

BEFORE THE STATE OF OHIO BALLOT BOARD

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In the Matter of the :
Constitutional Amendment :
Concerning Medical :
Marijuana. :

- - -

PROCEEDINGS

before Secretary of State Jon Husted, Chair;
Representative Kathleen Clyde; and Senator Bill
Coley; at the Ohio Statehouse, 1 Capitol Square,
Finan Finance Hearing Room, Columbus, Ohio, called at
2 p.m. on Thursday, March 31, 2016.

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ARMSTRONG & OKEY, INC.
222 East Town Street, Second Floor
Columbus, Ohio 43215-5201
(614) 224-9481 - (800) 223-9481
Fax - (614) 224-5724

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1 Thursday Afternoon Session,
2 March 31, 2016.

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4 SECRETARY HUSTED: I would like to call
5 the meeting of the Ballot Board to order. My name is
6 Jon Husted. I am the Ohio Secretary of State and
7 Chairperson of the Ballot Board. My Senior Elections
8 Counsel Carrie Kuruc will serve as the secretary of
9 the Ballot Board meeting today.

10 And these proceedings will be transcribed
11 by a court reporter from Armstrong & Okey, and the
12 Ohio Channel will be streaming the meeting live on
13 their website where it will be archived.

14 To determine whether a quorum of the
15 Ballot Board is present, I ask the secretary to call
16 the roll, please.

17 MS. KURUC: Secretary Husted.

18 SECRETARY HUSTED: Here.

19 MS. KURUC: Mr. Morgan.

20 Senator Coley.

21 SENATOR COLEY: Here.

22 MS. KURUC: Representative Clyde.

23 REPRESENTATIVE CLYDE: Here.

24 MS. KURUC: Senator Turner.

25 SECRETARY HUSTED: All right. Let the

1 record reflect we have a quorum.

2 The Ballot Board's purpose today is to
3 examine the citizen-initiated constitutional
4 amendment to determine each -- whether this amendment
5 contains only one proposed constitutional amendment.
6 If the Ballot Board determines that the proposal
7 contains more than one proposed amendment, it must
8 divide the proposal into individual amendments and
9 certify them as separate amendments back to the
10 General Assembly.

11 Petitioners would then need to submit to
12 the Attorney General summaries of each separate
13 ballot initiative proposal. Should the Attorney
14 General find the newly submitted summaries to be fair
15 and truthful, the petitioners would then need to
16 collect signatures for each petition individually an
17 equal amount to 10 percent of the total votes cast
18 for Governor in 2014.

19 If anyone wishes to address the Board
20 about whether the proposed constitutional amendment
21 regarding medical marijuana is a single issue, please
22 sign in on the sheet located at the front of the
23 room.

24 A text -- or the text and a summary of
25 the proposed amendment was provided to the Ballot

1 Board members in advance of the meeting but there are
2 also copies in each member's folder if they wish to
3 review those as well. Extra copies are available up
4 front.

5 Now, let us move into the public comment
6 period of the proposed amendment. Please identify
7 yourself and who you represent.

8 We have one person. I will attempt to
9 read the signature here. It says Christopher. And,
10 Christopher, will you --

11 MR. FINNEY: Finney, F-I-N-N-E-Y.

12 SECRETARY HUSTED: Okay. I didn't see
13 you, Chris, so I didn't realize who was here to
14 testify on behalf of it. Okay. And you are
15 advocating for the amendment. And welcome and please
16 share your -- your thoughts, if you would.

17 MR. FINNEY: Good afternoon,
18 Mr. Secretary and members of the Ohio Ballot Board.
19 My name Christopher P. Finney. I am an attorney with
20 the Cincinnati law firm of the Finney Law Firm. I am
21 here on behalf of Ohioans for Medical Marijuana and
22 the three-member committee established to represent
23 the petitioners, Dr. Rafid A.H. Fadul and James
24 Michael Mackey and Leo Shuler.

25 As the Secretary said, or maybe didn't,

1 I'm not sure I heard it, the only purpose for the
2 meeting here today is to determine if the proposal
3 constitutes one amendment or more than one amendment.
4 That role for this panel is set forth in Ohio Revised
5 Code 3505.062(A).

6 The Supreme Court of Ohio has set forth
7 clear criteria to be applied by this Board in
8 performing that function and most recently those
9 standards were enunciated in the Ohio Liberty Council
10 case and the case of Willke versus Taft, 2010 and
11 2005 cases respectively.

