there a second?
 20 MR. COLLEY: Yes.
 21 MR. DAMSCHRODER: All in favor, say
 22 aye.
 23 MEMBERS: Aye.
 24 MR. DAMSCHRODER: And there are

Page 14	Page 16
<p>1 three candidates who filed declarations of 2 write-in who staff recommends be rejected. 3 Karen? 4 MS. COTTON: For the three 5 candidates who as we were doing the research 6 we discovered were not either part of the 7 jurisdiction they were seeking to run for or 8 of the wrong political party. We have 9 Jeremiah Arn; he was seeking to be a State 10 Representative candidate for the 21st 11 District. The full term commencing date was 12 incorrect on his application. He had the 13 November 2010 date for the date of the 14 election rather than the commencing date of 15 the term of office. 16 State Representative, 27th District, 17 we have Apostle Sumlin. On his declaration, 18 his address is different than that on the 19 declaration of candidacy, the address on file 20 with the Board of Elections. 21 And in County Central Committee 22 Ward 7, Robert Weind, he is of the wrong 23 political party, being that he voted in the 24 Democratic primary of 2008.</p>	<p>1 Thank you, Karen. Stay close. 2 ----- 3 MR. DAMSCHRODER: The next item on 4 the agenda is protest hearings. The first is 5 Beardman, et al., versus the Board of 6 Elections. This is challenging or protesting 7 the certification by the board of Michael 8 Duffey as a candidate for the 21st -- 9 Republican candidate for the 21st House 10 District. 11 When we first checked the petitions, 12 as is our normal practice, once we got to 55 13 valid signatures, which is more than the 14 minimum threshold for the staff review, we 15 stopped checking part-petitions, and there 16 were two additional part-petitions. 17 As is our normal course when we have 18 a protest staff who reviews all of the 19 part-petitions, it's the opinion of the staff 20 that there are 79 valid signatures appearing 21 on all of the part-petitions, which is more 22 than the 50 minimum, but counsel for the 23 protesters has several arguments to make that 24 may change the board on its position.</p>
Page 15	Page 17
<p>1 MR. DAMSCHRODER: Any questions for 2 staff? 3 MR. MANIFOLD: On the first one, 4 what date did he put? 5 MS. COTTON: November 2010. 6 MR. MANIFOLD: Oh, okay. 7 MR. DAMSCHRODER: Is there a motion 8 on Exhibit D? 9 MR. COLLEY: Mr. Chairman, I move 10 that the list of electors appearing on 11 Exhibit D be deemed valid write-in candidates 12 for the May 4th, 2010 Primary Election. 13 MR. DAMSCHRODER: Deemed invalid. 14 MR. COLLEY: I'm sorry? 15 MR. DAMSCHRODER: Deemed invalid. 16 MR. COLLEY: Correction: Be deemed 17 invalid. 18 MR. DAMSCHRODER: Is there a second? 19 MR. MANIFOLD: I'll second that. 20 MR. DAMSCHRODER: All in favor, say 21 aye. 22 MEMBERS: Aye. 23 MR. DAMSCHRODER: And motion 24 carries.</p>	<p>1 So we'll call Megan Kelley, who is 2 counsel for protesters. Megan, or Mr. Hayman? 3 MR. HAYMAN: I'm Larry Hayman, 4 appearing before the board with respect to the 5 protesters. 6 MR. DAMSCHRODER: Before you start, 7 Mr. Chairman, for equity's sake, we'll 8 establish, as we have in the past, some basic 9 ground rules of allowing both sides ten 10 minutes for their presentation of arguments, 11 evidence, et cetera. After each of the 12 individual presentations, after Mr. Hayman's 13 presentation, the board can ask questions that 14 won't be charged against you for your time. 15 Afterwards, Mr. Brey, who is here on 16 behalf of Mr. Duffey, will have ten minutes, 17 same thing, and then we'll allow both sides 18 two minutes for rebuttal at the end before the 19 board votes, unless there's any objections 20 from board members. 21 CHAIRMAN PREISSE: I don't see any 22 objection, and we welcome you, Mr. Hayman, and 23 thank you; and thank you, Matthew, and 24 welcome, Bill, in another iteration of service</p>

