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THE FRANKLIN COUNTY BOARD OF ELECTIONS

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In Re: :
Regular Meeting :
- And - :
Administrative Hearing, :
In Re: Brown Township :
Referendum :

- - -

August 5, 2024

Before Chairman Douglas J. Preisse,
Director Antone White, Deputy Director David Payne,
Board Members Michael Sexton, Kim Marinello, and
Meredith Freedhoff, on Monday, August 5, 2024,
commencing at approximately 3:02 p.m. and
concluding at approximately 5:52 p.m.

- - -

ALSO PRESENT:

- Erin Gibbons
- Jeanine Hummer, First Assistant/Chief Counsel
- Brian Zagrocki, Counsel
- Sara Ziemba (spoke during meeting)
- Jeffrey Mackey (spoke during meeting)
- Phillip Alves (spoke during meeting)
- Jeffrey Arman (spoke during meeting via remote)
- Jonathan Cowan (spoke during meeting)
- Steve Bulen (spoke during meeting)
- Jeff Gatwood (spoke during meeting)

Audience

Higgins & Associates
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P R O C E E D I N G S

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DEPUTY DIRECTOR PAYNE:

Mr. Chairman, it looks like we have a quorum, but I will go ahead and take roll.

Kim Marinello.

MEMBER MARINELLO: Here.

DEPUTY DIRECTOR PAYNE: Mike Sexton.

MEMBER SEXTON: Here.

DEPUTY DIRECTOR PAYNE: Doug

Preisse.

CHAIRMAN PREISSE: Here.

DEPUTY DIRECTOR PAYNE: And

Meredith Freedhoff.

MEMBER FREEDHOFF: Here.

DEPUTY DIRECTOR PAYNE: We do have a quorum.

The first item on the agenda is the approval of minutes from the June 3rd meeting. I believe that you were sent the minutes. Hopefully you had an opportunity to take a look at those.

MS. MARINELLO: If there are no changes, I move that the Board approve the minutes of the June 3rd, 2024, meeting of the Franklin

1 County Board of Elections as submitted.

2 CHAIRMAN PREISSE: Second.

3 DEPUTY DIRECTOR PAYNE: It's been
4 properly moved and seconded.

5 All those in favor of the motion,
6 signify by saying "aye."

7 (Vote taken.)

8 DEPUTY DIRECTOR PAYNE: All opposed,
9 same sign.

10 (No response.)

11 DEPUTY DIRECTOR PAYNE: Motion
12 carries.

13 The next item on the agenda, we
14 have, I believe, five voter challenges, and I will
15 call on Sara Ziemba, who is the supervisor of Voter
16 Services.

17 MS. ZIEMBA: Good afternoon,
18 everyone. We do have five voter challenges, and I
19 believe I have them in the correct order as the
20 line item here.

21 The first one that we have is a
22 challenge against Brenna D. Kirk brought by
23 Mary Beth Breyfogle.

24 And is Mary Beth here?

1 I don't -- She's not here, so I
2 don't know if you want me to continue presenting
3 the challenge that Miss Breyfogle has put forward,
4 or do we want to take another action on this.

5 MS. HUMMER: Is this a continued --

6 MS. ZIEMBA: It's a
7 continue- --

8 MS. HUMMER: Jeanine Hummer from the
9 Franklin County Prosecutor's office.

10 Is this the one that was continued?

11 MS. ZIEMBA: Yes.

12 CHAIRMAN PREISSE: And will you,
13 Counsel, remind us why it was continued and what
14 the prescriptions or the preferences are as to
15 presence of the challenger for -- to proceed on
16 these matters?

17 MS. HUMMER: The reason is to obtain
18 sworn testimony since it's an administrative
19 hearing on the right for an individual to vote.
20 And the person that brought forth the matter is not
21 present to provide that sworn testimony, and that
22 is for -- the reason we have requested these
23 individuals who put forth this request to come
24 forward. And --

1 CHAIRMAN PREISSE: Is this the one
2 that was -- Was this one delayed because of that
3 same matter?

4 DEPUTY DIRECTOR PAYNE: Yes.

5 MS. ZIEMBA: Yes.

6 MS. HUMMER: And was she notified to
7 be here?

8 MS. ZIEMBA: She is. She actually
9 sent an email saying that she doesn't get paid time
10 off of work, and so she can't take the -- the time
11 out of her day and not get paid to be here.

12 MS. HUMMER: One option for the
13 Board to consider is to allow a person to remote in
14 and provide that sworn testimony to you.

15 MS. GIBBONS: We provided her with
16 that option, and she said that she was unable to do
17 that, as well.

18 CHAIRMAN PREISSE: What about an
19 affidavit?

20 MS. HUMMER: An affidavit would be
21 not subject to any type of cross-examination or --

22 The rules of evidence are relaxed
23 for the -- for quasi judicial administrative
24 hearings, so you can accept that. But given the

1 request to remove a request the right to vote, we
2 always prefer to have the person present to provide
3 testimony.

4 But I leave it to the Board. It's
5 not impermissible.

6 CHAIRMAN PREISSE: Well, it seems
7 like we -- we don't want to remain in some sort of
8 a catch 22. It sounds like we had ought to delay
9 once again and to have a staff or counsel
10 discussion about potential paths forward. All
11 right?

12 MS. ZIEMBA: All right. We will
13 hold off on that challenge.

14 The next one on your line item
15 list, I believe, is the challenge brought by
16 Sarah Gormley against Whitney Christian [sic].
17 Sarah Gormley.

18 Again, Sarah Gormley, the
19 challenger, is not in attendance today. So do we
20 want to do the same?

21 CHAIRMAN PREISSE: Did we have
22 communication with her?

23 MS. ZIEMBA: Yeah. She would have
24 received --

1 I have not heard back from her
2 personally via email or phone. She would have
3 received the subpoena that was sent.

4 MS. GIBBONS: She received a
5 subpoena, and we also noticed it in the Daily
6 Reporter, as well, so.

7 MS. HUMMER: What we can do for the
8 Board so there's clarity is we can provide you with
9 a legal opinion on what is considered legally
10 sufficient with regard to a challenger's testimony
11 before the Board.

12 CHAIRMAN PREISSE: Okay. Thank you.
13 So we'll pass on the Sarah Gormley
14 challenge.

15 MS. ZIEMBA: All right. The next
16 one is the challenge from Phillip Alves against Zoe
17 Rapair.

18 And in this case, Zoe Rapair, the
19 challenged person, originally registered to vote on
20 5-23, 2024 from a paper registration form collected
21 by an advocacy group. Miss Rapair has never voted
22 in Franklin County. And initially when
23 Miss Rapair's registration was processed by the
24 Board of Elections, as every registration form is,

1 it was cross-checked with the BMV and the Social
2 Security Administration to make sure that the
3 information on the form was accurate.

4 In this case, Miss Rapair's
5 registration information, meaning her name, first
6 name, last name, date of birth, or identification,
7 didn't match the records in the BMV or SSA.

8 CHAIRMAN PREISSE: Did you say did
9 or did not?

10 MS. ZIEMBA: Did not.

11 CHAIRMAN PREISSE: Did not.

12 MS. ZIEMBA: So we sent a follow-up
13 confirmation letter to her, which would have gone
14 to Mr. Alves' residence and did not receive a
15 response from that. So that changed her status
16 from active to inactive once she gets the
17 confirmation letter.

18 In this case, and you will see in
19 your packet there, Miss Rapair signed a petition
20 for the Ohio Minor Political Party this past
21 summer; and that activity of signing a petition was
22 deemed valid by our staff, and that changed her
23 registration back to active. So that is the
24 activity, the most recent activity Miss Rapair has

1 had on her record other than that initial
2 registration form. And Miss Rapair's signature is
3 on line 5 of the petition copy that you have there.
4 And to -- to me, it's 329 -- it says -- it looks
5 like Darbyhurst to me.

6 When I saw this, uhm, the address
7 that she put on her registration form is
8 329 Danhurst, which is Mr. Alves' residence.

9 So I sent a registration form to
10 329 Darbyhurst because I thought that's what it
11 looked like on the petition and have not heard
12 anything back from Miss Rapair yet.

13 So other -- other than this petition
14 and that initial registration form, those are the
15 only two things that we have to go on for
16 Miss Rapair in Franklin County.

17 Mr. Alves, on his challenge form,
18 said that he does not know Miss Rapair, and she has
19 not ever lived at his residence.

20 MS. FREEDHOFF: Was there an actual
21 address at 329 Darbyhurst?

22 MS. ZIEMBA: Uhm, yes, there are
23 other people registered there. Not -- There wasn't
24 anyone with the name Rapair, though.

1 So I sent a form there. Hopefully
2 if Zoe is living there, then she will send that
3 back and we can, you know, get her registered at
4 her proper residence.

5 But barring that -- that fact, that
6 I -- we tried to reach out to her there, I -- Voter
7 Services found no other evidence on file to support
8 that Zoe lived at 329 Danhurst Road.

9 And so we would recommend, after
10 you've heard the testimony from Mr. Alves, that the
11 Board would approve or uphold his challenge of
12 Miss Rapair, uhm, that she does not live at
13 329 Danhurst Road.

14 CHAIRMAN PREISSE: Can we hear from
15 Mr. Alves? Is it Alvis?

16 MR. PHILLIP ALVES: Alves. Kind of
17 sounds like elves with an A.

18 CHAIRMAN PREISSE: Okay. Would you
19 state your name and address for the court reporter.

20 Oh, yeah. You need to be placed
21 under oath first.

22 (Phillip Alves was given an oath to
23 tell the truth, the whole truth, and nothing but
24 the truth by the notary/reporter.)

1 CHAIRMAN PREISSE: Okay. Tell us
2 what's happening.

3 MR. ALVES: Well, earlier, I want to
4 say in June? Sorry. It's been a while. Yeah,
5 earlier in June, I received a piece of mail for a
6 Zoe Rapair from the Franklin County Board of
7 Elections. I didn't open it. I -- I looked at it
8 and I said, There is no one here by that name.

9 And so I asked some people who would
10 know for some guidance and some wisdom, and they
11 said, Maybe you should contact the Franklin County
12 Board of Elections, which I -- I did. And I
13 call -- I -- I think I left a message.

14 And while I was out of state, I
15 received a -- a call back and explaining what was
16 going on. And, ah, she gave me the instructions on
17 what to do, how to send --

18 You know, she sent me the -- the
19 file to fill out the paperwork, asked me why I was
20 challenging. Because I've never seen that name
21 before in my entire life.

22 We've owned that house since 2005, I
23 believe; and we've never had anybody by that name,
24 to my knowledge, live there, uhm, at all.

1 And so when I got that, I kind of
2 got a little worried, wondering how much more
3 information was given out. And so I contacted
4 them, and I received the subpoena with -- to bring
5 documentation that I live there. So I did that.

6 CHAIRMAN PREISSE: Okay. Questions
7 from the Board?

8 MEMBER SEXTON: Mr. Alves, it says
9 here you -- you said you moved there in 2005;
10 registered here in 2000 -- I believe 2004, and then
11 it says you moved to Brown County in 2013 and
12 returned in '16.

13 MR. ALVES: Correct.

14 MEMBER SEXTON: So I would assume
15 that since '16, you've had no -- before you moved
16 and after you moved, you have no idea who this
17 person is or they've never lived there any of those
18 times?

19 MR. ALVES: Ah, no, not that I know
20 of. One --

21 When away moved down to
22 Brown County, we did rent our house out to a lady
23 name Dianna Murchison. But that was through a real
24 estate agent that sort of does our property

1 manager. And he was very specific about who was
2 allowed to live there, and he checked on them
3 constantly and did not see anybody by that name
4 there --

5 MEMBER SEXTON: Okay. Thank you.

6 MR. ALVES: -- that he told me.

7 CHAIRMAN PREISSE: Other questions?

8 Well, we thank you for your
9 diligence and attention to the details and
10 participating in this public process.

11 Do you have any other things you
12 would like to say?

13 MR. ALVES: No. I mean, I brought
14 proof of -- that I live there. I was told to, so.

15 CHAIRMAN PREISSE: Does any of the
16 Board wish to see further evidence?

17 I am satisfied, but don't let me
18 influence you.

19 MEMBER MARINELLO: I'm satisfied,
20 too.

21 CHAIRMAN PREISSE: Okay. Thank you
22 very much.

23 MR. ALVES: Thank you.

24 MEMBER SEXTON: Mr. Chairman, I

1 would move that the Board approve the challenge
2 for the right to vote filed by Phillip Alves,
3 329 Danhurst Road, Columbus, Ohio, against
4 Zoe Rapair at the same address or that Zoe Rapair's
5 registration be removed from the Franklin County
6 Board of Elections voter file.

