

BEFORE THE FRANKLIN COUNTY BOARD OF ELECTIONS

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In Re: :
: Regular Meeting :

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PROCEEDINGS

before Chairman Douglas J. Preisse, Director William A. Anthony, Jr., Deputy Director Dana Walch, and Board Members Kimberly E. Marinello, Bradley K. Sinnott, and Gregory K. Haas at the Franklin County Board of Elections, 280 East Broad Street, Columbus, Ohio, called at 1:24 p.m. on Monday, February 3, 2014.

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APPEARANCES:

Franklin County Prosecutor's Office
By Mr. Harold J. Anderson, III
Mr. Nick A. Soulas, Jr.
Assistant Prosecuting Attorneys
373 South High Street, 13th Floor
Columbus, Ohio 43215

On behalf of the Board.

Fitrakis & Gadell-Newton, LLC
By Mr. Robert J. Fitrakis
Ms. Constance Gadell-Newton
1021 East Broad Street
Columbus, Ohio 43205

On behalf of Initiative Petitioner
Jonathan Beard.

McTigue McGinnis & Colombo, LLC
By Mr. Donald J. McTigue
Mr. J. Corey Colombo
545 East Town Street
Columbus, Ohio 43215

On behalf of Protestors Trent Edward
Smith and Brian Rothenberg.

Zeiger Tigges & Little, LLP
By Mr. Steven W. Tigges
Mr. Matthew S. Zeiger
Mr. Daniel P. Mead
3500 Huntington Center
Columbus, Ohio 43215

On behalf of Protestor Philip S. Pikelny.

ALSO PRESENT:

Ms. Suzanne Brown,
Executive Assistant to the Board

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

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

INDEX TO MEETING

- - -

ITEM	PAGE
Approval of Minutes	7
Voter Registration Challenge	8
Personnel Matter	10
Opening of Polls for Special Election	11
Columbus City Petitions Hearing	11
Motion to Recess Board	154
Adjourn	154

- - -

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

INDEX TO COLUMBUS CITY PETITIONS HEARING

- - -

"ARENA BAILOUTS DEMAND A VOTE" INDEX

- - -

WITNESSES PAGE

Jonathan C. Beard	
Cross-Examination by Mr. Tigges	44
Direct Examination by Mr. Fitrakis	51
Richard C. Pfeiffer, Jr.	
Direct Examination by Mr. Fitrakis	57
Cross-Examination by Mr. Tigges	59
Hugh J. Dorrian	
Direct Examination by Mr. Fitrakis	62

- - -

EXHIBITS MARKED

A-1 - Stipulations of Fact	15
A-2 - Affidavit of Jonathan C. Beard	15
A-3 - Protestor Trent Edward Smith Pre-Hearing Brief	15
A-4 - Pre-Hearing Brief of Protestor Philip S. Pikelny	15
Petitioner 1 - Casino Tax Revenue Distribution	68
Petitioner 2 - Nationwide Arena Financing	68

- - -

1 INDEX TO COLUMBUS CITY PETITIONS HEARING (Continued)

2 - - -

3 "COLUMBUS FAIR CAMPAIGNS CODE" INDEX

4 - - -

5 WITNESSES	PAGE
6 Hugh J. Dorrian	
7 Direct Examination by Mr. Fitrakis	86
8 Kenneth Herring	
9 Cross-Examination by Mr. McTigue	88
10 Direct Examination by Mr. Fitrakis	98
11 Recross-Examination by Mr. McTigue	100
12 Redirect Examination by Mr. Fitrakis	101
13 Further Recross-Examination by Mr. McTigue	102
14 Further Redirect Examination by Mr. Fitrakis	103
15 James Mitchell	
16 Cross-Examination by Mr. McTigue	105
17 Direct Examination by Mr. Fitrakis	108
18 Brian Rothenberg	
19 Direct Examination by Mr. McTigue	109
20 Cross-Examination by Mr. Fitrakis	110
21 Jonathan C. Beard	
22 Cross-Examination by Mr. McTigue	113
23 Direct Examination by Mr. Fitrakis	120
24 Denise A. Benning-Adedugbe	
Direct Examination by Mr. Fitrakis	117
25 - - -	
26 EXHIBITS	MARKED
27 CAM-1 - Stipulations of Fact and Evidence	15
28 CAM-2 - Affidavit of Jonathan C. Beard	15
29 CAM-3 - Protestor Brian Rothenberg's	15
30 Pre-Hearing Brief	

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

INDEX TO COLUMBUS CITY PETITIONS HEARING (Continued)

- - -

"COLUMBUS FAIR CAMPAIGNS CODE" INDEX (Continued)

- - -

EXHIBITS	MARKED
Rothenberg 1 - Initiative Petition	116
Rothenberg 2 - Initiative Petition	116
Rothenberg 3 - Initiative Petition	116
Rothenberg 4 - Initiative Petition	116
Rothenberg 5 - Denise Benning signatures	116

- - -

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

- - - - -

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: Gregory Haas.

BOARD MEMBER HAAS: Here.

DIRECTOR ANTHONY: Bradley Sinnott.

BOARD MEMBER SINNOTT: Here.

DIRECTOR ANTHONY: And Douglas Preisse.

CHAIRMAN PREISSE: Here.

DIRECTOR ANTHONY: Mr. Chairman, we have
a quorum. All members are present.

The first item on the agenda would be the
approval of the minutes from the December 30th and
January 13th Board of Elections meetings.

BOARD MEMBER MARINELLO: Mr. Chairman, I
move the Board approve the minutes of the
December 30th, 2013, and January 13th, 2014 meetings
of the Franklin County Board of Elections as

1 submitted.

2 BOARD MEMBER SINNOTT: Second.

3 DIRECTOR ANTHONY: All those in favor?

4 (All ayes heard.)

5 DIRECTOR ANTHONY: I will pass this
6 around for everyone's signature.

7 The second item on the agenda, we have a
8 voter registration challenge.

9 DEPUTY DIRECTOR WALCH: We had a
10 challenge of a voter registration filed with us on
11 January 24th by Mr. Carl Reardon, challenging the
12 registration of Mr. Jarrod Simmons, purportedly of,
13 what's the address on there, 1145 Chesapeake Avenue
14 No. G, in Columbus.

15 Is either Mr. Reardon or Mr. Simmons here
16 today on this matter?

17 (No response.)

18 DEPUTY DIRECTOR WALCH: Okay. I did not
19 expect them to be. The situation here, I spoke with
20 Mr. Simmons about this, I've also spoken to
21 Mr. Reardon's counsel on this. Mr. Simmons had moved
22 around for a while and was registered at this address
23 and moved. He does not currently live at this
24 address anymore. He is in the process of changing

1 his voter registration to his new address. Actually,
2 he tried to do it online through the Secretary of
3 State's site the other day and it would not allow him
4 to do it for some reason, but he is supposed to be
5 coming in to our office, maybe even today, to do
6 this.

7 I believe everyone is satisfied on this.
8 But, in the meantime, our recommendation is to go
9 ahead and put him in a status here that we use
10 "pending removal." That will restrict him from
11 voting at that address that he is currently
12 registered at which is the Chesapeake Avenue address,
13 but we'll keep him on the list until he updates it
14 with his new address. So our recommendation is to
15 place it in a "pending removal" status which he is
16 satisfied with and the challenger is satisfied with
17 as well.

18 BOARD MEMBER SINNOTT: Well, in light of
19 all that, I move that the Board place the
20 registration of Jarrod Simmons, purportedly of 1145
21 Chesapeake Avenue, Letter G, Columbus, Ohio 43212 in
22 a "pending removal" status until such time as he
23 updates his voter registration to his new address.

24 BOARD MEMBER HAAS: Second.

1 DIRECTOR ANTHONY: All those in favor?

2 (All ayes heard.)

3 DIRECTOR ANTHONY: The motion carries.

4 The next item on the agenda are two
 5 personnel matters dealing with we had several
 6 vacancies on the Democratic side of the Board,
 7 several in the Absentee Department and several in the
 8 Voter Services Department, and we have before the
 9 Board two employees we would like to bring on,
 10 beginning Monday, February the 10th. Randy Burley,
 11 he'll be in the Absentee Department, and Amie East,
 12 she'll work in the Voter Services Department. Those
 13 are the two motions.

14 BOARD MEMBER MARINELLO: Mr. Chairman, I
 15 move that the Board hire Randy Burley to a position
 16 in the Absentee Department beginning Monday,
 17 February 10th, 2014, at a salary of \$15.60 per hour.

18 BOARD MEMBER HAAS: Second.

19 DIRECTOR ANTHONY: All those in favor?

20 (All ayes heard.)

21 DIRECTOR ANTHONY: And the second one.

22 BOARD MEMBER HAAS: I move that the Board
 23 hire Amie East to a position in the Voter Services
 24 Department beginning Monday, February 10th, 2014, at

1 a salary of \$14.67 per hour.

2 BOARD MEMBER MARINELLO: Second.

3 DIRECTOR ANTHONY: All those in favor?

4 (All ayes heard.)

5 DIRECTOR ANTHONY: The next item on the
6 agenda will be tomorrow is a Special Election in
7 Minerva Park, so we need to have the polls opened for
8 tomorrow's Special Election.

9 BOARD MEMBER HAAS: I move that the polls
10 be declared open for the Tuesday, February 4th, 2014
11 Special Election beginning at 6:30 a.m., closing at
12 7:30 p.m., and that in accordance with the Ohio
13 Revised Code Section 3501.32, any voter in line prior
14 to the close of the polls at 7:30 shall be permitted
15 to vote.

16 DIRECTOR ANTHONY: Is there a second?

17 BOARD MEMBER MARINELLO: Second.

18 DIRECTOR ANTHONY: All those in favor?

19 (All ayes heard.)

20 DIRECTOR ANTHONY: The motion carries.

21 The next item on the agenda would be the
22 Columbus petition hearings. We have before you,
23 Mr. Chair, an order on how we would like to proceed
24 with these.

1 CHAIRMAN PREISSE: Thank you, Bill.

2 As we've concluded other business, we'll
3 now conduct the hearings on the protest related to
4 the Columbus Fair Campaigns Code Initiative Petition
5 by Brian Rothenberg, and the protests to the Arena
6 Bailouts Demand a Vote Initiative Petition by Trent
7 Edward Smith and Philip S. Pikelny.

8 The protests were filed subsequent to the
9 City of Columbus certifying the petitions to the
10 Board of Elections. The parties to the action are
11 represented by counsel, as are the circulators of the
12 initiative petitions. The parties have had the
13 opportunity to file briefs on the matter and have
14 also filed, with the Board, stipulations in both
15 matters.

16 Because the protest grounds and witnesses
17 for these protest hearings are nearly identical, and
18 in the interest of time, we're going to request that
19 the parties elicit testimony on direct and
20 cross-examination in both initiative protests. The
21 Board will, however, render separate and distinct
22 decisions on the protests of the two initiative
23 petitions.

24 We will -- let's introduce who's here

1 today. Our counsel, Harold Anderson, from the County
2 Prosecutor's Office. He may be joined by a colleague
3 of his, Nick Soulas, in the near future here. Board
4 Director Bill Anthony. Democratic members, Kim
5 Marinello and Greg Haas. Republican members, myself,
6 Doug Preisse, and Brad Sinnott. And our Deputy
7 Director of the Board, Dana Walch.

8 The Prosecuting Attorney, I'd like to
9 note, will have no part in the decision on the
10 protest. Instead, the function of the Assistant
11 Prosecutor will be to -- and the Prosecutor will be
12 to answer any questions the Board may have on the
13 correct procedure for handling the protests and to
14 answer any questions the Board may have about any
15 statute or case law as well.

16 The stenographer is here and will have to
17 introduce herself because I can't recall her name, I
18 apologize.

19 THE COURT REPORTER: It's okay. Carolyn
20 Burke with Armstrong and Okey.

21 CHAIRMAN PREISSE: Carolyn, I assume you
22 heard your own introduction for the record.

23 Everything is going to be taken down by
24 the stenographer who will also swear the witnesses in

1 prior to giving testimony.

2 And I think we would like now to have the
3 attorneys and parties introduce themselves and then
4 I'll have some more comments to make about how we
5 intend and expect to proceed.

6 Who wants to go first?

7 MR. MCTIGUE: Mr. Chairman, I'm Don
8 McTigue, and I'm here with my partner, Corey Colombo.
9 We represent Brian Rothenberg on the protest against
10 the self-titled Columbus Fair Campaigns Code
11 Initiative Petition, and we also represent Trent
12 Smith on his protest against the self-titled Arena
13 Bailouts Demand A Vote Initiative Petition.

14 MR. TIGGES: Good afternoon,
15 Mr. Chairman, members of the Board. I'm Steve
16 Tigges. I'm here on behalf of Philip Pikelny. With
17 me is my partner, Matt Zeiger, and our colleague,
18 Daniel Mead.

19 CHAIRMAN PREISSE: Okay.

20 Oh, yes. I'm sorry.

21 MR. FITRAKIS: Bob Fitrakis. I'm here
22 with Connie Gadell-Newton, my partner, Representing
23 the Columbus Coalition for Responsive Government.

24 CHAIRMAN PREISSE: And who is your

1 colleague, please?

2 MR. FITRAKIS: Connie Gadell-Newton.

3 CHAIRMAN PREISSE: Connie?

4 MR. FITRAKIS: Gadell, G-a-d-e-l-l,
5 Newton -- hyphen Newton.

6 CHAIRMAN PREISSE: At this time the Board
7 will mark the Stipulations of Fact and Evidence In
8 the Matter of the Columbus Fair Campaigns Code as
9 Exhibit CAM-1; the Affidavit of Jonathan Beard In
10 Response to the Complaint by Brian Rothenberg as
11 Exhibit CAM-2; Protestor Brian Rothenberg's brief as
12 Exhibit CAM-3.

13 We will also enter into evidence the
14 stipulations of fact in the matter of the Arena
15 Bailouts Demand a Vote as Exhibit A-1; the Affidavit
16 of Jonathan Beard In Response to the Complaint by
17 Smith and Pikelny as Exhibit A-2; the brief of Trent
18 Edward Smith as Exhibit A-3; and the brief of Philip
19 S. Pikelny as Exhibit A-4.

20 We will remind all present that the
21 protestors have the burden of proof and must show by
22 a preponderance of the evidence that the initiative
23 issues should not appear on the ballot. If the
24 protestor fails to meet the burden, the initiative

1 issues will appear on the ballot.

2 At this time I'll ask the Board and the
3 staff is there anything else that should be mentioned
4 before we proceed further?

5 DEPUTY DIRECTOR WALCH: No.

6 CHAIRMAN PREISSE: Any questions from any
7 of the parties or their counsel before we proceed
8 further?

9 MR. MCTIGUE: Mr. Chairman, I wanted to
10 indicate that Mr. Fittrakis and I agreed, this
11 morning, to three other exhibits to be stipulated.
12 These are actually already stipulated exhibits in the
13 -- on the protest against the Columbus Fair Campaigns
14 Code, but we are now going to stipulate them as
15 exhibits also on the protests against the Arena
16 Bailouts initiative petition.

17 It was just a glitch in -- when we --
18 when we filed the stipulations there on the Arena, we
19 didn't include these three exhibits, but they were
20 already stipulated in the other case, but they're
21 going to be used in both cases.

22 So, just for the record, those are the
23 original petition on the Arena Bailouts initiative
24 petition, all the part-petitions which were

1 subpoenaed to be brought by the City Clerk; also the
2 voter registration form for Denise Benning which was
3 stipulated in the one case is now stipulated in this
4 case as well; and then the return of service on the
5 subpoena to Kenneth Herring which, as I said, is
6 stipulated in the one case and now in this case, so
7 in both cases.

8 BOARD MEMBER SINNOTT: Mr. McTigue, this
9 stipulation would relate to the Arena initiative?

10 MR. MCTIGUE: Yes. This is a stipulation
11 related to the Arena protest.

12 BOARD MEMBER SINNOTT: Is Mr. Pikelny
13 also a protestor?

14 MR. TIGGES: We have no objection.

15 CHAIRMAN PREISSE: I think we're agreed
16 then.

17 Do any of the parties wish to have the
18 witnesses separated?

19 MR. MCTIGUE: No.

20 CHAIRMAN PREISSE: I'm going to remind
21 that the Court Rules of Evidence will not be used,
22 but that the Board will decide what witnesses and
23 evidence they will allow in order to make a decision
24 on the protest. Also, I would like to remind the

1 parties that given the number of witnesses, we hope
2 everyone will be efficient in presenting their cases.

3 The protestor will present witnesses and
4 evidence first. The Board can ask questions of the
5 witnesses after each testifies and so may the
6 Prosecutor's office.

7 We would like to proceed with the hearing
8 and each attorney for the parties now would like to
9 give an opportunity for three minutes to make an
10 opening statement and then I believe we'll have a few
11 more comments and proceed thereafter.

12 MR. MCTIGUE: Mr. Chairman, members of
13 the Board, I'm Don McTigue and, as I said, I
14 represent the Protestors Brian Rothenberg and Trent
15 Smith.

16 These protests by qualified electors in
17 the City of Columbus are not about the merits of the
18 proposals set forth in the two initiative petitions,
19 but, rather, the protests are about following the
20 rules set out in the Columbus City Charter, in the
21 Ohio Revised Code, and indeed even in the Ohio
22 Constitution for gaining access to the ballot on an
23 initiated ordinance. These are not rules that were
24 imposed by boards of elections. They were imposed by

1 the Constitution or the General Assembly or by the
2 voters of the City of Columbus when they adopted
3 their charter.

4 All persons who seek to place an issue on
5 the ballot in the City must follow the same rules,
6 including the five individuals who comprise the
7 committee responsible for these two initiative
8 petitions.

9 As set forth in the two protests and as
10 addressed in our prehearing briefs, the petitions
11 contain a number of fatal defects due to the failure
12 to comply with these mandatory legal requirements.
13 And we hope that the Board, at the end of the
14 hearing, will vote to uphold the protests.

15 Thank you.

16 CHAIRMAN PREISSE: Thank you.

17 MR. TIGGES: Good afternoon, Mr. Chairman
18 and members of the Board. I'm Steve Tigges on behalf
19 of Mr. Pikelny.

20 We've laid our position out in our
21 prehearing brief and in the protests themselves. In
22 the interest of time, I'm not going to repeat all of
23 that. I'd simply like to emphasize two points by way
24 of opening here this afternoon, both of which arise

1 directly from the Stipulations of Fact that we have
2 agreed to and have filed with the Board.

