

1 (The witness was sworn.)

2 THE COURT: Just have a seat. What
3 I'm going to ask you to do is just pick
4 that microphone up at the base and just
5 hold it in your lap.

6 THE WITNESS: Okay.

7 SHERRY POLAND

8 having been first duly sworn, was examined and
9 testified as follows:

10 DIRECT EXAMINATION

11 BY MR. PARKER:

12 Q. Good morning, ma'am. Will you tell
13 the judge your name?

14 A. Sherry Poland, P-o-l-a-n-d.

15 Q. Ms. Poland, what is your -- what do
16 you do for a living?

17 A. I'm the director of the Hamilton
18 County Board of Elections.

19 Q. And how long have you been doing
20 that?

21 A. I was appointed director in June of
22 2014. Prior to that I was the operation's
23 administrator with the Board. I've been with
24 them since March of 2004.

25 Q. Are you familiar with a request to

1 certify charter amendments for the City of
2 Madeira that occurred on or about March the 3rd,
3 2017?

4 A. I am.

5 Q. Can you tell us, what does it mean
6 to certify proposed charter amendments?

7 A. They're filed with the -- the
8 ordinances are filed with the Board of
9 Elections. These ordinances were. The ballot
10 language is drafted by Board of Elections staff
11 and sent to the Secretary of State for approval.
12 And then the Board of Elections certifies the
13 questions and issues that are submitted to the
14 ballot.

15 Q. So the City starts off the process
16 by filing something with the Board of Elections?

17 A. That's correct.

18 Q. Do you have a copy of that, what
19 they filed, with you today?

20 A. I do. I didn't bring it up here
21 with me to the stand.

22 MR. PARKER: May I approach the
23 witness, Your Honor?

24 THE COURT: I'm sorry. What was
25 your question?

1 MR. PARKER: Yeah. I'm asking her
2 what the City filed with the Board of
3 Elections.

4 A. What the City filed on March 3rd?

5 Q. Yes.

6 A. They filed Ordinance No. 17-03 and
7 Ordinance No. 17-04.

8 Q. Okay. And what's the importance of
9 that certification date?

10 A. March 3rd was the filing deadline
11 for questions or issues such as charter
12 amendments to appear on the May 2nd ballot.

13 Q. Okay. So what they filed is what
14 goes on the ballot?

15 A. That's correct.

16 Q. Okay. Do you have a copy of what
17 they filed?

18 A. Yes. They filed Ordinance No.
19 17-03 and 17-04 on March 3rd. And then Madeira
20 filed ordinance -- find the ordinance number --
21 another ordinance on March 14th.

22 Q. So why did they do that?

23 A. Yes. There was a typographical
24 error in Ordinance 17-03.

25 Q. okay. So do you have copies of all

1 that?

2 A. I do.

3 THE COURT: So is it -- 17-04 was
4 the typographical error; is that right?

5 THE WITNESS: The typographical
6 error was in 17-03.

7 THE COURT: All right. Thanks.

8 Q. So how do you define a
9 typographical error?

10 MR. STEVENSON: Objection.

11 THE COURT: I'll sustain it. I
12 know what it is.

13 MR. PARKER: I think that's kind of
14 the whole issue here, Judge. I would ask
15 that -- to be able to proffer the
16 testimony.

17 THE COURT: Can I get a stipulation
18 from -- maybe the defendants said a Roman
19 numeral XI was exchanged for Roman
20 numeral XII, or maybe the other way
21 around. Is that what it was?

22 MR. PARKER: No. There was 39
23 keystrokes, Judge, that weren't included
24 in what was filed on March 3rd.

25 THE COURT: Okay. Well, I didn't

1 see that part. But can I get a
2 stipulation -- do you know what the
3 key -- defendants, you want to
4 stipulate that there are missing
5 keystrokes?

6 MR. FOX: Your Honor, I don't know
7 what the number of keystrokes is, but I
8 actually have a demonstrative to help the
9 court, if I could approach and put it up
10 on the board.

11 THE COURT: Yeah, why don't you do
12 that.

13 And then, Mr. Parker, look at this
14 and then see if this is what --

15 MR. FOX: I think this will be
16 helpful.

17 THE COURT: I'm going to come look
18 at it, actually, from there.

19 And I guess, Ms. Poland, I don't
20 know if you've ever seen this before.

21 I'll sustain the objection. I know
22 what a typographical error is.

23 BY MR. PARKER:

24 Q. Okay. So, to be clear, what was
25 filed and certified on March the 3rd, 2017 by

1 the City -- which you have in your hand, right?