<p style="text-align: right;">Page 18</p> <p>1 to the Board of Elections. 2 And Matt has outlined for us some, 3 we think, fair parameters. If from time to 4 time -- we just want to try to give all sides 5 an opportunity to present to the board, an 6 opportunity for the board for question and 7 answer, and then some follow-up from all 8 sides, but to put some parameters on this in 9 the interest of making some progress this 10 morning. 11 So, welcome, and please state your 12 name for the record; I'm not sure she caught 13 it. She did, okay. And you may proceed. 14 MR. HAYMAN: Thank you, Chairman and 15 members of the board. My name is Larry 16 Hayman. I'm here on behalf of protesters, 17 both Beardman and Graham, based on the protest 18 that was filed with this board on March 1st of 19 2010. We've also filed briefs in support of 20 that protest. 21 At the outset, we would like to 22 withdraw Protests 2 and 3 of that protest that 23 were based on the circulators of the petitions 24 addresses. But I will be making arguments</p>	<p style="text-align: right;">Page 20</p> <p>1 our second argument is based on the fact that 2 the Revised Code 3503.261 requires that the 3 statement of candidacy be signed by the 4 candidate prior to the circulation of any 5 petitions. 6 As the board can see, with respect 7 to Part-Petitions 524 and 527, the first 8 signature that appears on each one of those 9 petitions occurs on January 29th of 2010. 10 Now, the statement of candidacy wasn't signed 11 by the candidate until January 30th of 2010. 12 The inference being made is that they were 13 circulated prior to the statement of candidacy 14 being filled out and executed by Mr. Duffey. 15 3501.38 prohibits this. 16 At the very least, the signatures 17 appearing on those petitions on January 29th, 18 2010, should be disregarded by the board, 19 because at the very least, there's an 20 indication, at least, that those signatures 21 appeared before the statement of candidacy was 22 executed. 23 It's of particular note that the 24 only place that January 29th, 2010, appears is</p>
<p style="text-align: right;">Page 19</p> <p>1 with respect to the rest of the protests that 2 are outlined in -- protests which can be found 3 in our brief at Exhibit A. 4 With respect to our first argument, 5 we believe that Part-Petitions 517, 526 should 6 be invalidated because they have different 7 full term commencement dates than the rest of 8 the part-petitions. 9 Revised Code 3103.07 requires that 10 the Secretary of State prescribe the substance 11 of the forms, but it also provides that a 12 candidate has an obligation to accurately fill 13 out the information contained in the form. 14 In particular, Part-Petitions 517 15 and 526 state that the full term that the 16 State Representative would be commencing would 17 occur on January 3rd of 2011, whereas the rest 18 of the part-petitions state that the full term 19 would be commencing on January 1st of 2011. 20 We believe that this error could mislead 21 voters, especially unaffiliated voters, who 22 voted or who signed the petitions in the 23 Republican primary. 24 Moving on to our second argument,</p>	<p style="text-align: right;">Page 21</p> <p>1 the very first signature block on each one of 2 those part-petitions. And again I'm referring 3 to Part-Petitions 524 and 527. 4 At the very least, the circulator 5 herself provided a petition to the board -- 6 well, Mr. Duffey's counsel did, saying that, 7 yes, that is inaccurate. So again, we believe 8 that the part-petition, the entire 9 part-petition should be disqualified for that 10 reason. 11 Our third basis for requesting a 12 disqualification of signatures is based on -- 13 and this is throughout; this doesn't have to 14 do with any particular one part-petition, but 15 it has to do with Part-Petitions 517 through 16 527. 17 Revised Code 3501.011 basically 18 provides that a signature can be whatever you 19 want it to be. It has to be in cursive, but 20 if what you use in your normal business 21 affairs is a printed name, that's fine, but at 22 the very least that what you use on a 23 part-petition in support of a candidacy has to 24 match that of the voter rolls.</p>

