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BEFORE THE FRANKLIN COUNTY BOARD OF ELECTIONS

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In Re: :
: Regular Meeting :
:

- - -

PROCEEDINGS

before Chairman Douglas J. Preisse, Director William A. Anthony, Jr., Deputy Director Dana Walch, and Board Members Zachary E. Manifold and Kimberly E. Marinello, at the Franklin County Board of Elections, 280 East Broad Street, Columbus, Ohio, called at 3:31 p.m. on Tuesday, September 4, 2012.

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1 APPEARANCES:

2 Franklin County Prosecutor's Office
3 By Mr. Harold J. Anderson, III.
4 Assistant Prosecuting Attorney
5 373 South High Street, 13th Floor
6 Columbus, Ohio 43215

7 On behalf of the Board.

8 Wiles, Boyle, Burkholder & Bringardner Co.,
9 LPA
10 By Mr. Michael L. Close
11 300 Spruce Street, Floor One
12 Columbus, Ohio 43215

13 On behalf of Eugene L. Hollins.

14 1851 Center for Constitutional Law
15 By Mr. Maurice A. Thompson
16 208 East State Street
17 Columbus, Ohio 43215

18 On behalf of Taxpayers for Westerville
19 Schools and the Petition Committee.

20 ALSO PRESENT:

21 Ms. Suzanne Brown,
22 Executive Assistant to the Board

23 Ms. Karen Cotton,
24 Operations Manager,
Franklin County Board of Elections

Mr. Ben Piscitelli,
Public Information Officer,
Franklin County Board of Elections

Ms. Renee Klco,
Manager of Voter Services,
Franklin County Board of Elections

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P R O C E E D I N G S

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DIRECTOR ANTHONY: Good afternoon,
everyone. I would like to call the Franklin County
Board of Elections meeting to order. I will do the
roll call.

Kimberly Marinello?

BOARD MEMBER MARINELLO: Here.

DIRECTOR ANTHONY: Zachary Manifold?

BOARD MEMBER MANIFOLD: Here.

DIRECTOR ANTHONY: Douglas Preisse?

CHAIRMAN PREISSE: Here.

DIRECTOR ANTHONY: We have a quorum,
Mr. Chairman, and the first item on the agenda is the
reimbursement for Steve Bulen for poll worker
training. Steve Bulen is our -- he works in poll
worker training, and we do all kinds of training, and
sometime last year he paid for some refreshments for
I think it was a class.

DEPUTY DIRECTOR WALCH: I think it was
actually for the trainers.

DIRECTOR ANTHONY: For -- for the
trainers. It was training trainers. And we need to

1 give him his hard-earned money back.

2 BOARD MEMBER MARINELLO: Mr. Chairman, I
3 move the Board approve the reimbursement of \$167.36
4 to Steve Bulen for the purchase of food and supplies
5 for a poll worker trainer's class on November 11th,
6 2011.

7 DIRECTOR ANTHONY: Is there a second?

8 BOARD MEMBER MANIFOLD: Second.

9 DIRECTOR ANTHONY: All those in favor,
10 say aye.

11 BOARD MEMBERS: Aye.

12 DIRECTOR ANTHONY: The next item on the
13 agenda, we need to revise the paper ballot allocation
14 for the November 6th General Election.

15 DEPUTY DIRECTOR WALCH: I just want to
16 pipe in on that for just a second if I could. It's
17 in your packets as Exhibit A. What happened was now
18 that we know exactly everything that's on the ballot
19 and the various ballot styles that are out there,
20 there were a few locations where the splits within
21 those locations may have a split that we originally
22 identified as two separate ballot styles that will
23 actually be the same ballot style. So since it's the
24 same ballot, we were able to combine in just a couple

1 of places those numbers which is what the revised
2 spreadsheet, which you have there in front of you,
3 reflects.

4 DIRECTOR ANTHONY: Any questions?

5 BOARD MEMBER MARINELLO: No.

6 CHAIRMAN PREISSE: 128,875. Okay.

7 DEPUTY DIRECTOR WALCH: It saves us
8 printing about 5,000, I think it was a little over
9 5,000 ballots is what it did, so.

10 BOARD MEMBER MARINELLO: Mr. Chairman, I
11 move that the Board adopt the amended paper ballot
12 printing allocation formula found on Exhibit A for
13 the November 6th, 2012 General Election.

14 DIRECTOR ANTHONY: Is there a second?

15 BOARD MEMBER MANIFOLD: Second.

16 DIRECTOR ANTHONY: All those in favor,
17 say aye.

18 BOARD MEMBERS: Aye.

19 DIRECTOR ANTHONY: We have several
20 challenges. Renee Klco, the Manager of Voter
21 Services, will present any questions -- kind of go
22 over them for you.

23 MS. KLCO: We only have one challenge,
24 and in this challenge Mrs. Dennis states that

1 Ms. Ward-Davie is a friend of her daughter's, but has
2 never lived at the address she put on her voter
3 registration form. She's a new voter in Franklin
4 County and has never voted. It's the recommendation
5 of the staff that we cancel this registration.

6 DIRECTOR ANTHONY: Any questions?

7 CHAIRMAN PREISSE: Sounds
8 straightforward.

9 BOARD MEMBER MANIFOLD: Mr. Chairman, I
10 move that the Board grant the Challenge of Right to
11 Vote and Correction of Registration List filed by
12 Marcella C. Dennis of 3806 Charbonnet Court,
13 Columbus, Ohio, against Deosha T. Ward-Davie,
14 purportedly of 3806 Charbonnet Court, Columbus, Ohio,
15 and order that Deosha T. Ward-Davie's registration be
16 immediately cancelled in Franklin County.

17 DIRECTOR ANTHONY: Is there a second?

18 BOARD MEMBER MARINELLO: Second.

19 DIRECTOR ANTHONY: All those in favor,
20 say aye.

21 BOARD MEMBERS: Aye.

22 DIRECTOR ANTHONY: The next item on the
23 agenda is the Reynoldsburg Charter Amendments to the
24 ballot. Karen Cotton, our Manager of Petitions, will

1 do a presentation.

2 MS. COTTON: A total of four charter
3 amendments were filed with us by the City of
4 Reynoldsburg. It wasn't until after we had certified
5 the other issues to the ballot that we realized that
6 they had attempted to file something. They mailed it
7 to us on the 8th of August which was the filing
8 deadline and we arrived -- we received it probably on
9 the 9th; however, the document was not timestamped in
10 at the time it was received.