3 The first is this: The Arena initiative
4 petition contains, on its very first page, what is
5 called a "fiscal impact statement" and it states
6 this: "This amendment will result" -- will result --
7 "in savings for the City of Columbus...totaling
8 approximately \$131,165,157 over the then-remaining
9 period of the lease." That is the statement in the
10 petition.

11 If you look in the stipulations that we
12 have filed with the Board, on page 4, Stipulation
13 No. 28 is as follows: "If the ordinance proposed by
14 the Initiative Petition is placed on the ballot and
15 approved by the electors, such approval will not
16 result in any savings for the City of Columbus." It
17 is indeed an admission by the petitioners, we would
18 submit, that this initiative petition is false and
19 misleading and defective for that reason alone.

20 The second point I would wish to address
21 is bear in mind the only action that the ordinance
22 called for by the initiative petition requires is to
23 include, in the lease and the sublease documents for
24 the Arena, a provision to the effect that after

1 January 1, 2016 the City cannot appropriate funds for
2 payment of the lease without there first being a vote
3 by the City, by the electors of the City approving
4 that vote.

5 That would all be well and good but for
6 one problem to which the petitioners have now
7 stipulated. The lease and sublease already exist;
8 they are signed, binding documents between the City,
9 the County, and the Convention Facilities Authority.
10 And indeed that being the case, this is not a subject
11 on which the City can legislate because it cannot
12 unilaterally cause this provision to be inserted into
13 a pre-existing binding contract.

14 And in Stipulation No. 29 on page 5 of
15 the stipulations, the petitioners have in fact
16 conceded that point. Stipulation 29 provides as
17 follows: "The City of Columbus does not have the
18 power to unilaterally alter the terms of the Lease
19 Agreement." A second fundamental deficiency that we
20 submit invalidates this position.

21 Thank you, Mr. Chairman and members of
22 the Board.

23 CHAIRMAN PREISSE: Thank you.

24 In reviewing the documents --

1 MR. ANDERSON: Doug --

2 CHAIRMAN PREISSE: Yeah?

3 MR. ANDERSON: We have the circulator.

4 CHAIRMAN PREISSE: Oh, I'm sorry.

5 MR. FITRAKIS: I would like to request of
6 the Board that Jonathan Beard be allowed to make the
7 opening statement, three minutes each, on both of the
8 complaints.

9 CHAIRMAN PREISSE: That's fine with all
10 of us. Thank you.

11 MR. BEARD: Good afternoon. My name is
12 Jonathan Beard, I live at 1815 Franklin Park South,
13 Columbus, and I'm one of the five members of the
14 committee that filed these two initiatives.

15 I want to address two things, big picture
16 thing first which is our interest in this comes from
17 the fact that here in Columbus we have a completely
18 unaccountable city government, in part because of
19 campaign finance provisions or what's allowed now.

20 So we know today, because of how much
21 money folks can raise versus how much money
22 challengers can raise, there are not competitive
23 elections in Columbus. And every other year, every
24 municipal election year, the problem gets worse and

1 worse.

2 So, as citizens, we took it upon
3 ourselves to do what the City Charter allows us to do
4 which is to circulate petitions to enact new
5 ordinances, and we've done that, we believe, in full
6 compliance with the law.

7 I would first address the two
8 stipulations that were made and perhaps put some -- a
9 different light on those.

10 I will say, you know, I've been in and
11 out of the hospital for the last two weeks and my
12 communication with our attorney has not been that
13 good. Our first meeting was this morning. So we've
14 been trying to do things by phone and by e-mail. I
15 think the first stipulation is one that reflects
16 that.

17 And we will present evidence today that
18 the \$131 million cost to the City, if this takes
19 effect January 1st, 2016, is a bad number, but the
20 only reason it's bad is because since we started
21 circulating the petition there's new information
22 about what casino tax receipts already -- what casino
23 tax receipts actually are, versus the projections we
24 used off of the City documents to frame that

1 \$131 million deficit -- or, expense. Right now,
2 based on the current casino tax receipts, it's a much
3 larger number that never pays off.

4 So the 131 was exactly what was in the
5 City documents, exactly what was in the lease
6 agreement and the bond payment schedule, and that is
7 correct as we start circulating the petition. But
8 the number has gotten far bigger to the point where
9 this thing never pays off. And, at the end of 100
10 years, it will be \$1.9 billion in payments the City
11 will owe to the CFA based on the terms and conditions
12 of the various agreements.

13 The second stipulation of fact was
14 Columbus does not have the power to unilaterally
15 alter the contract. I'm going to start first with
16 there is no contract in place January 1st, 2016 when
17 this ordinance will take effect. These are annual
18 contracts subject to annual renewal and an annual act
19 by City Council. There is no binding contract; let's
20 be very clear about that.

21 And while the City Council -- or, while
22 the administration may have tried to get a binding
23 contract and the stipulation says we don't have --
24 they don't have the power; the citizens do. There is

1 no binding contract in place. The citizens did not
2 make that agreement and the citizens can, under our
3 City Charter, move independently.

4 I guess, in summary, the third major
5 point is that what the -- what the complainers or
6 protestors are asking for is really not in state law
7 but interpretation of the City Charter. While they
8 were very adept at pointing out those provisions of
9 state law that would seem to create an incorrect
10 process or incorrect petition; in fact, that same
11 state law says these provisions do not apply to
12 municipal charter corporations that have their own
13 initiative and referendum petitions in -- or,
14 provisions in their charter.

15 So many of the things, the red ink, the
16 pre-circulation requirement, those do not apply to
17 Columbus. So what we're really doing is looking at
18 the threshold established by the City Charter and
19 that was -- we met those requirements clearly.

20 What they're -- what the protestors are
21 trying to do is essentially regulate unregulated
22 activity; regulate something that's not in statute,
23 that does not apply to Columbus. In so doing, they
24 are seeking to -- or, the effect of that would be to

1 deny the petitioners their free speech rights.

2 They object to some of the language in
3 the non-required summary, but we've got a right to
4 say that in the non-required summary. There is
5 nothing misleading, nothing inaccurate, nothing major
6 omitted, and there is no statute governing that under
7 the -- under -- in Section 731 of the Ohio Revised
8 Code.

9 We note again, going backwards, that this
10 has been an issue, campaign finance reform has been
11 an issue since 1994. And while I appreciate the fact
12 that, you know, this isn't a protest on the
13 substance, what I will say is Mr. McTigue and others
14 were involved in the reform effort back then that
15 very closely mirrors what we have proposed here.

16 So I say all that and I will let you
17 proceed with the hearing. Thank you much.

18 BOARD MEMBER MARINELLO: Thank you.

19 CHAIRMAN PREISSE: Thank you very much.

20 Before we get further, I'm going to --
21 it's been suggested and encouraged to me and us that
22 there may be three threshold matters that I'd like to
23 suggest that we might address at the outset.

24 The first is whether the Arena Bailout

1 initiative petition is administrative, it's been
2 suggested an administrative or legislative act;
3 second, whether we can look at the
4 materially-misleading statements that have been
5 suggested are contained on the petitions, the face of
6 the petitions; and, third, the issue of the
7 impairment of the contract.

8 And so we want -- I'm suggesting and
9 asking my colleagues to weigh in here that maybe we
10 can address these three so-called, shall we call them
11 "threshold issues" here at the outset and try to get
12 to the heart of the matter while not restricting
13 where we may go after this.

14 BOARD MEMBER SINNOTT: Mr. Chairman, I'd
15 be supportive of that suggestion. Based on my review
16 of the argument and stipulated evidence, it looks to
17 me, with respect to the Arena initiative, that there
18 are three especially-important subjects and I think
19 it would be efficient for us to hear evidence on
20 those subjects first.

21 One would be whether there is a
22 materially-wrong statement, being the fiscal impact
23 statement on the face of the petition; the other is
24 impairment-of-contract issue; the third being whether

1 we're dealing here with a legislative act or
2 administrative act with contemplation of the Upper
3 Arlington decision from the Supreme Court. Those are
4 the subjects raised by the Smith protest, Items 2,
5 11, 12; and from Mr. Pikelny's protest which are
6 numbered 2, 12, and 13. So I would favor the Board
7 hearing evidence on those particular protests first.

8 CHAIRMAN PREISSE: I'm not hearing any
9 objection.

10 BOARD MEMBER HAAS: No, there's no
11 objection. I really would like -- one of the
12 clearest things that I heard in conflict was the
13 issue of whether or not there is a contract and I
14 think that that might be something we should hear
15 from the attorneys fairly quickly and clear up
16 whether or not there is a contract.

17 CHAIRMAN PREISSE: And I think that's
18 part of what you were suggesting.

19 BOARD MEMBER SINNOTT: I agree.

20 BOARD MEMBER HAAS: You were hitting on
21 that, that item.

22 CHAIRMAN PREISSE: Right. Well, there
23 seems to be support across the Board for that. I'll
24 ask counsel for Protestor Smith if he would briefly

1 address this issue and then I'll move on to counsel
2 for Mr. Pikelny and then counsel for the initiative
3 circulators.

4 MR. MCTIGUE: Mr. Sinnott, could you give
5 me the numbers again on the -- that you called for
6 the Trent Smith protest?

7 BOARD MEMBER SINNOTT: I believe the
8 issues would relate to Protest Ground No. 2, fiscal
9 impact statement is inaccurate and misleading;
10 Protest Ground 11, initiative petition proposes
11 action that is not legislative; and Protest Ground
12 12, the proposed amendment would constitute an
13 unconstitutional impairment of obligations of a valid
14 contract. Mr. Pikelny raised the same issue but with
15 different terms.

16 MR. MCTIGUE: Yes. So I'll try to be
17 very brief on this. Mr. Tigges will probably have
18 more to say on these particular grounds.

19 But with regard to issue No. 2, which is
20 that the fiscal impact statement is inaccurate and
21 misleading. The statement at issue is the statement
22 that "This amendment will result in savings for the
23 City of Columbus in amounts ranging from \$3.9 to
24 \$7.9 million per year, and totaling approximately

1 \$131,165,157 over the then-remaining period of the
2 lease."

3 So the problem with that statement is
4 it's saying that this amendment, the amendment that's
5 actually being proposed by this petition, will result
6 in those savings, and that's speculative. They're
7 stating it as a blanket truism that this will, if it
8 passes, result in that amount of savings.

9 But that's not what happens. Because if
10 this proposed ordinance passes, what happens is
11 there's going to be, have to be another election
12 before 2016, at which time the voters would then vote
13 on whether to continue making lease payments, and the
14 voters might say yes, continue making lease payments.

15 So the savings that they're saying result
16 from their petition, their proposal at this stage,
17 aren't there. It's speculative. They are -- they're
18 basing it upon the next election that would occur and
19 anticipating that the voters -- how the voters are
20 going to vote at some election in 2016, that the
21 voters are going to say no more lease payments, and
22 that's where the savings comes from. But, again,
23 they are stating a fiscal impact from this particular
24 proposal, proposed ordinance, and this particular

1 proposed ordinance does not achieve those savings.

2 Now, with regard to the administrative
3 aspect which is No. 11. What essentially -- to
4 understand this, you have to understand that the
5 Supreme Court of Ohio has held that the right of
6 initiative is limited only to matters that are
7 legislative in nature as opposed to administrative in
8 nature.

9 They've defined something as being
10 "legislative" as something that creates new
11 obligations or new duties or imposes new liabilities.
12 They've defined "administrative" as just a process or
13 a change in a process or a decision made in a process
14 under an existing legislative scheme.

15 What this proposal is proposing is
16 essentially to change the process for the
17 appropriating of money for the lease payments; that's
18 an administrative matter, not a legislative matter.
19 It also is actually proposing something that can't be
20 done because it would -- even if it was approved by
21 the voters, it conflicts with the Charter which
22 provides that all appropriations have to be done on
23 the authority of Council.

24 This is a proposed ordinance. A proposed

1 ordinance cannot be contrary to the charter. So it's
2 proposing something that essentially is a nullity.
3 So if you're not proposing something that could
4 actually happen, you're not proposing legislation.

5 But just as important is that it's
6 proposing something which just changes the process
7 under which the City proceeds with the authorization
8 of funds for lease payments.

9 With regard to the last item, I think I
10 will leave that, so I'm not repetitive, I'm going to
11 leave that to Mr. Tigges to address.

12 CHAIRMAN PREISSE: Do you wish to present
13 any evidence beside the stipulation on these issues?

14 MR. MCTIGUE: No, just the stipulations
15 on that. Yeah, no evidence, just the stipulations.

16 CHAIRMAN PREISSE: Thank you.

17 Mr. Tigges.

18 MR. TIGGES: Thank you, Mr. Chairman,
19 members of the Board.

20 With respect to the question of whether
21 the Arena initiative proposes legislative action, it
22 does not and the reason it does not is because it is
23 a subject on which the City has no authority to
24 legislate; that's because we have an existing lease

1 in place.

2 Now, as Mr. Beard points out, the lease
3 is for 27 consecutive one-year terms starting
4 January 1 and ending December 31 of the calendar
5 year, up to 2039. But if you look at the lease which
6 is under tab 6 of the stipulation, in Section 2.02(c)
7 the lease provides that it automatically renews every
8 year simply upon the annual appropriation being made
9 by the City or the County as the case may be. There
10 is no expiration of the lease overall if the
11 appropriation is made.

12 So going back to look at the initiative
13 petition and the ordinance that it proposes, it very
14 clearly states what it requires and the only thing it
15 requires is a change in the lease, a change in two
16 respects: Add a new term to the lease pertaining to
17 appropriations after January 1, 2016; and this
18 ordinance also proposes to delete the existing
19 reference in the lease to the casino tax moneys being
20 the source of the payments of the lease. Those are
21 the two changes to the contract that the proposed
22 ordinance calls for and that's all the proposed
23 ordinance calls for.

24 But how are those changes to be made if

1 the County or the CFA do not consent, and presumably
2 they would not consent because it would not be in
3 their interest to do so. In the absence of the
4 consent of all three contracting parties, the lease
5 is very clear that it simply cannot be amended.
6 Section 9.02 of the lease says expressly that:
7 Amendments require the consent of all three signing
8 parties, the City, the County, and the CFA.

9 As they -- as the petitioners have
10 stipulated in Stipulation 29, that is not something
11 the City unilaterally can do and, thus, it is not a
12 subject on which the City can legislate. It requires
13 three parties to agree to amend the contract, two of
14 whom presumably will not do so because it will be
15 contrary to their interests.

16 In terms of whether the statements are
17 misleading or not, Mr. McTigue has aptly summarized
18 what the fiscal impact statement says about the cost
19 savings that will result. Bear in mind, the petition
20 does not say "savings may result," it says savings
21 will result to the City of Columbus totaling \$131
22 million and change over the remaining term of the
23 lease.

24 Yet, we can't possibly know that, because

1 if this ordinance were to pass, if it were to be
2 approved by the electorate, there will presumably be
3 a second election that's referenced in this
4 ordinance, sometime before January 1, 2016, for the
5 voters then to decide to approve or not approve
6 continuing appropriations. We can't possibly know
7 the outcome of that election as we sit here. We
8 cannot say with any certainty that savings, quote,
9 will result. Indeed, that's why the petitioners, in
10 Stipulation No. 28, have in fact stipulated and that
11 is now part of this record that there will not be any
12 savings as a result of this ordinance. It's
13 something which, clearly, we cannot know.

14 Lastly, on the question of impairment of
15 contract, that is really the other side of the coin
16 of the question of whether or not this proposes
17 legislative action or not.

18 As I stated, the only thing required by
19 this ordinance, if it passes, is to change the terms
20 of the lease. But that is something that can't be
21 done without either the consent of the other parties
22 or by forcing them to do that. And any attempt to
23 force the change in the lease terms would indeed
24 impair the rights to which the City and the County

1 and the CFA are entitled under the terms of that
2 agreement.

3 That concludes my remarks, Mr. Chairman.
4 There is some evidence I would like to present, very
5 briefly, if I may.

6 MR. ANDERSON: Why don't we --

7 MR. TIGGES: Or would you prefer me to
8 wait until --

9 MR. ANDERSON: You might want all three
10 lawyers to speak to the issue and then call their
11 witnesses.

12 CHAIRMAN PREISSE: It's been suggested by
13 counsel that are three counsel speak.

14 BOARD MEMBER SINNOTT: I would like to
15 inquire of Mr. Tigges.

16 CHAIRMAN PREISSE: I think we may have a
17 question here, Mr. Tigges.

18 BOARD MEMBER SINNOTT: Mr. Tigges, I note
19 that in Beard's affidavit offered in response to the
20 protest that these observations are made on the
21 subject of impairment of contract: "There is
22 absolutely no lease in effect in 2016 when, if
23 approved, this legislation will take effect. The
24 City is committed to the one year lease through no

1 later December 31, 2014.... There is no lease in
2 place in 2016 when our amendment says this will
3 otherwise end, thus there is no lease that could be
4 violated by a 2014 vote." What would be your
5 response to those observations or allegations?

6 MR. TIGGES: That actually, Mr. Sinnott,
7 goes to the issue as to which I have some brief
8 evidence to present, but my response is this: Is
9 that the lease calls for 27 consecutive one-year
10 terms, but they are evergreen terms. They
11 automatically renew every year merely upon the
12 appropriation being made.

13 So to say there is no lease begs the
14 question of whether or not the appropriation will or
15 will not be made. And, if it is made, then the lease
16 automatically renews. It doesn't require any
17 different or further action by any of the parties.
18 It will -- it is essentially an evergreen lease
19 continuing on until 2039.

20 CHAIRMAN PREISSE: Okay. Thank you, sir.

21 Mr. Fitrakis.

22 MR. FITRAKIS: As I understand it,
23 there's three questions that need clarification upon.

24 Let me begin by pointing out that what is

1 applicable here is, again, 731.41 of the ORC. And
2 note again that the history of that, there was a
3 period in U.S. history called "The Progressive Era"
4 from 1901 to 1914 and, within that, this charter was
5 adopted in 1914. And what was at stake, there used
6 to be these things called "big city machines" with
7 big city bosses, where one party would take over the
8 City and all the elected officials and the council
9 people and the mayor would be from that one party.
10 Thankfully, under Ohio law, there is a bipartisan
11 board here today that can rectify that and make sure
12 that doesn't happen again at this point in history.

13 First of all, if you look at the actual
14 lease, which we'll submit into evidence, you'll see
15 on page 7, and let me read in relevant part: "The
16 duration of this Lease Agreement may be renewed by
17 the Lessees...." "May." There's no "shall" there.
18 There's no commandment. "...may be renewed by the
19 Lessees upon the terms and conditions set forth in
20 this Section for a period of one year commencing on
21 January 1 and ending on the following December 31 of
22 the years 2014 through 2039...."