Page 22

1 Some of the challenged signatures,
 2 we believe, do not match at all that were
 3 validated by the board, as well as shorthand
 4 names were used, different middle initials
 5 were used, et cetera.
 6 So we believe that 3501.011 requires
 7 it needs to exactly match. And in fact, a
 8 case by the 10th District Court of Appeals six
 9 years ago made clear in Van Auken versus
 10 Blackwell that the General Assembly was clear
 11 when it put the tasks on the Board of
 12 Educations to compare those signatures that
 13 appear on the petitions to the voter
 14 registration cards.
 15 Now, moving on to our second
 16 argument with respect to signatures and
 17 addresses, similarly, the plain language of
 18 3501.38(C) requires that the voting address
 19 given on the petition shall be the address
 20 appearing on the registration records at the
 21 Board of Elections.
 22 Our basic challenge here is that the
 23 addresses are incomplete, because, for
 24 example, they don't include Drive, they don't

Page 23

1 include Street, they don't include Avenue.
 2 Again, in the Van Auken case, the 10th
 3 District Court of Appeals upheld boards
 4 invalidating petitions and signatures for
 5 variations on addresses that result from
 6 misspelling, voter error, transposition of
 7 numbers, et cetera.
 8 As the board can see and as we've
 9 attached to our petition -- or our brief,
 10 excuse me, this is no trivial concern. In
 11 Worthington alone, there exists a Middlebury
 12 Court, a Middlebury Drive, et cetera. We
 13 believe that the statute requires strict
 14 compliance.
 15 In conclusion, we would ask that the
 16 board invalidate the part-petitions we've
 17 requested and the signatures that we've
 18 requested. Thank you.
 19 MR. DAMSCHRODER: Any questions for
 20 Mr. Hayman?
 21 CHAIRMAN PREISSE: Yes, Mr. Hayman?
 22 MR. HAYMAN: I thought we were
 23 holding the questions till the end.
 24 CHAIRMAN PREISSE: As stated, we

Page 24

1 will do them now, but we'll be flexible. But
 2 let's ask the board if anyone has any
 3 questions at this time. Or we can hear the
 4 other side and then have you both available.
 5 Okay. At this moment, we don't have
 6 any questions.
 7 MR. HAYMAN: Great, thank you.
 8 CHAIRMAN PREISSE: And I think we
 9 have representation from --
 10 MR. DAMSCHRODER: Mr. Brey.
 11 CHAIRMAN PREISSE: -- Mr. Duffey's
 12 side of things. Welcome, and please state
 13 your name.
 14 MR. BREY: I thank you, Mr.
 15 Chairman, members of the Board of Elections.
 16 My name is Donald Brey, and I'm a legal
 17 counsel to the candidate, Michael Duffey,
 18 whose petitions are the subject of this
 19 protest.
 20 We do appreciate the fact that two
 21 of the five counts, if you want to call them,
 22 have been withdrawn.
 23 The first issue is the incorrect
 24 term commencement date on Part-Petitions 517

Page 25

1 and 526. And before I get into that, the
 2 statute we're talking about is Revised Code
 3 3513.07.
 4 Revised Code 3513.07 prescribes what
 5 the form of a petition and a declaration of
 6 candidacy is supposed to be like; and what it
 7 says is, it's supposed to be substantially as
 8 follows. And that "substantially" language
 9 means that a substantial compliance is
 10 sufficient. We don't have a rule where you
 11 have to cross every T and dot every I. Nobody
 12 is deceived or nobody is defrauded or there's
 13 no illegality involved.
 14 There were numerous Supreme Court
 15 cases that have said exactly that, and we cite
 16 them in our briefs. And one of the things
 17 this board has done is, this board has
 18 correctly decided that when people use an
 19 incorrect date of a term commencing, it's not
 20 going to throw the petitions out.
 21 And one of the reasons is, if you
 22 take a look at Part-Petitions 517 and 526,
 23 you'll notice that those were the
 24 part-petitions that were printed off of this