11 DEPUTY DIRECTOR WALCH: After -- after
12 speaking with Counsel about this matter, the advice
13 was the best option was to put these four charter
14 amendments on the ballot, so that's why we bring it
15 before you today.

16 In your packet you do have the four, in
17 Exhibit B, the four charter amendments listed out
18 there and then also a statement from, I believe, it's
19 the Law Director of the City of Reynoldsburg with a
20 statement regarding it.

21 BOARD MEMBER MARINELLO: Any questions?

22 BOARD MEMBER MANIFOLD: No.

23 BOARD MEMBER MARINELLO: Mr. Chairman, I
24 move that the Board certify to the November 6th, 2012

1 General Election ballot the charter amendments for
2 the City of Reynoldsburg detailed in Exhibit B.

3 DIRECTOR ANTHONY: Is there a second?

4 BOARD MEMBER MANIFOLD: Second.

5 DIRECTOR ANTHONY: All those in favor,
6 say aye.

7 BOARD MEMBERS: Aye.

8 DIRECTOR ANTHONY: That motion carries.

9 The next item on the agenda is the
10 appeal -- Mr. Larry Good's petition appeal.

11 Mr. Chairman, Mr. Good would like to . . .

12 MR. GOOD: Thank you. My name is Larry
13 Good.

14 DIRECTOR ANTHONY: You have to be sworn
15 in, sir.

16 MR. GOOD: Pardon?

17 DIRECTOR ANTHONY: Can you swear him in.

18 - - -

19 LARRY GOOD

20 being first duly sworn, as prescribed by law, was
21 examined and testified as follows:

22 DIRECT TESTIMONY

23 MR. GOOD: I -- I'm a member of the
24 Muskingum Valley Education Service Center and I've

1 elected to run for the State School Board. I had
2 thought I had enough petitions signed until one was
3 kicked out with -- all 20 signatures were valid, but
4 I had signed the petition, I was the one circulating
5 it and I just forgot the date, putting it on there.

6 I started on the 19th; circulating it at
7 a business meeting. I knew everybody on -- all 20
8 names. And I -- I'm at your mercy. I need nine of
9 them so I can run for the State position. So that's
10 basically the -- I know you're busy today and you've
11 got a lot on the agenda. Mine, I hope, is short and
12 sweet.

13 DIRECTOR ANTHONY: Are there any
14 questions?

15 CHAIRMAN PREISSE: You --

16 MR. GOOD: Yes, Doug.

17 CHAIRMAN PREISSE: Restate for me the
18 substantive -- you're saying you completed the
19 petition.

20 MR. GOOD: Yeah. I signed it, filled it
21 out, and signed it before I started selecting the
22 people to sign which was on -- the meeting was on
23 Friday the 20th. So if you see the date, the first
24 person on there is the 20th. Maybe you don't -- they

1 didn't make a copy for you, did they?

2 BOARD MEMBER MARINELLO: Yes.

3 MR. GOOD: Oh, okay. So I -- I just -- I
4 forgot the date. It's kind of a Board call, I
5 believe. All the signatures have been validated by
6 Muskingum County, as were all my other signatures
7 validated with the exception of a few, but those 20
8 pulled me out, pulled me below the 100 I need. I'm
9 nine short.

10 DIRECTOR ANTHONY: Mr. Good, did you --
11 what date did you circulate the petition?

12 MR. GOOD: I circulated it actually on
13 the 20th. The first name on there was the 20th, I
14 believe. I might have started on the 19th, I can't
15 remember exactly, but it was a Service Club Meeting
16 that meets on a Friday. I think, I looked, I
17 checked, the 20th is a Friday in July.

18 DIRECTOR ANTHONY: And when did you poll
19 the petitions?

20 MR. GOOD: When did I send it in?

21 DIRECTOR ANTHONY: Yeah, when did you --
22 so you started circulating them on the 20th.

23 MR. GOOD: Yes, yes, yes. I signed
24 everything, as you see on the top there, but left the

1 date out, I guess. Then I started soliciting those
2 people, yes.

3 DIRECTOR ANTHONY: Okay.

4 CHAIRMAN PREISSE: We have had
5 communication with the Secretary of State's office on
6 this?

7 DEPUTY DIRECTOR WALCH: We have had
8 communication with the Secretary of State's office
9 and it is their belief this is not a -- is not a
10 fatal flaw to that part petition.

11 We had a very similar situation in the
12 primary in which we had a candidate come back in, who
13 testified under oath, as Mr. Good has here today,
14 that they did sign the petition prior to circulating
15 them, and the Board did grant approval to that
16 request of placing that candidate on that ballot for
17 the primary.

18 DIRECTOR ANTHONY: Any questions?

19 CHAIRMAN PREISSE: No.

20 BOARD MEMBER MARINELLO: Mr. Chairman, I
21 move the Board accept the appeal of Larry Good and
22 that his name shall appear on the November 6th, 2012
23 General Election ballot as a candidate for the State
24 Board of Education in the 9th District.

1 DIRECTOR ANTHONY: Is there a second?

2 BOARD MEMBER MANIFOLD: Second.

3 DIRECTOR ANTHONY: All those in favor,
4 say aye.

5 BOARD MEMBERS: Aye.

6 DIRECTOR ANTHONY: Motion carries.

7 MR. GOOD: Thank you.

8 DIRECTOR ANTHONY: Thank you.

9 MR. GOOD: Thank you so very much. I
10 appreciate your consideration.

11 CHAIRMAN PREISSE: Thank you for coming
12 today.

13 MR. GOOD: It's quite all right. I had
14 to go through the same traffic you did, through
15 Zanesville. I understand why.

16 CHAIRMAN PREISSE: I appreciate your
17 patience.

18 MR. GOOD: Okay. Thank you.

19 DIRECTOR ANTHONY: The next item on the
20 agenda is the certification of a write-in candidate
21 for the November 6th General Election for Thomas
22 Alban for the 24th Ohio House District.

23 BOARD MEMBER MANIFOLD: Mr. Chairman, I
24 move that Thomas Alban be certified as a valid

1 write-in candidate for the office of State
2 Representative in the 24th Ohio House District on the
3 November 6th, 2012 General Election ballot.