7 CHAIRMAN PREISSE: Second.

8 DEPUTY DIRECTOR PAYNE: It's been
9 properly moved and seconded.

10 All those in favor of the motion,
11 signify by saying "aye."

12 (Vote taken.)

13 DEPUTY DIRECTOR PAYNE: All opposed,
14 same sign.

15 (No response.)

16 DEPUTY DIRECTOR PAYNE: The motion
17 carries.

18 MS. ZIEMBA: Okay. The next
19 challenge that we have is the challenge brought to
20 us from Lori Collner against Latoya Stewart. And
21 Lori is here.

22 Are you here today?

23 All right. Looks like Lori Collner,
24 the challenger, is not here today. So do we

1 want --

2 CHAIRMAN PREISSE: What kind of
3 communication have we had with her?

4 We have this form that she evidently
5 filed. Right?

6 MS. ZIEMBA: Yes.

7 MS. GIBBONS: We have sent by
8 certified mail subpoenas, and we have public
9 noticed it in the Daily Reporter.

10 MS. ZIEMBA: And I have not had any
11 additional phone or email conversation with
12 Miss Collner.

13 CHAIRMAN PREISSE: Our attempt to
14 communicate with her was a subpoena?

15 MS. ZIEMBA: Uh-huh.

16 MS. GIBBONS: By certified mail.

17 MS. HUMMER: But that was at the
18 wrong -- That was at an address that --

19 MS. ZIEMBA: No. This was the
20 challenger, Ms. Collner.

21 MS. HUMMER: Oh, okay.

22 CHAIRMAN PREISSE: We don't have a
23 phone number for Ms. Collner?

24 MS. ZIEMBA: I -- I don't know.

1 CHAIRMAN PREISSE: Okay. Well,
2 we'll pass on that one and put it in our stack of
3 resolutions.

4 MS. ZIEMBA: Okay. Last one is, the
5 challenge is brought to us from
6 Jeffrey Arman, and the challenge is against
7 Ashley Marie Latham.

8 MS. GIBBONS: And Jeffrey is with us
9 on -- on Zoom, so.

10 MS. ZIEMBA: Thank you, Jeffrey.

11 All right. I will start with the --
12 the overview of this one.

13 Ashley Marie Latham is registered at
14 649 East Jenkins Avenue, Columbus, Ohio 43207, on
15 April 12th, 2024.

16 Miss Latham, over the course of
17 April, May -- and May of this year, 2024, submitted
18 eight registration forms. The most recent one
19 was -- registered her at Mr. Arman's address of
20 649 East Jenkins Avenue.

21 Miss Latham has never voted in
22 Franklin County. You see in your packet there's
23 copies of all of her -- the registration forms
24 that she submitted. Several of them she used the

1 649 East Jenkins Avenue address over the course of
2 April and May this year. One of them she put
3 6079 Northgate Road, but that was just on one of
4 the eight.

5 Mr. Latham has been registered at
6 649 East Jenkins since 2018, and he regularly votes
7 absentee by mail from that address.

8 MEMBER MARINELLO: You mean
9 Mr. Arman?

10 MS. ZIEMBA: Mr. Arman, yes. I'm
11 sorry. Mr. Arman.

12 MR. ARMAN: Yes.

13 MS. ZIEMBA: So, again, like the --
14 like the last case, Voter Services did not find
15 anything else on file other than the seven
16 registration forms that were submitted by
17 Miss Latham during April and May of this year to
18 indicate that she did live at 649 East Jenkins.

19 And following the testimony from
20 Mr. Arman, Voter Services would recommend that the
21 Board approve the challenge that he has brought
22 today against Miss Latham.

23 He put on his form he's the only
24 occupant and owner of the property, and we found

1 nothing else on file or in -- that we have access
2 to that would say that that is untrue.

3 MR. ARMAN: Okay.

4 CHAIRMAN PREISSE: Just one moment.

5 (Discussion held off the record.)

6 MS. GIBBONS: Mr. Arman, can you
7 hear us?

8 MR. ARMAN: Yes, I can.

9 MS. GIBBONS: Is there any way for
10 you to turn your camera on?

11 MR. ARMAN: I'm old. Hang on one
12 sec.

13 MS. GIBBONS: No worries.

14 It should be on the bottom left-hand
15 side of the screen. And then we can swear you in.

16 MR. ARMAN: Okay. Your video has
17 stuck.

18 Tony, come here for one second,
19 would you?

20 I need a 20-year-old.

21 Can you get my video going?

22 (Jeffrey Arman was given an oath to
23 tell the truth, the whole truth, and nothing but
24 the truth by the notary/reporter.)

1 CHAIRMAN PREISSE: Okay. Mr. Arman,
2 you can hear me?

3 MR. ARMAN: Yes.

4 CHAIRMAN PREISSE: Okay. I'm
5 Doug Preisse, a board member.

6 We're getting a lot of background
7 discussion on your side. I don't know if there's
8 somebody in the room, but --

9 MR. ARMAN: Yeah, I'm at work.

10 CHAIRMAN PREISSE: Okay. Well, we
11 can proceed. It's just if they're able to give us
12 five minutes of tranquility, that will help. But
13 we'll proceed. We can hear you clearly, and now we
14 can see you. And you're young and good looking,
15 so.

16 MR. ARMAN: Well, you need your
17 glasses.

18 CHAIRMAN PREISSE: Would you --
19 would you please -- would you give us your name and
20 address, and then tell us the circumstances?

21 We've heard the staff here describe
22 it pretty clearly. We have material in front of
23 us, but we need to hear from you your version of
24 what's happened the last several months.

1 MR. ARMAN: First name Jeff, last
2 name Arman, A-r-m-a-n, 649 Jenkins Avenue,
3 Columbus, Ohio 43207.

4 There's a gentleman that did some --
5 I'm sorry?

6 CHAIRMAN PREISSE: Yes. Go ahead,
7 please.

8 MR. ARMAN: There's a gentleman that
9 did some yardwork and painting for me at the
10 property, ah, over probably -- well, last summer
11 and this fall. And he was dating a girl who was
12 trying -- who they both live on the streets of
13 Columbus, is their actual current address and
14 always has been living out of her vehicle. And
15 she used my -- she used my address to establish
16 residency to get Welfare, Food Stamps, and housing
17 for the two of them. And I didn't know this until
18 I received voter registration information with her
19 name on it at my address.

20 I called him, and he said that LMHA
21 advised her to get an address to make it easy for
22 her to file.

23 And then I found out that she used
24 the same address to try to obtain student loans

1 through Columbus State.

2 Well, I live alone. The deed is in
3 my name. I've never had anybody live there. And
4 this is what we've come to. And I'm just afraid,
5 knowing them, that she's the type that would, you
6 know, come to the door and say, I live here because
7 I have this registered address; uhm, and I just
8 don't want any problems. So that's where I'm at.

9 CHAIRMAN PREISSE: Okay. Thank you
10 very much.

11 Any Board members have questions for
12 Mr. Arman?

13 MR. ARMAN: Okay.

14 MEMBER MARINELLO: That's a scary
15 situation.

16 MS. FREEDHOFF: Uh-huh.

17 CHAIRMAN PREISSE: We are asking our
18 colleagues if they have any further questions for
19 you.

20 MR. ARMAN: Okay.

21 CHAIRMAN PREISSE: It sounds like we
22 do not, and so we thank you for your diligence and
23 for contacting the Board.

24 MR. ARMAN: Well, thank you guys.

1 signify by saying "aye."

2 (Vote taken.)

3 DEPUTY DIRECTOR PAYNE: All opposed,
4 same sign.

5 (No response.)

6 DEPUTY DIRECTOR PAYNE: Motion
7 carries.

8

9 CHAIRMAN PREISSE: Okay. Thank you
10 very much. And now you can tune out.

11 DEPUTY DIRECTOR PAYNE: The next
12 item on the agenda is the certification of minor
13 party candidates; and I'll call on Jeff Mackey, who
14 is the manager of petitions and filings.

15 MR. MACKEY: Afternoon. So the
16 beginning of July, the Libertarian Party of Ohio
17 filed a petition to form a minor political party
18 with the Secretary of State's office. And if -- if
19 proven by the SOS, then that would give them the
20 ability to have candidates on the November General
21 Election ballot.

22 Subsequent to that, five candidates
23 did file petitions with our office. Staff reviewed
24 the petitions, determined that three of the

1 petitions were sufficient. Those candidates are
2 recommended for certification by staff. They
3 appear on Exhibit A.

4 CHAIRMAN PREISSE: Five candidates
5 on two pieces of paper?

6 MR. MACKEY: So Exhibit A should
7 have three candidates, and those are the ones we
8 recommend for certifications.

9 CHAIRMAN PREISSE: Oh, I see where
10 it says it. Yeah.

11 MR. MACKEY: We still haven't heard
12 from the Secretary of State whether they approved
13 the petition to form the minor party. So if they
14 don't do that, then it will just not appear on the
15 ballot. But in the instance that they are approved
16 to have a party on the ballot, then these
17 candidates will appear.

18 CHAIRMAN PREISSE: So are -- If
19 we approve it today, our approval is somewhat
20 conditional pending the Secretary of State's
21 review --

22 MR. MACKEY: Yes.

23 CHAIRMAN PREISSE: -- of party
24 status statewide?

1 MR. MACKEY: Correct.

2 MS. HUMMER: And your motion should
3 so state that condition.

4 CHAIRMAN PREISSE: Okay. Questions
5 for Jeff?

6 And I think we have a member of the
7 public that wants to address the Board. But before
8 that, do we have questions?

9 MEMBER SEXTON: Mr. Mackey, just a
10 question we have, is there any time frame on when
11 that decision --

12 MR. MACKEY: I thought it was
13 supposed to happen on Friday.

14 CHAIRMAN PREISSE: So imminent.

15 MR. MACKEY: Right.

16 CHAIRMAN PREISSE: Is a
17 Mr. Jonathan Cowan with us?

18 MR. COWAN: Yes.

19 CHAIRMAN PREISSE: Do you wish to
20 address the Board?

21 MR. COWAN: Okay.

22 CHAIRMAN PREISSE: Okay. You're
23 welcome to do so.

24 MR. COWAN: Okay.

1 CHAIRMAN PREISSE: We hope you will
2 be succinct and take several minutes maybe at the
3 most and be available for questions.

4 MR. COWAN: Of course.

5 CHAIRMAN PREISSE: Will you also
6 state your name and get sworn in by the court
7 reporter. We'll do that first.

8 MR. COWAN: Sure. My name is
9 Jonathan Cowan.

10 (Jonathan Cowan was given an oath to
11 tell the truth, the whole truth, and nothing but
12 the truth by the notary/reporter.)

13 MR. COWAN: All right. Thank you
14 for having me here today.

15 CHAIRMAN PREISSE: Please proceed.

16 MR. COWAN: Yes. I'm here to
17 address for Steve Dodge. He's running for -- as a
18 Libertarian candidate for the upcoming Board of
19 Commissioners election.

20 On his form, I believe everything
21 was filled out correctly except for the date. He
22 put January 1st.

23 Now, there are two Board of
24 Commissioners running up for election, and one's

1 January 2nd, one's January 3rd. Uhm, all the other
2 petitions start January 1st. So he accidentally
3 put the wrong date on there, but everything else on
4 the petition, I believe, was correct.

5 I'm just asking for a little leeway
6 on that. He wasn't trying to do any kind of
7 malicious things or anything. The intent was to
8 put in the right date, but he just did not.

9 CHAIRMAN PREISSE: That's the review
10 that --

11 MR. MACKEY: He's on Exhibit B.

12 CHAIRMAN PREISSE: Yeah.

13 MEMBER MARINELLO: Jeff, do you have
14 anything to add? Like, we don't have a copy of the
15 petition or anything.

16 MR. MACKEY: I didn't bring the
17 petition with me. But, yes, he filled out the term
18 commencing date was January 1st of 2025, which,
19 January 1st would be the term commencing date for
20 Erica Crawley's seat, and she's not up until 2026.

21 CHAIRMAN PREISSE: Other than that,
22 the petition was in order?

23 MR. MACKEY: I -- Yes, I think so.

24 MS. FREEDHOFF: So what seat is he

1 wanting to run for?

2 MR. COWAN: So we weren't totally
3 for sure, but it would be the January 2nd one, if
4 that --

5 CHAIRMAN PREISSE: You're what?

6 MR. COWAN: So he was wanting to run
7 for the January 2nd one, but we were confused on if
8 when you run, do you run for both positions or do
9 you have to pick which one?