2 A. Correct.

3 MR. PARKER: May I approach the
4 witness, Judge?

5 THE COURT: Yeah. Sure.

6 MR. PARKER: Okay. They're
7 attached to the complaint. You guys just
8 want to agree what those are --

9 THE COURT: He couldn't see.

10 MR. PARKER: Judge, I attached
11 those two to my complaint. I guess I'd
12 ask to be -- I don't know if we have to
13 agree what the law is, because it is the
14 law, even if it's a City ordinance.

15 BY MR. PARKER:

16 Q. So do you have the final ballot
17 that's prepared?

18 A. I did not bring the final.

19 Q. But you would tell the court that
20 what is on the ballot does not match what was
21 certified?

22 A. That's not accurate. No.

23 Q. Well --

24 A. The process is that the charter
25 amendments, the city must file by the 60th day,

1 then there's a process --

2 Q. Hold on a second.

3 MR. STEVENSON: Let her answer.

4 THE COURT: Let her answer the
5 question. She's trying to explain.

6 Go ahead.

7 A. That's the deadline in which the
8 question, or issue, or charter amendment, must
9 be filed with the Board of Elections. It's not
10 the deadline for certification or final ballot
11 approval.

12 Because after the deadline, Boards
13 of Elections are required to publicly post the
14 ballot language so that it may be viewed by the
15 authority that put the charter amendment, or the
16 question, or issue, on the ballot, as well as
17 the public.

18 It was during that public posting
19 period that Madeira brought the typographical
20 error to the Board of Elections' attention.

21 Q. So you're trying to then say that
22 3505.14, the proofing period, permits there to
23 be a modification of what was filed as a
24 proposed charter amendment?

25 A. If then the jurisdiction -- it's my

1 understanding, that if the jurisdiction acts by
2 filing another ordinance -- that's what we were
3 advised by the secretary of state -- the filing
4 ordinance amending the typographical error, then
5 the board may accept that.

6 Q. So the proofing period requires
7 there to be changes in what was filed to be
8 placed on the ballot?

9 A. It's a -- it's a public posting
10 period of the questions and issues, and
11 candidates, that have filed to be on the
12 election.

13 Q. Did you read the circular by then
14 Secretary of State, Jennifer Brunner, about what
15 the proofing period is when she issued that in
16 2007?

17 A. I don't recall.

18 Q. How long have you been in your
19 position?

20 A. Since 2014.

21 Q. If -- did you read the current
22 Secretary of State's materials regarding the
23 proofing period?

24 A. The posting period?

25 Q. The proofing period.

1 A. Yes. The posting and proofing.
2 I'm familiar with the current.

3 Q. So help me out. Isn't it that the
4 Board of Elections sends to the printer their
5 proposed language, and then the printer prepares
6 it and sends it back to the Board of Elections,
7 and then you post it?

8 A. If we use an outside vendor. We
9 did not use an outside vendor for this election.

10 Q. So what was different in what was
11 posted than what was certified by the City on
12 March the 3rd, 2017?

13 A. I believe it was just displayed in
14 the demonstration on the board.

15 MR. PARKER: No. What I'm asking
16 you is -- may I approach the witness,
17 Your Honor?

18 THE COURT: Yes.

19 Q. I'm going to hand you Relator's
20 Proposed Exhibit No. 3. Do you recognize that
21 document?

22 A. I do.

23 Q. Okay. What was different in what
24 you've just been handed and what was in
25 ordinances 17-03 and 17-04 from the City of

1 Madeira?

2 A. I'd have to read it.

3 Q. Okay. Please do.

4 A. I don't know if this document
5 was -- we did two public postings, one after
6 March 3rd, and then again after the ballot
7 language had been revised. I don't know which
8 one this is.

9 Q. Okay. Let me ask you the question
10 again. What is on that document that's just
11 been given to you that's different than 17-03
12 and 17-04?

13 A. Well, 17-03 and 17-04 contain the
14 complete ordinance. This is the ballot
15 language.

16 Q. Okay. So what is different on that
17 document than what was in the ordinance that was
18 certified on March the 3rd, 2017?