4 BOARD MEMBER MARINELLO: Second.

5 DIRECTOR ANTHONY: Is there a second?

6 All those in favor, say aye.

7 BOARD MEMBERS: Aye.

8 DIRECTOR ANTHONY: Motion carries.

9 CHAIRMAN PREISSE: Okay.

10 DIRECTOR ANTHONY: We put on the agenda,
11 just for a discussion point, doing several mailings.
12 Just wanted to let you guys talk about it and decide
13 what it is you wanted us to do.

14 The first one is discussion of doing
15 possibly a postcard mailing prior to the start,
16 probably a week or two weeks before the election. It
17 would hit the week before the election and it would
18 be a postcard that would have the voter name and
19 their voting location on there.

20 We would do that late in order for us to
21 take out all the absentee, everyone that requested a
22 absentee ballot, and everyone that would have voted
23 at the vote center, and all the mail we would have
24 received as returned mail that we would have gotten

1 back as non-forwardable addresses. Then, for
2 everyone else, we would send out a mailing notifying
3 them where their polling location is for Election
4 Day, and we wanted to talk about that.

5 CHAIRMAN PREISSE: What has been our
6 common practice in the past regarding that?

7 DIRECTOR ANTHONY: Well, I think we've
8 done it once or twice. I was trying to recall when
9 was the last time we would have done that.

10 DEPUTY DIRECTOR WALCH: I believe it was
11 mandated in 2008, but then that section of the code
12 was repealed, I believe, that didn't make it
13 mandatory, but --

14 DIRECTOR ANTHONY: Right.

15 DEPUTY DIRECTOR WALCH: -- I do believe
16 it was done in 2008.

17 CHAIRMAN PREISSE: The reminder postcard
18 of voting location.

19 DEPUTY DIRECTOR WALCH: Correct.

20 DIRECTOR ANTHONY: Yeah, that's all this
21 would be, just a reminder.

22 CHAIRMAN PREISSE: It was mandated in
23 2008?

24 DEPUTY DIRECTOR WALCH: Yes.

1 CHAIRMAN PREISSE: We used to do that
2 voluntarily.

3 DEPUTY DIRECTOR WALCH: I can't speak to
4 that, Chairman. I wasn't here. I'm not for sure,
5 so.

6 DIRECTOR ANTHONY: We have done this
7 several election cycles, but it hasn't been -- and
8 I'm trying to recall because I wasn't -- I wasn't
9 there -- where I am now.

10 Do you recall, Renee?

11 MS. KLCO: 2008 was the last time.

12 DIRECTOR ANTHONY: Was the last time we
13 did it. So 2008 was the last time we did that.

14 So -- so the thought would be that we
15 would -- we would actually not send it out until we
16 had a good idea of who hadn't sent in an absentee
17 ballot and who didn't vote in the in-person vote
18 center and whoever's mail came back as
19 non-deliverable, so that would take a lot of, you
20 know --

21 BOARD MEMBER MARINELLO: Save a lot of
22 money.

23 DIRECTOR ANTHONY: Right, save a lot of
24 money, and hopefully stop the duplicate mailing.

1 DEPUTY DIRECTOR WALCH: After we factored
2 all that in, we approximated, and we haven't run
3 numbers on this obviously because we don't have how
4 many requested an absentee yet or anything like that,
5 but we thought we'd probably be in the neighborhood
6 of about 400,000 pieces of mail --

7 DIRECTOR ANTHONY: Right.

8 DEPUTY DIRECTOR WALCH: -- to go out to
9 the -- to the voters.

10 DIRECTOR ANTHONY: And we don't know what
11 that cost -- that may end up being about 200,000.

12 DEPUTY DIRECTOR WALCH: I think we have
13 to at least budget --

14 DIRECTOR ANTHONY: Yeah.

15 DEPUTY DIRECTOR WALCH: -- for, we're
16 going to expect at least, you know, in the
17 neighborhood of 50 cents a piece, I would presume.

18 DIRECTOR ANTHONY: Right.

19 DEPUTY DIRECTOR WALCH: We're out
20 gathering bids on this right now to bring back to you
21 at some point because it would have to be
22 authorized -- an expenditure like that would have to
23 be authorized by this Board, but we're in the process
24 of doing that, but we would estimate that it probably

1 would be in the neighborhood of \$200,000.

2 DIRECTOR ANTHONY: Right.

3 CHAIRMAN PREISSE: Okay.

4 BOARD MEMBER MANIFOLD: I -- I think it
5 makes sense. Anything that -- especially with
6 redistricting and, you know, all the -- all the
7 precinct changes, all the different things that
8 happened this year, I think that makes sense. We did
9 one in the primary, right?

10 DEPUTY DIRECTOR WALCH: We did do one
11 right after the first of the year, letting folks know
12 of their new polling -- or, of their new districts
13 and polling locations, yes, we did do that after the
14 first of the year.

15 BOARD MEMBER MANIFOLD: So, yeah, I don't
16 think it hurts to do another one. We have money in
17 our budget, I would imagine, because of the -- we're
18 not doing -- with the Secretary of State doing the
19 mailing, the absentee mailing.

20 DEPUTY DIRECTOR WALCH: We didn't include
21 that, though, in the budget for this year, because
22 that was -- that was taken out.

23 BOARD MEMBER MANIFOLD: Okay.

24 DEPUTY DIRECTOR WALCH: It was my

1 understanding, I wasn't part of those budget
2 discussions last year, at the end of last year, but
3 the budget sheets that I've seen did have,
4 originally, it in there, but then they were taken out
5 at the end for the absentee mailing. I do have a
6 slight concern with where we find the money in the
7 budget, but I think we can.