10 DIRECTOR WHITE: The date would
11 indicate which seat you want to run for, which is
12 why it's significant that you put the correct date.

13 MR. COWAN: Yes, he meant the
14 January 2nd one.

15 DIRECTOR WHITE: But we don't know
16 that without it being properly stated.

17 MR. COWAN: Yeah, so it would be the
18 January 2nd one.

19 CHAIRMAN PREISSE: How do we know
20 that other than you --

21 MR. COWAN: I talked to him. We've
22 had meetings this, about coming here.

23 MS. HUMMER: It's controlled by the
24 commission.

1 CHAIRMAN PREISSE: You've talked to
2 him, and how do we know that?

3 What is your position?

4 MR. COWAN: I am the chair of the
5 Franklin County Libertarian Party.

6 CHAIRMAN PREISSE: Okay.

7 MS. FREEDHOFF: Have we had this
8 happen before? And how did we handle it?

9 MR. MACKEY: Personally, I think
10 that that is probably one of the requirements that
11 would be strictly -- strictly required so that we
12 know which seat and that the people signing the
13 petition know which seat the candidate is running
14 for. So I don't --

15 I think this is what we would call a
16 fatal flaw.

17 MS. HUMMER: We have not reviewed
18 these.

19 CHAIRMAN PREISSE: These petitions
20 or this matter?

21 MS. HUMMER: Huh-uh.

22 CHAIRMAN PREISSE: I'm trying to
23 recall precedent, and I'm thinking back to --

24 MR. MACKEY: It would be like our

1 judicial candidate petitions. Each one is specific
2 to a term commencing date, so each one would have
3 to reflect the correct term commencing date.

4 MEMBER SEXTON: Well, I don't see
5 that we have any authority to grant any kind of
6 leeway or anything on this, because it is a -- I
7 mean, it is --

8 You know, the -- the date is the
9 seat that you're running for. And, you know, if we
10 look at a judge, is there what? 10 or 11 on all
11 different commencement days. And the director says
12 that's how we decide which race you're running for.

13 So I don't know if we can
14 arbitrarily just say, Well, it's -- you know, Prove
15 this and give any leeway, because I don't think
16 there's any leeway under the law.

17 But, you know, if there's any
18 opinion from the prosecutor's office, I'd like to
19 hear it. But I don't think it's anything we can do
20 as this body.

21 MS. HUMMER: Well, I learned in my
22 thousand years of practicing law not to shoot from
23 the hip on something this important. If we could
24 at least have a moment to start -- to research the

1 question and maybe come back to this matter, and
2 I'll have Brian look at it.

3 CHAIRMAN PREISSE: Okay.

4 MS. HUMMER: You want to come back
5 and --

6 CHAIRMAN PREISSE: Can we pause on
7 your matter for a few minutes or several minutes?

8 MS. HUMMER: But from my
9 recollection from the judges' basis, you are
10 absolutely correct that you cannot substitute what
11 has been placed on a petition for a determination
12 of a term, because the term determines what seat
13 you are running for.

14 CHAIRMAN PREISSE: This is certainly
15 something in my 40-some years of petitioning and
16 campaigns we would call a fatal flaw.

17 Having said that, in the last
18 handful of years, certain courts have said certain
19 things about what we would have considered a fatal
20 flaw 10 or 20 years ago; so I don't want to shoot
21 from the hip, either.

22 So if we could pause on your matter.
23 And thank you for your patience. We will return to
24 it when we think we're ready.

1 MR. COWAN: All right. Thank you.

2 MEMBER SEXTON: Thank you.

3 (Discussion held off the record.)

4 MR. MACKEY: He also showed me the
5 letter from the Secretary of State certifying the
6 Libertarians as a minor party. We just haven't
7 received that yet, apparently. So I don't think
8 any motions that you make need to be contingent any
9 longer, but let me go grab that petition for him.

10 CHAIRMAN PREISSE: Yeah, why don't
11 you take the time to do that.

12 And what do we have next on the
13 agenda?

14 (Discussion held off the record.)

15 DEPUTY DIRECTOR PAYNE: Potentially
16 that list could change, I would guess, depending
17 on what --

18 CHAIRMAN PREISSE: It might be
19 cleaner to wait on that, too, and add -- If Mr. --

20 If we determine that Mr. Dodge goes
21 on Exhibit A, alter A (phonetic), and then take one
22 vote maybe?

23 MEMBER SEXTON: Okay.

24 CHAIRMAN PREISSE: Okay. So what's

1 next?

2 DEPUTY DIRECTOR PAYNE: The next
3 item on the agenda would be the Brown Township
4 Zoning Referendum. And I was going to have Jeff
5 tee that up, but he exited the room.

6 CHAIRMAN PREISSE: Then, we're going
7 to take a five-minute recess so I can run down the
8 hall. And anybody else can do that, too, if they
9 want.

10 (Brief recess.)

11 CHAIRMAN PREISSE: Okay. We're
12 back.

13 On the -- on the matter of Candidate
14 Stephen Dodge, Mr. Chairman, we would like to give
15 our counsel more time to thoroughly investigate and
16 look at the precedent that I suspect you would
17 agree, though I apologize for the delay in making a
18 decision; but inasmuch as some of the old-timers
19 like me look at this as a fatal flaw, you may wish
20 to give us more time to look at it.

21 MR. COWAN: Okay.

22 CHAIRMAN PREISSE: We have a
23 regularly scheduled Board meeting on --

24 DEPUTY DIRECTOR PAYNE: It's not a

1 regularly scheduled. It's a special meeting coming
2 up on the 14th.

3 CHAIRMAN PREISSE: -- coming up on
4 August 14th, which we expect to be able to take
5 this matter up again. And hopefully that's not a
6 time inconvenient for you and your purposes.

7 MEMBER MARINELLO: And you're still
8 waiting for the Secretary of State's official --

9 MR. MACKEY: No. He had a copy of
10 the letter. Yeah, I have not -- I don't have a
11 copy of the letter.

12 DIRECTOR WHITE: The secretary would
13 send us a directive, all the Board, directing us
14 what to do in that matter. So they would notify as
15 to -- they made status as to what to do with the
16 ballots and candidates and things of that nature.
17 So we will be waiting for that direction.

18 CHAIRMAN PREISSE: Is there a
19 compelling reason to certify and not certify it as
20 suggested today, or should -- can we wait until the
21 14th for a cleaner proceeding?

22 So we'll postpone those decisions,
23 too.

24 Okay. Thanks a lot.

1 Now we're going to move on to the
2 Brown Township Zoning Referendum issue.

3 MR. MACKEY: I'm prepared to give
4 you a little background as we go into this.

5 March 12th, 2024, the Board of
6 County Commissioners passed Resolution No.
7 0326-24, adopting the recommendation of the
8 Franklin County Rural Zoning Commission and
9 approving the application of Horsehouse Property,
10 LLC, the owners of 7124 Davis Road, Columbus, Ohio.
11 That was Zoning Application No. ZON-23-12.

12 On April 9th, 2024, a referendum
13 petition of that zoning case was filed with the
14 Franklin County Board of Commissioners.

15 On April 23rd, 2024, the Board of
16 Commissioners passed Resolution No. 0339-24,
17 requesting the Board of Elections to review the
18 signatures on the referendum petition, which we
19 did.

20 And on April 24th, 2024, the Board
21 of Elections certified to the Board of
22 Commissioners the results of our review of the
23 referendum petition signatures.

24 May 14th, 2024, Resolution No.

1 0413-24 was passed by the Commissioners directing
2 the Board of Elections to place the question posed
3 in the referendum on the 2024 General Election
4 Ballot. And this was filed with the Board of
5 Elections on June 4th, 2024.

6 CHAIRMAN PREISSE: Repeat that last
7 sentence again.

8 MR. MACKEY: Yeah. So we sent our
9 certification of the signatures back to the
10 Commissioners, and they reviewed that and then
11 passed another resolution ordering us to put that
12 referendum on the ballot.

13 MS. FREEDHOFF: That was June 24th?

14 MR. MACKEY: That was May -- Well,
15 I'm sorry. June 4th.

16 MS. FREEDHOFF: June 4th.

17 MR. MACKEY: And then on June 6th,
18 2024, our office received a request not to certify
19 this referendum to the ballot from the law office
20 of McTigue & Colombo, LLC, representing Horsehouse
21 Property, LLC.

22 So to this point, the Board of
23 Elections's role has been purely ministerial in
24 nature. We checked the signatures on the petition

1 forwarded us by the Commissioner's office, and then
2 provided them a certification of our findings,
3 which were that at the 2022 General Election, there
4 were 1,233 votes cast for governor in Brown
5 Township, and the number of electors representing
6 eight percent of that number is 99. So 99 was the
7 number of signatures that the referendum petition
8 required. The referendum petitioner has filed 285
9 signatures on the petition, and we found 273 of
10 those to be valid. So they were registered voters
11 in the unincorporated areas of Franklin Township.

12 DIRECTOR WHITE: Brown.

13 MR. MACKEY: Brown Township. Sorry.

14 So under regular circumstances, the
15 Board of Elections at our August 14th meeting would
16 have certified this issue to the General Election
17 ballot, and the referendum would have appeared with
18 the other questions and issues that were submitted.
19 But because we received this request not to certify
20 the issue to the ballot, we're having this meeting
21 so that we can determine the merits of that
22 request.

23 CHAIRMAN PREISSE: Okay. Questions
24 for Jeff?

1 DIRECTOR WHITE: And, Jeff, when you
2 say it would have been automatically approved, you
3 mean the Board would have taken an action to
4 approve it --

5 MS. HUMMER: Or disapprove it.

6 DIRECTOR WHITE: -- or disapprove it
7 to the ballot?

8 MR. MACKEY: Sure.

9 CHAIRMAN PREISSE: Did you take that
10 action?

11 MR. MACKEY: No.

12 MS. HUMMER: No, because --

13 CHAIRMAN PREISSE: The protest came
14 in before?

15 MR. MACKEY: Correct.

16 MS. HUMMER: And we had not fully
17 approved the matter to form, as well. I think
18 that's an important part of the process that, uhm,
19 we need to --

20 In terms of what the Board of
21 Elections does administratively, they would have
22 sent this to our office, we would have reviewed it,
23 determined whether to approve the form; and if
24 there was an issue, we would have notified. And

1 that step, because a protest came in advance, did
2 not need to occur.

3 CHAIRMAN PREISSE: Okay.

4 MS. HUMMER: In terms of educating
5 the Board in terms of the Board of Commissioner's
6 process, they too are administering the following
7 the process. So when there is a request for a
8 referendum, their role is to just merely take what
9 was passed and move forward with that
10 administratively, because everything falls on the
11 Board of Elections to determine the merit of the
12 referendum that would be placed on the ballot.

13 - - -

14 *Thereupon, the Administrative
15 hearing, re: Brown Township Referendum commenced
16 at 3:54 p.m.

17 - - -

18 CHAIRMAN PREISSE: Okay. So
19 we will proceed to conduct a hearing. We're
20 suggesting that both sides of the matter will take
21 a -- will be provided a maximum of 30 minutes,
22 which we hope is sufficient to present the case.
23 We can go longer if it's necessary. We'll start
24 with the petitioners.

1 Who is representing the petitioners
2 today?

3 MR. COLOMBO: We represent the
4 protesters. He represents the petitioners.

5 CHAIRMAN PREISSE: Well, in this
6 case, I think --

7 MS.

8 MS. HUMMER: Protestors go first.

9 CHAIRMAN PREISSE: This is a little
10 confusing. I think the protestor should go --
11 begin.

12 (Discussion held off the record.)

13 CHAIRMAN PREISSE: The protestors
14 are petitioning the Board.

15 - - -

16 All witnesses and counsel sworn.

17 - - -

18 MR. COLOMBO: Good afternoon,
19 Chairman Preisse, members of the Board. My name is
20 Corey Colombo. I'm an attorney with McTigue &
21 Colombo.

22 And with me today -- he won't --
23 he'll be staying back there, but my co-counsel is
24 Tom Hart with Painter & Associates.

1 My plan today is, Chair Preisse, if
2 that's okay, is to give a two-minute opening
3 statement. I will have one witness. And then I'd
4 like to save -- reserve time for a closing
5 statement, which will probably be about a 10-minute
6 statement.

7 I represent Horsehouse Properties,
8 LLC, the name of the property --

9 One of the protestor's name is
10 Horsehouse Properties, LLC. And then we also --
11 when this was scheduled as a protest hearing, we
12 submitted a letter to the Board identifying four
13 registered Brown Township voters, who will also be
14 serving as protestors. And several of them are in
15 the audience.

