

**BEFORE THE BOARD OF ELECTIONS
HAMILTON COUNTY**

**CITIZENS TO RESTORE
FAIRNESS**

318 East Fourth Street
Cincinnati, OH 45202

and

GARY WRIGHT

2116 Alpine Place
Cincinnati, OH 45206

and

FREEMAN DURHAM

2725 Johnstone Place
Cincinnati, OH 45206

Plaintiffs,

v.

**HAMILTON COUNTY BOARD
OF ELECTIONS**

824 Broadway Ave.
Cincinnati, OH 45202

Defendant.

**PROTEST OF THE BOARD
OF ELECTIONS'
CERTIFICATION OF
REFERENDUM PETITIONS
RE: CITY OF CINCINNATI
ORDINANCE NO. 65-2006**

The Citizens to Restore Fairness, Gary Wright, and Freeman Durham, electors of the City of Cincinnati, hereby protest the Board of Elections' Certification of the referendum petition re: Cincinnati Ordinance 65-2006. This Protest is filed pursuant to R.C. § 3501.39. On March 15, 2006, eight of the nine City of Cincinnati Councilmembers voted to amend the Cincinnati Human Rights Ordinance to prohibit discrimination in the City on the basis of sexual orientation and transgendered status. The referendum petition committee is attempting to repeal this protection by placing the ordinance on the ballot. However, because the committee was unable to gather sufficient legitimate signatures, the petition should not be certified. We urge the Board

to make its decision quickly so that the protections offered by the Human Rights Ordinance may go into effect.

For a petition to be valid and sufficient in Cincinnati in 2006, it must contain 7,654 signatures. In July, the Board of Elections made its initial review of the 14,304 signatures submitted and rejected 6,648 of the signatures because the voter's address was invalid (2,257), the signer was not registered to vote (2,540), the voter lived outside of Cincinnati (850), the signature was not genuine (345), among other reasons. As a result of the Board's initial review, there were 7,656 signatures verified. As explained below, there are an additional 1,329 signatures which should be rejected. If the Board rejects these 1,329 signatures, the total number of valid signatures will be 6,327, which is clearly insufficient to certify the petition.

An alarming number of forgeries have been found on these petitions. In addition to the forged signatures that our expert was able to identify, there is additional evidence of forgeries. For example, the Board found 345 signatures to be not genuine. The affidavit of Amy McMahon states she did not sign her name to the petition, yet on page 1504 someone forged her name. (Exhibit 1 D). Likewise, someone forged Timothy M. Burke's signature on page 564 (compare to his registration card). (Exhibit 1 A). Someone forged Gregory Korte's signature on page 168 (compare to his registration card). (Exhibit 1 B). Someone attempted to forge the signature of Robert Castellini by changing the address of a Robert Castelli (who lives outside Cincinnati) to Robert Castellini's address (who lives inside Cincinnati). The Board accepted this signature as Robert Castellini's on page 56 although he was not the one to sign the petition (compare to his registration card). (Exhibit 1 C). Likewise, someone changed the address for Carol Atkins (who lives in Cleves) to an address in Cincinnati which the Board certified. However, the Carol

Atkins who lives in Cleves is the one who signed the petition, not the Carol Atkins who lives in Cincinnati (see registration card). (Exhibit 1 E).

For these reasons and those summarized below, we protest the petition for failing to contain a sufficient number of valid signatures. Every basis contained in this protest is rooted in a violation of an Ohio election law. Election laws are mandatory and require strict compliance. *State ex rel. Phillips v. Lorain Cty. Bd. of Elections* (2001), 93 Ohio St.3d 535, 539, 757 N.E.2d 319. The committee's failure to strictly comply with the Ohio laws dooms their referendum petition.

A. Failure to file itemization statement

Total Number to be rejected: **ALL SIGNATURES**

R.C. § 731.35 requires the circulating committee to file a complete itemized statement with the City Finance Director. On April 19, 2006 petition committee member David Miller filed an itemized statement stating that Citizens for Community Values (CCV) paid, give, or promised \$40,000 to un-named persons for circulating these petitions. (Exhibit 11). However, Mr. Miller refused to state the names and address of the person(s) to whom CCV gave the \$40,000. Even if the Board were to accept the statements from the circulators who called the Board of Elections claiming they would be paid \$1 for each signature that was validated, given that the Board initially verified 7,656 signatures, there is no accounting for who received the remaining \$32,344. Mr. Miller's refusal to provide this statutorily required information is sufficient grounds alone to reject the entire petition.