8 CHAIRMAN PREISSE: Well, we're just
9 talking about it right now; we're not making any
10 decisions, so.

11 DEPUTY DIRECTOR WALCH: Correct.

12 DIRECTOR ANTHONY: Yeah, I just want to
13 put it on the -- on the radar and we're going to have
14 some more numbers for you guys to take a look at it.
15 It would be a mailing that would not go out until --

16 BOARD MEMBER MARINELLO: Two weeks.

17 DIRECTOR ANTHONY: -- two weeks before
18 the election or a week before the election. It would
19 have to drop closer to the election. We don't want
20 it to drop too soon or why -- we don't, you know, why
21 mail it out if it drops --

22 BOARD MEMBER MARINELLO: Right.

23 DIRECTOR ANTHONY: -- three weeks before
24 the election.

1 DEPUTY DIRECTOR WALCH: Agreed.

2 DIRECTOR ANTHONY: The -- so we'll bring
3 that, we'll talk about that again probably at the
4 next Board meeting.

5 And then the next one was to do a mailing
6 to -- we have a list of -- of felons, folks who were
7 felons who have been reintegrated back into society,
8 and we are considering doing a mailing, advising them
9 that their voting rights have been reinstated and
10 then include, in there, their voter registration
11 card.

12 BOARD MEMBER MARINELLO: I bet a lot of
13 them don't know that their voting rights are
14 reinstated.

15 CHAIRMAN PREISSE: Where do we get that
16 information?

17 DIRECTOR ANTHONY: Well, from the Clerk
18 of Courts. Is that right, Renee?

19 MS. KLCO: Uh-huh.

20 DIRECTOR ANTHONY: The Clerk of Courts.
21 And it is not -- do you have any idea how many there
22 are?

23 MS. KLCO: No, I don't.

24 CHAIRMAN PREISSE: That's a knowable

1 figure, too, so we can know.

2 BOARD MEMBER MANIFOLD: I think -- I'd
3 love to see the numbers. I think it makes sense. I
4 think especially in different states and some states
5 you don't get your franchise back and you don't get
6 that voting right. I think there's a lot of
7 confusion over who gets to vote. I think that makes
8 a lot of sense.

9 CHAIRMAN PREISSE: Okay.

10 DIRECTOR ANTHONY: So would you all like
11 to see what those numbers are --

12 CHAIRMAN PREISSE: Yeah.

13 DIRECTOR ANTHONY: -- and how large a
14 mailing that will be and then we'll have the
15 information at the next meeting.

16 All right. The next item on the agenda
17 is the Westerville School issue protest hearing. I'm
18 assuming that most of the folks in the audience is on
19 -- is here for that issue, Mr. Chairman, so I'll let
20 you take over.

21 CHAIRMAN PREISSE: Right.

22 DEPUTY DIRECTOR WALCH: Our plan,
23 Mr. Chairman, is to let the protestors speak first
24 since it is their petition, and then, after that,

1 have the folks in opposition to the protest speak
2 after that, but it's your call.

3 CHAIRMAN PREISSE: Yeah, let's do it --
4 let's do it that way especially if that's how it's
5 been communicated to our guests today.

6 We're aware of the issue and we have been
7 in receipt of some of the briefs and had a chance to
8 review some of the materials.

9 So we'll start with your Honor.

10 MR. CLOSE: Used to be "your Honor," your
11 Honor.

12 CHAIRMAN PREISSE: Your Honor, please --

13 MR. CLOSE: We kind of switched positions
14 here.

15 CHAIRMAN PREISSE: -- as you know, state
16 your name for the record here and --

17 MR. CLOSE: Ladies and gentlemen of the
18 Board of Elections, my name is Mike Close, and I
19 represent the Protestor, Gene Hollins.

20 Let me start first by saying there is no
21 factual dispute here. We are comfortable with the
22 submission on the record which, at this point,
23 consists of our brief, the supporting brief by the
24 Westerville Board of Education, and then the

1 Petitioners' brief, with one exception, and I say
2 this preliminarily before I actually start my
3 comments.

4 On pages 12 and 13 of the Petitioners'
5 brief, he talks about language about there being an
6 additional resolution of 7.97 mills for each dollar
7 of valuation. I would submit to the Board that your
8 records will not reflect that that resolution ever
9 got here. It was not passed by the Board of
10 Education. The Board of Education merely passed,
11 using the exact statutory language, the replacement
12 levy language.

13 And I'm not going to go beat up again all
14 the stuff that you've got in the briefs you got in
15 front of you, but there are a couple of things that
16 are of import.

17 In the first place, unlike how the
18 Petitioners start off, we're not denying anybody to
19 the ballot. This has already been on the ballot in
20 November of 19 -- or, 2009, and decided by the
21 voters. Most importantly, and it's because it tracks
22 throughout both what you were submitted here, what
23 the voters voted on, but most importantly what the
24 legislature said.

1 This was a continuation of previously
2 voted levies. In fact, there was no increased rate
3 of levy. And I say that to you as words that are
4 contained in the statute. As you all are well aware,
5 5705.192(C) tells us what the ballot language has to
6 be for there to be a continuation or a replacement
7 levy only. The Board of Education resolution exactly
8 tracked that language and the voters exactly approved
9 that language.

10 It is important that no place in the
11 statute does it talk about the effective rate of the
12 levy, and I'm not going to go into all the Latin,
13 although we had kind of fun looking at that with all
14 the Latin I had in high school, but the reality is
15 when it's -- when the legislature says "effective
16 rate of levy," that is exactly what they mean. They
17 mean -- excuse me -- they mean what is the millage
18 that is authorized.

19 I take no issue with the Petitioners'
20 position that this caused the loss of the rollback
21 that had previously been in place; that is true. But
22 if, in fact, the legislature had wanted to be dealt
23 with in terms of the effective rate as opposed to the
24 rate of the levy, the only thing they had to do is

1 define "effective rate" which would be easily done,
2 although it's not any place in the code at this time;
3 but the second thing they would have had to have done
4 is insert the language in 192(C) that it was the
5 effective rate that we were concerned with and not
6 the rate of the levy.

7 What's, you know, am I picking nits? I
8 think not. Because what's important here, just like
9 in the only other case that's reported under this
10 section of the code which is a case you handled
11 considering the South-Western City Schools a number
12 of years ago, what the Supreme Court ultimately says
13 on all this stuff is you look to the exact language
14 of the statute. If that language needs no other
15 interpretation, you don't look farther -- further.

16 So in this particular circumstance, when
17 the replacement levy tracks the statute and the
18 ballot language tracks that levy request, uses the
19 expressed language of increased rate of levy, that's
20 all the farther you have to go. If that increased
21 rate of levy did not change, then, under the
22 statutory requirements of doing a repeal of that,
23 they simply do not qualify to get this issue on the
24 ballot.