23 The numbers we stipulated to are already
24 passed the first year. Where did we get those

1 misleading numbers? We took them from the lease,
2 Exhibit C, C-1. Yeah, it was misleading because we
3 believed the City, acting in good faith, its
4 optimistic projections that -- on the need for people
5 to gamble. So at a point in time we've got to right
6 what this City says. So now they're turning around
7 and going ha, we weren't optimistic enough, you
8 people are misleading.

9 Moreover, there is nothing in the Charter
10 that requires or denies you having a summary. And it
11 strikes me odd that the people involved and the
12 comments made at the City Council from the City
13 Attorney, as well as the Auditor, are in such outrage
14 over this, when these are the people who referred
15 that out to the City Council, with the advice of
16 their attorney, referred that out, calling it an open
17 meetings law which in fact it closed meetings for the
18 first time in the history of the City. So it seems a
19 little disingenuous that they're playing both sides
20 of this.

21 Not only that, within the lease itself,
22 page 9, Section 3.03, Nonappropriation of Funds. The
23 City reserves the right not to appropriate monies for
24 this lease.

1 The reality is that this is an
2 administrative body and it's under the executive
3 branch of the Secretary of the State. They want you
4 to act like the judicial branch. They want you to
5 stand in the way of people on a pyramid of contracts.
6 There's courts, if that needs to be done, that can do
7 that. Is that -- why should they put you in that
8 position?

9 And even if it happened down the road, it
10 still would be an initiative of the people of
11 sentiment about how we felt in the City of Columbus,
12 because five times we have said no and they did it
13 anyway. Now they're being called on it and now
14 they're outraged because we used their numbers,
15 because we referred to their lease.

16 So this is, again, an administrative
17 body. There's an impairment of contract, leave it up
18 to the courts where it belongs. At least give the
19 people a vote.

20 Thank you.

21 (Applause.)

22 CHAIRMAN PREISSE: Thank you,
23 Mr. Fitrakis. We have a question.

24 BOARD MEMBER HAAS: And I'd like to ask

1 Bob a question for a second, just kind of an abstract
2 question. Say I was mounting a petition drive to ban
3 AK-47s in Columbus. I look in the City crime code
4 and I see that there are 30 people a year killed by
5 AK-47s. If I put in that petition that this would
6 save 37 lives every year, would you advise me to keep
7 that in the petition?

8 MR. FITRAKIS: I would argue that the
9 City Charter is silent on that, and that based on
10 linear extrapolation of statistics that's a perfectly
11 valid number to put there. And, not only that, it
12 then goes to a voting process where your side will
13 argue that, based on that number, that fact, and the
14 other side will make their case and that's how it
15 should be handled.

16 BOARD MEMBER SINNOTT: If I may?

17 CHAIRMAN PREISSE: We have another
18 question.

19 BOARD MEMBER SINNOTT: Mr. Fitrakis, I
20 believe Mr. Beard said, during his opening statement,
21 that the estimate of fiscal impact that appears on
22 the face of the petition is a, quote, bad number,
23 close quote. Would you agree with that proposition?

24 MR. FITRAKIS: That the bad numbers were

1 their projections?

2 BOARD MEMBER SINNOTT: The bad number
3 appears on the face of the petition.

4 MR. FITRAKIS: The City did provide an
5 over-optimistic number to us and we took it at good
6 faith. So it seems a little odd that a one-party
7 authoritarian system, providing bad numbers on a deal
8 that people have five times said we have rejected
9 public funding of Arena, that we would be punished
10 because we used their numbers. That seems to be
11 fundamentally undemocratic.

12 BOARD MEMBER SINNOTT: Mr. Fittrakis,
13 another question. Would you address the standard
14 given to us by the Upper Arlington decision for
15 determination as to whether this is a legislative or
16 administrative act that's the subject of your
17 petition?

18 MR. FITRAKIS: Well, since we've already
19 voted on it five times in the City of Columbus, it
20 may impair the Council from altering their contract,
21 it does not impair the people under the Charter. And
22 that decision itself, the people have a right to an
23 initiative.

24 Now, that initiative, down the road, if a

1 court decides it's an impairment of contract, may
2 become an initiative, really, of sentiment. So my
3 idea is you let the vote go forward and the people
4 vote, realizing that down the road -- I don't see how
5 this administrative body, charged with seeing if it
6 correctly goes forward as an initiative, really needs
7 to jump in and interpret the mind of the Supreme
8 Court. I think we will be able to operate there.

9 And, I mean, in their own lease they can
10 stop payment. And payment is based on actual casino
11 revenue. So, I mean, they're trying, you know, to
12 say, look, they used our numbers, punish them.
13 They're trying to say that this is ironclad. If you
14 read the lease, it isn't. Maybe a court, down the
15 road, might say something, but I don't think it's
16 really up to this body to decide it's become the
17 judicial branch.

18 CHAIRMAN PREISSE: We're joined by
19 Mr. Soulas as predicted.

20 Why don't we proceed in the same
21 chronology and allow the parties to present evidence
22 on these matters that they may wish, on those three
23 grounds.

24 MR. TIGGES: We would call Mr. Beard

1 briefly to address these issues.

2 CHAIRMAN PREISSE: Okay.

3 - - -

4 JONATHAN C. BEARD

5 being first duly sworn, as prescribed by law, was
6 examined and testified as follows:

7 CROSS-EXAMINATION

8 By Mr. Tigges:

9 Q. Good afternoon, Mr. Beard.

10 A. Good afternoon.

11 Q. Would you state your full name for the
12 record, please.

13 A. Jonathan C. Beard.

14 Q. And you are one of the members of the
15 petition committee for the Arena initiative proposal?

16 A. That's correct.

17 MR. TIGGES: Mr. Chairman, may I approach
18 the witness?

19 CHAIRMAN PREISSE: Yes.

20 Q. Let me hand you, Mr. Beard, a copy of the
21 stipulations of fact that the parties have agreed to
22 and have been filed with the Board in this matter.
23 If I could ask you to turn, first of all, to the
24 Stipulation Exhibit 2 that appears behind No. 2.

1 Do you have it, sir?

2 A. Yes, sir.

3 Q. Do you recognize that as the form of the
4 Arena initiative petition?

5 A. Yes, it is.

6 Q. And let me ask you, sir: Who wrote this
7 initiative petition?

8 A. It was a group effort, sir.

9 Q. Were you a part of the group?

10 A. Yes, I was.

11 Q. Focusing specifically on the first page
12 of Stipulation Exhibit 2, the fiscal impact
13 statement. Do you see that?

14 A. Yes, sir.

15 Q. And it says: "This amendment will result
16 in savings for the City of Columbus in amounts
17 ranging from \$3.9 to \$7.9 million per year, and
18 totaling approximately \$131,165,157 over the
19 then-remaining period of the lease." "Over the
20 then-remaining period lease." What does that last
21 phrase mean, sir, "over the then-remaining period of
22 the lease"?

23 A. Yeah. So this means if the voters
24 approve this initiative, payments will stop on

1 November 1st, 2016. This -- if you look at Exhibit C
2 of the lease agreement between the City and the CFA,
3 this is a schedule of amounts required from the City
4 to fully pay off the bonds. Once those bonds are
5 fully paid off, then the City's obligation to pay
6 ends.

7 Q. You're referring --

8 A. So this is --

9 Q. You're referring to page C-1 attached to
10 the lease agreement?

11 A. Yes, sir.

12 Q. And if you look at tab 7 of the
13 stipulations, do you recognize 7 as the lease
14 agreement?

15 A. Yes, I do.

16 Q. And page C-1 is the very last page; is
17 that correct, sir?

18 Oh, I'm sorry, I said 7, I misspoke, I
19 apologize, Mr. Chairman.

20 Tab 6 is the lease agreement, correct?

21 A. Yes, it is.

22 Q. Tab 7 is actually the sub-lease, correct?

23 A. That's correct.

24 Q. And Exhibit C, page C-1 to the lease is

1 the very last page of tab 6 of the stipulation?

2 A. Yeah.

3 Q. All right. And are you saying,
4 Mr. Beard, that Exhibit C to the lease, page C-1, is
5 the source you used to come up with the figure that
6 appears in the fiscal impact statement, \$131 million
7 and some change?

8 A. Yes, sir. That would come from the City
9 portion there. Again, my amount's ranging from that
10 \$3.9 million or so to \$7.9 million as stated in the
11 fiscal impact statement.

12 Q. And in that fiscal impact statement, the
13 last phrase, the "then-remaining period of the
14 lease," what is the duration of that period to which
15 you're referring to?

16 A. That would be from 2016 when payments
17 would stop until 2039 which is the payment schedule
18 on the box.

19 Q. All right. Now, back to Exhibit C to the
20 lease, tab 6, the last page, the heading of Exhibit C
21 is "Alternate Amount of Lessees Rent When No Bonds
22 Are Outstanding. Do you see that, sir?

23 A. Yes, sir.

24 Q. What do you understand that to mean?

1 A. I understand that to mean if the City
2 does not run a deficit in terms of what the casino
3 tax receipts generate, the 25 percent that goes to
4 the CFA, and the amount of the payment due in that
5 year to fully pay off that year's bonds. So the City
6 makes that payment every year, it would be, you know,
7 in 2016, let's say, it would be \$3.66 million.

8 Q. Why does it say "Alternate Amount Of
9 Lessees Rent," sir? Do you know?

10 A. I'm not sure.

11 Q. Are the bonds outstanding presently?

12 A. They will be upon this first year's
13 payment, about 766,000.

14 Q. The bonds have not been paid off, have
15 they, sir?

16 A. No. I'm sorry, when you say that, what
17 do you mean?

18 Q. The CFA bonds, the bonds issued by the
19 Convention Facilities Authority, those bonds are
20 still outstanding, are they not?

21 A. They are, yes.

22 Q. Approximately \$10 million worth of those
23 bonds is held by the State of Ohio?

24 A. That's my understanding.

1 Q. And the State of Ohio has first priority
2 of repayment from the CFA?

3 A. Uh-huh.

4 Q. "Yes"?

5 A. I believe so.

6 Q. And Exhibit C to the lease, that sets
7 forth the amount of rent to be paid on the lease
8 after the bonds are retired; isn't that true, sir?
9 Do you know?

10 A. I don't understand. Try that again.

11 Q. After the bonds are repaid, the amount of
12 the lease payments will be the amounts set forth on
13 Exhibit C to the lease, correct, sir?

14 A. No, that's not my understanding at all.
15 This is what I would call an amortization schedule on
16 the bonds.

17 Q. Would you call -- you would call page C-1
18 an amortization schedule?

19 A. Yeah. The amount of bond payment --
20 amount of lease required in each year to pay the
21 bonds for that year.

22 If any payment in the year is short,
23 that's where we get to the no-bonds are outstanding,
24 then there would be bonds outstanding.

1 Q. For so long as the bonds were
2 outstanding, the City's rent is a specified
3 percentage of total casino tax receipts, correct,
4 sir?

5 A. That's correct.

6 Q. And then after those bonds are paid off,
7 the City's rent becomes the amounts set forth on
8 Exhibit C-1.

9 A. No, not at all.

10 Q. Take a look at page 3 of the lease, sir,
11 tab 6. The definition of "Lessees Rent." Do you see
12 that, sir?

13 A. Yes.

14 Q. Have you read that before?

15 A. I have.

16 Q. And you see where it says Part (B),
17 "during each calendar year when no Bonds are
18 Outstanding," -- this carries over to page 4 now --
19 "during each calendar year when no Bonds are
20 Outstanding, for each Lessee, the amount calculated
21 in (A) above," -- which is the percentage of casino
22 tax revenues -- "but only until the amount of Lessee
23 Rent received from such Lessee during such calendar
24 year equals the respective amount shown as such

1 Lessee's portion for such year in Exhibit C hereto."

2 Do you see that?

3 A. Yes, sir.

4 Q. So Exhibit C applies when no bonds are
5 outstanding.

6 A. Correct. Those are the projections of
7 what's required each year to satisfy the bonds
8 through 2039.

9 MR. TIGGES: Thank you, Mr. Chairman. I
10 have nothing further.

11 MR. MCTIGUE: No questions.

12 CHAIRMAN PREISSE: We'll proceed with
13 Mr. Fitrakis.

14 - - -

15 DIRECT EXAMINATION

16 By Mr. Fitrakis:

17 Q. Mr. Beard, in drawing up your summary,
18 where did you take your numbers from?

19 A. The numbers came from the lease agreement
20 between the City and the Franklin County Convention
21 Facilities Authority.

22 Q. In part, those numbers are wrong because
23 of the lack of casino revenue?

24 A. Yeah. These are the numbers, these were

1 the best numbers at the time we started circulating
2 the petition and actually through circulation. It's
3 only been within the last month or so when we found
4 out those numbers are very wrong and are projected,
5 with all the assumptions used in all the loan
6 documents and lease documents, you know, you start
7 with that deficit of 766,000 in 2013, and it grows,
8 every year there's more deficit, so it's a
9 never-ending debt essentially.

10 Q. So it's your understanding that if the
11 City wishes to go through with this contract, they
12 would simply refer a vote to the people without any
13 -- without any interruption in the contract?

14 A. I'm sorry, say that again.

15 Q. Yeah. Is that -- before this contract
16 could be cut off, the City, even if your initiative
17 passes, the City could in fact refer it out and
18 continue the contract, could they not?

19 A. That's exactly right. And, in fact, the
20 only thing -- our initiative did not require a vote.
21 It essentially restates, I think it's Section 45 of
22 the City Charter that says a vote of the people has
23 to be overturned by another vote of the people; that
24 Council can't legislatively do it. So that's all it

1 essentially does is recognize that charter provision.

2 Q. Last question: Is this a legislative act
3 you're amending?

4 A. This is clearly not a legislative act.
5 This is an amendment of an existing ordinance; that
6 is, by definition, legislative. The, you know, the
7 legislation sets the groundwork for any
8 administrative contract assigned after that, sets the
9 groundwork, sets the parameters, sets the frame. And
10 that's exactly what was approved by the Columbus City
11 Council in Ordinance 1596-2011. We are seeking to
12 amend that ordinance and it's clearly legislative.

13 I would say a couple other things as
14 well. Certainly the lease term is outlined clearly
15 in Section 2.02 of the lease agreement and that is a
16 one-year contract subject to annual renewal.

17 I would call the Board's attention to the
18 fact that there are specific provisions in Section
19 3.03, Nonappropriation of Funds, and that
20 specifically outlines the fact that Council does not
21 have to approve funds in any of the subsequent
22 contracts.

23 I would specifically say in sections I
24 think it's 7.01, that nonappropriation of funds do

1 not end in the event of default under the lease
2 agreement. So the City very clearly maintains every
3 right to not appropriate funds in any year of the
4 proposed amendment. And then without -- with no
5 fault, the contract terminates or the City loses its
6 leasehold rights.

7 MR. FITRAKIS: No further questions.

8 CHAIRMAN PREISSE: Okay. Any questions?

9 BOARD MEMBER HAAS: No.

10 CHAIRMAN PREISSE: Prosecutor -- we have
11 been joined by Nick Soulas. Do you gentlemen wish to
12 make any statements?

13 MR. SOULAS: No. At this point, not as
14 yet, I don't know, and I apologize for arriving late,
15 I'm not sure where we stand in the presentation of
16 the evidence. After the initial questions have been
17 addressed, if you have any questions of us, we'll
18 certainly be happy to try to answer those.

19 CHAIRMAN PREISSE: Okay.

20 BOARD MEMBER SINNOTT: Mr. Soulas, if I
21 may, since you weren't here for the early part of the
22 proceedings, the Board asked for the presentation of
23 evidence and argument on three particular grounds of
24 the protest relative to the Arena initiative.

1 MR. SOULAS: Okay.

2 BOARD MEMBER SINNOTT: One was whether
3 there is a material misrepresentation of fact
4 appearing on the fiscal impact statement on the
5 petition; the other was whether there is an
6 impairment of contractual obligation proposed by the
7 initiative; and the third was whether the initiative
8 relates to the performance of a legislative or
9 administrative act.

10 MR. SOULAS: Okay.

11 BOARD MEMBER SINNOTT: The Board has now
12 received arguments and evidence on those particular
13 grounds for protest.

14 MR. ANDERSON: Are they done -- are the
15 parties done with Mr. Beard as a witness or are there
16 any additional --

17 CHAIRMAN PREISSE: Are there --

18 MR. TIGGES: At this point, Mr. Chairman,
19 we are done.

20 MR. MCTIGUE: No.

21 CHAIRMAN PREISSE: "No" meaning you are
22 done.

23 MR. MCTIGUE: I can't hear.

24 CHAIRMAN PREISSE: No questions?

1 MR. MCTIGUE: No questions.

2 CHAIRMAN PREISSE: Mr. Beard, you are
3 excused. Thank you very much.

4 Mr. Tigges, do you have any additional
5 evidence to present?

6 MR. TIGGES: No, your Honor -- I'm sorry
7 -- Mr. Chairman.

8 (Laughter.)

9 CHAIRMAN PREISSE: Thanks a lot, but no
10 thanks.

11 MR. TIGGES: Not on the three threshold
12 issues you've identified. If the Board would wish to
13 hear some closing remarks on those issues, if that
14 may be helpful?

15 MR. ANDERSON: You may want to see if the
16 circulators have any evidence, any additional
17 evidence to put on.

18 CHAIRMAN PREISSE: Okay. I guess I
19 didn't ask if Mr. Fitrakis has any additional
20 evidence he wishes to --

21 MR. FITRAKIS: I would like to call Rick
22 Pfeiffer. Would that be off the -- is this
23 specifically on the three issues only?

24 MR. ANDERSON: Yes, correct.

1 MR. FITRAKIS: If it's on the three
2 issues only, I only have one question for him.

3 CHAIRMAN PREISSE: Mr. Fitrakis has asked
4 Mr. Pfeiffer --

5 MR. ANDERSON: Unless the City Attorney
6 has any objection that they mount to the City
7 Attorney's testimony.

8 (Witness sworn.)

9 MR. ANDERSON: Could you identify
10 yourself for the record, please.

11 THE WITNESS: My name is Richard C.
12 Pfeiffer, Jr. I am the Columbus City Attorney, 77
13 North Front Street, Columbus, Ohio 43215.