12 The standard for this Board is firstly to
13 construe liberally in favor of the petitioners that
14 the proposal constitutes one amendment. That is the
15 Liberty Council and the Taft decision.

16 Secondly, that where an amendment to the
17 Constitution relates to a single purpose or object
18 and all else contained therein is incidental and
19 reasonably necessary to effectuate the purpose of the
20 amendment, the amendment fulfills the statutory
21 requirement. A single issue should proceed to the
22 ballot.

23 Here, all of the provisions of the full
24 text of the proposed amendment bear a reasonable
25 relationship to one general object or one general

1 purpose and that is actually set forth in the
2 introductory paragraph of the proposed amendment
3 itself which is to allow that the medical use of
4 marijuana by qualifying patients with debilitating
5 medical conditions and to allow for the licensed and
6 regulated cultivation, manufacturing, testing,
7 distribution, dispensing of marijuana for medical
8 use. So that is the specific object or general
9 purpose of the amendment and all of the framework
10 that is there relates directly to that.

11 So applying that statutory standard as
12 clarified by the Ohio Supreme Court multiple times,
13 there should be no doubt that this is, in fact, a
14 single amendment to the Ohio Constitution, and as to
15 the sole issue before you today, you should rule in
16 favor.

17 I am pleased to answer any questions that
18 you may have.

19 SECRETARY HUSTED: Okay. Thank you.

20 Are there any questions from members of
21 the Committee -- Board?

22 Senator Coley.

23 SENATOR COLEY: Okay. Do you want her to
24 go first?

25 SECRETARY HUSTED: No.

1 SENATOR COLEY: Mr. Finney, thank you for
2 being here. I -- in looking at that I had several
3 questions to see if we were consistent here. So
4 there's still a monopoly provision in -- in this --
5 in this amendment similar to the prior amendment that
6 went through, but the monopoly is limited to 15 -- is
7 it 15 type 1 facilities and who gets those licenses
8 would be determined by the Board? Did I understand
9 that correctly?

10 MR. FINNEY: Right. Senator Coley,
11 certainly respect the role you play today. But I
12 would disagree with the characterization that you've
13 applied. But the 15 type 1 facilities, limited to 15
14 type 1 facilities, is in there, yes, and that is part
15 of the overall scheme or incidental to that general
16 purpose.

17 SENATOR COLEY: Now, in reading -- in
18 reading that section, can -- can one organization
19 have more than -- than one of the type 1 facilities?
20 So similar to like our casino thing, can you have --
21 can you have -- you know, we have a monopoly on those
22 things and there is like four, you know, for the
23 first 10 years. Do you have in this one -- are --
24 are they limited how many of these each one of these
25 facilities can own?

1 MR. FINNEY: Senator Coley, as I was
2 preparing today, I was trying to guess what questions
3 we were going to get because I am not an expert on
4 the amendment itself. It was prepared by an expert I
5 think out of Washington. She is on the international
6 trail today or else would be here to answer those
7 specific questions.

8 I'm not candidly familiar enough with the
9 provision to tell you about that, but I will say that
10 that is not -- and I certainly understand the job you
11 have to do, I don't mean to show any disrespect, but
12 the questions before you today are of whether or not
13 this relates to the general purpose of the amendment.

14 SENATOR COLEY: I thought the -- I
15 thought the voters kind of decided before that
16 that -- in the last election they kind of decided
17 when something is a monopoly, we have to flag it for
18 a monopoly. I just didn't know if you had anything
19 to say on that.

20 MR. FINNEY: I think you are absolutely
21 correct; but, Senator, for purposes of the hearing
22 today the only subject before you is this question
23 which is does it relate to a single subject. You
24 will have the opportunity, I think, to weigh in on
25 that second issue but not today.

1 SENATOR COLEY: I understand that. Now,
2 Mr. Secretary -- Secretary, relative to
3 practitioner --

4 SECRETARY HUSTED: Senator Coley, go
5 ahead.

6 SENATOR COLEY: Thank you, Mr. Secretary.
7 Relative to practitioner, I note that we're saying
8 this is medical marijuana, but the practitioner does
9 not have to be a doctor; is that correct?