19 MR. STEVENSON: Objection. Asked
20 and answered.

21 MR. PARKER: No, she hasn't
22 answered.

23 MR. STEVENSON: Yes, she has.

24 THE COURT: I'm going to overrule
25 it.

1 well, let me ask you this, Mr.
2 Stevenson -- why don't you give me a
3 hint -- is it about the Roman numerals?
4 You said she's answered it.

5 MR. STEVENSON: Your Honor, what
6 she said was is that 17-03 was the
7 ordinance and 17-0 -- and what was handed
8 by Mr. Parker was the ballot language.
9 And that is the answer to the question.

10 MR. PARKER: Let me back up for a
11 second. I'll ask a different question,
12 Judge, and we'll get to it.

13 Q. Where did the ballot language come
14 from?

15 A. The proposed ballot language came
16 from the City of Madeira.

17 Q. It came from the ordinance that you
18 were given?

19 A. Correct.

20 Q. Right? And it was -- and, again,
21 why is it important that it be filed on March
22 the 3rd?

23 A. The filing deadline is 60 days
24 prior to Election Day, because Boards of
25 Elections must have ballots prepared and mailed

1 to military voters and overseas voters by the
2 45th day, prior to Election Day. So it allows
3 15 days for the proofing, posting, and printing
4 the ballots.

5 Q. And what's the City's
6 requirement -- and there are rules about
7 submitting proposed charter amendments. You
8 talked about -- you said earlier something about
9 a 60-day period?

10 A. I know the rules for the Board of
11 Elections, and that is we can accept charter
12 amendments up until four p.m. on the 60th day
13 prior to the election.

14 Q. So what was given to you 60 days is
15 what gets put on the ballot?

16 A. What is -- it's my understanding
17 what is filed with the Board of Elections on the
18 60th day allows the board to put -- to put that
19 question, or issue, or amendment, on the ballot.

20 And it's also my understanding,
21 from direction from the Secretary of State's
22 office, that the ordinance that was filed after,
23 on March 14th, was not a whole new brand
24 ordinance -- brand new ordinance. It was an
25 ordinance correcting a typographical error; and

1 because the original ordinance was filed by the
2 deadline, that we were permitted to make the
3 change.

4 Q. What was the typographical error?

5 A. It was displayed on the board just
6 a few minutes ago.

7 Q. But do you remember what it was?

8 A. I believe it was with the -- the
9 wrong article was cited in 17-03. In Ordinance
10 17-03.

11 Q. Who brought it to whose attention
12 that there was --

13 A. It's my understanding, during the
14 public posting period, Tom Moeller, with the
15 City of Madeira, contacted our operations
16 administrator, Charlie Norman, regarding the
17 error. And that is the instructions that the
18 Board of Elections gives when we publicly post,
19 it's to contact our operations administrator.

20 Q. So do you have any authority, are
21 you permitted in your position, to decide what
22 3505.14 of the Revised Code permits, what errors
23 or corrections are permitted?

24 A. I'd have to read the code to answer
25 that question.

1 MR. PARKER: May I approach, Your
2 Honor?

3 THE COURT: Yes.

4 A. Could you repeat the question?

5 Q. Sure. Are you given any discretion
6 to make decisions about what errors are to be
7 corrected?

8 A. I believe so.

9 Q. Okay. And in this instance, what
10 errors do you allow to be corrected?

11 A. Again, amending, correcting the
12 typographical error that was displayed on the
13 board.

14 Q. Okay. Well, don't worry about what
15 was on the board. Let me ask you again to look
16 at the ballot language that was handed to you
17 earlier as Relator's Exhibit 3. What
18 typographical errors are there in Exhibit 3 as
19 compared to the ordinances that were filed on
20 March the 3rd, 2017?