B. Questioned Signatures

Total Number to be rejected: **15**

After an initial review of the Petition, the Protestors engaged a handwriting expert, Paul H. Kramer. Mr. Kramer worked for nineteen years with the United States Postal Inspection

Service. He spent 10 years assigned to the USPS crime laboratory. In addition, Mr. Kramer has been in private practice as an examiner of questioned documents for over twenty-five years. He has testified approximately four hundred times in all levels of courts in eighteen different states, including Ohio. He served as the Regional Vice President for the State of New York for the International Association for Identification and served as a member of the Subcommittee on Questioned Documents and Subcommittee on Forensic Photography. His CV is attached as Exhibit 2. Mr. Kramer reviewed the petitions and voter registration cards and questions the authenticity of numerous signatures.

Ohio law clearly states that “no person shall write any name other than his own on any petition. No person may authorize another to sign for him.” R.C. §3501.38(D). The entire petition page is invalid when a circulator knowingly permits a person to write a name other than the person’s own on a page. R.C. § 3501.38(F).

On this petition there are 27 signatures which Expert Kramer has identified as being written by someone other than the petitioner. Of those 11 were rejected by the Board in its initial review, therefore, 15 additional signatures should be rejected.

BOE Page #	City Page #	Line #	Elector Name	Problem	Board Initial Review
862	488	2	Yvonne Reed	Not genuine	√
862	488	3	Dante Reed	Not genuine	√
862	488	4	Jerome Thomas	Not genuine	√
1056	824	4	Jeanette Stewart	Not genuine	√
1020	902	3	Tiffany Gibson	Not genuine	NG
1179	936	3	Karen Bell	Not genuine	√
1168	1014	7	Donald Winterman	Not genuine	NG
1171	1020	5	Blair Baker	Not genuine	NG
1172	1022	2	Betty Roley	Not genuine	√
1173	1024	7	Emmanuel Graham	Not genuine	NG
1449	1578	8	Denise Robinson	Not genuine	NR
644	1888	1	Mike Hermes	Not genuine	√
587	1974	7	Ewana Johnson	Not genuine	√
477	2162	7	Vanessa Wathel	Not genuine	√

403	2214	3	Robin "Jonhson"	Not genuine	NG
403	2214	4	Latasha Jones	Not genuine	NG
447	2302	10	Venita Ward	Not genuine	√
447	2304	1	Agnes Jones "Ange Jones"	Not genuine	NG
450	2308	6	Deborah Jordan	Not genuine	NG
450	2308	7	Millie Jordan	Not genuine	NG
352	2312	7	Eugene Anderson	Not genuine	√
356	2320	7	Jeffrey Forney	Not genuine	√
356	2320	10	Monroe Barnes	Not genuine	NG
359	2326	3	Donnerick Harper	Not genuine	√
389	2386	4	Melissa Brown	Not genuine	W
52	2912	4	Mark Jones	Not genuine	√
1529	3138	5	Deborah Gross	Not genuine	√

C. Questioned Signatures made by another signer

Total Number to be rejected: **110**

In addition to the above, Mr. Kramer has been able to identify that one petition signer signed for another petition signer:

BOE Page #	City Page #	Line #	Elector Name	Problem	Board Initial Review
928	408	8	Christie Jones	Written by same person	√
		9	Dr. William Jones		√
862	488	2	Yvonne Reed	Written by same person	√
		3	Dante Reed		√
		4	Jerome Thomas		√
		5	Evette Reed		√
1056	824	3	Kaiser Stewart	Written by same person	√
		4	Jeannette Stewart		√
1179	936	3	Karen Bell	Written by same person	√
		2	Roger Bell		√
1188	954	9	Dwayne Hill	Written by same person	NG
		7	Melissa Hill		√
587	1974	7	Ewana Johnson	Written by same person	√
		5	Edward Johnson		√
		6	Sandra Johnson		√
477	2162	6	Chandri Wathel	Written by same person	√
		7	Venessa Wathel		√
403	2214	3	Robin Johnson	Written by same person	NG
		4	Latasha Jones		NG
		5	Arnold Bush		NG
447	2302	5	Barbara Slavinski	Written by same person	√