14 - - -

15 RICHARD C. PFEIFFER, JR.
16 being first duly sworn, as prescribed by law, was
17 examined and testified as follows:

18 DIRECT EXAMINATION

19 By Mr. Fitrakis:

20 Q. All right. Mr. Pfeiffer, did you write
21 that final paragraph there?

22 A. No.

23 Q. Did it come out under your office under
24 your name?

1 A. Yes.

2 Q. Could you read it to the body?

3 A. The last paragraph?

4 Q. Yes.

5 A. "The potentially fatal defects in the
6 petition submitted to the Clerk that I have
7 identified do not involve interpretation of the City
8 Charter requirements, but rather are primarily
9 matters of the state elections law on which there is
10 no established case law directly on point and
11 therefore require an interpretation of that law.
12 Additionally, resolution of at least one of those
13 issues may benefit, or require, the opportunity for
14 presentation of evidence in a quasi-judicial
15 proceeding, which the Clerk is not permitted to
16 conduct. Accordingly, I have advised the City Clerk
17 that, given her limited discretionary authority here,
18 the Board of Elections is the body best suited to
19 determine whether those deficiencies are fatal to the
20 petition."

21 CHAIRMAN PREISSE: Mr. Fitrakis, can you
22 tell us what document Mr. --

23 MR. FITRAKIS: This is the -- it's the
24 same in both. This is Columbus Fair Campaigns Code,

1 but this is in both of them, so for efficiency we
2 won't call him to read the same paragraph again.

3 MR. ANDERSON: I believe this would be
4 Stipulation Exhibit No. 8, which is a memorandum to
5 the Honorable Andrew J. Ginther from Richard C.
6 Pfeiffer, dated January 6th, 2014, regarding Legal
7 Review of Initiative Petition, and it's found in tab
8 8 of the stipulations.

9 I'm sorry, Mr. Fitrakis, was that
10 correct?

11 MR. FITRAKIS: Correct. It was correct.
12 Thank you.

13 I have no other questions.

14 We would like to call, if we could, on
15 the three key issues, the City Auditor, after the
16 other side gets a chance to talk.

17 - - -

18 CROSS-EXAMINATION

19 By Mr. Tigges:

20 Q. Good afternoon, Mr. Pfeiffer. Are you
21 familiar with the lease agreement, sir?

22 A. Yes.

23 Q. And if you would turn, in the -- may I
24 approach the witness, Mr. Chairman?

1 CHAIRMAN PREISSE: Uh-huh.

2 Q. If you would turn in the stipulation book
3 to tab 6, Stipulation Exhibit 6.

4 A. Say again, please.

5 Q. Stipulation Exhibit 6.

6 A. Yes.

7 Q. Do you recognize that as the lease
8 agreement?

9 A. I do.

10 Q. And if you turn to, turn to page 3 on the
11 bottom of the page, carrying over to page 4.

12 A. Yes.

13 Q. Are you familiar with the definition of
14 "Lessees Rent" contained in the lease?

15 A. Yes.

16 Q. And does that provide for two different
17 kinds of rent to be paid by the City? One, while the
18 bonds are outstanding; and, a second, while the bonds
19 are not outstanding?

20 A. Yes.

21 Q. And so Part (A) under Lessees Rent, that
22 is the rent payment while the bonds are outstanding?

23 A. Yes.

24 Q. And Part (B) is what the lease payment

1 will be once the bonds are paid off?

2 A. Yes.

3 Q. And Part (B) refers to Exhibit C,
4 correct, sir?

5 A. Yes.

6 Q. And that's the very last page of the
7 lease, page C-1?

8 A. Say again.

9 Q. Page C-1, the very last page of the
10 lease.

11 A. You will have to help me with that,
12 please.

13 Q. I think the easiest way to do it is
14 just --

15 A. I'm at C-1.

16 Q. And that is entitled "Alternate Amount of
17 Lessees Rent When No Bonds are Outstanding," correct?

18 A. Yes.

19 Q. And do I understand correctly that the
20 rent payments set forth in Exhibit C to the lease
21 only apply after the bonds are paid off, are no
22 longer outstanding?

23 A. Yes.

24 MR. TIGGES: Thank you. Nothing further.

1 CHAIRMAN PREISSE: Anything else for
2 Mr. Pfeiffer?

3 (No response.)

4 CHAIRMAN PREISSE: I think you're
5 excused. Thank you, sir.

6 MR. FITRAKIS: We'd like to briefly call
7 Auditor Dorrian on the issue of the bonds.

8 CHAIRMAN PREISSE: On the issue of the?

9 MR. FITRAKIS: The first three issues,
10 the key issues.

11 CHAIRMAN PREISSE: Mr. Dorrian.

12 (Witness sworn.)

13 MR. ANDERSON: Could you identify
14 yourself for the record, please.

15 THE WITNESS: My name is -- excuse me.
16 My name is Hugh J. Dorrian, City Auditor for the City
17 of Columbus, Ohio.

18 MR. ANDERSON: Thank you.

19 - - -

20 HUGH J. DORRIAN
21 being first duly sworn, as prescribed by law, was
22 examined and testified as follows:

23 DIRECT EXAMINATION

24 By Mr. Fitrakis:

1 Q. Can you take a look at that? Is that a
2 summation of an e-mail that you sent to Jonathan
3 Beard regarding shortfalls in the numbers currently
4 that differ from the original projections?

5 A. It is a listing of the actual collections
6 of casino tax revenues which I did in fact send to
7 Mr. Beard.

8 Q. Those differ from the original
9 projections.

10 A. Yes, they do.

11 CHAIRMAN PREISSE: Could you identify
12 what you handed to Mr. Dorrian?

13 MR. FITRAKIS: I've handed, as he stated
14 under oath, and I can give the Board copies, now we
15 have them or if you want to wait until -- did you
16 want me to enter it into evidence now?

17 MR. ANDERSON: Probably.

18 MR. FITRAKIS: That was an e-mail on
19 which projections were made showing a shortfall in
20 the original projections by the City which would
21 explain why the numbers are bad.

22 BOARD MEMBER SINNOTT: Mr. Fittrakis, is
23 that a stipulated exhibit?

24 MR. FITRAKIS: No. This is an exhibit

1 that was filed. I thought we would elicit this under
2 oath, because we had no notion -- as a public record,
3 so he could attest that he sent the e-mail which he
4 did.

5 BOARD MEMBER SINNOTT: Perhaps you would
6 want to share that with counsel for the protestors.

7 MR. FITRAKIS: Yeah, let me see a couple
8 for the other side.

9 Q. (By Mr. Fittrakis) And this -- the next
10 thing I have is in fact a projection, a linear
11 extrapolation of loss rates which does show there
12 would be savings because of the loss rates. Are you
13 familiar with that? Did Mr. Beard send that to your
14 office?

15 A. He may have, but I have not read it.

16 Q. Right. You haven't read it.

17 A. No, I have not read it.

18 Q. This is in fact an exhibit that's in the
19 record that shows there's a far greater projected
20 loss. Is it \$1.4 million?

21 MR. BEARD: \$1.9 billion.

22 MR. FITRAKIS: \$1.9 billion.

23 CHAIRMAN PREISSE: Once again, we don't
24 have what you're --

1 MR. FITRAKIS: It should be in the
2 material that was already put forth.

3 I have no further questions for the
4 Auditor, other than there's one thing I wanted to
5 ask.

6 Q. If petitioners went to your office and
7 were at the wrong office, would it not be your
8 practice to direct them to the correct office, or
9 would you accept a petition?

10 A. I would accept their petition.

11 Q. Do you think the petition then should be
12 invalidated because you accepted it as a public
13 official?

14 MR. MCTIGUE: Objection. It calls
15 clearly for a decision that this board has to make.

16 MR. FITRAKIS: Well, this is the Auditor.
17 It's his office.

18 MR. MCTIGUE: You're asking him for a
19 legal conclusion.

20 MR. FITRAKIS: I'm asking him for his
21 personal, as the elected auditor --

22 MR. MCTIGUE: You're asking him for a
23 decision on election law.

24 MR. FITRAKIS: No, I'm not. I'm asking

1 him what is the policy of the office.

2 CHAIRMAN PREISSE: I think maybe you're
3 straying beyond what we're hoping to --

4 MR. FITRAKIS: Well, this goes to the
5 complaint and you told us to be efficient. I'm just
6 trying to get to the policy while he's here under
7 oath, but I'll wait.

8 CHAIRMAN PREISSE: Any further questions
9 for the Auditor?

10 MR. TIGGES: No questions.

11 MR. MCTIGUE: No questions.

12 THE WITNESS: Mr. Chairman, may I offer a
13 comment pertaining to some earlier comments that were
14 made?

15 CHAIRMAN PREISSE: Sure.

16 THE WITNESS: Earlier, during this
17 meeting, there were comments that referred to issues
18 being placed before the voters five times on various
19 athletic complexes or entertainment venues and so
20 forth; the voters had defeated them five times.
21 That, by itself, is true, but it is not inclusive.

22 The fact is such venues were presented
23 before the voters six times. The five times they
24 were defeated called for a tax increase. The one

1 time it was approved by the voters, approximately
2 60 percent of the voters approved it, it did not call
3 for a tax increase. And the whole concept of putting
4 this agreement together, the underlying issue here
5 was we were not going to seek or allow a tax increase
6 through this agreement.

7 So the statement of five times before the
8 voters only pertains to cases where there were tax
9 increases being sought. In the one case where there
10 was not a tax increase being sought, the voters
11 approved the issue.

12 And forgive me for saying "I," but I've
13 been there during all six of those issues.

14 Thank you, sir.

15 CHAIRMAN PREISSE: Thank you,
16 Mr. Dorrian.

17 MR. ANDERSON: How would -- may I ask a
18 procedural question which the court reporter raised.
19 How do we want to label these exhibits that you've
20 just placed, Mr. Fitrakis? Petitioner's 1 and 2?

21 MR. FITRAKIS: Are you labeling the
22 exhibits entered here different than the ones that
23 were --

24 MR. ANDERSON: I think just to

1 differentiate those from what the Board moved,
2 itself.

3 MR. FITRAKIS: That's fine with me
4 whatever's convenient.

5 MR. ANDERSON: Thank you.

6 CHAIRMAN PREISSE: Did we name them?

7 MR. ANDERSON: Yes. Protestor's -- I'm
8 sorry, Petitioner's 1 and 2.

9 CHAIRMAN PREISSE: Any more evidence,
10 Mr. Fitrakis?

11 MR. FITRAKIS: Not on those three issues.

12 CHAIRMAN PREISSE: Very well.

13 BOARD MEMBER HAAS: I guess, just another
14 question, another abstract question for Bob. If I've
15 got a mortgage, it's a variable rate and it renews
16 itself every couple of years, I still have a
17 mortgage, right? Ergo, a contract.

18 MR. FITRAKIS: Well, from what I could
19 tell with the recent collapse of the market, that's
20 questionable. But it's a well-known matter of fact
21 that many people who have mortgages were incorrectly
22 foreclosed on, so I can't draw a conclusion on that.

23 BOARD MEMBER HAAS: So you wouldn't say
24 it's a contract?

1 MR. FITRAKIS: I think what was on paper
2 would -- would constitute a contract, but the
3 question is whether or not that contract impairs the
4 right of the people, essentially a social contract,
5 which is what the City Charter is in the plain
6 language which allows them to vote to amend an
7 ordinance. So I think if there was an addendum to
8 your mortgage that allowed you to vote yourself out,
9 it would be a similar contract to what we're talking
10 about now.

11 CHAIRMAN PREISSE: Okay. Do you
12 gentlemen from the prosecutor's office have anything
13 to add at this point?

14 MR. SOULAS: I -- we have no question of
15 anything -- any of the proceedings, Mr. Chairman, but
16 I wasn't sure if you wanted to ask for a final
17 summation, a closing statement with respect to the
18 threshold issue.

19 CHAIRMAN PREISSE: I think we may be at
20 that point if you are satisfied.

21 MR. ANDERSON: Yes.

22 CHAIRMAN PREISSE: We are at that point,
23 so we'll ask for those summary statements.

24 MR. MCTIGUE: Mr. Chairman, members of

1 the Board, with regard to the three, I'd like to call
2 them the three "initial issues" as opposed to
3 "threshold," because it seems to imply there may be
4 some, you know, more validity to those than others.

5 With regard to these, let me address
6 just, I just want to address one of the three, and
7 that's the thing about the number issue on the
8 summary. The summary is there to, and the fiscal
9 impact statement is there, on the front page of the
10 petition, to encourage people to sign the petition or
11 to at least give them information to make up their
12 mind on whether or not they want to sign the
13 petition.

14 And we've had a lot of back and forth
15 here about how the number's wrong because apparently
16 it should be higher. That's missing the point. It's
17 not about whether the number is bad because it should
18 be a different number because casino revenue is down.
19 That's not the issue.

20 You have to look at what is in the
21 protest. The protest is that the number -- or, that
22 the statement that this amendment will result in
23 savings to the City ranging from 3.9 to 7.9 per year,
24 that is a false statement on its face because it

1 presumes that -- that the -- that either -- it
2 presumes one of two things: It presumes either that
3 this -- there will not be an election before 2016 on
4 whether to continue lease payments, or it presumes
5 there will be an election and that the voters will
6 vote to not continue.

7 The point is this: This is a
8 self-contained, you know, what they're putting forth
9 as a proposed amendment to an ordinance, it's
10 self-contained. The only thing that this does is it
11 says -- that this proposed ordinance does, it says
12 that there will be no more payments until approved by
13 the voters or unless -- until and unless approved by
14 the voters.

15 Now, that means that they're -- that
16 they're assuming that either it's not going to get to
17 the voters which would result in savings, either this
18 or some higher number apparently, or they're assuming
19 that it will go to the voters but the voters will
20 vote no. That's the problem here.

21 They're telling people to sign this
22 petition because by signing this petition this is
23 what we're going to save, this amount of money, we're
24 going to save millions and millions of dollars by you

1 signing this petition and putting this issue on the
2 ballot. But this ordinance doesn't do that. It's
3 what comes later. Either no election is held or --
4 for the subsequent election, or the subsequent
5 election is held but the voters turn it down.

6 This has to be truthful. This fiscal
7 impact statement has to be truthful for this proposed
8 amendment, not for what happens next, which may or
9 may not happen.

10 MR. TIGGES: Thank you, Mr. Chairman,
11 members of the Board. I'd like to focus my remarks
12 on these threshold issues.

13 On the misleading nature of the statement
14 in the fiscal impact statement of \$131 million of
15 so-called savings. What we heard Mr. Beard admit is
16 that he used Exhibit C to the lease, page C-1, as his
17 source to come up with that \$131 million number, but
18 he didn't understand what page C-1 is. He said he
19 views it as an amortization schedule.

20 But, as the City Attorney testified and
21 if you look at the definition of "lessees rent" right
22 in the lease agreement, there are two types of rent.
23 There's Part (A) rent which is rent when the bonds
24 are outstanding, as they are; and there's Part (B)

1 which is rent after the bonds are paid off. Part (B)
2 rent is the listing on page C-1. That's what
3 Mr. Beard used for his number, but that document
4 doesn't even apply because the bonds are still
5 outstanding. The number is simply flatly wrong.
6 Mr. Beard's own testimony acknowledges that based on
7 what he thought it was and it clearly is not that.

8 So, in addition to all the problems with
9 that fiscal impact statement we've already covered,
10 the reality is the number just doesn't fit the source
11 document that was used.

12 Thank you, Mr. Chairman.

13 CHAIRMAN PREISSE: Thank you.

14 MR. FITRAKIS: Okay. Again, if you look
15 under home rule in the Charter, there's nothing that
16 prohibits the rights of the people to bring a
17 petition. Sure, you could say we were foolish to
18 rely on the numbers of the City, but that should not
19 impair the right of the people to vote on this.

20 First of all is that ours is not -- ours
21 is only speculation because we relied on speculative
22 numbers in public records. So why should we be
23 punished for doing that. And the City, by its own
24 process of referral, closes meetings and calls it --

1 calls it -- and calls it an open, you know, meetings
2 act. So they have summaries all the time on their
3 legislation and on their referendum. This board
4 cannot now say that the people can't do what the City
5 does. The same standards should apply.

6 And, of course, Mr. McTigue is
7 speculating on future elections. We're speculating
8 on their numbers. He's speculating on future
9 elections prior to 2016 that no one's even
10 circulating petitions for.

11 And if that statement is misleading,
12 which is not prohibited by the home rule charter but
13 is the sovereign right of the people, it's only
14 misleading because they don't have the needed revenue
15 from the casino and, hence, the bonds are going to be
16 outstanding now to 2042.

17 So they turn around and go oh, they're
18 not getting -- there's not enough casino revenue and
19 you relied on those numbers; hence, there's
20 outstanding bonds. "Outstanding" means they haven't
21 paid them within a year. We're willing to concede
22 that. We're willing to concede we went under
23 optimistic numbers. Why should that impair our right
24 to vote?

1 Thank you.

2 CHAIRMAN PREISSE: Thank you,
3 Mr. Fitrakis.

4 MR. MCTIGUE: Sir?

5 CHAIRMAN PREISSE: Do you want to make a
6 another statement?

7 MR. MCTIGUE: Just a short rebuttal. And
8 I think it's useful at this point especially since
9 it's been raised about, you know, five or six times
10 by the petitioners which is that the summary and the
11 fiscal impact are not something that's required on
12 the petition and they cite Revised Code Section
13 731.41 which basically says if you have a charter
14 that has provisions for initiative and referendum
15 then you do not follow the State-prescribed
16 procedures.

17 But I think it's really important because
18 -- and if I don't say it now we're just going to hear
19 it over and over and over before we go home. And the
20 Ohio Supreme Court has specifically addressed that
21 argument that they're making. And the Supreme Court
22 has said and they've said it with regard to the
23 exercise of initiative and referendum by the City of
24 Columbus that if your -- if your charter also, if it

1 contains provisions on initiative and referendum, but
2 if it also incorporates state law that is not
3 inconsistent, then you must follow both, you must
4 follow the charter and you must follow the state law
5 requirements. The case law is absolutely clear on
6 this.

7 So the question becomes only whether or
8 not -- it's not -- it's about whether the charter
9 conflicts with the specific provision of the state
10 law, okay? That becomes the legal issue. They have
11 to follow state law that does not conflict.

12 Now, with regard to the issue about the
13 number. It's not about speculating about the number,
14 okay? I didn't say that. It's about speculating
15 about what's going to happen next.

16 They're stating that there is X amount of
17 savings by putting this issue on the ballot and
18 approving this issue, but that's not true because
19 they're speculating, that number comes from their
20 speculation as to what's going to happen next, that
21 either there's not going to be another election or,
22 if there is, the voters are going to say no to
23 further payments. It's not about speculating about
24 specific numbers, it's about speculating about what

1 happens next. That's my point.