<p style="text-align: right;">Page 26</p> <p>1 Board of Elections Web site, which 2 automatically put the date of January 3rd, 3 2011, in there. 4 In fact, the other ones were printed 5 out and then whited out and then handwritten 6 in, the January 1, 2011 commencement date, 7 which is the date that Ohio's Constitution, 8 Article 2, Section 2 prescribes, the 1st day 9 of January. 10 But this commission has already 11 decided, and properly decided, that having 12 that kind of mistake in a petition, which 13 mistake was used in every single petition 14 which used this board's Web site to determine 15 the date, is not a substantial variance. It's 16 substantial compliance. 17 And it's not only this board that's 18 said that; the Ohio Supreme Court has said 19 that, and said repeatedly. In a 1981 case of 20 Hill versus Cuyahoga County, where someone put 21 in the wrong primary date, the board threw 22 them off, the Ohio Supreme Court granted the 23 mandamus to the board and forced the board to 24 put that person back on the ballot.</p>	<p style="text-align: right;">Page 28</p> <p>1 but his presentation had the right numbers. 2 We're talking about Part-Petitions 3 524 and 527. In Part-Petition 524, the first 4 line did write in 1-29, at least on my copy. 5 That was then crossed out and 1-30 was put in 6 there. So I don't think even that one 7 signature ought to be knocked out, because 8 it's clear what the date was. They wrote down 9 the wrong date, 1-29, and then they crossed 10 that out and the right date was written in, 11 1-30. 12 In Part-Petition 527, the first line 13 also had the wrong date, January 29. We have 14 an affidavit that we've filed with you from 15 the circulator, Sara Molski, saying that the 16 part-petition was not circulated before 17 January 30, and all the part-petitions that 18 she circulated have the declaration of 19 candidacy date filled out. 20 In any event, there is no authority 21 for throwing out the whole part-petitions for 22 that kind of mistake, even if this board were 23 to choose to knock out the first signature in 24 Part-Petition 527, which, naturally enough,</p>
<p style="text-align: right;">Page 27</p> <p>1 In Phillips versus Lorain Board of 2 Education, 2001, the Ohio Supreme Court upheld 3 a Board of Elections commission decision that 4 put on the ballot somebody who had the wrong 5 term ending date. 6 And the protest is not really making 7 an argument, but the fact that these two 8 petitions are a little different than the 9 other is problematic; and it's good that 10 they're not, because the Ohio Supreme Court 20 11 years ago in Beck versus Casey granted a 12 mandamus against this very board forcing them 13 to put back on the ballot someone they threw 14 off because they had a different declarations 15 of candidacies on different part-petitions. 16 So both the precedent of this Board 17 of Elections properly interpreting the 18 substantial compliance language of 3513.07 and 19 the decision of the Supreme Court being that 20 that's just a nonissue. 21 Secondly, protester claims that 22 there are two part-petitions that must have 23 been circulated before the declaration of 24 candidacy, and the brief has the wrong numbers</p>	<p style="text-align: right;">Page 29</p> <p>1 since I represent the respondent, I'm saying 2 you shouldn't do that. 3 The third argument is item 5 on the 4 protest letter, which is what I call the 5 kitchen sink allegations. In other words, 6 there are all sorts of things that are wrong 7 with these signatures, and by my count, there 8 are 22 signatures that protester says should 9 be thrown out because they have an 10 insufficient date. They have an insufficient 11 date, and he used examples, and I'll use them, 12 too. 13 That instead of saying you live at 14 20 -- well, somebody said they lived at 28 15 West Stafford but didn't say they lived at 28 16 West Stafford Avenue. Or that somebody lived 17 at 6929 Perry but didn't say they lived at 18 6929 Perry Drive, or "Dr." And that is, I 19 would submit, utter nonsense. It's 20 substantial compliance. 21 The board staff had no problems 22 finding out where those people lived, and 23 that's the purpose of putting an address on 24 it, so you can check the name with the</p>