16 If you're a protestor, can you raise
17 your hand?

18 We have Mahmoud Rababah, the second
19 is Riyadh Altallaa, the third protestor is Alia
20 Hamed, and the final protestor is Mahdi Badawi.

21 And one of the exhibits I'll provide
22 to the Board members is their voter registrations
23 to show they're Brown Township registered voters.

24 So there are five protestors in

1 total: the entity, and then the four registered
2 Brown Township voters. And a few of them are here
3 today.

4 But I do want to thank the Board of
5 Elections for scheduling this hearing. This
6 opening statement will be brief.

7 In short, the Brown Township
8 referendum petition at issue here that was filed
9 should be deemed invalid and not certified to the
10 ballot.

11 The petition did not contain the
12 location of the property along with several other
13 items that were identified in the protest letter or
14 the request not to certify. That includes the
15 personal ID number, the applicant, the owner, and a
16 few other items. But the one we are especially
17 going to highlight is the location of the property,
18 and that's because the Ohio Supreme Court in the
19 last three years has issued three decisions
20 referencing that the property location is a central
21 component of the petition summary. If there's a
22 material omission in the petition summary, the full
23 petition is invalid.

24 And the requirements for the

1 petition summary requires strict compliance. And
2 I'll cover this more in my closing.

3 These minimum standards are all
4 contained in Revised Code 303.12(H) to provide a
5 brief summary of the contents of the subject zoning
6 referen- -- resolution. And I'll give you the case
7 cites in my closing.

8 But excluding the property location
9 on the petition is a material omission which
10 renders the petition invalid. And I look at this
11 as -- as being analogous as a candidate filing a
12 nominating petition and not having their name on
13 there; and then at the hearing trying to say, Well,
14 the people who signed it knew what this was about.

15 But there are safeguards in these
16 petitions where you're balancing referendum rights
17 compared to property owner rights. And those
18 guardrails are in place out of fundamental fairness
19 that if some -- you know, if a group were to
20 circulate a referendum petition, it needs to
21 include some bare minimums for it to be valid.

22 So I will be submitting later a copy
23 of one of the part-petitions, and I would ask the
24 Board to look at the four corners -- within the

1 four corners of that document and ask whether a
2 person who had signed this petition would have any
3 idea where this property is even located.

4 You know, Brown Township is
5 22 square miles. This property is 24 acres of that
6 22 square miles. And this is an area that sees a
7 significant number of rezonings, zoning
8 applications, variances, not to mention that
9 surrounding Hilliard and Columbus has all kinds of
10 contentious zoning matters. So if a person doesn't
11 know what -- which one they're signing, it should
12 be invalid, and we would request for the -- the
13 Board not to certify the issue to the ballot.

14 Chair Preisse, I'm not sure if you
15 want the other counsel to give an opening of some
16 or sort or if you want me to go through my case?

17 CHAIRMAN PREISSE: I think go
18 through them one at a time, I think. And then
19 you'll both have the opportunity for rebuttal
20 and --

21 MR. COLOMBO: Yeah, that sounds good
22 to me.

23 I'd like to -- He's already been
24 sworn in, but my sole witness today is Mark Denny.

1 And I'm not sure if you want him to pull a chair up
2 here, if that would be easiest.

3 CHAIRMAN PREISSE: Well, he should
4 come up to the microphone or close to it if he's
5 capable.

6 MS.

7 MS. HUMMER: I think counsel wants
8 to ask him questions.

9 CHAIRMAN PREISSE: Oh. Is that what
10 you want to do?

11 MR. COLOMBO: I do.

12 CHAIRMAN PREISSE: Okay. Yeah,
13 sure. Pull a chair up.

14 MR. COLOMBO: And for the record,
15 Mark Denny was sworn in when DEPUTY DIRECTOR PAYNE
16 reporter asked for, you know, anyone testifying to
17 be sworn in.

18 If I could approach the Board, I do
19 have four exhibits.

20 (Discussion held off the record.)

21 - - -

22 MARK R. DENNY,

23 being first duly sworn, as hereinafter

24 certified, testified as follows:

DIRECT EXAMINATION

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BY MR. COLOMBO:

Q. So, Mark, if you could, could you state and spell your name for the record.

A. Sure. It's Mark R. Denny, M-a-r-k, D-e-n-n-y.

Q. Mark, what's your business address?

A. 1085 Kenilworth Place, Columbus, 43209.

Q. What is your profession?

A. I'm an architect by profession.

Q. And how did you become involved with this particular zoning?

A. Ah, the clients of mine had purchased this property and wanted me to help them rezone it and wanted me to be their project manager.

(Discussion held off the record.)

BY MR. COLOMBO:

Q. Mr. Denny, was the zoning application in your name?

A. Yes, I was the applicant and all the information go through me.

Q. Is it correct the property was

1 located at 7124 Davis Road?

2 A. Yes.

3 Q. And do you recall how many acres
4 there were total?

5 A. 24.116.

6 MS. HUMMER: Mr. Colombo, keep your
7 voice as high up because you don't have a
8 microphone.

9 MR. COLOMBO: Understood. Thank
10 you.

11 Q. Mr. Denny, if I could, could you
12 look at Exhibit C in the packet I've put before
13 you?

14 May I assist?

15 Mr. Denny, have you seen these?

16 Take a quick look at that two-page
17 exhibit.

18 A. Yes.

19 Q. Have you seen these maps before?

20 A. Yes.

21 Q. Are these true and accurate copies
22 of maps of where the subject property is located in
23 Brown Township?

24 A. Yes.

1 Q. Now, explain to me by looking at
2 these maps, where is it located? What part of
3 Brown Township?

4 A. It's in the northeast portion of
5 Brown Township adjacent to Hilliard.

6 Q. You had testified you were the
7 zoning applicant.

8 Would the -- would this address of
9 7124 Davis Road have been included in the zoning
10 application?

11 A. Yes.

12 Q. Was the address of 7124 Davis Road
13 included in the zoning resolution passed by the
14 Franklin County Commissioners?

15 A. Yes.

16 Q. Okay. If I could now have you look
17 at Exhibit A. This one right there. This is a
18 copy of a Franklin County Commissioners Zoning
19 Resolution 0326-24. Is that correct?

20 A. Yes.

21 Q. Have you seen this before?

22 A. Yes.

23 Q. Is it a true and accurate copy of
24 the resolution that was approved for the rezoning?

1 A. Yes.

2 MR. COLOMBO: And for the record, we
3 obtained this document directly from the Board of
4 Elections.

5 Q. If you could turn to page 2 of that
6 exhibit.

7 A. Okay.

8 Q. Okay. Is the address 7124 Davis
9 Road included within the zoning resolution?

10 A. Page 2?

11 Q. The second -- Yeah. I'm sorry. The
12 second page of Exhibit A.

13 A. I don't see that.

14 Q. Right before the number 1 there, a
15 couple lines up, does it say it's recommended,
16 hereby adopted, and -- I'm sorry -- that, The
17 recommendation of the Franklin County Rural Zoning
18 Commission is hereby adopted and the application of
19 Horsehouse Property, LLC (owner) 7142 Davis Road --
20 has a few more words -- is approved with the
21 conditions.

22 Do you see that in the resolution?

23 A. Yes.

24 Q. And asking an obvious question here,

1 does -- is a -- is a property address one way to
2 identify the location of a property?

3 A. Yes.

4 Q. And on that same line, is the parcel
5 ID listed?

6 A. Yes.

7 Q. And is it correct that's PID No.
8 120-000318?

9 A. Yes.

10 Q. Now, if I could have you flip to the
11 first page of Exhibit A, under the first whereas
12 clause, does it list the amount of acreage involved
13 in this rezoning effort?

14 A. Yes.

15 Q. And am I correct that that's
16 24.116 acres?

17 A. Yes.

18 Q. I also see in that same whereas
19 section, it says the applicant is Mark R. Denny.
20 Correct?

21 A. Yes.

22 Q. And that's obviously you.

23 A. Yes.

24 Q. And on that same line, it lists

1 Horsehouse Property, LLC, as the owner of the
2 property. Correct?

3 A. Yes.

4 Q. And if you go to the very top of
5 Exhibit A, does it say that this was Resolution
6 No. 0326-24?

7 A. Yes.

8 Q. Okay. Now, if I could have you look
9 at Exhibit B.

10 Mr. Denny, have you seen this
11 Exhibit B before?

12 A. Yes.

13 Q. Is this a true and accurate copy of
14 one of the part-petitions that was circulated?

15 A. Yes.

16 Q. And to your understanding, this
17 format is the same as all the other part-petitions
18 that were filed?

19 A. That's correct.

20 MR. COLOMBO: And I believe the
21 original copy may be here if the Board needs to --
22 to look at that.

23 Q. On the part-PE- -- on this Exhibit
24 A -- I'm sorry -- Exhibit B, sample part-petition,

1 have you reviewed this before?

2 A. Yes.

3 Q. Is there anywhere within the sample
4 part-petition where the address of 7124 Davis Road
5 is listed?

6 A. The address is not listed.

7 Q. And that same Exhibit B, is there
8 anywhere on there where the Parcel No. 120-000318
9 is listed?

10 A. The parcel number is not listed.

11 Q. Is there anywhere on the sample
12 part-petition where the acreage of 24.116 acres is
13 listed?

14 A. No, it's not listed.

15 Q. Is there anywhere in this sample
16 part-petition where your name, Mark R. Denny,
17 Architect, is listed?

18 A. No.

19 Q. Is there anywhere on the referendum
20 petition where Horsehouse Property, LLC, is listed?

21 A. Can I have one minute, please?

22 Q. Sure.

23 A. (Witness reviewing document.)

24 The Horsehouse property is not

1 listed.

2 Q. Is there anywhere on the Sample B
3 part-petition in front of you where Resolution
4 0362-24, which approved this rezoning, is listed?

5 A. That's a little hard to -- to check.

6 Q. 0362-24.

7 A. I don't see it on here.

8 Q. Now, Mr. Denny, in your personal
9 opinion, does the -- does the petition provide
10 sufficient information for a petition signer to
11 become aware of where this property was located?

12 A. It does not.

13 Q. If you -- if you look at this again,
14 at the top line of that part-petition, the only way
15 this is differentiated or distinguished is that
16 they have the application number. Correct? Is
17 that -- is that correct?

18 A. That's correct.

19 Q. ZON-23-12. Correct?

20 A. That's correct.

21 Q. Now, would -- In your opinion, is
22 that alone enough to notify a petition signer that
23 this property deals with 7124 Davis Road?

24 A. No.

1 Actually, even for myself, I would
2 not recognize that connection between that number
3 and the location.

4 Q. So you as the applicant, if you saw
5 that number, you wouldn't even realize --

6 A. No.

7 Q. -- you're dealing with this
8 property?

9 A. No, I would not.

10 Q. In your opinion, why is it important
11 that petition signers should know where the
12 property is located?

13 A. I think number-one reason in my mind
14 is because of the density of the planning. This
15 property is next to Hilliard, which is a higher
16 density zoning area; and this property is located
17 on the Brown Township comprehensive plan. That's
18 the only property that's designated for one unit
19 per acre. Our plan shows one unit per every three
20 acres, which is one-third of what was shown in the
21 comprehensive plan.

22 So it would be important for
23 somebody to know that before they would sign a
24 petition against zoning that was in direct

1 compliance with the comprehensive plan from Brown
2 Township.

3 MR. COLOMBO: Okay. I do not have
4 any further questions. I don't know if you want to
5 allow --

6 CHAIRMAN PREISSE: I just have a
7 question for you.

8 MR. COLOMBO: Oh.

9 MS. HUMMER: You should allow first
10 the cross-examination of the other side. Then the
11 Board can ask any clarifying questions.

12 CHAIRMAN PREISSE: Okay. The
13 cross-examination or the -- or the --

14 Is that procedurally what we want to
15 do?

16 MS. HUMMER: I think they have a
17 right in an administrative hearing to cross-examine
18 any witness that is presented to the Board.

19 CHAIRMAN PREISSE: Oh, cross-examine
20 the witness.

21 Okay. All right. Then we shall
22 allow that if it's requested.

23 MR. EWALD: Shane Ewald, attorney
24 for the petitioners.

1 CHAIRMAN PREISSE: I'll ask you to
2 speak up, too, so we can move the mic in front of
3 Mr. Denny or move it back and forth if --

4 (Discussion held off the record.)