1 There's only three things that the School
2 Board can do: They can replace, they can increase,
3 they can decrease. Only on an increase are they
4 allowed to use this section of the code, and they
5 can't do it here when they cannot show that there has
6 been an increase in the rate of that levy.

7 I'm not going to beat this any further.
8 The language is simple. You're required to do the
9 statutory construction that gets you where you need
10 to be. And the same as you did in the South-Western
11 City Schools case, I think you have to deny this
12 petition a place on the ballot in November.

13 CHAIRMAN PREISSE: Anybody have any
14 questions?

15 Do you want to give us your recollection,
16 you've studied this more closely and more recently
17 than I and, probably, than we --

18 MR. CLOSE: Well, you had plenty of time,
19 sitting on 270, just like I did.

20 CHAIRMAN PREISSE: -- the Southwest
21 situation from your interpretation.

22 MR. CLOSE: I'm sorry, your Honor. The
23 question?

24 CHAIRMAN PREISSE: The -- the -- you've

1 referenced the Southwest City Schools.

2 MR. CLOSE: Well, the Southwest City
3 Schools was here on an issue where there had been an
4 increase. And, in fact, what happened there was a
5 petition filed to decrease that increase to zero. So
6 the Supreme Court decided on an additional issue.
7 They said you can't decrease to zero. You can
8 decrease, but you can't go back down to nothing.

9 But the important part of the
10 South-Western City Schools case is it didn't say that
11 the Board of Elections has to punt on a clear issue
12 and let the courts decide it. The South-Western City
13 Schools case affirmed the fact that you had decided
14 that should not have a place on the ballot because it
15 did not meet the statutory requirements and that's
16 the analogy, I think, that's important here.

17 I apologize, Mr. Preisse, I didn't intend
18 to sit down before you were done with me.

19 CHAIRMAN PREISSE: No, that's all right.

20 Anybody with any questions?

21 BOARD MEMBER MARINELLO: No.

22 BOARD MEMBER MANIFOLD: No.

23 CHAIRMAN PREISSE: All right. No
24 questions from any of my colleagues. We'll proceed

1 with our next --

2 DEPUTY DIRECTOR WALCH: I don't know if
3 there's anybody else on behalf of the protest or is
4 it just Mr. Close.

5 CHAIRMAN PREISSE: Were you the only one
6 that was here to --

7 MR. CLOSE: Yes, your Honor. The School
8 Board and my co-counsel will not speak.

9 CHAIRMAN PREISSE: Okay. Okay.

10 MR. THOMPSON: Members of the Board,
11 Maurice Thompson for the Respondents, Taxpayers for
12 Westerville Schools and the Petition Committee. We
13 designated them as "Taxpayers for Westerville
14 Schools" on our merit brief filed earlier this
15 morning.

16 And, members of the Board, from our view,
17 this case is simply about trying to accomplish here
18 today through procedural artifice that which really
19 should be accomplished in November through a vote, up
20 or down, of this measure, and that is an attempt to
21 keep the measure off the ballot when it, in fact,
22 should be on the ballot.

23 And I'm also going to abridge my remarks
24 because you do have a sufficiently-lengthy merit

1 brief from us on all of the legal issues here, but I
2 would be very happy to answer any questions that you
3 have should there be any doubts around any issues in
4 your mind here.

5 The November 2009 levy I'll refer to as
6 "Issue 48," which is how it appeared on the ballot,
7 in our brief, and that increased the rate of taxation
8 and that's the fact. That's how you review whether
9 this should appear on the ballot. The question is
10 did Issue 48 increase the rate of taxation, because
11 Ohio Supreme Court law dictates that the increased
12 rate of levy is the same as an increased rate of
13 taxation. And the November 2009 replacement levy,
14 Issue 48, did increase the rate of taxation all the
15 way from 3.43 mills up to 11.4 mills.

16 And to understand why we're correct here
17 and why this is true and why we chose the 2009
18 replacement levy, you have to understand the plain
19 language of the statute and just a few simple things:

20 First of all, a tax increase is a levy
21 increase. The exact language is in 5705.261. It
22 specifies that an increased rate of levy can be
23 reduced. So that's the phrase that's in dispute
24 here: "increased rate of levy."

1 Well, there's no dispute as to what an
2 increased rate is or so we think. Everybody knows
3 what an increased rate of taxation is; it's when your
4 tax bill goes up when your rate goes up.

5 So, apparently, the issue is whether
6 there's some sort of mystical meaning to the term
7 "levy." Well, there's simply not. The term "levy"
8 is clear. It's been defined by the Ohio Supreme
9 Court in a controlling case that the challengers
10 don't cite at all or reference at all today.

11 "Levy" is defined by the Ohio Supreme
12 Court in this context of school district levies as
13 the "imposition or collection of an assessment or a
14 tax." And that's City of Springfield v. Bethel
15 Township, 1982, Ohio Supreme Court case, which cites
16 other previous Ohio Supreme Court cases.

17 Secondly, that same case also defines the
18 term "taxes levied." It defines "taxes levied" as
19 "those taxes actually imposed or collected, not those
20 which may or could have been levied," and that's the
21 same case. So an increased rate of levy, a levy
22 being a tax, is an increased rate of taxation. So
23 whether there was an increased rate of taxation
24 imposed by Issue 48 depends upon its effect, its

1 operation, and its essential nature.

2 The Ohio Supreme Court also tells us
3 this: So Ohio courts analyze a tax by reviewing --
4 and these are quotes from different cases -- when
5 you're looking at a tax, here's how you decide what
6 kind of a tax it is or whether it's a tax increase
7 for example. You look at, quote, its incidence, its
8 operation, its essential nature, its real object
9 purpose and result, or its substance of the
10 assessment, not the form of the assessment.

11 By all of these tests, Issue 48 increased
12 the rate of taxation by 7.97 mills. And to
13 understand why this is true, unfortunately you do
14 need to understand a little bit about Ohio property
15 tax law.

16 First of all, what a replacement levy is
17 can be a little bit confusing. A replacement levy,
18 importantly, is not a renewal levy. It is not simply
19 a continuation of an existing levy at the same rate.
20 It is a replacement of that levy no matter what --
21 when that levy was originally voted on and no matter
22 what the rate was.