21 A. I think I need to pull out the
22 ballot language.

23 Q. Ms. Poland, I know you're doing
24 something different. What I asked you was:
25 what was different on what was handed to you on

1 Relator's Exhibit 3, which -- what is Exhibit 3
2 first of all? Can you identify that?

3 A. I can't. Because I don't know --
4 we issued -- as I stated before, we did two
5 public postings.

6 Q. Okay. Well --

7 A. And I don't know which one this is.

8 Q. Okay. I'll let you look through
9 your file and compare your first public posting
10 to Exhibit 3. Let's do that.

11 A. I did not bring my public postings
12 with me.

13 Q. Well, if I told you that what you
14 were handed as Relator's Exhibit 3 is your first
15 public posting, okay, can you tell me what was
16 different in your first public posting as
17 compared to what was in Ordinances 17-03 and
18 17-04 that was certified by the City on March
19 the 3rd, 2017?

20 MR. STEVENSON: Objection. Calls
21 for speculation.

22 MR. PARKER: No, it's not. She can
23 compare them.

24 THE COURT: Well --

25 MR. STEVENSON: Your Honor, he's

1 asking her to rely on his statement as to
2 what the exhibit is. It's not properly
3 identified at this point.

4 MR. PARKER: I'm asking her to look
5 at it. And we'll bring it in later.

6 THE COURT: I'll sustain it. It's
7 sustained.

8 BY MR. PARKER:

9 Q. So do you know what your first
10 public posting -- what was wrong with it as
11 compared to what was in the ordinance?

12 A. I believe it was a difference in
13 the articles that were cited in the ordinance.

14 Q. Wasn't it that the -- really?

15 A. That's my recollection. I have not
16 reviewed it recently.

17 Q. Wasn't it really what happened is
18 that there were keystrokes not made in the
19 ordinance 17-03?

20 A. I can't answer that.

21 Q. You don't know?

22 A. I have not reviewed it recently.

23 Q. So what was the typographical error
24 that you were talking about?

25 A. As I said before, I believe it had

1 to do with the article that was cited; was the
2 wrong article cited.

3 Q. Okay. Is that -- is this what
4 you're talking about?

5 A. Correct.

6 Q. Okay. That's -- and you're saying
7 that number of keystrokes is a typographical
8 error?

9 A. That's my understanding.

10 Q. Okay. Where do you get that
11 understanding from?

12 A. Again, we submitted this
13 information from the Secretary -- to the
14 Secretary of State's office, and was advised
15 that we could accept an ordinance changing this
16 typographical error.

17 Q. Did you tell them that the time
18 period for the City to have filed their
19 certifications already passed 11 days before
20 that?

21 A. The Secretary of State's office is
22 well aware of the filing deadlines.

23 Q. So what you're saying is that
24 under -- that you were able to use 3505.14 to
25 change language in a proposed charter amendment

1 from what was submitted on March the 3rd?

2 A. We used the amended -- the
3 ordinance that was submitted by the City of
4 Madeira on March 14th, together with the advice
5 from the Secretary of State's office, to change
6 the ballot language.

7 Q. Okay. So -- this is not a trick
8 question, but I have to ask you this. If the
9 City came in on March the 3rd, and they handed
10 you a piece of paper that said charter amendment
11 on it, and the rest of the page was blank, would
12 they then be able to -- 11 days later -- fix the
13 fact that it was blank and add in language for a
14 proposed charter amendment?

15 A. There wouldn't be enough -- a blank
16 piece of paper and -- we would have nothing to
17 post publicly with a blank piece of paper.

18 Q. Well, you could post a blank piece
19 of paper, couldn't you? Proposed charter
20 amendment, blank, to be filled in later.

21 A. The reason for the posting period,
22 my understanding, is so that these type of
23 errors can be corrected before the ballots are
24 printed and distributed to voters.

25 Q. Which types of errors?

1 A. Typographical errors.

2 Q. Okay. So was the -- was the letter
3 O typed when the letter I was supposed to be
4 typed, after the Roman numeral? Was that the
5 typographical error that you mentioned?

6 A. I think it's displayed on the
7 board.

8 Q. Okay. So did somebody keystroke in
9 a typographical error and type an I instead of
10 an O? No. They referenced the wrong section of
11 the code, right? Of the charter. That's really
12 what we're talking about, right?

13 A. The title has changed with the
14 article.

15 Q. Right. They referenced the wrong
16 section of the charter that they wanted to amend
17 in the charter amendment that they filed on
18 March the 3rd.

19 And now you're trying to have the
20 court believe that 3505.14, by some -- and you
21 don't have the discretion to make that decision,
22 so you had to call up the Secretary of State's
23 office, right?