5 - - -

6 CROSS-EXAMINATION

7 BY MR. EWALD:

8 Q. Mr. Denny, you are the architect for
9 Horsehouse LLC that we are reviewing here today?

10 A. Yes.

11 Q. Okay. And how long have you been
12 retained for that project?

13 MS. HUMMER: You need to bring it to
14 the witness.

15 A. Approximately two years.

16 Q. Okay. Sorry.

17 Approximately two years?

18 A. Yes.

19 Q. And when you started on that
20 project, did this project have a name? Was it
21 identified by any particular name?

22 A. No, --

23 Q. Okay. Has it always --

24 A. -- not when we started.

1 He said when we started; and when we
2 started, he did not have. When he started, it did
3 not have a particular name.

4 Q. At any point did you identify it as
5 a project name or a number?

6 A. I've used the reference Davis Road
7 Development.

8 Q. Was that submitted with your
9 application to the County Commissioners?

10 A. No. No. It was just internal.

11 Q. It looks like that was known as
12 Zoning 20 -- I apologize -- ZON-23-12.

13 Does that sound correct?

14 A. Yes.

15 Q. Okay. Did you ever refer to the
16 project by the name given to it by the County
17 Commissioners, the 326-24?

18 A. I -- I don't know -- I don't know
19 how to answer that.

20 Q. Well, in any of your documents that
21 you submitted or any of the follow-up, did you
22 identify this project as the number that was
23 assigned by -- 326-24 by the County Commissioners'
24 resolution?

1 MS. HUMMER: If I may assist, the
2 number you're referring to is the Board of Zoning
3 and Planning number that is assigned by the
4 Economic Development and Planning Department when
5 there is an application submitted.

6 A. I do not have all my documentation
7 here to answer that question with.

8 I mean, obviously, we communicated
9 back and forth many, many times with the Planning
10 Commission, so I'm sure there's a reference
11 somewhere to it.

12 Q. Thank you.

13 The next question I have for you
14 quickly is, in front of you I see you have
15 Exhibit A, which was presented by your attorney in
16 the packet that he submitted to the Board.

17 Is that a true and accurate copy of
18 Exhibit A?

19 A. Yes.

20 Q. Okay. And what does Exhibit A mean
21 to you?

22 A. It's a copy of the approval for a
23 rezoning.

24 Q. Thank you.

1 And at the top of page, the first
2 page of 326-24 that you have in front of you, it's
3 in bold. That's usually referred to as a title.

4 Do you recognize that title?

5 A. Yes.

6 Q. And could you read that title for
7 the group to hear?

8 A. "Resolution to adopt the
9 recommendation of the Rural Zoning Commission of
10 Franklin County, Ohio - Case No. ZON-23-12
11 (Economic Development & Planning)."

12 Q. Thank you.

13 Could you flip to the next page.

14 A. (Witness complied.)

15 Q. What is at the top of that page?

16 A. Appears to be the exact same words.

17 Q. Thank you.

18 And could you flip to the next page.

19 A. (Witness complied.)

20 The same words.

21 Q. Okay. Thank you.

22 Mr. Denny, do you have a degree in
23 law? Are you able to practice in Ohio?

24 A. Law?

1 Q. Yes, an attorney.

2 A. No, I'm not an attorney.

3 MR. EWALD: Okay. I have not given
4 a copy of this to the Board, so I would like to
5 reserve time to cross-examine after the exhibits
6 have been presented to the Board, if that's okay.

7 CHAIRMAN PREISSE: You haven't given
8 us what?

9 MR. EWALD: I have a copy of a
10 notebook for each one of you.

11 I didn't want to --

12 I wanted to do that on direct; but,
13 I mean, I can do it now if you're okay with that.

14 MS. HUMMER: Well, I think you --
15 Are you finished with this witness?

16 MR. EWALD: At this time, yes.

17 MS. HUMMER: All right. You can
18 always re-call anybody you need to re-call.

19 You want to offer Mr. Colombo a
20 chance to redirect?

21 MR. EWALD: Sure.

22 MR. COLOMBO: I have no questions on
23 redirect. Thank you, though.

24 MR. EWALD: Thank you.

1 MR. COLOMBO: Thank you, Mr. Denny.
2 I have no further questions for you.

3 THE WITNESS: Thank you for your
4 patience.

5 MR. COLOMBO: Thank you.

6 Chairman Preisse, that was my sole
7 witness; and I could proceed to closing arguments
8 if -- if that would be good.

9 MS. HUMMER: Why don't you wait
10 till --

11 MR. COLOMBO: Till he gives his
12 side -- or his presentation?

13 CHAIRMAN PREISSE: Yeah. Let's --
14 We'll do that. So now we'll hear your general
15 case. Right, Shane?

16 MR. EWALD: Yes.

17 I'd like to call up
18 Melissa Brinkerhoff. And this witness has
19 already been sworn in.

20 CHAIRMAN PREISSE: You're going to
21 have to do the microphone dance again.

22 MR. EWALD: All right. I will. I
23 will.

24 (Discussion held off the record.)

1 MR. EWALD: I'm going to provide
2 this to the witness as I ask her questions.

3 MS. HUMMER: Is that an exhibit that
4 you're providing to her?

5 MR. EWALD: It is.

6 MS. HUMMER: Is it a notebook
7 that we --

8 MR. EWALD: It is a copy that will
9 go directly to the Board.

10 (Discussion held off the record.)

11 MR. EWALD: I've already provided a
12 copy to opposing counsel.

13 MS. HUMMER: You can hand it to them
14 now.

15 And eventually one of those will
16 need to go to DEPUTY DIRECTOR PAYNE reporter.

17 MR. EWALD: Yes.

18 Thank you for your patience. That
19 works a lot better.

20 - - -

21 MELISSA BRINKERHOFF,
22 being first duly sworn, as hereinafter
23 certified, testified as follows:

24 - - -

DIRECT EXAMINATION

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BY MR. EWALD:

Q. What I've handed you is a copy of 10 exhibits I'd like to introduce to the Board to -- for your review.

On -- I wonder if I can get away with this.

Exhibit 1 is a copy of the petitions.

Do you care if I call you Melissa?

A. (Witness shook head negatively.)

Q. Melissa, looking at those, do those look familiar?

A. Yes.

Q. Okay. And how do you recognize them?

A. By the number ZON-23-12.

Q. Okay. And do you recognize the number at the top?

A. The ZON-23-12.

Q. Was that number always provided on all documentation during the process through the County Commissioners?

A. That's -- Yes, that's the

1 number that was -- That was the number that was
2 assigned to the zoning -- to the zoning case
3 ZON-23-12.

4 Q. Thank you.

5 And how many signatures did you
6 collect with your group?

7 A. We collected over 280. Uhm, we were
8 required to get 99. Over 273 were certified.

9 Q. Could you move to Item 2. What is
10 Item 2?

11 A. It's the transcript from the County
12 Commissioners' meeting on the zoning -- rezoning
13 hearing March 12th, 2024.

14 Q. And that was requested by your
15 group?

16 A. Correct.

17 Q. Could you open No. 2 to page 19.
18 And on page 19 at Row 19, can you tell me what that
19 says?

20 A. "The request is to rezone from the
21 Rural district to the Planned Low-Density
22 Residential district to allow for the development
23 of a single-family subdivision with eight lots."

24 Q. And do you recall, was that what was

1 listed as the title on your petition form?

2 A. No. It was only the zoning number
3 assigned to the case, ZON-23-12.

4 Q. And for the brief summary, was that
5 the title that was listed?

6 If you look back.

7 MR. EWALD: We're going to go back
8 to the Exhibit 1 so she can review the --

9 A. Sorry.

10 Q. You're good.

11 A. Oh, yeah. Here. Sorry.

12 It was to rezone Rural district
13 Planned Low-Density Residential district to allow
14 the development of a single-family subdivision.

15 Q. Thank you.

16 Can we go back to Item 2.

17 And looking back at Item 2, line 19,
18 page 19, does that appear to be the same language
19 that's used on the -- the attached summary of the
20 petition, each petition part?

21 A. On this summary?

22 Q. Yes. Yes.

23 A. Yes. It's at the -- it's at the top
24 to rezone the low -- to -- the Rural district to

1 the Planned Low-Density Residential district.

2 Q. And is it your understanding that
3 that was the action that was being taken by the
4 county, is to rezone this property?

5 A. Yes.

6 Q. All right. Can you go to Item 3.

7 A. (Witness complied.)

8 Do you recognize Item 3?

9 A. Ah, yes.

10 Q. And what is it?

11 A. Uhm, it is for the clerk --

12 Ah, let's see.

13 Oh. The Zoning 23-12. Uhm, we
14 submitted the petitions to the Board of Elections.
15 That's the title for the Special Election held on
16 the date in November. That was what we submitted.

17 Q. And did the county pass this to send
18 it to the Board of Elections?

19 A. Yes.

20 Q. Okay. Attached to that is a copy of
21 Resolution 326-24.

22 Can you turn to that? It's
23 identified as Exhibit A. It's also in the
24 protestor's packet, as well.

1 A. Oh. Yes. I'm sorry. Next page.
2 Oh, I'm sorry.

3 The Resolution to adopt the
4 recommendation of the Rural Zoning Commission of
5 Franklin County, Case No. ZON-23-12.

6 Q. And do you have an understanding of
7 what that means?

8 A. To rezone the --
9 The request was to rezone the
10 property.

11 Q. Was the rezoning based on the
12 application or a recommendation and adoption of the
13 Rural Zoning Commission?

14 A. On the recommendation of the Rural
15 Zoning.

16 Q. Did they add any conditions?

17 A. There were conditions associated
18 with it from the County Commissioners that moved
19 forward with it to the Rural Zoning.

20 Q. The -- Let's move to Item 4,
21 Exhibit -- Exhibit 4.

22 A. Oh, I'm sorry.

23 Q. You're good.

24 A. Oh, I'm sorry. Okay.

1 Q. Do you recognize this map?

2 A. Yes. This map was in the County
3 Commissioners' packet for their March 12th meeting.

4 Q. It's the first color map for the
5 Board members. There are three maps included.

6 Could you look at each one and tell
7 me if you recognize those?

8 A. I do recognize them.

9 Uhm, we used the -- specifically
10 during our petition gathering, signature gathering,
11 because it contained all the information that we
12 needed to explain, uhm, to people when they came to
13 sign what they were -- what they were signing for,
14 which was a rezoning, ZON-23-12. It lists the
15 address, and it lists the amount of acreage, and it
16 is drawn on the map that the County Commissioners
17 had in their packet.

18 Q. If you turn the notebook to the
19 left, in the upper right-hand corner on the first
20 page of Exhibit 4, what does the text under the
21 zoning number state?

22 A. "Request to rezone from the Rural
23 District to the Planned Low-Denisty Residential
24 District to allow for the development of a

1 single-family subdivision with 8 lots."

2 Q. And above that text and below that
3 text, do you see a red -- black line?

4 A. Ah, yes.

5 Q. Okay. Anywhere within that area,
6 does it list the acreage within those lines?

7 A. Uhm, no, not -- not above it.
8 Huh-uh.

9 Q. Does it list the address at
10 7124 Davis within those lines?

11 A. No.

12 Q. Okay. Could you turn to Map 2.

13 A. (Witness complied.)

14 Q. Do you recognize this map?

15 A. Yes.

16 We used this map also on our
17 petition-gathering table that we had set up,
18 because it showed the smaller picture of the
19 subdivision.

20 Q. And in the upper right-hand corner,
21 when the notebook is turned to your left, do you
22 see the zoning number?

23 A. Yes, ZON-23-12.

24 Q. Does this appear to be the same

1 language and separation from the other additional
2 attributes of the document?

3 A. Yes. It's what we used, because
4 that's what was referenced, was the ZON-23-12.

5 Q. Can we move to the next map, please.

6 A. (Witness complied.)

7 Q. Do you recognize this map?

8 A. Yes, I've seen this map. It's
9 referenced by the numbers ZON-23-12.

10 Q. And does the language in between
11 the lines appear to be the same as the prior two
12 maps?

13 A. Yes.

14 Q. Okay. Can you please move to
15 Exhibit 5.

16 A. (Witness complied.)

17 Q. Do you recognize this document?

18 A. Yes.

19 Q. And how do you recognize it?

20 A. I was -- This was mailed to my home
21 in May.

22 Q. Okay. Let's move to Exhibit 6.

23 Do you recognize this document?

24 A. Yes. This was mailed to my home.

1 Q. Okay. And it is a document
2 purporting to have four protestors for the hearing
3 today. Is that correct?

4 A. Correct.

5 Q. Exhibit 7, please.

6 A. (Witness complied.)

7 Q. Do you recognize this case law from
8 Brown Township?

9 A. I -- I have seen this before, --

10 Q. All right.

11 A. -- but I've never --

12 I -- I know of it. I guess I -- I
13 don't know the whole case.

14 Q. I have some follow-up questions.

15 I'm done with the exhibits at this
16 point.

17 The -- So when you circulated the
18 petitions, how did -- how did you do that?

19 A. So we had two drive-and-sign events
20 at the township hall. Uhm, we had prepared on our
21 table, uhm, the maps and petitions; and we had a
22 voter log, make sure that the people that were
23 signing, you know -- you know, were registered
24 voters.