23 To give you an example: If the voters of
24 Westerville voted for a 10 mill levy in 1970 and the

1 State had reduced that down to a 5 mill levy, it
2 could still be the case that Westerville could put on
3 the ballot a replacement levy at a decreased rate for
4 the 1970 levy that would levy 7.5 mills, but that
5 would still increase the rate of taxation on property
6 owners. So the term "replacement levy" can be
7 confusing and it can be somewhat of a misnomer.

8 But what the challengers attempt to do
9 here is misconstrue a replacement levy as a renewal
10 levy. So, in the case here, the rate actually
11 imposed on Westerville property owners, up until
12 November of 2009, by the two levies that were
13 replaced, combined was 3.43 mills; it was not 11.4
14 mills. After the passage of Issue 48, it was 11.4
15 mills. This is a tax increase of 7.97 mills.

16 And this whole phenomenon springs from
17 HB920 which was passed in 1976 and requires the
18 reduction of tax rates even if they're approved by
19 the voters, so -- this is codified in Revised Code
20 319.301, and that actually requires the Franklin and
21 Delaware County Auditors to reduce those tax rates.
22 Even if the voters voted for 11.4 mills, which they
23 did here, the Auditors for Franklin and Delaware were
24 required to reduce those tax rates down all the way

1 to 3.43 mills which was the rate of taxation levied
2 by these two levies prior to November 2009.

3 So the operative term is "authorized."
4 That's the term used in 5705.292 about the ballot
5 language and it's the term we see used everywhere.
6 What was Westerville authorized to levy the tax rate
7 at.

8 Now, it is very true what the challengers
9 say that Westerville was authorized originally by the
10 voters, in the 1970s, to levy a tax rate of 11.4
11 mills through these two levies. But it is also true
12 that they were not authorized to levy this rate in
13 2009 because State law only authorized them to levy a
14 rate of 3.43 mills, so this is the most they could
15 have levied.

16 In support of the fact that this is in
17 fact the case, we have Exhibit A to our brief. Our
18 brief is, of course, a very thick stack, but it looks
19 more imposing than it is because most of it is
20 exhibits and we've quoted the most relevant parts, so
21 hopefully you won't have to read them ad nauseam.

22 But Exhibit A is Ohio Department of
23 Taxation data that shows the actual voted rates
24 versus the actual rates imposed. And, you know, they

1 use the term "effective rates," but the effective
2 rate is the actual tax rate and that's what we're
3 looking at here with 5705.261 is the actual tax rate
4 and was it increased by the effort that you're
5 seeking to reduce.

6 Secondly, Exhibit B is the property tax
7 duplicates for Westerville.

8 And, by the way, the burden of proof is
9 on the challengers here and they've effectively
10 submitted no evidence to you to support their
11 position that there was no increased rate of taxation
12 at all. And we've given you lots of evidence to
13 prove that there was in fact an increased rate of
14 levy or increased rate of taxation.

15 Most importantly, the property tax
16 duplicates for Westerville property owners, in
17 Exhibit B we've attached Jim Burgess's property tax
18 records which show the increased rate of taxation
19 firsthand. The difference between early 2009 and
20 early 2011.

21 Most importantly of anything, I think,
22 that we've produced because of its clarity is the
23 Westerville City School District itself's five-year
24 financial forecast for 2002 [verbatim] to 2013 and

1 because this quotes so -- so eloquently explains the
2 legal and the factual issues here, I am going to
3 quote that in its entirety because I really do want
4 this to sink in.

5 So this is prepared -- by statute it's
6 required to be prepared for the State, prepared by
7 Westerville, and this is a passage from the first
8 full page of that five-year forecast. This is
9 located on page 11 of our brief and it's also Exhibit
10 D in the packet you have before you. Now, this
11 really covers the issue.

12 (As read): "On November 3rd, 2009, the
13 district asked voters to restore an operating levy
14 from 1972 and one from 1979 back to their original
15 voted millage. The dollars generated from those
16 levies is still the same, but the amount of revenue
17 we receive has essentially been frozen because of an
18 Ohio law passed in 1976 called House Bill 920. When
19 properties go up in value, the effective millage that
20 homeowners and businesses pay is actually reduced."
21 Again, to emphasize that: The effective millage is
22 actually reduced.

23 "As a result, a school district never
24 receives more revenue than it did previously except

1 for one-time revenue increases from any new
2 construction that may occur. Every three years the
3 county auditor determines the value of taxable
4 property for each school district. If inflation has
5 caused the value of the property to increase, the
6 auditor cuts the school tax rate so schools do not
7 receive more money."

8 "HB920 makes it difficult for school
9 districts to meet inflationary cost increases and is
10 one of the primary reasons why they must return to
11 voters on average every two to three years to request
12 additional revenue. The 1972 levy was approved for
13 1.6 mills and the 1979 levy was approved for 9.8
14 mills." Now, this is probably the most important
15 part: "When added together, the total voted millage
16 for these two issues was" -- "was 11.4 mills."

17 "Because of HB920, those issues had been
18 reduced to collect only 3.43 mills. The district
19 asked residents to restore those two issues back to
20 their originally-approved voted millage totaling 11.4
21 mills. Since the district continues to collect 3.43
22 effective mills from those issues, the net increased
23 millage -- or, the net requested millage," I'm sorry,
24 the increase, the "increase is 7.97 mills." So the

1 school district says it right there. There's a tax
2 rate increase of 7.97 mills.

3 And then, further down, the district
4 reiterates: "What voters must remember they are
5 currently paying 3.43 effective mills on the issues
6 to be restored to their full value, so the net
7 increase is 7.97 mills, not 11.4 mills."

8 It's that 7.97 mills that the
9 Petitioners, who have proffered to you the valid
10 initiative petition, seek to reduce through their
11 effort that you have properly certified.

12 And everybody understood this at the
13 time; even the media understood this. We've attached
14 a media article that explains it as well as anything:
15 "The 11.4 mill replacement levy will raise taxes by
16 7.7 mills" -- will raise taxes by 7.7 mills --
17 "costing property owners an additional \$244 per each
18 \$100,000 in residential property valuation."

19 So, you know, there you have the fact
20 this is clearly an increased rate of taxation. You
21 look at 5705.261, that is what it says, it says
22 "increased rate of levy." And, quite strangely, the
23 word "levy" is defined nowhere in the Revised Code,
24 so what we look to is how the Ohio Supreme Court has

1 defined that term and a "levy" means "a tax."