		6	Richard Slavinski		√
448	2304	1	Agnes Jones	Written by same person	NG
		2	Roosevelt Jones		NG
449	2306	6	Deborah Dixon	Written by same person	NG
		7	George Dixon		NG
450	2308	6	Deborah Jordan	Written by same person	NG
		7	Millie Jordan		NG
		8	Quinton Jordan		NG
351	2310	9	Rudolph Worthen	Written by same person	√
		10	Deborah Worthen		√
352	2312	6	Eugene Anderson	Written by same person	√
		7	Barbara Anderson		√
356	2320	6	Daphne Forney	Written by same person	√
		7	Jeffrey Forney		√
356	2320	9	Stacey Barnes	Written by same person	√
		10	Monroe Barnes, Jr.		NG
357	2322	7	Aaron Stairs	Written by same person	√
		9	Kim Stairs		√
359	2326	3	Donnerick Harper	Written by same person	√
		4	Danny Harper		NR
		5	Eugene Harper		D
385	2378	4	Carla D. Williams	Written by same person	NRA
		5	Alexander Williams		NRA
389	2386	4	Melissa Brown	Written by same person	WD
		5	Alice Dubose		WD
390	2388	1	Allyson Davis	Written by same person	√
		2	Gary Davis, Jr.		√
52	2912	3	Mike Jones	Written by same person	NR
		4	Mark Jones		√
1520	3120	7	Sandra Waters	Written by same person	√
		8	Robert Waters		√

Of these, 33 were verified by the Board, but should now be rejected. However, when the circulator watches someone sign another's name, the circulator must have known the person signed another person's name to the petition, thereby disqualifying all the signatures on the petition. See, R.C. § 3501.38(F); *In re Protest of Brooks* (Ohio App. 3 Dist. 2003), 155 Ohio App.3d 370, 2003-Ohio-6348. Furthermore, R.C. § 3519.06(E) requires the Board to reject each petition where one person had affixed more than one signature. Therefore all of the signatures

on these above petition pages should be rejected. The total number of verified signatures on these pages is 110.

D. Questioned Signatures - Precilla Ward's Petitions

Total Number to be rejected: **71**

In addition to the above apparent forgeries, Expert Kramer has identified 20 additional signatures which were not written by the named signer.

BOE Page #	City Page #	Line #	Elector Name	Problem	Board Initial Review
496	2200	6	Princess Dear	Not genuine, appears to be written by P. Ward	√
496	2200	5	Chanell Williams	Not genuine, appears to be written by P. Ward	√
497	2202	5	Barbara Humes	Not genuine, appears to be written by P. Ward	NR
497	2202	10	Bobbie Jones	Not genuine, appears to be written by P. Ward	√
498	2204	7	Audrey Crump	Not genuine, appears to be written by P. Ward	√
498	2204	2	Willa Morris	Not genuine, appears to be written by P. Ward	√
498	2204	9	“Cynithia” Spell	Not genuine, appears to be written by P. Ward	NR
498	2204	8	“Cynithia” Mincy	Not genuine, appears to be written by P. Ward	NR
498	2204	10	Mamie Osborne	Not genuine, appears to be written by P. Ward	NR
499	2206	3	Alberta McFarland	Not genuine, appears to be written by P. Ward	√
499	2206	4	Ruthie Jones	Not genuine, appears to be written by P. Ward	√
499	2206	5	Sharon Shaw	Not genuine, appears to be written by P. Ward	√
499	2206	6	Camilia McDonald	Not genuine, appears to be written by P. Ward	√
499	2206	7	Deron McDonald	Not genuine, appears to be written by P. Ward	√
499	2206	9	Paul Cohen	Not genuine, appears to be written by P. Ward	NG
499	2206	10	Kendra Simmons	Not genuine, appears to be written by P. Ward	√
500	2208	10	Regina Lattimore	Not genuine, appears to	NR

				be written by P. Ward	
405	2218	4	Carol Bennington	Not genuine, appears to be written by P. Ward	NG
409	2226	6	Rhonda Brooks	Not genuine, appears to be written by P. Ward	√

These all appear to be written by circulator Precilla Ward. Circulator Precilla Ward has unique handwriting; in particular, she writes her “P” using a unique mark. She has other handwriting characteristics that make it appear as if she wrote these 20 questionable signatures. The Board should reject the 12 signatures which were previously verified. In addition, all the signatures on these 7 petition pages should all be rejected. R.C. § 3501.38(F) states that if a circulator knowingly permits an unqualified person to sign a petition paper or permits a person to write a name other than the person’s own on a petition paper, that petition paper is invalid” Therefore, if it is determined that Precilla Ward signed voter names on these 7 petition pages then each entire petition page should be rejected, for a total of 27 invalid signatures.

Finally, should it be found that circulator Precilla Ward did sign names to 7 of the 20 petition pages she circulated, we urge the Board to reject all 20 petition pages Ms. Ward circulated, thereby invalidating 71 signatures. The proper remedy for filing a false circulator declaration is to invalidate the part petitions submitted by a circulator. R.C. § 3519.06(D) (no referendum petition is properly verified if the circulator’s statement is false in any respect). *See also, In re Protest of Brooks* (Ohio App. 3 Dist. 2003), 155 Ohio App.3d 370, 2003-Ohio-6348 (when circulator statement is false, proper remedy is to strike entire part petition).