1 A. That's okay.

2 Q. Ms. Brinkerhoff, if you turn to the
3 exhibit that's the copy of the petition, which I
4 believe is Exhibit 1.

5 A. Okay.

6 Q. Do you acknowledge that the property
7 address is not on this referendum petition?

8 A. Correct.

9 Q. Do you acknowledge there's not a
10 parcel ID?

11 A. Correct.

12 Q. Do you acknowledge it does not
13 reference the applicant as Mark R. Denny,
14 Architect?

15 A. Correct.

16 Q. Do you acknowledge it does not
17 reference the owner Horsehouse Property?

18 A. Correct.

19 Q. And do you acknowledge it does not
20 contain the resolution number that approved this
21 rezoning?

22 A. Correct.

23 Q. Is there anything on this petition
24 that, if you presented it to a Brown Township

1 voter, would assist them in identifying where the
2 property was located?

3 A. It was -- You could lo- -- you could
4 have located it by the ZON-23-12.

5 Q. In your opinion, would the average
6 Brown Township residents -- resident recognize that
7 zoning application number as the rezoning of
8 7124 Davis Road?

9 A. I can't testify to the wherewithal
10 of other people; but the people that came to the
11 drive-and-sign event, we went over it with them to
12 make sure that everybody understood what they were
13 signing. Uhm --

14 Q. If I -- if I could just -- I want to
15 know about the petition itself, what's contained
16 within the four corners of these -- this four-page
17 document.

18 Would they have been able to look at
19 this petition and know what property it was without
20 talking to you?

21 A. We had this petition only available
22 at our drive-and-sign event along with the summary
23 and the map.

24 Q. Okay. Was -- was a map an exhibit

1 to this petition?

2 A. I mean, it was -- it was with the
3 petition when we -- when people signed it. We went
4 over it with them, physically pointing and talking
5 to them.

6 We did not submit it to the Board of
7 Elections, uhm, because it was unnecessary to do
8 that.

9 Q. Was -- Were any maps stapled to the
10 petition when people signed them?

11 A. Uhm, maps were with it, yeah.

12 Q. Okay. But not stapled to it?

13 A. Ah, I don't think so, no.

14 Q. Does anywhere in the petition, does
15 it say "See Attached Exhibit Map"?

16 A. No.

17 Q. Were these maps filed with the Board
18 of Elections?

19 A. No, 'cause they were available in
20 the packet with the County Commissioners.

21 Q. Were you the circulator on all the
22 part-petitions?

23 A. I was one of the circulators. There
24 were a couple of us. I was there at both

1 drive-and-sign events.

2 Q. So you -- you don't know a hundred
3 percent what was said by other circulators?

4 A. Well, I --

5 Q. You -- you can only --

6 I'm sorry to interrupt you, but you
7 can only speak for yourself on the part-petitions
8 you circulated?

9 A. We -- I did the main speaking. We
10 both answered questions, the other volunteer and I.
11 Uhm, but I did the majority of the speaking and --
12 and went over the petition, the summary, and the
13 map with each person before they, you know, came
14 up.

15 And when they came up to sign,
16 we had multiple maps and information out. We
17 specifically asked people if they understood where
18 the property was located at and did they understand
19 that this was a rezoning.

20 Uhm, and they -- We collected over
21 280 signatures.

22 Q. But am I correct you can only
23 speak to the part-petitions that you signed as
24 the cir- -- as the designated circulator? Is that

1 correct?

2 A. Well, they were standing right next
3 to me. I mean, we had two sets of petitions going.

4 You know, I mean, both of us, we
5 were both right there. I don't know how else to
6 answer that.

7 Q. So at certain points in time, you
8 would be talking to one petition signer, and you
9 might have had a fellow resident talking to another
10 petition signer?

11 A. Yes. Uh-huh.

12 MR. COLOMBO: Okay. Those are all
13 the questions I have.

14 CHAIRMAN PREISSE: Okay. Now what
15 do we move on to?

16 MS. HUMMER: I believe if there are
17 no other witnesses, you would then call for closing
18 remarks. And then they can each --

19 MEMBER SEXTON: Is there one still
20 we need to hear from on --

21 CHAIRMAN PREISSE: Is
22 Michele Stayrook on this issue?

23 MS. GIBBONS: She filled out a
24 speaker slip to speak on the issue.

1 MS. STAYBOOK: I am present.

2 CHAIRMAN PREISSE: Did you wish to
3 address the Board on the Brown Township matter,
4 Michele Stayrook?

5 MS. STAYROOK: I can, again, say
6 that I was the second petitioner at the
7 sign-and-drive event.

8 CHAIRMAN PREISSE: Can you hang on a
9 second?

10 Are you able to activate your video?

11 MS. STAYROOK: I am. Maybe. I have
12 to activate it on my phone. Give me --

13 Can you guys hear me?

14 CHAIRMAN PREISSE: We can hear you.
15 We cannot see you.

16 MS. STAYROOK: My camera is on. I
17 appreciate you allowing me to join you. I'm
18 actually in Michigan right now. So hopefully my
19 reception is good enough.

20 CHAIRMAN PREISSE: Now we can see
21 you.

22 We would need to swear you in if you
23 wish to address the Board on the matter.

24 MS. STAYROOK: Okay. I can.

1 (Michele Stayrook sworn by the
2 Notary.)

3 CHAIRMAN PREISSE: Okay. Would you
4 start with reminding us of your name and address,
5 please?

6 MS. STAYROOK: Sure. My name is
7 Michele Stayrook. My address is 7806 Morris Road,
8 Hilliard, Ohio 43026.

9 CHAIRMAN PREISSE: Okay. Yes,
10 please proceed.

11 MS. STAYROOK: Okay. Well, I --
12 And, again, thank you for the opportunity.

13 I was the second petitioner at the
14 sign-and-drive event.

15 And as Miss Brinkerhoff recalled,
16 that is correct. We did have maps that were
17 provided to each of the -- the petition signees.
18 Uhm, so, you know, very -- very diligent in
19 providing the information to locate the property,
20 the bounds, and the -- the planned construction
21 development of the property.

22 I don't know if there's other
23 questions; but, again, we felt it very important
24 that the folks signing the petition knew exactly

1 where the property was.

2 Uhm, and, again, it was not an issue
3 with the -- the owner or the parcel. It was truly
4 about the -- the rezoning part to residential
5 rural, rather, to planned low density. That was
6 the focus.

7 CHAIRMAN PREISSE: Can we -- Does
8 counsel get to cross-examine her if they wish?

9 MS. HUMMER: Yes, since she's
10 obviously on behalf of the petitioner, then
11 Mr. Colombo can ask her questions.

12 MR. COLOMBO: Yes. Thank you,
13 Ms. Hummer. I don't have any questions.

14 CHAIRMAN PREISSE: Okay. I have one
15 question. Were there two petition circulators or
16 three? It looks as if there were three.

17 MS. BRINKERHOFF: There were three
18 altogether, Michele, myself, and another friend of
19 Michele's that were at the drive-and-sign events.

20 CHAIRMAN PREISSE: Okay. Thank you.

21 MEMBER MARINELLO: And all 285
22 signatures were gathered at these three events --
23 two events?

24 MS. BRINKERHOFF: Two events.

1 13 were not at that event. We had several people
2 who couldn't come to the drive-and-sign event, and
3 so the -- the two people went to them to get their
4 signatures. We didn't canvass or knock on doors or
5 anything like that.

6 CHAIRMAN PREISSE: Okay. Any other
7 questions for Michele Stayrook?

8 Okay. Well, you're welcome stay
9 online with us, of course; but thank you for your
10 participation today.

11 MS. STAYROOK: Thank you. I
12 appreciate it.

13 CHAIRMAN PREISSE: Now we can move
14 on to closing.

15 MS. BRINKERHOFF: I just have one
16 last thing if I could say, please.

17 MS. HUMMER: She can't. She's
18 already testified.

19 MS. BRINKERHOFF: That's fine.
20 Thank you.

21 CHAIRMAN PREISSE: Okay. Closing
22 statements?

23 MS. HUMMER: Mr. Colombo goes first,
24 then the other side, then Mr. Colombo finishes.

1 MR. COLOMBO: Board Members, thank
2 you for your patience today on behalf of the five
3 identified protestors, as well as my co-counsel,
4 Tom Hart.

5 At the end of the day, this is a
6 referendum petition, and it's about 7124 Davis
7 Road.

8 The problem with the petition is
9 there is nothing within the four corners of the --
10 the petition that would identify for a petition
11 signer of -- to the location of the property. And
12 that was the nature of my question, as well:
13 Without the address, was there anything else,
14 anything that would let someone who is signing this
15 to know where the property is located?

16 As I mentioned in the opening, Brown
17 Township is 22 square miles. The property involved
18 here is 24 acres. And this is an area of the
19 northwest quadrant of Franklin County that is
20 seeing a tremendous boom and all kinds of zoning
21 activity with their neighbors even in Hilliard,
22 which it borders it, and the City of Columbus in
23 the news is this zoning package that the City of
24 Columbus is evaluating.

1 So what is in this petition?

2 I would say we're talking about a
3 specific property here. We're talking about one on
4 Davis Road. And the witness for the petitioners
5 couldn't even pinpoint what that is in the
6 petition. Again, this would be like a candidate
7 petition where the candidate doesn't put their
8 name. This is a referendum petition where the
9 property is not identified.

10 So this is not the kind of defect in
11 the petition --

12 And I would call it a fatal flaw.

13 It's not the kind of defect that the
14 Board wants to have the precedent where you can
15 come in and have everyone testify about what else
16 was shown besides the petition or what else was
17 discussed.

18 We had two of the circulators, but I
19 know -- I note that another of the circulators, who
20 I think circulated the most, wasn't here today,
21 Sandra Bare, I believe, and Jan Scipio.

22 I mean, just flipping through these
23 petitions, we don't know where they got their
24 signatures, if they got them at the table, if they

1 personally circulated them going door to door. And
2 that's why the -- the sanctity of the petition is
3 so important; because otherwise, we would be
4 setting up the precedent we're going to have to
5 bring in all the circulators to discuss what they
6 told petition signers before they signed them.

7 There's some very minimal hurdles,
8 minimal thresholds for a petition to be valid to
9 proceed to the ballot, and those are contained
10 Revised Code 303.12(H).

11 I respectfully disagree with my
12 co-counsel's questions where he was asking about
13 different aspects of 303.12(H).

14 There's basically four requirements:
15 that you include the number in the full and correct
16 title, if any; the zoning resolution amendment,
17 resolution motion or application; the third is
18 furnishing the name by which the amendment is
19 known; and the fourth is a brief summary of the
20 contents of the petitions.

21 So the nature of the testimony from
22 his witness was about other aspects of that: Was
23 the zoning number included, that type of thing.

24 But the focus on -- for the Board

1 today is the brief summary of its contents, and
2 this must be strictly complied with.

3 If a summary is misleading,
4 inaccurate, or contains material omissions which
5 would confuse the average person, the petition is
6 invalid. It may not form the basis for the
7 submission to a vote.

8 And how can a brief summary
9 requirement be satisfied when the petition doesn't
10 even identify where the property is located?

11 These requirements in 303.12(H) are
12 essential to balance the -- the interests involved
13 here between the rights to referendum and the
14 rights of property owners.

15 It is mentioned this is in an area
16 of a hot bed of activity with zoning. And even --
17 even obtaining the documents to get ready for this
18 hearing, I saw all kinds of other Brown Township
19 matters that have been voted on are contentious.

20 You know, for example, in 2023,
21 there was a petition by the by the Girl Scouts of
22 America dealing with 228 acres that was on Hubbard
23 Road.

24 I mean, how do we know that what

1 they circulated here wasn't that -- for that
2 referendum?

3 There was 2022 zoning matter dealing
4 with securing pools, a 2023 resolution for a
5 smart-growth overlay. And the list goes on and on
6 and on about these other contentious zonings around
7 the township.

8 And I would submit having the
9 application number by itself is not going to do the
10 job of providing the average citizen where the
11 property is located.