24 A. I called the Secretary of State's
25 office -- I -- again, the Secretary of State's

1 office also approves all ballot language.
2 They -- Ordinance 17-06, correcting, changing,
3 as previously described, ballot language was
4 submitted to the Secretary of State's office,
5 and we received approval from them.

6 Q. Of the first one or the second one?

7 A. Both.

8 Q. So the Secretary of State
9 originally approved the language of Ordinance
10 17-03, right?

11 A. That's correct.

12 Q. And then it wasn't until March the
13 14th that everybody goes, whoops, we made a
14 mistake, let's fix it. Right?

15 A. No. I believe that the City of
16 Madeira contacted the Board of Elections on
17 March 10th.

18 Q. Okay. And then what happened?

19 A. And I sought advice from the
20 Secretary of State's office. That was a Friday.
21 That Friday afternoon. I received a call back
22 that Monday morning on what the appropriate
23 procedure would be. I relayed that information
24 to the City of Madeira. And then on the 14th
25 Ordinance 17-06 was filed.

1 That language -- that ordinance and
2 that language was then sent to the Secretary of
3 State's office, which the Secretary again
4 approved and sent to the Board of Elections.

5 Q. Okay. So Judge Winkler's up for
6 election next time and he circulates his
7 petitions and files Robert D. Winkler for judge.
8 And then you find out the day after the
9 certification process was supposed to have
10 occurred that they should have put Robert C.
11 Winkler. Is he allowed to make that change?

12 MR. STEVENSON: Objection.

13 THE COURT: Well, I don't think
14 they would let me do it anyway. But I'll
15 sustain it. I'll sustain it.

16 Q. So there's a line that can be
17 crossed as to what can be changed in this
18 proofing period, right?

19 A. When we -- when the Board of
20 Elections receives information that an error had
21 occurred, we seek the advice of the Secretary of
22 State's office and legal counsel.

23 Q. But where did the error occur? Did
24 the error occur after the printing process, or
25 did the error occur in the submission of the

1 proposed charter amendments?

2 A. The error was in the proposed
3 charter amendments, the ordinance that was
4 filed.

5 Q. And, again, do you know the legal
6 authority upon which you base the ability to put
7 on the ballot language that's different than the
8 ordinances that were submitted prior to the
9 certification deadline?

10 A. No. I relied on the advice of the
11 Secretary of State's office and their approval
12 of the revised ballot language.

13 Q. In seeking their advice, did you
14 tell them that the City's deadline for
15 submitting charter amendments was 60 days before
16 the election?

17 A. The Secretary of State's office is
18 well aware of the deadlines.

19 Q. Well, now, aren't there different
20 deadlines for each particular local
21 municipality?

22 A. All charter amendment deadlines are
23 60 days prior to Election Day throughout the
24 state, for charter amendments.

25 Q. Why do you think that is, that they

1 have that deadline?

2 A. I believe I've already answered
3 that. It's because ballots have to be prepared
4 45 days prior to Election Day for military and
5 overseas voters; 15-day period gives the boards
6 time to approve, publicly post, and print those
7 ballots.

8 Q. I'm going to hand you what's been
9 marked as Relator's Proposed Exhibit 2. Can you
10 identify that document?

11 A. This was -- appears to be a copy of
12 the ordinance 17-06 that was filed with the
13 Board of Elections on March 14th.

14 Q. You actually certified that, right?

15 A. Correct.

16 Q. Did you -- you subsequently find
17 out that the person who certified that wasn't
18 the clerk of the council of the City of Madeira?
19 Or do you even care; it doesn't matter to you
20 one way or the other?

21 A. Are you referring to the acting
22 clerk?

23 Q. So you were aware that she wasn't
24 the clerk for the City of Madeira City Council?

25 A. I don't understand who you're

1 asking that I certified this to.

2 Q. Well, first of all, is that your
3 signature on that document?

4 A. Yes, it is. Can I read the
5 document?

6 Q. Sure.

7 A. This certification is a
8 certification indicating that the ordinance is a
9 true copy of what was filed with the Board of
10 Elections.