10 MR. FINNEY: I was doing my best to
11 prepare as best I could for this particular subject.
12 I don't know the answer to that. Again, I think the
13 provision related to practitioner is incidental to
14 the overall general purpose here. I do not know the
15 answer to that question.

16 SENATOR COLEY: Well, Mr. Finney -- and,
17 Mr. Secretary, if I could continue -- on the issue of
18 practitioner, from what I read, not only does the
19 person not have to be a doctor but then -- but then
20 they don't even have to be a resident of the state of
21 Ohio. And -- and when we look at that and we -- and
22 we say so this doesn't have to be a doctor. They
23 just have to be -- they just have to be someone to be
24 able to write a -- or to authorize the use of
25 controlled substances in their state with a small S.

1 You know, so I am trying to determine do
2 they even have to be a licensed professional in the
3 United States of America, or could somebody from
4 Jamaica that was allowed to -- was allowed to
5 authorize use of substances in that -- in -- in that
6 local, would that be someone that would be permitted
7 to -- to be a practitioner under this -- under this
8 amendment?

9 MR. FINNEY: Again, Senator, I'm not in a
10 position to -- to -- I'm not an expert on the
11 amendment itself. I am here to speak about that
12 issue which is specifically before you today which is
13 whether or not this is -- relates -- all these issues
14 we have been talking about relate to the sole -- the
15 general purpose of the -- of the proposed amendment.
16 But I am not in a position to answer that question.

17 SENATOR COLEY: Mr. Finney, I appreciate
18 that. If I could --

19 SECRETARY HUSTED: Senator Coley.

20 SENATOR COLEY: -- Mr. Secretary, the --
21 what you seem to be doing here, this amendment seems
22 to be doing here, is, you know, the monopoly
23 provisions are there, but then when you get to the
24 whole question of practitioner and you seem to be
25 rewriting professional licensing laws in the state

1 and then because I can't tell whether the person even
2 has to be in the state when they write the script
3 and/or it's not even a script. It's just a
4 permission slip basically, a hall pass from -- from
5 high school.

6 MR. FINNEY: Right. If you read -- if
7 you read the decision in the Willke case and the
8 decision in the Ohio Liberty Council case, what
9 you'll see is that -- that definition, as I said in
10 my opening, is to be liberally construed in favor of
11 it being in effect in these things. And they went in
12 really -- I think in the Taft case it was very
13 instructive because there were provisions there that
14 were arguably logrolling or unrelated, and the Ohio
15 Supreme Court said it doesn't matter, that they
16 were -- they were all economic development purposes
17 and allowed them one amendment.

18 In this particular instance these things
19 that we're talking about are incidental to the
20 overall general purpose being advanced by the
21 amendment; and, therefore, it's a single subject on
22 the ballot.

23 SENATOR COLEY: Mr. Secretary, if I
24 could, then continuing on that -- I appreciate that.
25 So you are not saying that I'm wrong about my reading

1 on that, that this doesn't have to be a doctor and
2 they don't have to be a resident and it's possible
3 they might -- might be a foreign national and
4 somebody authorized under a foreign government to do
5 that. You're just saying it's -- it's not relevant
6 to the issue that you still think it makes it one
7 subject.

8 MR. FINNEY: Respectfully, Senator, it's
9 two propositions by saying that. One was the truth
10 of the matter asserted which I don't know one way or
11 the other.

12 SENATOR COLEY: Right.

13 MR. FINNEY: And then you seem to assert
14 that perhaps that meant the second subject is
15 addressed by the amendment which I would disagree
16 with. I believe that that subject is incidental to
17 the overall purpose of the amendment itself.

18 SENATOR COLEY: If you would have
19 listened to my question, it would have said even
20 though -- you are saying -- you are not denying that
21 those things are true; you are saying that even if
22 they are true -- whether or not they are true is
23 irrelevant because it would still be a single
24 subject.

25 MR. FINNEY: That's correct. Whether or

1 not those things -- all the things you have addressed
2 today are true, it's irrelevant. I think it's
3 irrelevant to the issue because they are all
4 incidental to the general purpose advanced by the
5 amendment.