BOE Page #	City Page #	Board Initial Review # Verified signatures
906	376	2
901	722	0
1060	832	1
1004	870	7
1031	924	4
1186	950	2

1462	1674	4
1472	1694	4
476	2164	2
480	2168	4
496	2200	6
497	2202	2
498	2204	4
499	2206	7
500	2208	2
401	2210	7
405	2218	1
406	2220	7
407	2222	2
408	2224	3
Total		71

E. Address alterations

Total Number to be rejected: **1016**

On 504 petition parts there are at least 1016 addresses that were altered. (See Exhibit 6 for a list). It is obvious that the signer wrote in his/her address and someone else crossed out the original address and wrote in another address. The signer must place on the petition the location of his/her voting residence, which must be the address appearing in the registration records at the Board of Elections. R.C. § 3501.38 (C). No one is permitted to change the address without the signer’s authorization or permission. Therefore, these altered signatures are invalid and should all be rejected.

F. More than one circulator signed 10 part petitions

Total Number to be rejected: **76**

R.C. § 3501.38(E)(1) requires one circulator to circulate the petition page and sign a statement made under penalty of election falsification that the circulator witnessed the affixing of every signature, that all signers were to the best of the circulator’s knowledge and belief qualified to sign, and that every signature is to the best of the circulator’s knowledge and belief the signature of the person whose signature it purports to be. See also the Secretary of State

Memo (Exhibit 7) and Secretary of State Instructions. (Exhibit 8). R.C. § 3519.06 (C) prohibits erasure, interlineations or otherwise in the statement.

On 10 part petitions the circulator signed the statement and then someone else crossed off the circulator's name and signed the petition part. (Exhibit 9).

Board Number	City Number	Orig. Circulator	Altered Circulator	# valid signatures
788	12	Harold Kelly	Donald Barns	4
789	14	Harold Kelly	Donald Barns	6
790	16	Harold Kelly	Donald Barns	8
958	656	Timothy Tierney	Eric Wilder	7
967	674	Timothy Tierney	Eric Wilder	9
972	684	Timothy Tierney	Eric Wilder	8
777	802	?	Bill Kintner?	7
1444	1568	Anthony Fultz	Ryan Turner	3
1445	1570	Anthony Fultz	Ryan Turner	0
1448	1576	Anthony Fultz	Kenneth Alarid	3
1460	1670	Timothy Tierney	Eric Wilder	5
229	2666	Timothy Tierney	Eric Wilder	9
34	3072	?	Timothy Tierney	7
			TOTAL	76

From the face of these petition pages it is obvious that these pages are irregular and should be rejected. Only one circulator can sign the statement and it is clear from the petition that two people signed. Additionally, it is unclear which circulator actually circulated the petition and can attest to the signatures. Finally, the mere fact that the circulator's signature was crossed out and alerted violates the law. R.C. § 3519.06 (C). Therefore, all 58 signatures on these pages should be rejected.

G. Signatures that were not dated
 Total Number to be rejected: **28**

When signing a petition, the signer must place on the petition the date s/he signed. R.C. § 3501.38 (C). None of these signers placed a date on the petition, therefore they should all be rejected:

BOE Page #	City Page #	Line #	Elector Name	Problem
759	54	9	Julie Woods	Dated 9/9/06
866	496	6	Latoya Robinson	Zipcode but no date
866	496	7	Erika Rogers	Zipcode but no date
891	546	6	Connie English	Zipcode but no date
1106	1090	10	Shannera Solomon	Zipcode but no date
1319	1160	10	Dennis Bagett	Date box blank
1321	1164	8	Martha Koehler	Zipcode but no date
1227	1326	7	Krystal Meyer	Zipcode but no date
1227	1326	9	Annette Washington	Zipcode but no date
1460	1670	6	Clarence Smith	Time (7:45 pm) but no date
1376	1752	7	Demetrius Nash	Zipcode but No date
619	1838	2	Charles Allen	Zipcode but No date
619	1838	2	Sandra Moore	Zipcode but No date
639	1878	8	Rachel Pates	Zipcode but No date
539	2084	6	Ann P Salzbrun	Zipcode but No date
496	2200	8	Ladonna Jefferies	Street name, but No date
249	2706	1	Waulee Stivender	Dated 05/05/06
197	2802	6	Irma Purnell	Date box empty
105	2818	5	Stephen Green	Zipcode but No date
74	2956	5	Penny Poirier	Zipcode but No date
96	3000	1	James Goloversic	Zipcode but No date
96	3000	5	Sonya Thompson	Zipcode but No date
96	3000	6	Tim Andrew	Zipcode but No date
96	3000	7	Bonnie Weaver	Zipcode but No date
96	3000	8	Ebony Mixon	Zipcode but No date
100	3008	10	Marie Gardner	Zipcode but No date
8	3020	5	Catherine Cremeans	Zipcode but No date
29	3062	6	Marsha Jones	Zipcode but No date