12 As the applicant even said, this was
13 his application, and he couldn't even look at that
14 number just by itself and say, This is my property.
15 And if he can't do that, then certainly someone
16 presented with this petition is not going to know
17 which property this deals with.

18 This protest here, we're not dealing
19 with a novel legal argument. We are -- we're not
20 in unchartered waters here. The Supreme Court has
21 spoken to this many times, including three times in
22 the last three years. And I was on the losing end
23 of some of those.

24 But the first case that people cite

1 a lot is this Donaldson case, and that's in the
2 letter I submitted to the Board. That was a 2021
3 case in Delaware County. And DEPUTY DIRECTOR PAYNE
4 said quite simply it's the obligation to briefly
5 summarize a zoning amendment, implicitly requires a
6 referendum petition to accurately describe the
7 property subject to the rezoning.

8 DEPUTY DIRECTOR PAYNE said the
9 average person reading the summary would not know
10 where in this case a planned overlay district was
11 located or property is included with it. And
12 DEPUTY DIRECTOR PAYNE further stated, quote, At a
13 minimum, the summary should have identified the
14 location of the property of the land being rezoned
15 and explained the proposed zoning change. And this
16 is a case where the petition did not proceed to the
17 ballot.

18 Shortly after, Hillside Creek Farms
19 against Clark County, DEPUTY DIRECTOR PAYNE
20 emphasized, The summary must, quote, "must"
21 identify the location of the relevant property.

22 In preparing for this hearing today,
23 I found there's a 2024 case, as well, where it said
24 we have -- DEPUTY DIRECTOR PAYNE said -- Supreme

1 Court has said, We have held that the referendum
2 petition summary of the zoning amendment must
3 identify the location of the relevant property.

4 It is mentioned through the
5 testimony here not only did it not identify the
6 location; there were not even any secondary factors
7 that would help trigger someone to know where this
8 was. No acreage amount. That might have been
9 recognizable by someone. Parcel ID numbers is a
10 way to identify property; the landowner, the
11 applicant, the zoning resolution that was approved.

12 But as mentioned, it's not the kind
13 of thing -- The petition is what it is, and it's
14 that three-page -- each one was three pages. That
15 was what was submitted to the Board. No maps were
16 attached.

17 Uhm, we can't rely on two of the
18 circulators testifying with confidence that they
19 spoke to everyone. Again, that would open up a
20 huge Pandora's box if we had to go outside the
21 petition in order to salvage a -- a fatal petition.

22 So in short, the petition is
23 deficient, it does not meet the minimum standards
24 of 303.12(H) of the Revised Code, the petition has

1 material omissions on its face; and we would submit
2 that a brief summary is not sufficient if it
3 doesn't identify the property location.

4 Failing to include the property
5 location would confuse the average voter, as
6 there's nothing that would distinguish this
7 rezoning from any others that have been considered
8 for Brown Township and the surrounding areas.

9 So due to this fatal defect that are
10 on the face of the petition, on behalf of the
11 protestors, we request the Board declines to
12 certify the issue to the ballot.

13 Thank you.

14 CHAIRMAN PREISSE: Thank you.

15 Mr. Ewald?

16 MR. EWALD: Good afternoon.

17 In my closing statement, I'm going
18 to address the -- what the law is, actually, today.

19 There is no statute other than 303
20 that requires certain things. That is the
21 controlling statute. Nowhere in that statute will
22 you find that it says you have to have a property
23 description. That's been brought to us by case
24 law.

1 As my colleague said earlier, if you
2 look at your Exhibit 10, --

3 CHAIRMAN PREISSE: In the notebook?

4 MR. EWALD: -- in the most recent
5 cases, Hillside Creek Farms. And at the very tail
6 end of the opinion, it refers to what Mr. Colombo
7 just raised.

8 Under paragraph 33 on page 10, it
9 says, We recently identified the type of
10 information that a valid summary must include in
11 order to give perspective to voters a fair
12 understanding of the measure. You'll notice that
13 that refers back to the case in Donaldson.

14 And that's only one of the two items
15 in here that I want to call attention to.

16 So if you put a finger behind
17 that and move back to Exhibit 9 on page 7,
18 paragraph 14, The obligation to brief -- briefly
19 summarize a zoning amendment implicitly requires a
20 referendum petition to accurately describe the
21 property subject to rezoning.

22 That refers to the Rife case from
23 the late eighties, I believe.

24 So all this information is being

1 pulled forward in time from the Rife case.

2 That is Exhibit 8. And I promise
3 it's a shorter case. It's front and back.

4 On the back of that page, on page 2,
5 The obligation to briefly summarize the contents of
6 a rezoning resolution per 303 -- I'm sorry --
7 Revised Code 303.12(H) implicitly requires a
8 referendum to accurately describe the property
9 subject to rezoning.

10 There's a second part of that that
11 has somehow in the years fallen off. It says,
12 Compliance with this requirement is also measured
13 against the resolution as adopted by the County
14 Commissioners.

15 Now, earlier you remem -- you may
16 remember that I was talking about the title at the
17 top of the page; and that title doesn't talk about
18 the rezoning. That title refers to adopting a
19 recommendation of the Rural Zoning Commission.

20 And the Rural Zoning Commission
21 found that they wanted conditions applied to the
22 zoning. It was conditional. And they talked only
23 about the fact that they were changing the zoning
24 classification.

1 At no time did they ever talk about
2 where the property's located or the PID or the
3 owner or the architect. And that's why I asked
4 about that earlier.

5 So if you follow the case law back
6 and you look in there --

7 And you could possibly even argue.
8 I'll argue the other side for a
9 second.

10 Under Exhibit 3, it's also Exhibit A
11 in the Defendant -- I'm sorry -- in the
12 protestors's packet. Exhibit A, Resolution to
13 adopt the recommendation of the Rural Zoning
14 Commission.

15 Nowhere in this title --

16 And these titles are important. If
17 you've ever worked for a municipality or a city, a
18 lot of times it's common practice to put the
19 information that the protestors are looking for in
20 the title of the resolution. They didn't do that
21 here.

22 And if you even want to give
23 credence to the fact on the next page, under item 1
24 after all the whereases, if that's a word, that the

1 recommendation of the Franklin County Rural Zoning
2 Commission is hereby adopted and the application
3 for Horsehouse Property, LLC, and then it gives the
4 address of 7124 Davis Road, PID 120-000318,
5 Columbus, Ohio, being Application No. ZON-23-12, is
6 hereby approved with the following conditions.

7 That is directly taken from the
8 Rural Zoning Commission. But guess what? None of
9 that information was adopted and -- or passed by
10 the Rural Zoning Commission with a recommendation
11 to go to this County Commissioners.

12 So it's very difficult to write a
13 brief summary to an amendment from the floor in a
14 County Commissioner meeting when we had the
15 transcripts to deal with, which takes me back to
16 No. 2.

17 What was actually said at the
18 meeting?

19 Page 19: The request, which is the
20 proposal by the -- the developer or architect in
21 this case, the request is to rezone from the Rural
22 District to Planned Low-Density Residential
23 District to allow for the development of a single
24 family subdivision with 8 lots.

1 That's the request. That's what was
2 asked for of the Rural Zoning Commission, that's
3 what was asked for of the -- of the County
4 Commissioners, and that's what they approved
5 because they adopted the recommendation of the
6 Rural Zoning Commission.

7 So when you look at this, what is in
8 the --

9 I'll get back to Exhibit 1. Turn
10 to the second page. It's actually on the third
11 page, the Brief Summary of the Proposal. The
12 proposal is to actually change the zoning. That's
13 what was included in the brief summary. That's all
14 that's required.

15 Now, to the second point, back on
16 page 11 of Exhibit 10 --

17 And I know I'm flipping all over the
18 place, so.

19 -- you have to apprise the reader of
20 the present zoning status of the land and the
21 precise -- precise nature of the requested change.

22 If you look at -- under Exhibit 3,
23 it's the section we were just talking about,
24 No. 1.

1 CHAIRMAN PREISSE: What tab are you
2 at?

3 MR. EWALD: Sorry. It's Tab 3,
4 Exhibit 3. And it's the Exhibit A, which is the
5 resolution passed by the County Commissioners.

6 If you look at Item 1, nowhere in
7 there --

8 It gives you the address, and it
9 gives you the PID, and it gives you the zoning
10 number, and it tells you the owner, but it doesn't
11 talk about the zoning change.

12 So if the case law under Hillside is
13 correct, then that section does not meet the
14 requirements.

15 So what are the protestor -- I'm
16 sorry. What are the petitioners supposed to do?
17 They have an ordinance that is -- I'm sorry -- a
18 resolution that the title is incorrect; that the
19 first item is incorrect; and they worked within
20 the -- within the confines of that resolution. And
21 also based on the transcripts they were able to
22 obtain, there is an inconsistency between the
23 transcript and the resolution adopted.

24 And that would be our case, that

1 they used what was actually adopted on the record
2 from a floor vote from the County Commissioners,
3 and that's the zoning change.

4 So I would submit to the Board that
5 there is no requirement and that the language of
6 this meets the requirements of the base. And
7 that's why I included all the case law for your
8 review.

9 MS. HUMMER: Mr. Chairman, one thing
10 that wasn't done --

11 And there are a number of exhibits
12 that were submitted to the Board both on the
13 protestor's side and the petitioner's. Are you
14 asking that all that be admitted?

15 MR. EWALD: I believe both sides are
16 fine with all the exhibits. And there's one fi-

17 MS. HUMMER: You need to make sure
18 those are admitted into the evidence for purposes
19 of this transcript.

20 MR. EWALD: And I just have one
21 final case citation that's not in here.

22 If you look at State versus McCord,
23 and I did not provide that to you, it says that
24 DEPUTY DIRECTOR PAYNE has readily acknowledged that

1 when a referendum. State Ex Rel McCord versus
2 Delaware County Board of Elections, 2005 case, and
3 it's 106 Ohio St.3d 346, it says, DEPUTY DIRECTOR
4 PAYNE has readily acknowledged that when a
5 referendum petition summary of a resolution
6 contains substantially the same wording as the
7 resolution itself, we have
8 held that the summary complies with statutory
9 requirement.

10 I would submit to you that the
11 adoption of the language included into the
12 resolution through adopting the Rural Zoning
13 Commission -- I'm sorry -- the Rural Zoning
14 Commission directly from their approval is
15 substantially the same language.

16 And further, if you look at the
17 transcript, it matches the only thing that's listed
18 as the request; and that request is to change the
19 zoning.

20 Thank you for your time.

21 CHAIRMAN PREISSE: Thank you.

22 And we will include all -- both
23 sides' exhibits into the record.

24 MS. HUMMER: And I think finally,

1 Mr. Colombo has a right to the final word.

2 CHAIRMAN PREISSE: Final word,
3 Mr. Colombo?

4 MR. COLOMBO: You know, today I --
5 I -- I don't really think I have -- my closing
6 statement adequately summarizes our position.

7 To Ms. Hummer's point, though, I,
8 yes, would officially move the Board to admit the
9 exhibits I submitted. They were A through D.

10 And I have no objection to
11 Mr. Ewald's Exhibits 1 through 6, although usually
12 you don't submit cases as exhibits. So I don't --
13 I don't know if you want to admit those or --

14 MR. EWALD: I'd like to admit them
15 if they want to take a look at them. I mean, they
16 can look them up.

17 MS. HUMMER: After you admit, my
18 recommendation is that you -- since it's an
19 administrative hearing, that you go into a closed
20 session for purposes of your deliberations.

21 CHAIRMAN PREISSE: Okay.

22 Any objections to that from the
23 Board?

24 All right. Then, we will -- we will

1 move into --

2 MS. HUMMER: Go ahead and move to
3 admit the exhibits.

4 CHAIRMAN PREISSE: We have to vote
5 on that?

6 MS. HUMMER: Uh-huh.

7 CHAIRMAN PREISSE: All right. I
8 move to admit that we admit all the exhibits
9 submitted by both sides.

10 MEMBER SEXTON: I'm Michael Sexton.
11 I'll second it.

12 DEPUTY DIRECTOR PAYNE: It's been
13 properly moved and seconded.

14 All those in favor of the motion,
15 signify by saying "Aye."

16 (Vote taken.)

17 DEPUTY DIRECTOR PAYNE: All opposed,
18 same sign.

19 (No response.)

20 DEPUTY DIRECTOR PAYNE: Motion
21 carries.

22 CHAIRMAN PREISSE: Now I'll move
23 that we move into executive session.

24 Do I have to take a voice vote on

1 that? I mean, an individual vote on that?