6 SENATOR COLEY: Now --

7 SECRETARY HUSTED: Senator Coley.

8 SENATOR COLEY: Thank you, Mr. Secretary.
9 Relative to the immunity provisions of this proposed
10 amendment and the practitioner, I notice it's not a
11 doctor, it's a practitioner loosely defined, that the
12 immunity provision -- so am I reading the immunity
13 provisions correctly that -- that if the practitioner
14 writes a script or writes a hall pass for someone to
15 get -- to get -- authorize them to utilize or procure
16 or have in their possession marijuana, that -- that
17 they are immune from -- immune from liability. If,
18 in fact, the chemical compound of the marijuana that
19 they got had other medical -- medical effects that
20 were adverse to that individual, that -- that this is
21 granting that practitioner immunity; is that correct?

22 MR. FINNEY: Again, I -- I wish that the
23 drafter of the language could be here to explain
24 these specific issues that you are addressing. But I
25 came prepared to address the subject that's before

1 you today which is the question of whether or not
2 these matters are incidental to the overall general
3 purpose advanced by the amendment which is the only
4 issue before you.

5 Having said that, Senator, you have the
6 microphone and you have the ability to advance your
7 view of this thing from using this forum, but I'm
8 saying that political discussion is not relevant to
9 the analysis that's before you today. I respect
10 everything you said.

11 SENATOR COLEY: Mr. Finney, I'm just
12 asking questions. So you believe whether or not it
13 grants immunity, that that doesn't -- that doesn't
14 disqualify it as a single subject.

15 MR. FINNEY: Because it's all related to
16 the same general topic, yes.

17 SENATOR COLEY: Okay. And in the
18 provision appear to be -- it also appears to grant
19 immunity to a hall pass owner, someone who has a hall
20 pass to have marijuana, if they have marijuana in
21 their possession that they did not procure from
22 legitimate channels, it seems to -- and to the
23 criminal lawyer, it seems to grant them immunity from
24 prosecution if the amounts are quote-unquote
25 reasonable.

1 MR. FINNEY: Yeah. This was an overall
2 constitutional framework for addressing the question
3 of medical marijuana and that would fall -- if as you
4 described it says that, it would fall within that
5 general purpose of the amendment.

6 SENATOR COLEY: Okay, okay. Even though
7 it expands -- it goes off into a criminal area now
8 and says, you know, buying -- buying controlled
9 substances illegally outside the scope of the -- as
10 described in this amendment, if you are in possession
11 of that illegally procured material, that that --
12 that would be -- well, it would still be you would be
13 immune from prosecution. And you say it's your
14 opinion that that keeps it still within a single
15 subject; and, thus, this Board should approve that.

16 MR. FINNEY: Yeah. I've avoided using
17 the word single subject because that's more what a
18 legislative application would be. The case law talks
19 more about the same general purpose. The courts have
20 said that it's roughly the same standard but not
21 identical standard that the legislature had in
22 passing the law, and as you probably know, that
23 standard has been interpreted, as I have indicated,
24 very liberally over the years.

25 SENATOR COLEY: I think Vern Riffe said

1 it was all a single subject. It was all
2 government --

3 MR. FINNEY: Everything.

4 SENATOR COLEY: -- so. Okay. All right.
5 I have no further questions, Mr. Secretary.

6 SECRETARY HUSTED: Any other questions?
7 Pardon me. Any other questions?

8 SENATOR COLEY: Not of this witness,
9 Mr. Secretary.

10 SECRETARY HUSTED: Okay. Thank you,
11 Mr. Finney.

12 MR. FINNEY: Pleasure appearing in front
13 of you.

14 SECRETARY HUSTED: Thanks. Do we have
15 anyone else?

16 Does anybody else at this time wish to
17 offer any public comment on the issue before the
18 committee?

19 It seems we are having a technical
20 difficulty. It's -- the microphone out there is not
21 working, and so if you would bear with us a moment.

22 Could you please come, sign in so we have
23 your information.

24 (Off the record.)

25 SECRETARY HUSTED: Okay. We have

1 somebody. Let's see here, we have a witness who
2 would like to testify in favor of the medical
3 marijuana proposal. If you could identify yourself
4 and then -- for the audience and who you are
5 representing.

6 MR. KELLER: Yes. Thank you,
7 Mr. Secretary. My name is Michael Brice Keller. I
8 am a criminal defense attorney from Dayton, Ohio. I
9 am with the group Green Bite, and I am also the solo
10 practitioner responsible for the Keller Law Office.
11 We work on public defender issues and public policy
12 issues in three counties near Dayton.