2 Thank you.

3 CHAIRMAN PREISSE: Thank you.

4 Final thought?

5 MR. FITRAKIS: Yes.

6 Again, what Mr. McTigue is suggesting is
7 that we take a one-party system in the City, with
8 defects and the fact that it hasn't updated its
9 charter and we allow them to be called inconsistent
10 with state law.

11 On the other hand, I would refer to this
12 language: "The potentially fatal defects in the
13 petition submitted to the Clerk that I've identified
14 do not involve interpretation of the City Charter
15 requirements, but rather are primarily matters of
16 state...law on which there is no established case
17 law." So I'm glad Mr. McTigue realizes there's case
18 law right on point. I'm going with the City Attorney
19 in this case in his under oath testimony and in fact
20 the document that's in evidence.

21 Thank you.

22 CHAIRMAN PREISSE: Okay. Well, we've
23 heard both sides generally and some good discussion
24 and Q and A here. Does the Board have any further

1 comments, deliberation, or consideration here?

2 BOARD MEMBER HAAS: I guess I just have a
3 quick comment. I think that I heard both attorneys
4 agree that there's speculation in the petitions,
5 whether that number is based on who put it out is
6 really not the issue. I think that, to me, I think
7 that this body, along with the other boards of
8 elections, takes very seriously ballot language and
9 petition language and that campaign promises aren't
10 the place to put those.

11 I think -- I think that the work that
12 Mr. Beard and company did is commendable. I think
13 that the promotion of an idea is always a good thing
14 and I want to commend you for it, but I think I'll --
15 I'll go ahead and make a motion that we move that the
16 Board uphold the protest against the "Arena Bailouts
17 Demand a Vote Petition" and not place the issue on
18 the May 6, 2014 Primary Election Ballot.

19 DIRECTOR ANTHONY: Is there a second?

20 BOARD MEMBER SINNOTT: There is.

21 DIRECTOR ANTHONY: All those in favor,
22 say aye.

23 BOARD MEMBER SINNOTT: Perhaps there
24 should be some discussion.

1 CHAIRMAN PREISSE: Some discussion.

2 DIRECTOR ANTHONY: Any discussion?

3 BOARD MEMBER SINNOTT: Yes, Mr. Chairman,
4 if I may. These are my thoughts on why I seconded
5 the motion. I do think that this board is now called
6 upon to serve as a quasi-judicial body. And on the
7 matters of which we have received evidence and
8 argument today, it seems impossible to conclude that
9 there is not a material misrepresentation that
10 appears on the first page of the petition that's
11 designed to induce electors to sign the petition.

12 The petition reads: "Fiscal Impact: This
13 amendment will result in savings for the City of
14 Columbus in amounts ranging from \$3.9 to 7.9 million
15 per year, and totaling approximately \$131,165,157
16 over the then-remaining period of the lease."

17 There is, however, a stipulation in which
18 all parties have entered, Stipulation No. 28, which
19 says, quote, If the ordinance proposed by the
20 initiative petition is placed on the ballot and
21 approved by the electors, such approval will not
22 result in any savings for the City of Columbus.

23 What's more, Mr. Beard pointed out today
24 that the number that appears on the face of the

1 petition, plainly designed to induce electors to sign
2 the petition, is a, quote, bad number, close quote.

3 I think there was a material
4 misrepresentation on the face of the petition that
5 was designed to induce electors into signing the
6 petition.

7 Beyond that, the matter that is addressed
8 by the petition seems to me to be plainly an
9 administrative one as the Supreme Court as described
10 a distinction between administrative and legislative
11 acts in the Upper Arlington decision from 2008.
12 We've really not heard any argument, as a board, that
13 would support a contrary conclusion from the
14 proponents of the petition.

15 And then, finally, I am persuaded that if
16 this initiative were to be enacted that it would
17 impair existing contractual obligations; and, as the
18 Supreme Court has taught us, an issue of this sort
19 cannot do.

20 So for all three of those reasons, I
21 second Mr. Haas's motion to keep this particular
22 initiative off the ballot.

23 DIRECTOR ANTHONY: All those in favor,
24 say aye.

1 (All eyes heard.)

2 DIRECTOR ANTHONY: The motion carries.

3 MR. MCTIGUE: Mr. Chairman?

4 CHAIRMAN PREISSE: Yes.

5 MR. MCTIGUE: May I ask a question?

6 CHAIRMAN PREISSE: Yes.

7 MR. MCTIGUE: Since the Board has already
8 voted on the protest, but did not allow us to get
9 into or offer the evidence on all the other grounds
10 in the protest, I feel the need to say that we need
11 to put that into the record. I realize that we are
12 still -- we still have to deal the other protest on
13 the Fair Campaigns Code. There's an overlap in that
14 case in terms of the grounds in that protest that are
15 also asserted in the protest on the Arena.

16 I would suggest that I be allowed to
17 offer that evidence in the protest by Mr. Rothenberg
18 and to proffer that evidence to be submitted as a
19 part of the record on the Arena protest as well. I'm
20 not asking to do it twice, I'm just saying I want it
21 to be absolutely clear here, in case there's an
22 appeal to court, that we have evidence in the record
23 related to Mr. Smith's protest on the other grounds
24 that he's asserted in his protest.

1 BOARD MEMBER SINNOTT: Mr. Chairman, if I
2 may.

3 Mr. McTigue, we're about to move, I
4 believe, on to the finance initiative. As you
5 created your record on that subject, would you also
6 be presenting evidence in the record to support your
7 protest on the Arena issue? Is there complete
8 identity of evidence going forward?

9 MR. MCTIGUE: Yes, I believe there is
10 complete identity in terms of that evidence.

11 BOARD MEMBER SINNOTT: Such being the
12 case, do you think that would be a sufficient record
13 to address your concerns relative to the Arena
14 subject?

15 MR. MCTIGUE: Well, I think it would be
16 as long as it's understood and it's on the record
17 that it's a proffer of evidence in the protest on the
18 Arena petition.

19 BOARD MEMBER SINNOTT: I suspect the
20 parties would so stipulate.

21 MR. FITRAKIS: I would simply ask this
22 body what is your regular procedure? It seems like
23 you were able to act quite quickly to vote down the
24 petitioners, and now, because of that, you want to

1 continue the trial. I'm not going to stipulate to
2 that. You can do whatever you want, but how I see it
3 is the people's voice has been throttled and this
4 will be a victory for --

5 CHAIRMAN PREISSE: Okay. As to the
6 question --

7 MR. FITRAKIS: -- the people know exactly
8 what's going on here today.

9 CHAIRMAN PREISSE: Okay. As to the
10 question whether we can find a satisfactory method
11 for meeting Mr. McTigue's request, does counsel over
12 here have a suggestion? I don't think we heard any
13 problem here. The Board understands your request and
14 appreciates it.

15 MR. FITRAKIS: If you stipulate our
16 defense into the record along with what he's going to
17 say, I would accept -- we would accept that. I just
18 don't want it to be one-sided where he's up here --
19 as long as the rules apply.

20 MR. ANDERSON: Uh-huh.

21 CHAIRMAN PREISSE: I'm not sure we want
22 to adjudicate something we've already voted --

23 MR. MCTIGUE: Mr. Chairman, a proffer is
24 up to the judicial body or quasi-judicial body, you

1 know, decides whether they're going to allow a
2 proffer of evidence. It not's up -- it doesn't have
3 to be stipulated by the parties.

4 BOARD MEMBER SINNOTT: This is an unusual
5 Board proceeding, so give us a moment to figure out
6 something that is fair and preserving of the rights
7 of all involved.

8 (Discussion amongst the Board members.)

9 BOARD MEMBER SINNOTT: Well, the
10 suggestion that I would make to my colleagues on the
11 Board is that we now proceed with the hearing on the
12 finance issue. And, at the conclusion of that
13 hearing, if there is a party that wants to create an
14 additional record on the Arena issue, then the Board
15 will consider that request at that time.

16 CHAIRMAN PREISSE: Does that satisfy you?

17 MR. MCTIGUE: Certainly. I mean it would
18 simply be a request that everything that was said be
19 proffered in the other case.

20 BOARD MEMBER SINNOTT: I suspect the
21 Board would entertain such a motion.

22 CHAIRMAN PREISSE: Fine. Then I think
23 we're ready to proceed in the second matter.

24 MR. TIGGES: Mr. Chairman, on behalf of

1 Mr. Pikelny, since we don't have a dog in the second
2 matter, may we be excused?

3 CHAIRMAN PREISSE: Yes, as long as you're
4 satisfied with our proposed resolution of
5 Mr. McTigue's concern that may come at the end of the
6 proceeding.

7 MR. TIGGES: That's not an issue. Fine.

8 CHAIRMAN PREISSE: Okay. Mr. McTigue,
9 it's been suggested, and I fully agree, that maybe we
10 take a seven-, eight-minute break here, a pause.
11 Let's be back here in say eight minutes.

12 (Recess taken.)

13 CHAIRMAN PREISSE: I think the
14 appropriate parties are here.

15 MR. MCTIGUE: Mr. Chairman, during the
16 break, Mr. Fitrakis and I had a short conversation.
17 We're going to take things a little out of order
18 here. I'm going to allow him to call one of his
19 witnesses, which is Mr. Dorrian again, so he can ask
20 him one question that he wants to ask him and then we
21 can be done with Mr. Dorrian.

22 CHAIRMAN PREISSE: And this relates to
23 moving forward or reflecting back?

24 MR. MCTIGUE: No. It relates to --

1 MR. FITRAKIS: Both.

2 MR. MCTIGUE: --- the current -- well, it
3 relates to both, but it, you know, it's involved in
4 both petitions, both protests.

5 CHAIRMAN PREISSE: I have no objection
6 here. And then Mr. Dorrian would be free to go.
7 That's kind of both of you. Unless he wants to stay
8 for the duration. Mr. Dorrian is already sworn-in,
9 so he doesn't have to be re-sworn.

10 - - -

11 HUGH J. DORRIAN

12 being first duly sworn, as prescribed by law, was
13 examined and testified as follows:

14 FURTHER DIRECT EXAMINATION

15 By Mr. Fitrakis:

16 Q. Mr. Dorrian, two questions that goes to
17 the -- both of the protests. What would be the
18 policy of your office if people came to you with
19 wrong material, do you think that they shouldn't be
20 allowed to submit that or would you simply forward it
21 to the right office?

22 A. Our policy basically is to accept
23 whatever petitions are given to us. We typically
24 give a receipt to the person or persons giving us the

1 petitions. We time stamp them being received and we
2 file them in our vault, sometimes never to be heard
3 by again.

4 But we do not give advice as to where one
5 must also go. Quite frankly, I feel those are --
6 call for a legal determination. I'm not a lawyer and
7 I'm certainly not the City Attorney. So our policy
8 is to accept them, give a receipt for them, and file
9 them.

10 Q. All right. And the money coming from the
11 casino, whether it's to the bonds or to fund the
12 election, the fair election campaign initiative, is
13 that tax-payer or general-fund money? How would you
14 categorize that?

15 A. I would categorize it as state tax funds.

16 Q. And which -- state tax funds would go
17 into which account of the City?

18 A. They go into multiple accounts or, as
19 well call them, "funds." There is a formula recited
20 in the ordinance that indicates where the funds are
21 to be distributed. I take it, if you wish, I could
22 pretty much recite that formula.

23 Q. No need to.

24 MR. FITRAKIS: Thanks. That's it.

1 MR. MCTIGUE: No questions.

2 CHAIRMAN PREISSE: Okay. Thank you,
3 Mr. Dorrian.

4 MR. MCTIGUE: I understand that
5 Mr. Dorrian and Mr. Pfeiffer are free to go?

6 MR. FITRAKIS: Correct.

7 MR. MCTIGUE: I'd like to call Kenneth
8 Herring.

9 - - -

10 KENNETH HERRING

11 being first duly sworn, as prescribed by law, was
12 examined and testified as follows:

13 CROSS-EXAMINATION

14 By Mr. McTigue

15 Q. Could you state your name, please, and
16 spell your last name.

17 A. Kenneth Herring, H-e-r-r-i-n-g.

18 Q. Okay. Mr. Herring, you are -- you
19 circulated the petition that we're here on today on
20 what's called the Columbus Fair Campaigns Code?

21 A. Correct.

22 Q. Okay. You also were a circulator of the
23 petition on the Arena bailout?

24 A. Yes.

1 Q. Okay. So I want to show you an exhibit
2 here, and I will just represent this is a -- I'm
3 going to show you two exhibits actually, okay?

4 MR. MCTIGUE: And pass out, if you can
5 pass those, I'd appreciate that.

6 Q. It's been stipulated already that the
7 petitions for the two initiatives are part of the
8 record. And I will represent to you that this is,
9 these two exhibits I have here are two what we call
10 "part-petitions," meaning one of the petitions, okay?
11 But just the first page and the last page because
12 that's all I want to ask you about.

13 If you could look at, let's start with
14 this one that has the No. 33 at the top, and this
15 says that this is on the Arena bailout, Arena
16 Bailouts Demand a Vote.

17 I'm going to turn to the second page of
18 this and ask you if that is your signature there,
19 right about in the middle, right there where it
20 says -- well, let's start at the top. It says
21 "Declaration of person circulating section of recall
22 petition." Do you see that?

23 A. Yes.

24 Q. And then there's a name, Kenneth Herring,

1 do you see that?

2 A. Yes.

3 Q. And then down below, a signature and an
4 address, correct?

5 A. Yes.

6 Q. And that's your signature there, right?

7 A. Yes.

8 Q. Okay. And then one more time, a little
9 further down, there's an affidavit of the circulator
10 and a printed name which says Kenneth Herring, and a
11 another signature, Kenneth Herring. Is that your
12 signature as well?

13 A. Yes.

14 Q. Okay. I wanted to ask you about the
15 address that's under your name which is, looks like
16 15 --

17 A. -- 92.

18 Q. -- 1592 Gibbard Avenue?

19 A. Yes.

20 Q. Okay. Is that your residence address?

21 A. That was -- that was my residence
22 address.

23 Q. Okay.

24 A. It was my mother's address.

1 Q. That was your mother's address?

2 A. Yes. I was not on the lease. That's my
3 mother's address.

4 Q. Okay. And do you still live there?

5 A. No. Currently I stay at 361 Clinton
6 Street.

7 THE COURT REPORTER: Stay at where? I'm
8 sorry.

9 THE WITNESS: 361 Clinton Street.

10 CHAIRMAN PREISSE: I'm sorry. We're
11 having a hard time hearing. Do you mind just getting
12 closer to the mic or scoot your chair in.

13 THE WITNESS: I currently stay at 361
14 Clinton Street.

15 THE COURT REPORTER: "Clinton Street"?

16 THE WITNESS: Yes.

17 THE COURT REPORTER: Thank you.

18 Q. (By Mr. McTigue) Clinton Street?

19 A. Yes.

20 Q. In Columbus?

21 A. Yes.

22 Q. Okay. And did you move from Gibbard to
23 Clinton?

24 A. Yes.

1 Q. Okay. When did you move from Gibbard to
2 Clinton?

3 A. The end of 2012.

4 Q. The end of 2012.

5 A. Yes.

6 Q. Okay. And by "end of 2012," we're
7 talking what? October? November? What?

8 A. Around December -- or, early part of the
9 year, earlier, like January maybe. But I do have
10 papers stating that -- I do have papers stating that
11 we currently moved to 361 Clinton Street.

12 Q. You have papers from whom?

13 A. No. Like documentation that we moved
14 currently.

15 Q. I'm trying to pin down when did you move
16 though. Was it in the --

17 A. It was around end of 2012, early 2013.

18 DIRECTOR ANTHONY: Can you speak into the
19 mic? We're having a hard time hearing.

20 THE WITNESS: All right.

21 A. It was, like, around the end of 2012.

22 Q. The end of 2012?

23 A. Yes.

24 Q. Leave it at that?

1 A. Yes.

2 Q. Okay. Now, on here, this exhibit that
3 you're looking at here, okay, this was notarized, the
4 date down at the bottom it says May 22nd, 2013. Do
5 you see that?

6 A. Yes.

7 Q. Okay. And that -- is that when you
8 filled this out?

9 A. Yes.

10 Q. Okay. Including your address?

11 A. Yes.

12 Q. Okay. But that was not your address at
13 that time, correct?

14 A. I was back and forth, a friend of the
15 family does stay there, so I was between residences.

16 Q. But is that your permanent address?

17 A. No.

18 Q. Your permanent address is on Clinton
19 Street?

20 A. Yes.

21 Q. And that was your permanent address when
22 you moved there at the end of 2012?

23 A. Yes.

24 Q. Now, on this other exhibit which has the

1 No. 9 at the top right-hand corner, it is two pages
 2 from one of the part-petitions on the Columbus Fair
 3 Campaigns Code initiative. Do you see that?

4 A. Yes.

5 Q. Now, the second page again, is that your
 6 signature under the declaration of the circulator?

7 A. Yes.

8 Q. Okay. And the address again is 1592
 9 Gibbard?

10 A. Yes.

11 Q. Okay. And then this was completed, it
 12 looks like July 31st of 2013?

13 A. Yes.

14 Q. Okay. But that was not your permanent
 15 residence at that time, correct?

16 A. Correct.

17 Q. Okay. It was Clinton Street.

18 A. Yes.

19 Q. Now, Gibbard Street is where you are
 20 registered to vote, correct?

21 A. Yes.

22 Q. But, again, you don't live there anymore,
 23 correct?

24 A. Correct.

1 Q. I'm sorry?

2 A. Correct.

3 Q. Let me ask you now a couple other
4 questions related to these documents as well. Let's
5 take the campaign finance petition, what I call the
6 "Fair Campaigns Code petition." Do you know about
7 how many of those petitions you circulated and turned
8 in?

9 A. I can't recall.

10 Q. Okay. But it was multiple?

11 A. Yes.

12 Q. The same with the Arena bailout petition?

13 A. Yes.

14 Q. Okay. What was the -- first of all, were
15 you paid to circulate these petitions?

16 A. Yes.

17 Q. Okay. What was the terms? Was it per
18 signature? Per hour?

19 A. Per signature.

20 Q. Per signature?

21 A. Okay.

22 Q. How much per signature?

23 A. I'm not exactly sure.

24 Q. Okay. And who were you paid by?

1 A. Ms. Denise.

2 THE COURT REPORTER: It was who? I'm
3 sorry.

4 THE WITNESS: Ms. Denise.

5 THE COURT REPORTER: Thank you.

6 Q. Was it cash or check?

7 A. Check.

8 Q. Okay. So was the check from Ms. Denise's
9 personal account?

10 A. I'm not exactly sure.

11 Q. Okay. What was, just tell me in your own
12 words, what was the process for, you know, when you
13 were done circulating a petition, you know, where did
14 you turn it in and did you turn them all in at once
15 or over a period of time?