11 Q. Right. That's what you were given?

12 A. Correct.

13 Q. So that --

14 A. Our staff was given, correct.

15 Q. So that you could go ahead and
16 print up the ballots to get them on -- to meet
17 your 45-day deadline, right?

18 A. Correct.

19 Q. What was the 45th day before the
20 election?

21 A. It was March 18th.

22 Q. So there was some -- there was some
23 time periods that had to be met with certain
24 things that were filed and given to you, and you
25 were relying on that to then say the new

1 language is good to go?

2 A. Correct.

3 MR. PARKER: May I approach the
4 witness, Your Honor?

5 THE COURT: Yes.

6 Q. I'm going to hand you what is
7 marked as Relator's Proposed Exhibit No. 4. I
8 wonder if you would be able to tell me whose
9 handwriting it is at the top there where it says
10 revision?

11 A. I do not know.

12 Q. Does that look like Dave Heimbach's
13 handwriting?

14 A. I do not know.

15 Q. Do you remember when I -- me and --
16 Mr. Oppenheimer and I came down, you -- Dave
17 Heimbach actually handed us that? That's the
18 revised language.

19 A. I cannot testify to what Dave gave
20 you.

21 Q. Do you have copies of the revised
22 language in your file?

23 A. I do.

24 Q. Do you want to compare that to what
25 I've just handed you?

1 A. Uh-huh.

2 MR. STEVENSON: I'm sorry. Can I
3 see the exhibit?

4 MR. PARKER: I handed it to you.

5 THE COURT: Mr. Stevenson, do you
6 want me to take that board down?

7 MR. STEVENSON: We've got it.

8 Q. So --

9 THE COURT: Well, I think she's --
10 did you find it, ma'am?

11 MR. PARKER: Yeah, she's still
12 looking at it. Sorry.

13 THE WITNESS: Yeah, I'm still
14 looking at it. Sorry. There's lots of
15 paperwork here.

16 Could you repeat the question?

17 MR. PARKER: Sure.

18 Q. Does Exhibit 4 -- does that match
19 up with what -- the modified language that
20 was --

21 A. Submitted. Yes. Approved. Yes.

22 Q. And that was the second one that
23 was submitted and approved by the Secretary of
24 State's office?

25 A. That's correct.

1 Q. But the first one was submitted and
2 approved also?

3 A. That's correct.

4 Q. The one that matched up with the
5 prior -- priorly filed ordinances?

6 A. That's correct.

7 Q. Okay. Exhibit 1. And the Board of
8 Elections --

9 I'm going to hand you what's marked
10 as Relator's Proposed Exhibit 1. The Board of
11 Elections doesn't worry about City charter
12 provisions that require a mailing to go out, do
13 you?

14 A. No.

15 Q. And if somebody were to tell you or
16 the Board that the mailing that was required
17 under the City's charter didn't go out, or
18 wasn't correct, that would have no effect on
19 what decisions you would make about holding this
20 election?

21 A. That's correct.

22 Q. Okay. Do you know if a mailing did
23 go out?

24 A. I do not know.

25 Q. Do you care? I mean, as far as

1 your job.

2 A. It's not something that falls under
3 the Board of Elections' duties or
4 responsibilities.

5 Q. Okay. Have you guys ever run into
6 a situation like this before, Hamilton County
7 Board of Elections, that you know of?

8 A. It may have happened. I don't
9 recall.

10 Q. Not since you've been there?

11 A. Not since I've been director. It
12 may have happened prior to 2014.

13 Q. And, again, do you have any direct
14 contact with the representatives of the City of
15 Madeira?

16 A. Just regarding the correcting of
17 the error. There were e-mails that I believe
18 were supplied to Mr. Oppenheimer in a public
19 records request.

20 MR. PARKER: Okay. Your Honor, I
21 have nothing further. Let me confer with
22 my client.

23 THE COURT: Sure.

24 Q. What prompted your call to the
25 Secretary of State's office to ask about the --

1 second time that they were going to review
2 language?

3 A. During the public posting period
4 when we received -- I don't recall if -- it was
5 either an e-mail or phone call -- from Tom
6 Moeller with the City of Madeira.

7 Q. What do you -- is there a law that
8 requires there to be a public posting period?

9 A. I believe so. Yes. It's in the
10 Secretary of State's directives, I know that.

11 Q. Do you have it with you?

12 A. No.

13 Q. Okay. Would it be 3505.14?

14 A. Again, I was referring to the
15 Secretary of State's Election Official Manual.
16 I know that the -- our posting requirements are
17 within the manual, and I did not bring it.