2 MS. HUMMER: You do not need --
3 Open meetings does not apply to an administrative
4 hearing, so you can just go into closed session
5 without a vote.

6 CHAIRMAN PREISSE: Okay. So we'll
7 ask everybody respectfully to leave the room, but I
8 think we'll ask counsel to remain.

9 MS. HUMMER: No.

10 CHAIRMAN PREISSE: No?

11 (Discussion held off the record.)

12 (Brief recess for deliberations at
13 5:16 p.m.)

14 (Resumed hearing at 5:41 p.m.)

15 CHAIRMAN PREISSE: Okay. We will
16 move out of executive session.

17 We took no votes, but we did have a
18 vigorous conversation and examination of the
19 materials presented to us today and the arguments.
20 We appreciated the substance and seriousness that
21 was laid before us, as well as the participation of
22 the various voters and citizens who testified.

23 So we are, I think, prepared.

24 Unless any other Board members have comments, I

1 think we're prepared to proceed.

2 MEMBER MARINELLO: Mr. Chairman, I
3 move the following: That the Board of Elections
4 finds that the Petitioners did not prove by clear
5 and convincing evidence that a map was attached to
6 each part petition at issue here; that the Board of
7 Elections find that the summary of contents of the
8 petition did not sufficiently identify the location
9 of the relevant property; that the Board of
10 Elections find that the Franklin County Board of
11 Commissioners sufficiently identified the location
12 of the relevant property; that the Board of
13 Elections sustained the protest regarding the Brown
14 Township zoning referendum, and the Brown Township
15 zoning referendum will not appear on the
16 November 5th, 2024, General Election ballot.

17 CHAIRMAN PREISSE: Second the
18 motion.

19 DEPUTY DIRECTOR PAYNE: It's been
20 properly moved and seconded.

21 All those in favor of the motion,
22 signify by saying "Aye."

23 (Vote taken.)

24 DEPUTY DIRECTOR PAYNE: All opposed,

1 same sign.

2 (No response.)

3 DEPUTY DIRECTOR PAYNE: Motion
4 carries.

5 - - -

6 Thereupon, the administrative hearing
7 concluded at approximately 5:42 p.m.

8 - - -

9 (Recess.)

10 DEPUTY DIRECTOR PAYNE: The next
11 item on the agenda is the printing of a poll worker
12 training manual that we do each election, and
13 either Antoine or Steve Bulen.

14 MR. BULEN: Hi, Mr. Chairman and
15 members of the Board.

16 MS. FREEDHOFF: Hello.

17 MR. BULEN: It's once again time to
18 print our training manual, and so I believe that
19 the quote is in front of you. And we recommend
20 that we use the same printer that we used
21 throughout the last several elections. They do a
22 great job for us. And we're anticipating a high
23 turnout of poll workers this time around, so 6,000
24 training manuals would be the request.

1 our old training manuals, because even the
2 slightest change will be difficult to keep up with.
3 And so we start from scratch every election and
4 make sure that we destroy all the previous training
5 manuals, because there could be a domino effect;
6 one change in one section could affect other
7 changes. And so we want to make sure that
8 everything is accurate and up to date. And the
9 best way to do that is to get rid of all the old
10 and only print new and hand out new ones.

11 MEMBER SEXTON: Okay. Thank you.

12 MR. BULEN: Yes, sir.

13 MEMBER FREEDHOFF: Do you ever see
14 us going to a digital training manual?

15 MR. BULEN: We have it online, Madam
16 Chairman. We do have it online. I'm not sure that
17 all of our poll workers could access it online.

18 And we always recommend that they
19 take it with them on Election Day.

20 And so I'm not sure we want our poll
21 workers on digital devices on Election Day. That
22 may not be a good look. So having a nice paper
23 copy there we feel right now is the best; but it is
24 available online, as well, for reference.

1 CHAIRMAN PREISSE: Good question,
2 good answer.

3 DIRECTOR WHITE: That also has all
4 the checklists. That's why we recommend that they
5 take their book on Election Day, because it
6 contains all their important checklists that they
7 need to reference. We always tell them to
8 reference their checklists throughout the day.

9 MR. BULEN: Our goal is to create a
10 document that we can hand to everybod- -- anybody
11 off the street who may not even have gone through
12 training; and if they go to the right section and
13 follow it step by step by step, everything that
14 would need to be done would be outlined in those
15 checklists, as the director has pointed out.
16 That's our goal.

17 It is award winning, and a lot of
18 counties like to -- would like to have it. And I'm
19 so grateful honestly to a board that's willing to
20 accommodate the funding to create that. Our poll
21 workers appreciate it.

22 MS. FREEDHOFF: Thank you for
23 getting some good estimates, too.

24 MR. BULEN: That's Chris Bender,

1 training coordinator did all that hard work.

2 MS. FREEDHOFF: Thank you.

3 CHAIRMAN PREISSE: Good work.

4 MS. FREEDHOFF: Mr. Chairman, I move
5 that the Board authorize the printing of 6,000 poll
6 worker training manuals to be used in the 2024
7 general election at a total cost of \$34,700.

8 MEMBER SEXTON: Mr. Chairman,
9 Mike Sexton. I'll second.

10 DEPUTY DIRECTOR PAYNE: It's been
11 properly moved and seconded.

12 All those in favor of the motion
13 significant by saying "aye."

14 (Vote taken.)

15 DEPUTY DIRECTOR PAYNE: All opposed,
16 same sign.

17 (No response.)

18 DEPUTY DIRECTOR PAYNE: Motion
19 carries.

20 The next item on the agenda is the
21 Columbus Coach Shuttle Bus for our staff. And I'll
22 turn that over to Erin Gibbons.

23 MS. GIBBONS: Good evening, Board
24 members.

1 Tonight we're asking for your
2 support for a purchase order for shuttle buses for
3 staff to park at Ascension Lutheran Church just
4 down the street here on Morse Road off-site during
5 the early voting period to accommodate parking for
6 voters. This allows more space for our voters to
7 park, as well have, you know, large turnout during
8 this upcoming General Election.

9 Columbus Coach has been doing this
10 in larger elections for the past few years for us,
11 so they're familiar with the route, they're
12 familiar with our staff, and they do a good job.
13 And we have an ADA van, as well.

14 Any questions?

15 CHAIRMAN PREISSE: Not from me. You
16 are satisfied with the same service last time and
17 you're recommending we proceed?

18 MEMBER SEXTON: Okay. Mr. Chairman,
19 Michael Sexton. I move that the Board authorize
20 the payment of \$57,260 to Columbus Coach to shuttle
21 Board of Elections employees to 1700 Morse Road,
22 which will free up parking spots for Early Vote
23 Center voters during the 2024 General Election.

24 CHAIRMAN PREISSES: Second the

1 motion.

2 DEPUTY DIRECTOR PAYNE: It's been
3 properly moved and seconded.

4 All those in favor of the motion,
5 signify by saying "aye."

6 (Vote taken.)

7 DEPUTY DIRECTOR PAYNE: All opposed,
8 same sign.

9 (No response.)

10 DEPUTY DIRECTOR PAYNE: The motion
11 carries.

12 The next two items on the agenda,
13 I'll turn it over to Jeff Gatwood, our IT director.

14 The first one is the annual
15 Cradlepoint licensing fee.

16 MR. GATWOOD: Good evening, Board
17 Members. First item on the list is our Cradlepoint
18 licensing for the year. Cradlepoints are the
19 devices we use for our secure communications with
20 the polling locations during -- during our
21 election.

22 CHAIRMAN PREISSE: Okay.

23 MEMBER SEXTON: Are these the Poll
24 Pads?

1 MR. GATWOOD: So the electronic poll
2 books communicate with these. Correct.

3 MEMBER SEXTON: Okay. And this
4 election we're doing them for -- it's moved to the
5 entire county?

6 MR. GATWOOD: Correct.

7 MEMBER SEXTON: Okay.

8 Mr. Chairman, Michael Sexton. I
9 move the Board authorize the purchase of an annual
10 Cradlepoint license in the amount of \$68,283.34
11 with a renewal date of 8-14, 2025.

12 CHAIRMAN PREISSE: Second the
13 motion.

14 DEPUTY DIRECTOR PAYNE: It's been
15 properly moved and seconded.

16 All those in favor of the motion,
17 signify by saying "aye."

18 (Vote taken.)

19 DEPUTY DIRECTOR PAYNE: All opposed,
20 same sign.

21 (No response.)

22 DEPUTY DIRECTOR PAYNE: Motion
23 carries.

24 The next item is the Tenex petition

1 creation system.

2 MR. GATWOOD: Tenex is going to be
3 providing the new petition creation system.

4 The old system was originally
5 developed by the data center using outdated
6 technology, Cold Fusion, so we have to come up with
7 a replacement. And Tenex is in a better position
8 to provide this functionality, as they can tie it
9 indirectly to the Tenex environment where a lot of
10 the data that is used for this application is
11 maintained.

12 CHAIRMAN PREISSE: So petition
13 creation system, what are they -- what are they
14 creating?

15 MR. GATWOOD: So you can go online
16 to start your petition process, as well as
17 generating receipts for the petition filing
18 process.

19 CHAIRMAN PREISSE: Generate receipts
20 for electronic petition filing?

21 MR. GATWOOD: Uh-huh.

22 CHAIRMAN PREISSE: Okay. Sounds
23 good to me.

24 MS. FREEDHOFF: This isn't for the

1 next -- until 2024?

2 MR. GATWOOD: Till 2025, right.

3 MS. FREEDHOFF: So it will be live
4 at the end of the year?

5 MR. GATWOOD: Correct:

6 MEMBER FREEDHOFF: Mr. Chairman,
7 Meredith Freedhoff. I move that the board
8 authorize the payment of \$100,000 to Tenex Software
9 Solutions, Incorporated, for the Franklin County
10 Board of Elections petition creation system.

11 MEMBER MARINELLO: Second.

12 DEPUTY DIRECTOR PAYNE: It's been
13 properly moved and seconded.

14 All those in favor of the motion,
15 signify by saying "aye."

16 (Vote taken.)

17 DEPUTY DIRECTOR PAYNE: All opposed,
18 same sign.

19 (No response.)

20 DEPUTY DIRECTOR PAYNE: Motion
21 carries.

22 I don't see anything else on the
23 agenda.

24 Mr. Chairman?

1 CHAIRMAN PREISSE: Move to adjourn.
2 MEMBER MARINELLO: Second.
3 MEMBER SEXTON: Second.
4 CHAIRMAN PREISSE: We're adjourned.
5 DEPUTY DIRECTOR PAYNE: Seeing no
6 objections, we're adjourned.
7 - - -
8 Thereupon, the Board Meeting concluded
9 at approximately 5:52 p.m.
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C E R T I F I C A T E

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THE STATE OF OHIO:

SS:

COUNTY OF FRANKLIN:

I, Beth A. Higgins, a Professional Reporter and Notary Public in and for the State of Ohio, do hereby certify that the foregoing is a true, correct, and complete written transcript of the proceedings in this matter;

That the foregoing was taken by me stenographically and transcribed by me with computer-aided transcription;

That the foregoing occurred at the aforementioned time and place;

That I am not an attorney for or relative of either party and have no interest whatsoever in the event of this litigation.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal of office at Columbus, Ohio, this 19th of August, 2024.

/s/Beth A. Higgins _____
Notary Public, State of Ohio

My Commission Expires: July 16, 2025.

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Exhibit A: Candidates Recommended for Certification to the November 5, 2024 General Election

SEYMOUR, BRANDY **Ballot Name:** Brandy Seymour **Write-In:** No
Libertarian STATE REPRESENTATIVE OHIO HOUSE DISTRICT 09 Full Term Commencing

TERFORD, ERIC **Ballot Name:** Eric Terford **Write-In:** No
Libertarian STATE REPRESENTATIVE OHIO HOUSE DISTRICT 02 Full Term Commencing

LUNDSTROM, DRAKE **Ballot Name:** Drake Lundstrom **Write-In:** No
Libertarian COUNTY TREASURER FRANKLIN Full Term Commencing

DODGE, STEPHEN **Ballot Name:** Steve Dodge **Party:** Libertarian
COUNTY COMMISSIONER FRANKLIN Term Commencing 1/1/2025

Deficiency: The County Commissioner seat with the Term Commencing Date of January 1 is not on the ballot in 2024.

BARRINGTON, BRENNAN **Ballot Name:** Brennan Barrington **Party:** Libertarian
STATE REPRESENTATIVE OHIO HOUSE DISTRICT 01

Deficiency: Insufficient Valid Signatures - Candidate filed 13 signatures, but only 2 were found to be valid (5 required).