16 A. At once. I would have to sit in front of
17 a notary and make sure that every petition was
18 notarized.

19 Q. Okay. So, for example, on this one it
20 has the number 33 on it.

21 A. Yes.

22 Q. Did the notary place you under oath
23 before you signed this petition?

24 A. Yes.

1 Q. And was that the procedure for every one
2 of the petitions you circulated?

3 A. Yes.

4 Q. So were you placed under oath before
5 signing each one or as a group?

6 A. Before.

7 Q. I'm sorry?

8 A. Before.

9 Q. Before each one.

10 A. Yes.

11 Q. Before you signed each one.

12 A. Yes.

13 Q. Okay. And just to close the record and
14 circle on this, with regard to the other petition
15 which is No. 9 from the Fair Campaigns Code, is that
16 the same process, were you put under oath by the
17 notary for each petition you signed?

18 A. Yes.

19 Q. And you signed in the presence of the
20 notary?

21 A. Yes.

22 Q. And you were paid to circulate that
23 petition as well?

24 A. Yes.

1 Q. Let me ask you: Did you turn -- did you
 2 take -- do you know if you had these all notarized on
 3 the same day? In other words, you bring them all in
 4 at once or was it over a period of time?

5 A. Same day.

6 Q. Same day?

7 A. Yes.

8 Q. And that's true for both petitions?

9 A. Yes.

10 MR. MCTIGUE: Okay. I don't have any
 11 further questions.

12 CHAIRMAN PREISSE: Okay.

13 - - -

14 DIRECT EXAMINATION

15 By Mr. Fitrakis:

16 Q. Mr. Herring, did you know the person who
 17 remained at the address in question, 1592, after your
 18 mom moved out?

19 A. Yes.

20 Q. Did you ever spend any nights there?

21 A. Yes.

22 Q. How many nights do you think you spent
 23 there in a year? More than three?

24 A. Yes.

1 Q. So, in a sense, it was your second
2 residence, was it not?

3 A. Yes.

4 Q. Did you keep personal items there?

5 A. Yes.

6 Q. So, again, wasn't it your mom who changed
7 her address?

8 A. Yes.

9 Q. Did you formally change your address from
10 your official residence?

11 A. No, sir.

12 Q. You sure you weren't paid by the
13 part-petition as opposed to the signature?

14 A. No, sir.

15 Q. So you weren't -- when you brought in a
16 stack of petitions, you weren't -- if you filled one
17 out, you weren't given a set amount for the petition?

18 A. Yes.

19 Q. You were?

20 A. Yes.

21 Q. For the petition.

22 A. For the petition.

23 Q. Not for the signature.

24 MR. FITRAKIS: Okay.

-- --

REXCROSS-EXAMINATION

By Mr. McTigue:

Q. Just so I'm clear on the residence issue. You said that there's a friend at the Gibbard Avenue --

A. Yes.

Q. -- address? What's the person's name?

A. Mr. Henry.

Q. I'm sorry?

A. Mr. Henry.

Q. Who?

A. Mr. Henry.

Q. Henlyn?

A. Claudiee Henry.

THE COURT REPORTER: Can you spell that for me, please?

THE WITNESS: C-l-a-u-d-i-e-e --

THE COURT REPORTER: I'm sorry. One more time.

THE WITNESS: C-l-a-u-d-i-e-e, Henry, H-e-n-r-y.

THE COURT REPORTER: Thank you.

Q. (By Mr. McTigue) And Mr. Henry, was he --

1 when you and your mother were at the address on
2 Gibbard, did Mr. Henry live there too?

3 A. Yes.

4 Q. He lived there too? Okay.

5 And your mother moved and you moved with
6 your mother?

7 A. Yes.

8 Q. But you've gone back to visit Mr. Henry?

9 A. Yes.

10 Q. Is he a person your own age or a friend
11 or what?

12 A. No, he's not my age. He's an older
13 gentleman, but he's a friend of the family.

14 Q. He's a friend of the family?

15 A. Yes.

16 MR. MCTIGUE: Okay. I don't have any
17 further questions. Thank you.

18 - - -

19 REDIRECT EXAMINATION

20 By Mr. Fitrakis:

21 Q. Again, did you live there with your
22 mother with Mr. Henry at any time?

23 A. Yes.

24 Q. So you resided with Mr. Henry and your

1 mother.

2 A. Yes.

3 Q. At that residence?

4 A. Yes.

5 Q. And your mom moved and changed her
6 address?

7 A. Yes.

8 Q. But you still went back and spent nights
9 at that residence, correct?

10 A. Yes.

11 Q. And never changed your official address.

12 A. Yes.

13 MR. MCTIGUE: I'm going to have to ask a
14 follow-up based on that.

15 CHAIRMAN PREISSE: Okay.

16 - - -

17 FURTHER RECROSS-EXAMINATION

18 By Mr. Mctigue:

19 Q. You said earlier that you have papers
20 showing that you changed your address to Clinton. So
21 which is your -- which is your more permanent
22 address?

23 A. Sir, I also said that I was back and
24 forth between addresses, so this was not a actual

1 permanent address if I'm back and forth.

2 Q. Well, how many, in the last 12 months,
3 how many nights, you know, have you slept overnight
4 at the Gibbard Street address in a 12-month period,
5 the last 12 months?

6 A. Six months.

7 Q. Okay. You're saying six months?

8 A. Yes.

9 Q. Okay. And six months at the other
10 address?

11 A. Yes.

12 Q. And where are your possessions at?

13 A. I have some things at 1592 Gibbard Avenue
14 and I have some things at Clinton.

15 MR. MCTIGUE: I don't have any further
16 questions. Thank you.

17 MR. FITRAKIS: One last question?

18 CHAIRMAN PREISSE: One last question.

19 - - -

20 FURTHER REDIRECT EXAMINATION

21 By Mr. Fitrakis:

22 Q. Were you not paid \$22 per petition as
23 opposed to signatures? Does that number sound
24 familiar?

1 A. Yes, sir.

2 Q. So you were paid per petition regardless
3 of the correct signatures.

4 A. Yes.

5 MR. FITRAKIS: That's all.

6 BOARD MEMBER HAAS: I have a question.

7 When you brought in a part-petition, how
8 much were you paid?

9 THE WITNESS: Pardon me?

10 BOARD MEMBER HAAS: When you brought in a
11 part-petition, how much were you paid?

12 THE WITNESS: I would have to complete a
13 full petition, sir.

14 BOARD MEMBER HAAS: So if a part-petition
15 was submitted, you didn't get paid for it.

16 THE WITNESS: Correct.

17 BOARD MEMBER HAAS: And I want to make
18 sure I understood you correctly. Did you say that
19 all of the notarizations happened at the same time?

20 THE WITNESS: Yes.

21 CHAIRMAN PREISSE: And, I'm sorry, I
22 think you were asked where you were registered to
23 vote. Is that right? You asked that?

24 MR. MCTIGUE: Yes.

1 CHAIRMAN PREISSE: And the address was,
2 which address was it?

3 THE WITNESS: 1592 Gibbard Avenue.

4 MR. FITRAKIS: If we can clarify that the
5 petitions, all of the petitions weren't brought in on
6 the same day, but you would bring in a stack of them
7 that you had done on a given day and all of those
8 would be notarized on that day and then, when you got
9 more, you would bring in another stack; is that
10 correct?

11 THE WITNESS: Correct.

12 CHAIRMAN PREISSE: Okay. Any other
13 questions for Mr. Herring?

14 (No response.)

15 CHAIRMAN PREISSE: Thank you.

16 MR. MCTIGUE: I just informed her she
17 could leave.

18 (Laughter.)

19 MR. MCTIGUE: I'd like to call
20 Mr. Mitchell.

21 - - -

22 JAMES MITCHELL

23 being first duly sworn, as prescribed by law, was
24 examined and testified as follows:

CROSS-EXAMINATION

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By Mr. McTigue:

Q. Would you state your name, please, for the record.

A. James Mitchell.

Q. Okay. Mr. Mitchell, I'm going to show you -- you were here during my questioning of the previous witness, correct?

A. Yes.

Q. So the questioning here is somewhat similar.

A. Okay.

Q. I'm putting in front of you two part-petitions, at least the first and last page of two part-petitions, one for the Arena petition and one for the Fair Campaigns Code petition.

A. Okay.

Q. And I'm going turn to, let's deal with the one that has No 42 on it.

A. Uh-huh.

Q. And on the back you'll see a signature under the Declaration of the Circulator. Is that your signature?

A. Yes, it is.

1 Q. And then, further down the page on the
2 affidavit there's a signature, is that your signature
3 as well?

4 A. Yes, it is.

5 Q. And then looking at the other petition
6 which has the No. 1 on it, same question, is that
7 your signature twice on there?

8 A. Yes, it is.

9 Q. Okay. Now, can you tell me what was the
10 process for turning in these petitions and having
11 them notarized?

12 A. I would turn them in, I would gather my
13 signatures once per week, turn them in on Wednesday,
14 and we notarize them and we were paid on Friday every
15 week.

16 Q. Okay. And were you placed under oath by
17 the notary before signing each petition?

18 A. Yes, I was.

19 Q. So, in other words, if you had, let's say
20 you had 10 petitions that week, you were put under
21 oath 10 times?

22 A. Yes, I was. Well, actually, when you say
23 that, we turned in a stack, like I might turn in 30
24 books and the notary authorized me and asked me

1 whether these signatures are to my knowledge, and he
 2 would notarize the signatures I turned in which would
 3 probably be 30 books per week.

4 Q. Okay. So it would be you were put under
 5 oath once a week, more or less.

6 A. Yes.

7 Q. Okay. And it would be for the whole
 8 stack.

9 A. Yes.

10 Q. So did you sign, like, let's say you have
 11 a stack of 30 books one week, did you sign the
 12 affidavit in front of the notary for all 30?

13 A. Yes, right in front of the notary.

14 MR. MCTIGUE: Okay. I don't have any
 15 other further questions.

16 - - -

17 DIRECT EXAMINATION

18 By Mr. Fitrakis:

19 Q. Was it clear to you from the notary that
 20 you remained under oath once you were sworn in and
 21 were in fact affirming each part-petition?

22 A. Can you repeat that again?

23 Q. When you were sworn, put under oath, was
 24 it clear that you were swearing to each individual

1 petition? Say, if you brought in 10, that each of
 2 those you were swearing to individually?

3 A. Correct.

4 MR. FITRAKIS: Okay. I don't have any
 5 further questions.

6 CHAIRMAN PREISSE: Any questions or
 7 comments from the Board?

8 (No response.)

9 CHAIRMAN PREISSE: Okay. Thank you, sir.

10 MR. MCTIGUE: I think, based on where we
 11 are right now, I need to call Brian Rothenberg.
 12 There's not a stipulation that he's a registered
 13 voter in the City of Columbus, so I just need to
 14 establish that.

15 - - -

16 BRIAN ROTHENBERG

17 being first duly sworn, as prescribed by law, was
 18 examined and testified as follows:

19 DIRECT EXAMINATION

20 By Mr. McTigue:

21 Q. Okay. Could you state your name, please?

22 A. Brian Rothenberg.

23 Q. Okay. And, Mr. Rothenberg, are you the
 24 protestor here?

1 A. I am.

2 Q. Okay. And where are you registered to
3 vote?

4 A. 5140 Autumn Fern Drive. It's in
5 Columbus, Ohio 43016.

6 Q. Is your mailing address Columbus or is it
7 another city?

8 A. Because it's 43016, when I bought my
9 unit, they informed me that you could use Columbus or
10 Dublin. They use and the post office uses Dublin. I
11 often use Columbus, myself.

12 Q. Okay. And you actually reside within the
13 corporate boundaries of the City of Columbus and vote
14 in City of Columbus of elections, correct?

15 A. It is off of Avery Road, and I do vote in
16 Columbus elections, Columbus School Board elections,
17 Columbus City elections, I pay my taxes to the City
18 of Columbus.

19 MR. MCTIGUE: Okay. No further
20 questions.

21 - - -

22 CROSS-EXAMINATION

23 By Mr. Fitrakis:

24 Q. On your voter registration did you put

1 down the City of Dublin?

2 A. I have no idea. I do know that's the way
3 in which the post office mails things to my home,
4 they sometimes use Dublin, Ohio, 43016, because that
5 is the post office designation.

6 Q. I think we submitted that into the record
7 that it's Dublin. Have you resided in any other
8 residence outside of the city for at least three
9 nights within the last year?

10 A. For at least three nights?

11 Q. For at least three nights.

12 A. I've traveled more than that.

13 Q. Other than travel.

14 A. Other than travel?

15 Q. Another residence?

16 A. I have.

17 Q. Okay. Have you ever worked for the
18 Democratic party?

19 A. Franklin County or the State?

20 Q. The State.

21 A. I have.

22 Q. Okay. Has Greg Haas ever been any -- on
23 any of the boards of any organizations that you've
24 worked for?

1 A. He has.

2 Q. Which would that be?

3 A. ProgressOhio.

4 Q. And, roughly, what is your salary at
5 Progress Ohio?

6 MR. MCTIGUE: I'll object. How is this
7 relevant?

8 MR. FITRAKIS: Probative value as
9 to political operative for a one-party system.

10 A. ProgressOhio is a 501(c)(3) --

11 MR. MCTIGUE: I have an objection.

12 A. It is not --

13 Q. It's public record what his salary is, is
14 it not? You file your --

15 A. My salary changes year by year.

16 MR. ANDERSON: Hang on, folks. Let the
17 Board deal with the objection on the floor first.
18 Sorry, Mr. Fittrakis.

19 CHAIRMAN PREISSE: Yeah. I think we'll
20 agree with the objection on this point.

21 Q. Would 120,000 in the 990 be correct?

22 A. That would not be correct for the current
23 year.

24 Q. Okay. I'll accept that.

1 Progress -- are you currently involved in
2 any suits against the Republican Governor of Ohio?

3 A. ProgressOhio is involved in suits I am
4 part of.

5 Q. Does one of them involve JobsOhio?

6 A. Yes, it does.

7 CHAIRMAN PREISSE: Any questions?

8 MR. MCTIGUE: I have no further
9 questions.

10 CHAIRMAN PREISSE: Okay. Thanks.

11 MR. MCTIGUE: Can I have one minute here?

12 CHAIRMAN PREISSE: Yeah. Sure.

13 MR. MCTIGUE: I would call Jonathan
14 Beard.

15 Okay. Mr. Beard, since this is a
16 separate record, maybe we ought to swear in the
17 witness again.

18 - - -

19 JONATHAN C. BEARD

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

22 CROSS-EXAMINATION

23 By Mr. McTigue:

24 Q. Mr. Beard, with regard to the two

1 petitions, the Arena Bailout and the Fair Campaigns
2 Code, you notarized many of the part-petitions,
3 correct?

4 A. That's correct.

5 Q. Okay. Did you place the circulators
6 under oath for each petition?

7 A. I placed them under oath for the stack or
8 the number they were presenting to me. Typically,
9 they'd come down with an invoice of how many
10 petitions, part-petitions they signed. So,
11 typically, I refer to that invoice and say for the 15
12 or 18 or 20 petitions, that's what I swear them to,
13 the stack of petitions they present to me.

14 Q. Now, you received a subpoena to come
15 today, correct?

16 A. Yes.

17 Q. And did the subpoena ask you to bring
18 with you your notary log?

19 A. Yes, sir.

20 Q. Okay. Did you do that?

21 A. No, sir. Notaries are not required,
22 under Ohio law, to keep a log and I do not keep a log
23 of that.

24 Q. Okay. Now, you've heard some testimony,

1 I think you were sitting here, on payment to
2 circulators. Just so there's clarity in the record,
3 were they paid per signature or part-petition or
4 what?

5 A. They were paid by part-petition. I think
6 the fee is \$22 per part-petition.

7 Q. Okay. And they were paid by whom?

8 A. They were paid by the Columbus Coalition
9 for Responsive Government, the PAC.

10 Q. Okay. Who's the treasurer of the PAC?

11 A. The treasurer is Kenneth Wilcox.

12 MR. MCTIGUE: I don't have any other
13 further questions. Thank you.

14 CHAIRMAN PREISSE: Mr. Fitrakis?

15 MR. FITRAKIS: I don't have any other
16 questions.

17 CHAIRMAN PREISSE: Thank you, Mr. Beard.

18 THE WITNESS: Thank you.

19 MR. MCTIGUE: Mr. Chair, I am not going
20 to be calling any further witnesses, but I have one
21 more exhibit. I'm not sure where we are. This may
22 be the first exhibit being offered by, in this case,
23 this protest today. So if we could call this
24 Rothenberg 1?

1 MR. ANDERSON: Rothenberg 1 is fine.

2 MR. MCTIGUE: Okay. And I'll pass out
3 copies.

4 And these are actually from the Board of
5 Elections' records showing digital signatures for
6 Denise Benning, and I'm not sure how to pronounce the
7 last name, but my understanding is that Mr. Fitrakis
8 intends to call her as a witness to ask her some
9 questions about this topic.

10 As I said, that is -- yes?

11 MR. SOULAS: I apologize. I did have a
12 question. The other part-petitions that you had
13 submitted, the four documents for the prior two
14 witnesses, those should be numbered --

15 MR. MCTIGUE: Those should be numbered,
16 too, as Rothenberg --

17 MR. SOULAS: 1, 2, 3, 4?

18 MR. MCTIGUE: 1, 2, 3, 4 and this should
19 be Rothenberg 5, yes.

20 MR. SOULAS: Okay.

21 MR. MCTIGUE: Correct.

22 As I said, Mr. Chairman, I don't have any
23 further witnesses or documents to present. So I will
24 rest at this point and wait to see what happens next.

1 CHAIRMAN PREISSE: Okay.

2 Mr. Fitrakis.

3 MR. FITRAKIS: Yeah. I would like to
4 call Denise Benning.

5 - - -

6 DENISE A. BENNING-ADEDUGBE

7 being first duly sworn, as prescribed by law, was
8 examined and testified as follows:

9 DIRECT EXAMINATION

10 By Mr. Fitrakis:

11 Q. Ms. Benning, would you take a look at
12 that as well as the initiative petition that has your
13 name on it. Could you explain for this body why
14 there's two different names?

15 CHAIRMAN PREISSE: Mr. Fitrakis, will you
16 clarify for us what you've handed her so we know what
17 she's looking at.