13 I would like to express my support for
14 the medical marijuana proposal and furthermore ask
15 that the Ballot Board responsibly certify this as a
16 single issue today so that we can move forward, and I
17 am concerned that there are other issues that seem to
18 be coming up.

19 And I would be happy to answer questions
20 on those, but it would be better to move forward with
21 the determination of whether it's a single issue.

22 SECRETARY HUSTED: Okay. And you are
23 testifying in favor of it being a single issue,
24 correct?

25 MR. KELLER: Yes, Mr. Secretary.

1 SECRETARY HUSTED: Okay. Any questions?
2 Senator Coley.

3 SENATOR COLEY: Thank you, Mr. Secretary.
4 And you heard my questions of -- of Mr. Finney. If I
5 were to ask you those questions, would you have
6 answered any of those questions different than
7 Mr. Finney?

8 MR. KELLER: I support the position that
9 Mr. Finney has presented here today that those issues
10 are for the drafters and for the Supreme Court to
11 ultimately determine what the analysis of the
12 language is as they are interpreted. But all the
13 issues that I have read in reviewing the documents
14 seem to point to the idea that it's all one general
15 issue and consistent with the precedent that it would
16 be approved.

17 SENATOR COLEY: Counsel -- Mr. Secretary,
18 if I could, counsel, perhaps you might not understand
19 the process, but it's not up to the Supreme Court.
20 Before the Supreme Court opines in this area, we
21 opine in this area. And that's why we are here
22 today, not to just rubber stamp things that people
23 bring before us but to probe and ask those questions
24 and try to get answers.

25 Mr. Finney did not have a lot of answers

1 to questions that I asked. He just opined in general
2 that -- that even though he didn't know about the --
3 the details of the amendment, he felt that it was
4 still a single subject.

5 So my question to you was do you have
6 any -- would you have answered -- do you have any
7 additional information relative to the amendment that
8 Mr. Finney was not privy to. I understand you share
9 his opinion that it's a single subject, but did you
10 have any additional information that Mr. Finney did
11 not have?

12 MR. KELLER: Well, the efficacy of the
13 immunity clause or the affirmative defense, as it
14 were, is something that will be interpreted by the
15 courts after the election, not something for the
16 Ballot Board to determine whether or not nor can
17 Mr. Finney or myself determine how effective an
18 affirmative defense might be.

19 Furthermore, the question of monopoly or
20 the pejoratives that might be used like cartel or
21 other things like that are all in relation to what
22 would happen after the election. And there's also
23 tier 2 licenses that can be given as -- as the -- it
24 is appropriate moving forward. So the restriction of
25 those licenses would be something the Ohio government

1 does, not Mr. Finney or myself.

2 SECRETARY HUSTED: Senator Coley.

3 SENATOR COLEY: Yes. But we are not --
4 no matter what we do as the Ohio government, we are
5 not -- because of this amendment we could not -- if
6 the Ohio legislature was to pass a law in this area,
7 we could decide that 25 facilities might be the right
8 number or 2 facilities could be the right number.
9 But the way this amendment is written, the monopoly
10 limit is 15, and it cannot be increased above 15.
11 Did I read that correctly? For type 1 facilities.

12 MR. KELLER: For type 1 the language, as
13 I understand it, is that it begins at 15. However,
14 there is -- I don't know what the restrictions are
15 for growing that industry but there is a definite
16 need and it has been the practice in other states
17 that we start with somewhere as a beginning phase and
18 then grow the industry. So it is our hope that there
19 would be lots of tier 2 licenses and that ultimately
20 the stigma associated with medical marijuana would go
21 away and that the Ohio government would no longer
22 cage human beings for cannabis.

23 SENATOR COLEY: Counsel, I understand --
24 I understand your political opinions on this, but I
25 am just trying to determine on the monopoly issue.

1 It says -- and I am looking at section -- subsection
2 D, "Except as otherwise provided in this paragraph,
3 the Division shall issue no more than 15 type 1
4 medical marijuana cultivation licenses." So then am
5 I reading that correct then? It's not starting at
6 15; it shall not increase above 15, correct?