2 So do we have an increased rate of
3 taxation here? Obviously we do of 7.97 mills. All
4 the evidence supports that, that's why this levy was
5 chosen, and it's very much properly an object of
6 5705.261.

7 As a final note: To the extent that
8 there can be any doubts at all, those all result in
9 favor of a ballot access and that's also Ohio Supreme
10 Court mandate that -- that issues are to be liberally
11 construed in favor of ballot access, and Ohio Liberty
12 Council v. Brunner discusses that issue well, that
13 you are to construe in favor of the right of the
14 initiative.

15 And, you know, when you look at the
16 arguments of the other side, we do take them very
17 seriously because over 5,000 signatures were gathered
18 for this effort and over 4,600, I believe, were
19 ultimately certified as valid. It's currently on the
20 ballot; it has a right to be on the ballot.

21 So this, you know, even though we think
22 the legal arguments and the factual arguments are
23 frivolous and incorrect, we take this issue very
24 seriously. And the -- the policy arguments are not

1 before the commission. So both sides make policy
2 arguments and those are simply gripes with the
3 statute itself, and the gripes of the statute itself
4 should be settled through the legislature or at the
5 ballot box; they're not proper for this Board on this
6 day.

7 So I'd be more than happy to answer any
8 questions at all to clear up any plausible disputes
9 at all. Thank you for your time.

10 CHAIRMAN PREISSE: Do we have the
11 language, the ballot language that appeared in 2009
12 on the replacement? Do we have that? Is that
13 accurately reflected in the Maria Armstrong document?

14 MR. CLOSE: Mr. Preisse, it's in our
15 brief on page 4.

16 MR. THOMPSON: I also have a page with
17 the full ballot language that I did not attach as an
18 exhibit if you want a separate page printed.

19 CHAIRMAN PREISSE: It's on -- Mr. Close,
20 it's on --

21 MR. CLOSE: Page 4, about three-fourths
22 of the way down the page, "A replacement of two
23 existing levies --

24 CHAIRMAN PREISSE: Right.

1 MR. CLOSE: -- to constitute a tax" and
2 so forth.

3 (Discussion among the Board members.)

4 CHAIRMAN PREISSE: I signed it.

5 MR. THOMPSON: If I may? In response to
6 your query about the ballot language, if I may
7 emphasize a certain point: I did mention that it is
8 the substance and the effect of the tax that you look
9 at to determine whether it was a tax increase, and
10 not necessarily the ballot language, but that does
11 appear to be their point that you look at the ballot
12 language.

13 But it's important to note that the
14 ballot language from 5705.292 does not require the
15 ballot language designate an increased tax rate even
16 if it increases the rate of taxation.

17 We also cite an expert on property tax
18 law who makes an interesting statement: "The
19 proposed millage" -- this is the full quote: "The
20 term 'replacement' can be 'deceptive' because the
21 proposed millage is compared with the old,
22 no-longer-in-effect, originally voted millage of the
23 existing levy." And that's what happened with the
24 ballot language.

1 So is it a tax increase over and above
2 the 11.4 mills voted on in the 1970s? No. But that
3 amount is irrelevant. It has disappeared by 2009 and
4 the tax rate is actually 3.43 mills.

5 CHAIRMAN PREISSE: You all have any
6 questions?

7 BOARD MEMBER MARINELLO: I don't.

8 BOARD MEMBER MANIFOLD: I'm thinking
9 about it.

10 CHAIRMAN PREISSE: You're thinking about
11 it.

12 Okay. Mr. Close, I'll give you a chance
13 if you want, and then, Maurice, once after that if
14 you want to spend a few minutes.

15 MR. CLOSE: I will give Mr. Thompson the
16 courtesy he did not give me in saying that his
17 argument is frivolous, but his argument exactly
18 illustrates my point. He would talk about increased
19 rate of taxation, if that's what the legislature
20 intended, the legislature should have said, could
21 have said and didn't say if you increase the amount
22 of taxes paid, then you can do this petition.

23 What they said is you can only do that if
24 you increase the rate of the levy. You ask anybody

1 sitting here what a rate of a levy is, that's the
2 millage. And the millage that we replaced was 11.4
3 replaced the 9.8 and a 1.6 for a total of 11.4. The
4 rate of the levy did not change.

5 I'm not arguing with any of the factual
6 issues that Mr. Thompson raised. Did this
7 effectively increase the amount of money that was
8 collected by Westerville? It did; certainly. But it
9 didn't increase the rate of the levy and that's where
10 the statute defeats the argument that he's making.
11 Thank you. Unless there are questions.

12 CHAIRMAN PREISSE: It's all right with me
13 and then we'll see if Mr. Thompson has any more.

14 MR. THOMPSON: I -- on the record, my
15 apologies for any discourteousness that I may have
16 displayed.

17 The -- the issue as to that point is
18 absolutely critical for you to understand. 5705.261,
19 the statute that we're interpreting today, was
20 drafted and passed by the legislature in 1969. And
21 the argument we have in the protest is the
22 legislature deliberately rejected the use of the term
23 "effective rates of taxation." There was no such
24 thing in 1969. HB920 didn't come along until 1976.

1 So their argument that the legislature
2 deliberately thought about and chose not to use the
3 language, the term "effective rates of taxation" is
4 absolutely frivolous because it was seven years
5 before HB920 reduction factors even determined the
6 rates of taxation.

7 So what determines your rates of taxation
8 today in Ohio is not the voted millages; it's the
9 actual millage which is after the reductions via
10 HB920. So now you can say well, should the
11 legislature have maybe gone back and clarified
12 5705.261 if they wanted to make that point absolutely
13 clear? And we submit to you there was no need for
14 them to do that because it says "increased rate of
15 levy," and the Ohio Supreme Court says increased rate
16 of levy means increased rate of taxation which means
17 you look at the actual tax rate paid by actual
18 property owners and there's no dispute that that went
19 up via Issue 48 in November 2009 and, therefore, it
20 can be reduced.

21 CHAIRMAN PREISSE: Any questions?

22 BOARD MEMBER MARINELLO: Uh-uh.

23 CHAIRMAN PREISSE: Okay. Thank you.

24 (Discussion among the Board members.)