18 MR. ANDERSON: Protestor's Exhibit 5.

19 MR. FITRAKIS: Protestor's Exhibit 5,
20 you're correct. A lot of different people introduced
21 these, I think, including Mr. McTigue, but it's just
22 the initiative petition.

23 MR. SOULAS: Could you give us your name
24 for the record.

1 THE WITNESS: Denise A. Benning-Adedugbe.

2 THE COURT REPORTER: Denise Benning, I'm
3 sorry, what was the --

4 THE WITNESS: Dennis Benning-Adedugbe.

5 THE COURT REPORTER: Could you spell
6 Adedugbe?

7 THE WITNESS: A-d-e-d-u-g-b-e. The "g"
8 is silent.

9 THE COURT REPORTER: Thank you.

10 Q. (By Mr. Fittrakis) This is explained in
11 the filing as well. Could you explain, for the
12 record, why the names are different?

13 A. My name is Denise A. Benning. I've been
14 that for 55 years. I got married and when I got
15 married my last name, my name never changed, Denise
16 A. Benning, I will be that until the day I die. I
17 hyphenated it, Adedugbe, only due to marriage.

18 After I got a divorce, I went to not only
19 the Social Security Administration, but also talking
20 to the IRS. I am legally allowed to write Denise A.
21 Benning on anything because I am Denise A. Benning.
22 I cannot remove "Adedugbe" unless I pay to remove it.
23 But I am legally permitted to use Denise A. Benning;
24 I am that person.

1 Q. And where were you divorced?

2 A. Missouri.

3 Q. Would you have to go back to Missouri --

4 A. Yes.

5 Q. -- to change it?

6 A. Yes.

7 MR. MCTIGUE: I don't have any questions.

8 CHAIRMAN PREISSE: Okay.

9 MR. FITRAKIS: I wanted to get the parts
10 on the record on the form again for the last one. It
11 will be quick.

12 I'd like to call Jonathan Beard.

13 I'm dismissing her.

14 MR. ANDERSON: I'm sorry, I'm so sorry.
15 Could we just -- could you just give us your address
16 for the record? I'm sorry.

17 THE WITNESS: 1094 Lavender Lane,
18 Columbus, Ohio 43207.

19 MR. ANDERSON: Thank you.

20 THE WITNESS: Been there since I moved to
21 Ohio.

22 MR. ANDERSON: Oh, no, no, no. That's
23 fine. We just needed it clarified. Sorry.

24 MR. FITRAKIS: One last question, the

1 obvious one by case law: Is there anyone else at
 2 that address that goes by Denise Benning or the other
 3 name?

4 THE WITNESS: No, there isn't. The only
 5 person at that address is my mother.

6 MR. FITRAKIS: Last witness, I'd like to
 7 call Jonathan Beard.

8 - - -

9 JONATHAN C. BEARD

10 being first duly sworn, as prescribed by law, was
 11 examined and testified as follows:

12 DIRECT EXAMINATION

13 By Mr. Fitrakis:

14 Q. You've already been sworn-in, Mr. Beard.
 15 Could you explain why, because part of the challenge
 16 goes to this, why you prepared the ballot initiative
 17 for campaign finance in the manner in which you
 18 prepared it?

19 A. You know, obviously, the City Charter has
 20 provisions dealing with city initiatives, so we
 21 started there. There's some requirements of the City
 22 Charter, I don't remember exactly what they are off
 23 the top of my head, but there are requirements as
 24 to, you know, the five electors and -- hold on a

1 second -- and this is all in my testimony.

2 There are minimum requirements
3 essentially that deal with initiated ordinance and
4 the ordinances in general. Ordinances in general, I
5 think it's Section 19: "Each proposed ordinance or
6 resolution shall be introduced in written or printed
7 form, and shall not contain more than one subject
8 which shall be clearly stated in a title; but general
9 appropriation ordinances may contain the various
10 subjects and accounts for which moneys are to be
11 appropriated. The enacting clause of all ordinances
12 passed by the council shall be, 'Be it ordained by
13 the council of the city of Columbus.' The enacting
14 clause of all ordinances submitted by the initiative
15 shall be, 'Be it ordained by the people of the city
16 of Columbus.'" Beyond that, the Charter provides no
17 direction on form or content.

18 As the protestors filed, there's a
19 Section 232 of the Charter that then refers to state
20 law for things that are not in conflict. When you go
21 to state law, Section 731.41, dealing with Charter
22 municipal corporations, says that "Sections 731.28 to
23 731.41, inclusive, of the Revised Code, do not apply
24 to any municipal corporation which adopts its own

1 charter containing an initiative and referendum
2 provision for its own ordinances and other
3 legislative measures." Having said that, so if you
4 go to the state law, the state law says this does not
5 apply to Columbus.

6 Having done that, we did go to Rick
7 Pfeiffer, the City Attorney, and ask for review of
8 form and content. We said, you know, these are
9 ordinances, these have to fit into the City code,
10 does he want input in that, so forth. He declined,
11 saying he was the City's attorney not our attorney.
12 We did attempt to meet with Columbus City Council for
13 nearly two years; they've declined to meet with us as
14 well.

15 So, in the absence of any further
16 direction beyond the fact, you know, beyond the
17 minimum that was provided in the City Charter, we
18 looked at existing city ordinances to see how they
19 were presented to the people. I say clearly we met
20 the charter requirements, the minimums, which it's
21 written, it's one subject, it's got a clear title and
22 it's got the enactment clause as specified by the
23 City Charter.

24 So given that that's all there was, we

1 went to look at other city ordinances and saw how
2 they were presented. The one that we looked at in
3 this case, one of the ones we looked at is attached
4 as Exhibit B in my testimony, and that is actually
5 the ordinance adopting the Nationwide Arena
6 financing. You'll see there's a background, there's
7 a title, and fiscal impact.

8 I note for the record that nowhere in the
9 City Charter does it authorize or require the
10 background, the fiscal impact, but these are things
11 added by council at its discretion. So we mimicked
12 what council does already.

13 There's some question about the accuracy
14 of these statements. We believe all our statements
15 are accurate and testified to such. You know, beyond
16 going point by point, I'd be happy to respond, but
17 everything in our background --

18 CHAIRMAN PREISSE: I think maybe you're
19 straying beyond what the question was.

20 Q. The question, when you observed the City,
21 and subsequently received the e-mail, did it appear,
22 when the City went forward with its ordinances, that
23 they would engage in writes and rewrites that clearly
24 might not be supported by the facts or the numbers?

1 A. Yes, that's exactly right. We did a
2 public information request on the Arena Bailout
3 Ordinance 1596-2011. We got back a series of e-mail
4 exchanges that involved folks from Nationwide
5 Insurance, folks from the Blue Jackets, Council
6 staff, City Attorney staff, and administration staff,
7 and essentially they were presenting the best case to
8 the public. They were saying, you know, in our
9 background and our "whereas" we should focus on the
10 jobs component, so it was pure salesmanship.

11 It apparently was not reviewed by the
12 City Attorney as an independent review because they
13 were participating in the draft writing; they were
14 participating in this chain of e-mails. So there was
15 no independent review of that process.

16 So we looked at that and we said, you
17 know, that's a very advocacy-oriented background, not
18 required by charter, not regulated, and we did the
19 same thing, but I think far less, far more neutral in
20 our presentation of the issues. For instance, we
21 didn't have these unbacked assertions that this was
22 protecting tens of thousands of jobs, we didn't have
23 the unbacked assumptions that, you know, of the Arena
24 bailout petition originally.

1 So we stuck to facts and certainly they
2 are facts that we believe were presented from our
3 point of view which we believe is our right under the
4 First Amendment and we believe that's political
5 speech and that's fair speech. There's no material
6 defects in what we presented.

7 Q. Are there any other cities that you know
8 of that have this initiative as a matter of law?

9 A. We drew this initiative primarily from
10 the City of Austin, Texas. We looked at the last two
11 remaining at large cities in the nation. We looked
12 at Seattle and we looked at Austin. Both of them
13 have campaign finance laws on the books, similar to
14 this, different approaches, but similar concept. We
15 liked Austin's better, so a lot of the language is
16 copied straight from Austin, Texas, and then some
17 provisions applied based on issues in Columbus.

18 Q. To your knowledge has the Austin, Texas
19 ordinance ever been struck down as unconstitutional?

20 A. No, it has not.

21 Q. Is it your belief that an individual
22 candidate would have the right to waive his right to
23 spend unlimited money, his own money, and accept
24 public financing?

1 A. That's correct. It's an opt-in program,
2 so people have to opt in to the campaign limits.

3 Q. So it doesn't force any campaign to take
4 this money or restrict the amount they can spend?

5 A. No, it doesn't.

6 MR. FITRAKIS: That's it.

7 MR. MCTIGUE: I have no questions.

8 CHAIRMAN PREISSE: Okay. Any from the
9 Board?

10 BOARD MEMBER SINNOTT: Mr. Beard, I
11 gather from reading your affidavit and hearing your
12 oral testimony today that you were the principal
13 drafter of the petition on campaign finance?

14 THE WITNESS: It was a group effort, yes,
15 but a lot of the writing came from me.

16 BOARD MEMBER SINNOTT: I'm sorry?

17 THE WITNESS: It was a group effort, but
18 a lot of the writing came from me.

19 BOARD MEMBER SINNOTT: You did much of
20 the writing of the petition yourself.

21 THE WITNESS: Yes, sir.

22 BOARD MEMBER SINNOTT: You are not a
23 lawyer, I believe.

24 THE WITNESS: That's correct.

1 BOARD MEMBER SINNOTT: Thank you,
2 Mr. Beard.

3 CHAIRMAN PREISSE: Any other questions
4 from the Board?

5 BOARD MEMBER HAAS: No.

6 CHAIRMAN PREISSE: Okay. Thanks very
7 much.

8 THE WITNESS: Thank you.

9 MR. MCTIGUE: Okay. Mr. Chair, with your
10 permission, I'd like to give my closing.

11 CHAIRMAN PREISSE: I think that's time.
12 We're moving to closing remarks without objections.

13 MR. ANDERSON: Yes.

14 CHAIRMAN PREISSE: Bob, are you resting?

15 MR. FITRAKIS: Yes.

16 MR. MCTIGUE: Mr. Chairman, members of
17 the Board, before I do the closing, just so I don't
18 forget, I would proffer, I would ask that I be
19 allowed to proffer the testimony you've heard on this
20 protest, on the Rothenberg protest, proffer that as
21 part of the Trent Smith case.

22 CHAIRMAN PREISSE: That's acceptable
23 without objection here and not from Mr. Fitrakis.
24 That is sufficient.

1 MR. MCTIGUE: Okay. Now, in terms of
2 closing, some of you have endured my closing
3 arguments, I can go on a while. I'm going to try to
4 be very efficient here.

5 One of the reasons we were able to get
6 through the testimony fairly quickly, despite the
7 number of allegations or grounds to the protest, is
8 that most of -- most of what the protest is based on
9 are defects on the face of the petition. They don't
10 require evidence other than the petition itself for
11 this Court -- for this Court -- for this Board to
12 make a ruling. You are charged with, of course,
13 determining whether or not the petition complies with
14 the requirements of the election law.

15 Now, we heard Mr. Beard explain how he
16 looked at what City Council does when City Council
17 passes ordinances and there are summaries and fiscal
18 impact statements, and I understand his point there,
19 but that's not the correct point, because we are
20 talking about election laws governing initiative
21 petitions. We are not talking about laws governing
22 legislative bodies, city councils, village councils
23 and what requirements they have to follow. We're
24 talking very specifically about mandatory

1 requirements for petitions, okay?

2 And the way in which you decide these has
3 been decreed over and over by the Ohio Supreme Court.
4 Election laws have to be strictly applied. If a
5 requirement is clear, and the one exception is if the
6 statute, if the General Assembly has said that you
7 only need to substantially comply, that the form
8 shall be substantially as follows, when they use that
9 expression, we're not talking about any law here
10 today that involves substantial compliance.

11 When there's not substantial compliance,
12 it is strict compliance; you apply the law. You
13 apply the law when it's clear, okay? If it's subject
14 to ambiguity, you might have a little wiggle room
15 shall I say, but when it's not subject to ambiguity
16 and it doesn't allow for substantial compliance, then
17 strict compliance is what you have to do, is what is
18 the standard that you have to apply.

19 So let me address a few of the grounds.
20 I'm going to go with No. 3, Ground No. 3 of the
21 protest. We briefed all the grounds in our brief, so
22 I'm not going to repeat everything that's in the
23 brief, but I want to point out, on a few of these,
24 things that you should, that I would request that you

1 focus on.

2 So, under 3, the allegation is that the
3 title paragraph on the front of the petition, which
4 can be considered almost part of the summary,
5 contains some false statements. It states that it
6 imposes -- or, I'm sorry, it provides, I'm sorry,
7 "provides for a voluntary system of campaign finance
8 reform by creating voluntary limits on contributions
9 and expenditures." However, that's only a small
10 part, voluntary contribution limit and voluntary
11 expenditure limit is only really a small part of what
12 this law does.

13 What it does, in addition, is it mandates
14 at least about 12 mandatory requirements on all
15 candidates in the City of Columbus, whether you opt
16 in to this contribution expenditure limit program,
17 that is a small part of this, regardless of whether
18 you opt in to that, there's at least a dozen
19 mandatory requirements imposed, new requirements on
20 all candidates, but there's no mention of that. We
21 highlight those.

22 Let me point out a couple of those just
23 because I think it's useful. First of all, I would
24 direct your attention to Stipulation 4 which

1 addresses that in part. And then under the proposed
2 ordinance, on page -- well, there's not specific page
3 numbers on the proposed ordinance, but under Section
4 107.06, it establishes a campaign period which is a
5 fundraising period, okay, but it provides that no
6 candidate for City Council, whether you opt in or
7 don't opt in to the voluntary system, no candidate
8 can maintain more than \$20,000 in his or her campaign
9 fund outside the campaign period.

10 And it also provides that all candidates,
11 whether you opt in or not, are limited to their
12 fundraising to occur during this time period spelled
13 out in the statute. So that is something that makes
14 the title paragraph of the summary clearly
15 misleading.

16 There's also prohibitions in another
17 section that prohibit candidates from spending more
18 than X amount of money of their personal funds. That
19 applies to everybody, not just the people who opt in
20 to this voluntary expenditure limit. Here's an
21 expenditure limit that applies to everyone. There's
22 multiple provisions like that; I'm not going to go
23 over all of them. But I think if you read through
24 it, you'll see at least a dozen that fall into that

1 category.

2 Now, if we look at -- well, one more
3 reason that this summary is misleading, if not
4 outright false, is it says it provides for this
5 system of voluntary contributions and expenditures,
6 but what it fails to point out is it then has a
7 waiver provision.

8 You can opt in to the contribution
9 system, contribution limits and expenditure limits,
10 and then there are three circumstances which are very
11 broad circumstances under which the limits that you
12 just agreed to are waived, you're no longer bound by
13 those limits at all, you can raise and spend
14 unlimited amounts of money. But, guess what, you
15 still get the public funds.

16 So this starts out by saying -- and this
17 is kind of a real hat trick, okay, because it is
18 saying well, you're going to get public funds by
19 agreeing to contribution limits and to limit your
20 spending and then it waives those and allows you to
21 keep the public funds and a number of other benefits
22 such as having, at city expense, you can produce a
23 certain amount of commercials, political commercials.

24 CHAIRMAN PREISSE: But your point is that

1 those details are not covered in the summary
2 statement.

3 MR. MCTIGUE: That's right. It's both --
4 we're going to take -- it's material omissions and
5 false statements. It's false in the sense that it
6 talks about the system being voluntary and that the
7 proposal is a voluntary campaign finance program, but
8 there are many nonvoluntary provisions.

9 But it also fails or suffers from not
10 containing -- having material omissions, which are
11 just some of what I was just mentioning, and which
12 are -- we've itemized all of those under Ground 6,
13 where all the material omissions are. If you just
14 look down that list you have to say to yourself
15 there's not one word in the summary regarding any of
16 these bullet-pointed omissions. And you can judge
17 for yourself whether this is material or immaterial.

18 Now, I'm not going to belabor, under
19 paragraph 5 there's this history which I think they
20 distorted the history on campaign finance reform. I
21 think they're outright wrong, more than distortion,
22 and they say that there was no reform enacted by
23 Council. Council clearly enacted a reform measure.
24 Columbus has more stringent reporting of

1 contributions, occupation, employer information than
2 virtually any other city or village in the state of
3 Ohio.

4 Now, this is important both in terms
5 of, you know, the lack of truthfulness and the
6 material omissions because the Supreme Court has said
7 over and over that when you have a summary it's got
8 to be accurate, it cannot be misleading, and it
9 cannot have material omissions.

10 Because what's the point of the summary
11 on a petition? It's to substitute for reading the
12 full text. That is why the standards that the
13 Supreme Court has developed for summaries on
14 petitions is very similar to the standards they've
15 adopted for ballot language.

16 Now, let me go to No. 7 which is material
17 omissions on the fiscal impact. And there's a
18 stipulation, Stipulation 10, that applies here. But
19 the -- it mentions, in the fiscal impact, sources of
20 revenue for the Columbus Fair Campaigns finance fund
21 coming from a set aside on casino money, okay? But
22 what it doesn't mention is what the costs to the City
23 are.

24 Remember, this is a fiscal impact

1 statement designed for people to read it in order to
2 decide whether to support this issue. It never
3 mentions all the new costs that are imposed on the
4 City of Columbus. And I've itemized, again, about a
5 dozen instances where costs are imposed. I don't
6 need to repeat it, you can read it, it's right there
7 in Paragraph 7.

8 Now, I'm going to move to No. 8 and this
9 has to do with the mandatory requirement of the City
10 Charter for petitions, initiative petitions to,
11 quote, they have to have printed, on the petition,
12 the names and addresses of at least five electors of
13 the City, okay? You have to print the name of the
14 elector.

15 The issue here is Ms. Benning, I think,
16 Adedugbe. I want to be clear about something: This
17 is not about whether it's the same person. We never
18 said that these are two different people. In fact,
19 if you go look at the protest, we actually point out
20 that there is a person registered under the name
21 Denise Benning-Adedugbe who may or may not be the
22 same person. That's not the point. The point is
23 that the Charter requires you to list the names of
24 five qualified electors. There is no qualified

1 elector with the name Denise Benning.

2 And we have cited -- and I understand
3 this concept might be a little bit difficult, but
4 it's based on Ohio Supreme Court case law that says
5 you are not a qualified elector if you haven't
6 updated your address or if you haven't updated your
7 voter registration name. Your voter registration
8 record has to be updated for you to be a qualified
9 elector.