7 MR. KELLER: That would be how the
8 program would begin, yes.

9 SENATOR COLEY: And at what -- am I
10 missing something? They can at -- at a future date,
11 they can issue more?

12 MR. KELLER: I cannot speak to that,
13 Mr. Senator.

14 SENATOR COLEY: Okay. Thank you,
15 Mr. Secretary.

16 SECRETARY HUSTED: Any other questions?
17 Thank you.

18 MR. KELLER: Thank you, Mr. Secretary.

19 SECRETARY HUSTED: Before we entertain a
20 motion -- and I appreciate the witnesses that came
21 today and spoke on behalf of the issue. But as we
22 are looking at these issues, these are constitutional
23 amendments. These are -- these are establishing the
24 foundation from which people will operate and that
25 they will operate under in terms of some pretty

1 serious issues. And a lot of times there are some
2 legitimate questions which -- some of which Senator
3 Coley tried to probe; but, again, we are in a
4 situation where nobody could answer those questions.
5 Nobody on behalf -- advocating on behalf of the
6 petitioners was in a position to answer those
7 questions. And I think that it is important that
8 when we're considering something as -- with the
9 magnitude of a -- of a constitutional amendment, that
10 petitioners provide answers to some of these
11 questions.

12 It would make our job much easier. It
13 would serve the public to have information about
14 these issues so that they can make a discernment
15 along the way about whether they are going to sign a
16 petition whether or not they believe this particular
17 issue is worthy of amendment to the Ohio
18 Constitution. So this is essentially the second
19 hearing in a row of the Ballot Board where questions
20 couldn't be answered. And that's a growing concern
21 as the Chair of the Ballot Board that I have seen in
22 these proceedings as of late.

23 I also want to mention that for those who
24 are discerning where the passage of Issue 2 that
25 happened last fall concerning monopoly provisions and

1 those separately being approved by -- the need for
2 those to be separately approved by the voters of the
3 state of Ohio if indeed it is determined to be a
4 monopoly is not a question that's -- that gets
5 decided at this point in the process.

6 That question would only be before this
7 Board assuming that all of the necessary signatures
8 would be gathered and it would qualify to appear
9 before the voters. At that time the Ballot Board
10 would be in a position to answer those questions --
11 or address that question.

12 Are there -- are there any comments
13 and -- and do we have a motion?

14 Senator Coley.

15 SENATOR COLEY: Yeah, Mr. Secretary,
16 thank you. And just on the comment side, I share
17 your concerns that people that can answer questions
18 don't show up before the Ballot Board because as --
19 as counsel pointed out, you know, this ultimately can
20 be decided by the Ohio Supreme Court, but it's
21 incumbent upon us to have first bite at the apple to
22 make sure that we make the right decision.

23 And when parties who are promoting these
24 amendments choose not to attend the Ballot Board and
25 not provide the Board with that information, I think

1 there's a credible argument to be made that they
2 waive those rights but that will be up for the
3 Supreme Court to determine whether they waived those
4 rights, but they sure don't make it easy for us to do
5 our job.

6 And I have no further comments, and if
7 you wanted to recognize me for a motion, I will make
8 a motion after this.

9 SECRETARY HUSTED: Since we have three
10 attendees today, Senator Coley, would you make a
11 motion, please.

12 SENATOR COLEY: I would be happy to,
13 Mr. President. And with the understanding that we're
14 to give wide latitude to -- to petitioners in this
15 case, I move that we approve this as a single subject
16 or as -- as one issue.

17 SECRETARY HUSTED: One issue.

18 SENATOR COLEY: One issue.

19 REPRESENTATIVE CLYDE: Second.

20 SECRETARY HUSTED: And we have a second.
21 So we have a motion and a second. Is there any
22 discussion?

23 Hearing none, secretary, would you please
24 call the roll.

25 MS. KURUC: Secretary Husted.

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SECRETARY HUSTED: Yes.

MS. KURUC: Senator Coley.

SENATOR COLEY: Yes.

MS. KURUC: Representative Clyde.

REPRESENTATIVE CLYDE: Yes.

SECRETARY HUSTED: All right. The motion carries by unanimous vote.

And do we have any other issues that need to be brought before the Board today?

Hearing none we stand adjourned.

(Thereupon, the meeting was concluded at 2:37 p.m.)

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CERTIFICATE

I do hereby certify that the foregoing is a true and correct transcript of the proceedings taken by me in this matter on Thursday, March 31, 2016, and carefully compared with my original stenographic notes.

Karen Sue Gibson
Karen Sue Gibson, Registered Merit Reporter.

(KSG-6175)