H. Signatures that were dated before the committee filed a certified copy of the ordinance with the City Auditor

Total Number to be rejected: **6**

Before circulating a petition, the committee must file a certified copy of the proposed ordinance with the city auditor. The committee filed the ordinance on March 17, 2006 (Exhibit 10). Therefore the following signatures collected before March 17, 2006 must be rejected:

BOE Page #	City Page #	Line #	Elector Name	Problem
1114	1106	2	Annette Coleman	Dated 3/6/06
1114	1106	3	Shannon Miller	Dated 3/6/06
1121	1120	10	Debra Flammer	Dated 3/3/06
1304	1130	1	Jean Settles	Dated 3/4/06

1491	1732	3	Rayshaid Robinson	Dated 3/12/06
180	2768	10	Tim Kyles	dated 3/10/06

I. Signatures on petition page # 562 should be invalidated because the circulator attested to only 10 of the 11 signatures on the page

Total Number to be rejected: **8**

R.C.§ 3501.38(E)(1) requires the circulator to circulate the petition page and sign a statement made under penalty of election falsification that the circulator witnessed the affixing of every signature. When the circulator attests to less than the total number of signatures on a page, the entire page should be rejected. See Secretary of State Instructions (Exhibit 8). Page 562 has 11 signatures but the circulator only attested to 10. It is impossible to tell which 10 the circulator witnessed and which 1 he did not. Therefore, the entire page should be rejected.

J. Reject signature of Robert Castelli, Greg Korte, Carol Atkins

Total Number to be rejected: **3**

On page 56 the address of Robert Castelli (line 2) was changed to 2180 Grandin Road. The original address was for a residence in Mariemont, outside the City of Cincinnati. Robert Castellini lives at the Grandin Road address but the signature on the petition is not his. The signature appears to match Robert Castelli, who at the time the petitions were filed was registered to vote in Mariemont. Either way, this signature should not be counted.

On page 168 Greg Korte's signature was verified, but he has since contacted the Board to explain that he did not sign the petition. Therefore, his signature should be rejected.

On page 175 the address of Carol Atkins (line 10) was changed to 539 Milton. The original address was for a residence in Cleves, outside the City of Cincinnati. The Carol Atkins who lives at the Cleves address she signed the petition. However, the Board verified the signature for the Carol Atkins who lives in Cincinnati. The signature card of the Carol Atkins

who lives on Milton Street does not match the signature on the petition. The Carol Atkins signature should be rejected.

K. Evidence of circulators obtaining signatures with false pretense.

Total Number to be rejected: **15**

Upon information and belief, John Williams received a telephone call from Twin Towers Retirement Home verifying that BOE employees were collecting signatures on the referendum petition. Mr. Williams learned that circulators of the petitions were claiming they were BOE employees. Two petitions were circulated at Twin Towers Page # 646 and # 647. Given the false pretenses used by the circulators at Twin Towers the 15 signatures on these pages should be rejected.

Additional Evidence

The City of Cincinnati certified the petitions to the BOE on August 2, 2006. This protest is being filed on August 4, 2006. It is anticipated that between the filing and the hearing additional grounds for protesting may come to light as witnesses come forward and evidence is gathered. We will supplement our protest accordingly.

Conclusion

For anyone or all of the above reasons we urge you to find that there are insufficient numbers of signatures on the referendum petition. Therefore, this protest should be granted and the petitions should be declared to be invalid and insufficient.

Respectfully submitted,

Alphonse A. Gerhardstein (0032053)
Jennifer L. Branch (0038893)
Attorney for Plaintiffs
GERHARDSTEIN BRANCH & LAUFMAN CO. LPA
617 Vine Street # 1409

Cincinnati, Ohio 45202
(513) 621-9100
agerhardstein@GBLfirm.com
jbranch@GBLfirm.com

C: David Stevenson (w/ encl.)
David Langdon (w/encl.)
John Williams (w/ encl.)
Pamela Swofford (w/ encl.)