10 Now, if Benning-Adedugbe is her name,
11 which she says it is and nobody's disputing that, the
12 problem here -- and she's a qualified elector as
13 Benning-Adedugbe. She is not a qualified elector as
14 Denise Benning. And what the Charter requires is
15 your name, your qualified elector name. That is the
16 problem here. It's not about the identity issue;
17 it's about fulfilling the requirement to list the
18 name of five qualified electors. There is no person
19 registered under the name Denise Benning.

20 Now, with regard to, if I can go to
21 No. 9. This is the requirement to have the notice
22 printed in red. Well, first of all, the notice they
23 have on the petition is slightly different in wording
24 than that required by law, okay, but I'm not going to

1 focus on that at the moment, I'm going to focus that
2 it is not in red.

3 State law is very clear. In fact, it
4 says that the following notice, and then it has it in
5 quotes, must be printed in red on the municipal
6 initiative petition. There's a stipulation,
7 Stipulations 14 and 15 establish, beyond argument,
8 that this requirement was not complied with. So the
9 only thing we have to argue about is whether the
10 requirement applies. They clearly didn't follow it.

11 They say they don't have to follow it
12 because we heard Mr. Beard testify that the procedure
13 that he used was he went to the Charter and the
14 Charter says well, you have to have this, this, and
15 this, and then follow state law in addition. And
16 then he said he went to state law and he saw seven
17 sections, Revised Code Section 731.41 that says that
18 the proceeding Sections 731.28 through, I think, 40
19 don't apply if the City has a charter.

20 The problem is he didn't look at the Ohio
21 Supreme Court case law. He stopped there, okay? The
22 case law is very clear that when the Charter adopts
23 the state law not inconsistent with the Charter, and
24 this is clearly not inconsistent with the charter,

1 the charter doesn't say anything about a warning,
2 okay, so you incorporate state law. The Supreme
3 Court has said it about half a dozen times involving
4 charter cities that this section has to be read in
5 conjunction with the charter that incorporates state
6 law, okay? So if the charter is incorporating state
7 law that's how it comes into being, okay, that these
8 requirements apply.

9 And, you know, lest we, you know, wonder
10 about any of that, the Ohio Supreme Court decided
11 this issue 48 years ago in the Nimon versus
12 Springfield, City of Springfield case. The City of
13 Springfield has a charter that sets out some
14 requirements for initiative and referendum. And a
15 petition was filed that did not have the red warning
16 and also the circulators had not filed, before
17 circulating, a certified copy of the proposal with
18 the City officials.

19 The Court said, in very clear language,
20 there are two fatal defects here. One of those fatal
21 defects was that the warning was not printed in red;
22 it didn't have it. It clearly applies. That is
23 the, you know, the beginning and end, in my view, of
24 questions about the validity of this petition.

1 The problem that we have, that the
2 circulators have here -- or, the petitioners
3 committee is they tended to follow the requirements
4 for state-wide petitions, okay, which don't require,
5 which actually have a slightly different warning
6 which is the warning they used and doesn't require it
7 to be in red. But the General Assembly has decreed
8 this has to be red on municipal initiative petitions.
9 And, quite frankly, your hands are tied on this one.

10 Now, with regard to the issue of the
11 affidavit and the deficiencies in the affidavit. I
12 won't belabor that at this point. We've addressed it
13 in the brief. Essentially, the problem is that the
14 Charter says that there must be an affidavit and this
15 is what the affidavit will say and that's not what
16 these affidavits said. They try to incorporate, by
17 reference, a circulator statement outside of the
18 affidavit.

19 The last thing that I'll mention is where
20 they filed the certified copy before beginning
21 circulating. They filed it with the City Auditor.
22 However, a relatively recent 2011 Ohio Supreme Court
23 case clearly establishes that when a charter city
24 shifts responsibilities to the clerk for receiving

1 initiative petitions and processing those initiative
2 petitions, that the pre-circulation certified copy
3 must be filed with the clerk.

4 See, under state law, when you don't have
5 a charter or if your charter just adopts state law
6 completely, you file the petition not with the clerk
7 of council, you file your petition with the auditor,
8 city auditor or finance director, whatever you have
9 in your city, okay? Hence, that's also where you
10 file the pre-circulation certified copy.

11 But, when your charter changes who's
12 responsible for the petition, then you have to change
13 where you file. And we have a stipulation here, it's
14 Stipulation No. 16, that the petitioners did not file
15 the pre-circulation certified copy with the clerk.

16 For these reasons, and some of these are
17 very black and white, I believe that you don't have
18 any choice but to rule to uphold the protest because
19 these are requirements that apply to everyone. It's
20 not about the merits, again, of this proposal, it's
21 not about whether it's the same as Austin, Texas, the
22 Austin, Texas ordinance. It's very simple: What are
23 requirements for the petition; did they follow them.

24 Thank you.

1 CHAIRMAN PREISSE: Thank you.

2 Questions from the Board for Mr. McTigue?

3 (No response.)

4 Mr. Fitrakis.

5 MR. FITRAKIS: Well, it reminds me of my
6 favorite movie, "Nashville," where a populist
7 candidate had a proposal to ban all attorneys from
8 elected office because they're only good for two
9 things: When the law is clear, they confuse it; when
10 the law is confused, they clarify it. And, in this
11 case, allow me to clarify it.

12 If all of this -- if your hands are tied,
13 I've heard this in many court cases, you have to find
14 them guilty. No, you don't. You don't have to
15 restrict the people's voices here.

16 If these defects were so obvious, why
17 would the City Attorney say "...but rather are
18 primarily matters of state...law on which there is no
19 established case law directly...."

20 Don is saying things here -- I mean
21 Mr. McTigue is saying things here, but the reality is
22 the City Attorney himself points that there's no case
23 law, so Mr. McTigue wants you to accept his version
24 of that case law.

1 Let's -- I'll go through this quickly.
2 We've been over it again and again. You've got a
3 defective charter and a one-party system. You've got
4 an initiative that historically came out of The
5 Progressive Era to make sure the people, when there
6 was a one-party monopoly on power, which there is in
7 the City of Columbus, people on this Board know it
8 better than anyone else, that in that case the people
9 would have a right to initiate legislation. It's set
10 up exactly for this case.

11 So you have this home rule charter and
12 then -- and the people, with limited skills and not
13 the money to hire high-priced attorneys put on a fair
14 and clear statement. And then, of course, the
15 well-paid attorneys come in and begin to say oh, you
16 shouldn't use the charter there, in that case we used
17 the charter, you should have used state law and the
18 law is really clear. But that's not what the City
19 Attorney is saying. The City Attorney is not saying
20 that at all.

21 Why punish the people because a one-party
22 monopoly system essentially has decided that nobody
23 may offer other proposals other than that one-party
24 monopoly. I mean let's be clear here: There was

1 more dissent on Joe Stalin's Politburo than you'll
2 find in the Columbus city government. Go down and
3 see how much dissent actually happens there. It's a
4 corrupt, one-party, smily-faced authoritarian system.
5 And that somehow these things are illegal only in
6 Columbus, they can happen in Austin, they can happen
7 in presidential primaries, but they can't happen
8 here; it's absurd.

9 And, again, it's the classic confusion
10 and clarification. Here you have the Chair was
11 talking about details, Don was accepting those
12 details; suddenly, all details have to be in the
13 summary. They don't. There is no, even, requirement
14 of the defective charter which guides the people that
15 there has to be a summary. And, suddenly, not only
16 there has to be a summary, it has to be exactly what
17 Mr. McTigue says, because in this case there's state
18 case law and state law applies and, over here, the
19 Charter applies.

20 And no matter what my clients, with very
21 little money, do, they can't have a voice. That's
22 more than anything else what's going to be recorded
23 here today and future historians will have a clear
24 transcript and I know I'm going to be able to write

1 about this myself is that this is absolutely
2 stifling. You are throttling the voices of people
3 that have very little money and influence. And
4 that's not the job of this Board. This Board is
5 bipartisan. And when one party fails or has too much
6 power, in our wisdom we have created this Board to
7 let the people speak.

8 And, again, to somehow say well, it's
9 reform, right? They wanted the name, here's the
10 reality, it's in the testimony, Scott Pullins, the
11 Ohio Tax Payers Association, tried to do something in
12 the City, just as my client. Let's -- suddenly we
13 need to know everyone who's given you money; that's
14 their campaign finance reform. Where's the actual
15 campaign public financing?

16 Sure, there's a list of things that
17 exempt people. Think about it; exempt people. If
18 one side doesn't adhere to this law, we can't enforce
19 it, and spends, you know, \$10 million, it allows the
20 other side not only to get the public money because
21 they opted in, but when the other side nukes them
22 with all the cash that's corrupting our political
23 system then they're not held by the public financing.

24 The system is broken. This is legal in

1 other cities. We should not allow well-paid lawyers
2 to confuse and to clarify when the Charter speaks for
3 itself. Ultimately, the Charter is the contract with
4 the people. It is the same as a fundamental
5 constitutional right.

6 And can you imagine what's going to
7 happen when the Republicans pass legislation to say
8 oh, a woman who is married in another state can't use
9 her maiden name because she can't get -- the
10 Republicans will be accused of being sexist, they
11 will be accused of suppressing votes, and the
12 Democrats will oppose to knocking people off the
13 ballot in the next's governor's race and in the
14 presidential race that are in the same situation as
15 Ms. Benning is in this situation. That's what will
16 happen. Either it's voter suppression or it's not.
17 Either there's one standard for everyone or it's not.

18 I would submit that they deserve a vote,
19 that the people deserve a vote in this instance, and
20 to nitpick them and destroy America's progressive
21 tradition cannot be accepted.

22 Thank you.

23 (Applause.)

24 CHAIRMAN PREISSE: Do you have any

1 questions?

2 BOARD MEMBER SINNOTT: I do. I've read
3 Mr. Beard's affidavit in response to the protest and
4 I understand why there would be no citation to the
5 decisions of Ohio's courts discussed by Mr. Beard
6 because he's not a lawyer. Do you have any authority
7 in support of your position that you can cite us to?

8 MR. FITRAKIS: The question -- the
9 questions on this is whether it's a home rule charter
10 or not. I take the same analysis as the City
11 attorney. Mr. McTigue is the only one who is
12 absolutely confident that he has the case law. I
13 think that's a case I'd love to take, I mean, because
14 it does go to the crux of whether this is a
15 constitutional right in what the standards are.
16 Because, I mean, this is just like any other legal
17 proceeding if we go back to the "Dream Team." If
18 you've got enough lawyers, you can, in fact,
19 challenge any initiative that arises from the people.

20 I don't think that was the intent of the
21 City of Columbus or the lawmakers in this state to
22 allow everything to be picked apart because a detail
23 should be a summary and a summary should be a detail.

24 BOARD MEMBER SINNOTT: So is there any

1 case authority, by name, that you can direct us to in
2 support of your position?

3 MR. FITRAKIS: The -- yes. The U.S.
4 Constitution, the State of Ohio, the Charter itself.
5 I mean, the Charter is clear. Again, when we do the
6 analysis, the first thing you look to is the plain
7 language of the Charter. The Charter doesn't require
8 a summary. The Charter doesn't require all of these
9 things. He's cherrypicking. He's picking and
10 choosing.

11 And for this Board to suddenly say well,
12 we're quasi-judicial, he cited case law, he must be
13 right. Why not read the Charter and why not ponder
14 the question why haven't they fixed these defects?

15 I've been sitting here for years, over
16 and over again. First it was decriminalization of
17 marijuana; that was totally defective. You know,
18 talk about being on the wrong side of history there.
19 And then, previously, it was the new districts.
20 Anything that comes up that doesn't come from the
21 City Council gets knocked down. That's the reality.

22 Where you start with the basic
23 Constitutional right is the plain language of the
24 charter and that's what's in Ohio law.

1 The fact that there's no specific case
2 law on this, I'm agreeing with the City Attorney.
3 Why is Mr. McTigue's analysis superior? I could go
4 out and get a hundred cases that said this is
5 correct, but my clients don't have any money, I
6 didn't even get to meet with them until this morning.
7 I was attempting to do this, you know, through
8 e-mail.

9 CHAIRMAN PREISSE: Okay. All right. So
10 I don't see you standing up, but you're welcome to,
11 if you want.

12 MR. MCTIGUE: Well, if I can, let me just
13 add one thing here. I'm not going to try to match
14 Mr. Fitrakis in his ability to give impassioned
15 speeches, but what we didn't hear from him was, you
16 know, why does this comply with the law other than he
17 says go read the Charter.

18 Okay. In two places in the Charter it
19 says that the general laws of Ohio are incorporated
20 except to the extent that they conflict with the
21 Charter. That's how we get there. The Charter and
22 the people have spoken and they adopted a charter
23 that incorporates the general laws of Ohio and those
24 laws have to be followed.

1 It's about one standard being the same
2 for everyone here, okay? And it's not about, you
3 know, letting the people vote because voting is a
4 good thing, okay? You cannot make the decision based
5 on that; you first have to look at what the law is.
6 If the voters don't get to vote this time on this
7 proposal, it's because the petitioners didn't follow
8 the law. That's why the voters don't get to vote
9 this time. They have to go back and do it the right
10 way.

11 Thank you.

12 CHAIRMAN PREISSE: And we'll let you --

13 MR. FITRAKIS: In the words of --

14 CHAIRMAN PREISSE: -- respond on that
15 briefly.

16 MR. FITRAKIS: -- City Attorney Richard
17 Pfeiffer, quote, there is no established case law
18 directly on point.

19 CHAIRMAN PREISSE: All right. Anything
20 -- any other thoughts here from counsel or anyone
21 else to address this issue?

22 (No response.)

23 CHAIRMAN PREISSE: I appreciate the
24 witnesses and the debate here.

1 Thoughts? Comments?

2 BOARD MEMBER HAAS: No.

3 BOARD MEMBER SINNOTT: Well, I'm prepared
4 to offer a motion, but I will explain why I move as I
5 do.

6 I would not sustain protest No. 8,
7 relative to the number of electors identified on the
8 petition. I am satisfied that the proponents of the
9 petition did describe the five electors on the face
10 of the petition. It has been routine for this Board,
11 when someone is registered as Mary Smith Jones, to
12 allow that person to sign a petition both in the name
13 of Mary Smith and Mary Jones so long as there is no
14 indication of real ambiguity about who the voter is,
15 who the elector is, so I would not sustain that
16 protest.

17 I also don't think that the protestor has
18 met his burden relative to Protest No. 13,
19 Mr. Herring providing false information about his
20 permanent residence. I think the timing question
21 answered any sufficient ambiguity about where
22 Mr. Herring was residing. So the protestor's burden
23 has not been met on that subject.

24 Which leaves us with the protest having

1 to do with the form and substance of the petition.
2 I'm mindful of the fact that we are sitting as a
3 quasi-judicial body at this juncture. And, as
4 recently as last year, the Supreme Court said that
5 election laws are mandatory and require strict
6 compliance unless the statute expressly authorizes
7 substantial compliance.

8 In this particular instance, I think the
9 protestors have pointed to numerous defects in the
10 petition arising under Ohio law, those defects are
11 prohibited by Ohio law, they render the petition
12 infirm, and there's no indication of any legal
13 authority that would excuse compliance with the
14 statutes, with the applicable law as it has been
15 written.

16 I believe that this Board of Elections
17 ought to adhere to the general instruction from the
18 Supreme Court that election statutes are to be
19 strictly enforced. If a reviewing court elects to
20 relax a requirement of Ohio election law that would
21 be within its prerogative, but I think the Board, in
22 this instance, ought to adhere to the Supreme Court's
23 general instruction.

24 For that reason, I would move as follows:

1 I move that the Board uphold the protest against the
2 Columbus Fair Campaigns Code petition and not place
3 the issue on the May 6th, 2014, Primary Election
4 Ballot.

5 DIRECTOR ANTHONY: Is there a second?

6 BOARD MEMBER MARINELLO: Second.

7 CHAIRMAN PREISSE: Discussion.

8 DIRECTOR ANTHONY: Any discussion?

9 CHAIRMAN PREISSE: I just want to, I'm
10 going to agree with Brad's -- with both of Brad's
11 observations as they related to the fifth petitioner
12 and the issue as to the -- struck me as sufficient
13 evidence that the petitions appear to be submitted
14 and notarized satisfactorily. But there's a whole
15 host of other deficiencies that strike me as also
16 rising above and beyond sufficient evidence for us to
17 uphold the protest.

18 Brad and I sit here moved by your
19 impassioned appeal, Mr. Fitrakis. And, as the
20 Republicans, we wear those hats, we fight against
21 one-party control all the time, and the
22 responsibilities that come with wearing those hats.
23 We're not wearing those hats today; we're wearing the
24 hats of duly appointed Board members.

1 And I think I speak for Brad and all of
2 our colleagues, our colleagues on the other side of
3 the aisle, we've got to examine these issues a little
4 more narrowly, as we're required to do, on the merits
5 of whether these petitions were prepared, to the best
6 of our understanding, according to the Charter and
7 state law and it appears to me strongly that they
8 have not.

9 Any other comments?

10 BOARD MEMBER HAAS: I would concur, but I
11 want to go a step further, particularly on the
12 Kenneth Herring point. You know, here on the record
13 it says, you know, that Mr. Herring made false
14 statements. I want to say, for the record, after
15 listening to your testimony, having been divorced a
16 couple years and living in multiple locations that I
17 certainly understand what took place. And I think,
18 as a matter of on-the-record comment, I don't believe
19 you made a false statement.

20 But I concur with both Doug and Brad in
21 terms of the volume of errors in the petition.

22 CHAIRMAN PREISSE: We have a --

23 DIRECTOR ANTHONY: Ready for a vote?

24 CHAIRMAN PREISSE: -- motion and a

1 second.

2 DIRECTOR ANTHONY: All those in favor?

3 (All ayes heard.)

4 DIRECTOR ANTHONY: The motion carries.

5 The next item on the agenda would be the
6 Board has to recess until after the close of the
7 Special Election on Tuesday, February the 4th. We
8 need a motion to recess.

9 BOARD MEMBER MARINELLO: I move that the
10 Board recess its meeting of the Board of Elections,
11 subject to re-call by the Chair, until after the
12 close of the election being held on Tuesday,
13 February 4th, 2014.

14 BOARD MEMBER SINNOTT: Second.

15 DIRECTOR ANTHONY: All those in favor?

16 (All ayes heard.)

17 DIRECTOR ANTHONY: We stand adjourned.

18 (Thereupon, the meeting adjourned at
19 4:50 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 Monday, February 3, 2014, 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, 2018.

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