Page 30

1 address, particularly if some people write
 2 kind of messy. Some people do, including
 3 yours truly.
 4 But having said that, they just
 5 misread the law. Certainly, that's never been
 6 the practice of this commission to say
 7 signatures -- just because they don't put
 8 "Dr." or "Ave." or "Rd." after the specific
 9 address that they put down there. And if that
 10 were to become, you know -- unless the Supreme
 11 Court knocked it down, you guys are going to
 12 have an awful lot more protest work to do,
 13 because I've never seen a petition that hasn't
 14 had that kind of a shortening of the address
 15 without putting Road or Drive or Avenue after
 16 it.
 17 And second argument under the
 18 kitchen sink arguments is, there are
 19 incomplete signatures. Now, what are they
 20 talking about here?
 21 We have somebody who wrote Ken and
 22 his last name rather than Kenneth and his last
 23 name. Or someone who wrote -- John Jolley
 24 signed his name John Jolley, but they say it

Page 31

1 should be thrown out because he didn't sign
 2 his name John David Jolley. Or there's a
 3 couple cases where Michael J. somebody signed
 4 his name M.J.
 5 Those are their signatures. If you
 6 sign a check that way, they're going to cash
 7 them. And those signatures, those
 8 shortenings, you can compare with the
 9 signatures on file, as your staff has and done
 10 a thorough job of it, and you can know exactly
 11 who signed it because it matches. It's the
 12 same signature. There's no question about
 13 that.
 14 And to say that if I signed my name
 15 Don Brey to a signature rather than Donald
 16 Brey, or even if I sign Donald Brey but don't
 17 sign it Donald C. Brey, my signature should be
 18 thrown out, is, I would suggest, contrary to
 19 the traditions of this board, because the
 20 traditions of this board are not to make
 21 stupid rules and apply them that way.
 22 And it would be a stupid rule to
 23 apply that anybody who signs their name other
 24 than the exact letters that they have signed

Page 32

1 in a more formal fashion ought to be tossed
 2 out. It has to match, which is to say you've
 3 got to be able to tell it's the same signature
 4 as the person who signed. The staff has
 5 checked that, they've been able to tell that,
 6 and it did.
 7 I would also suggest that, just for
 8 the record, because I do represent the
 9 respondent, every one of the signatures that
 10 your staff tossed out I think ought to be put
 11 back on. But having said that, even if you
 12 don't do that, we've clearly got 50, and for
 13 that reason I would ask that the protest be
 14 denied.
 15 Does the board have any questions?
 16 MR. MANIFOLD: Yeah, I do. Because,
 17 you know, I was kind of involved when there
 18 was this big debate, I think it was around the
 19 first of the year, where the generated board
 20 petitions had 1-3-2011, and I think they were
 21 getting a lot of counsel that it should be
 22 1-1-2011.
 23 And I think what the former Director
 24 came back to us with, because we had a lot of

Page 33

1 candidates that actually had this same
 2 occurrence, that had different ones, and we
 3 had multiple candidates, I think actually went
 4 back out -- threw out the petitions and went
 5 out and got other ones.
 6 Because, essentially, what they were
 7 told by the Director, the former Director was
 8 that you could do 1-1 of 11 or you could do
 9 1-3 of 11, but that you really shouldn't be
 10 able to turn in petitions that some were 1-1
 11 and some were 1-3, just to those being
 12 completely different dates. And I believe
 13 that's what the board was saying.
 14 MR. DAMSCHRODER: At the board
 15 meeting, I think it was January 25th, the
 16 board passed a resolution saying -- I don't
 17 have it here in front of me so I don't have
 18 the exact text, but we could get it if the
 19 board wants it reread into the record, but
 20 basically that it would accept either dates
 21 for full term commencing, and if the board is
 22 persuaded by the argument that all the
 23 part-petitions should have the same date even
 24 if it's the incorrect date, then I think the