1 BOARD MEMBER MARINELLO: Mr. Chairman, I
2 would like to hear from Harold.

3 CHAIRMAN PREISSE: You what?

4 BOARD MEMBER MARINELLO: I would like to
5 hear from Harold.

6 CHAIRMAN PREISSE: Counsel? Harold, do
7 you want to weigh in on any of the points you heard,
8 or are you just in a reactive mood today?

9 (Laughter.)

10 MR. ANDERSON: I'm always in a reactive
11 mood.

12 I think both parties laid out,
13 succinctly, the two sides of the coin. This is an
14 issue of first impression in Ohio. There is not
15 a great -- there is no case law that is directly on
16 point. It's clear from the Southwest City Schools
17 case, however, it is within your purview to make a
18 determination as to whether or not you're going to
19 grant ballot access or not.

20 BOARD MEMBER MANIFOLD: I think . . .

21 (Discussion among the Board members.)

22 CHAIRMAN PREISSE: I move that the Board
23 accept the protest filed by Mr. Hollins and remove
24 the proposed tax reduction issue filed in the

1 Westerville City School District.

2 Does that require a second?

3 DIRECTOR ANTHONY: Yes, sir.

4 Is there a second?

5 BOARD MEMBER MANIFOLD: I'll second.

6 DIRECTOR ANTHONY: All those in favor,
7 say aye.

8 CHAIRMAN PREISSE: I think maybe you want
9 to take a -- maybe we should take a roll call.

10 DIRECTOR ANTHONY: A roll call? We'll do
11 a roll call vote.

12 Kimberly Marinello?

13 BOARD MEMBER MARINELLO: Yes.

14 DIRECTOR ANTHONY: Zachary Manifold?

15 BOARD MEMBER MANIFOLD: Yes.

16 DIRECTOR ANTHONY: Douglas Preisse?

17 CHAIRMAN PREISSE: Yes.

18 DIRECTOR ANTHONY: The motion carries.

19 BOARD MEMBER MANIFOLD: That was a tough
20 one.

21 CHAIRMAN PREISSE: The -- this was hard
22 and there's great articulated merits on both sides as
23 this non-lawyer sees it. I'd like to quote Teddy
24 Roosevelt who says, "The best way to remove a bad law

1 is to enforce it vigorously." Maybe that's the best
2 way to update antiquated law as well.

3 MR. CLOSE: Thank you.

4 DIRECTOR ANTHONY: The next item on the
5 agenda for you guys, I passed out a budget recap for
6 your perusal if you have it. It's the 2012 budget
7 that was sent, so that's in your packet. Take a look
8 at it when you have time and you can ask questions,
9 or, if you want to take a look at it now, you can ask
10 questions now.

11 CHAIRMAN PREISSE: Bill, I'm sorry --

12 DIRECTOR ANTHONY: Actually, it's the
13 spreadsheet --

14 DEPUTY DIRECTOR WALCH: It's the
15 spreadsheet.

16 CHAIRMAN PREISSE: What are we doing
17 here?

18 DIRECTOR ANTHONY: We're just looking at
19 the recap of our 2012 budget. Keeping you guys
20 apprised of how much we're spending and why we're
21 spending it.

22 DEPUTY DIRECTOR WALCH: As it says, we've
23 spent about 54.7 percent of the total budget through
24 August which is about two-thirds of the year. So,

1 from a percentage standpoint, we're better on the
2 percent we've spent than percent of the year used so
3 far, so to speak, on a calendar basis, but we
4 obviously do have our busiest time of the year coming
5 up.

6 In our -- in our budget discussions that
7 we've had with our finance officer on this, I've been
8 told this is pretty much where we need to be for the
9 year in comparable years.

10 CHAIRMAN PREISSE: We're spiking at the
11 end.

12 DEPUTY DIRECTOR WALCH: We'll be spiking
13 at the end; absolutely.

14 DIRECTOR ANTHONY: With the vote center
15 and all the --

16 DEPUTY DIRECTOR WALCH: Bill -- Bill
17 would have a better perspective, having been here
18 longer than I am, but I've been told this is about
19 where we need to be for the year.

20 DIRECTOR ANTHONY: And we wanted to share
21 it with you so you guys know that we're trying to be
22 prudent keepers of our taxpayers' dollars.

23 BOARD MEMBER MANIFOLD: Is there any area
24 that is of concern? Is there anything that stands

1 out to you guys or you guys are worried about?

2 DIRECTOR ANTHONY: Well -- well, not --
3 not -- not really. I mean, the vote center, you
4 know, we're doing the security a little differently
5 than what we've done in the past, but I think we'll
6 be able to work that out. The Sheriff's office is
7 still just, you know, is doing it, basically. They
8 have to put it in their -- we have to request the
9 budget dollars for them to be able to do it.

10 So we have to go to the Commissioners.
11 It's something like \$920,000 or something like that.
12 So that's something that we -- yeah, we have to go to
13 the Commissioners for the Sheriff and say that the
14 Sheriff needs \$920,000 to do all of the security work
15 that we need at the -- for the Board of Elections.

16 So we didn't do that in the past. It's
17 something we have to do now. We have to encumber the
18 money for the Sheriff's office. So we just -- we
19 don't hold it, we just encumber it so they can spend
20 it. They were told we have to encumber it before
21 they can use it, so.

22 BOARD MEMBER MANIFOLD: Makes sense.

23 DIRECTOR ANTHONY: But we didn't do that
24 in 2008.

1 CHAIRMAN PREISSE: Okay. That's helpful.

2 DIRECTOR ANTHONY: That was all I had.

3 Is there a motion to adjourn?

4 BOARD MEMBER MANIFOLD: I move to
5 adjourn.

6 BOARD MEMBER MARINELLO: Second.

7 DIRECTOR ANTHONY: All those in favor?

8 BOARD MEMBERS: Aye.

9 DIRECTOR ANTHONY: We stand adjourned.

10 (Thereupon, the proceedings concluded at
11 4:29 p.m.)

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CERTIFICATE

I do hereby certify that the foregoing is a true and correct transcript of the proceedings taken by me in this matter on Tuesday, September 4, 2012, and carefully compared with my original stenographic notes.

Carolyn M. Burke, Registered Professional Reporter, and Notary Public in and for the State of Ohio.

My commission expires July 17, 2013.

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