18 MR. PARKER: Judge, I have it
19 somewhere. It's got a nice blue cover on
20 it. I've got to find it.

21 Q. So this manual that you're
22 referring to tells you what you're supposed to
23 do with errors?

24 A. No. I stated the manual instructs
25 the Board of Elections on the posting and

1 proofing period.

2 Q. So what does it tell you to do?

3 A. It tells us that we are required to
4 publicly post the ballots, proofs, and notify
5 the party committee chairpersons from each major
6 political party with the candidate on the
7 ballot, as well as any committees that have
8 filed for or against questions or issues. And
9 to publicly post for 24 hours.

10 Q. And they're supposed to compare
11 what's on the ballot with what was filed and
12 called to question, right?

13 A. We're required to publicly post.
14 That's what we do.

15 Q. So it could be that they're
16 supposed to go back and research whether or not
17 what was originally posted was even appropriate?
18 You don't know?

19 A. No.

20 MR. PARKER: Okay. May I, Your
21 Honor, may I approach the witness?

22 THE COURT: Yes.

23 THE WITNESS: These are what you
24 gave me.

25 Q. Well, doggone it. Here it is.

1 See. I handed it to you already.

2 Would you mind looking through
3 there and checking to see about that, that
4 directive from the Secretary of State? Does
5 that look like what you're talking about?

6 A. What you gave me was 35 -- a copy
7 of 3505.14.

8 Q. Okay. Do you recognize that Ohio
9 Revised Code Section? Does that come into play
10 in your work?

11 A. It does.

12 Q. Okay.

13 A. But this isn't the Secretary of
14 State's directive.

15 Q. Okay. Secretary of State would
16 just be the one that -- I think is a repository,
17 when the legislature passes it, the governor
18 signs it. Okay. What's the next thing?

19 A. Directive 2009-13. I don't believe
20 this directive is in effect.

21 Q. Okay. So which directive --

22 THE COURT: That's Jennifer
23 Brunner's, right?

24 THE WITNESS: That's correct.

25 Q. So what directive's in effect? You

1 just flip to the next few pages.

2 A. (Indicating.)

3 Q. That one? Probably.

4 A. This isn't a directive.

5 Q. Okay. So what does that -- what
6 does that require? what directive were you
7 talking -- do you remember the number?

8 A. I don't recall the number. It's in
9 the Ohio Elections Official's manual. which is
10 a directive.

11 Q. Okay. But nowhere in that
12 directive does it say that what was filed on the
13 day that the ordinance was supposed to be filed,
14 which was 60 days prior to the election, that
15 that language can be changed after the date that
16 it's filed?

17 A. I don't believe that it addresses
18 that situation at all, which is why I contacted
19 the Secretary of State's office.

20 Q. Because this is kind of a novel
21 deal, where you've never dealt with it, you call
22 the Secretary of State's office, and they said,
23 well, just have the City pass a new ordinance,
24 right?

25 A. That wasn't the exact language, no,

1 that was used. Actually I believe the elections
2 administrator stated that she has a wealth of
3 experience, and that in her experience this has
4 happened in the past, and that's how
5 jurisdictions have corrected the error.

6 MR. PARKER: Sounds like you
7 remember more of the conversation now
8 than you did when you signed your
9 affidavit.

10 May I approach the witness, Your
11 Honor?

12 THE COURT: Yes. Do I have -- is
13 her affidavit in the file?

14 MR. PARKER: Yeah.

15 THE COURT: Who filed it?

16 MR. PARKER: It was attached to Mr.
17 Fox's --

18 THE COURT: You know what, I
19 don't -- I have your response, but I do
20 not have all of the exhibits attached. I
21 think it -- it was filed, I think, today.
22 May I just look at it? I just have the
23 response.

24 MR. FOX: That is all -- pretty
25 much all of the stuff we're going to be

1 talking about.

2 THE COURT: Okay. Do you have your
3 affidavit, ma'am?

4 THE WITNESS: I do not. Oh, I
5 might.

6 THE COURT: Well, you want me to --
7 I have it now.

8 THE WITNESS: I do have it. I do
9 have it.

10 THE COURT: All right.

11 BY MR. PARKER:

12 Q. So did you remember all that you
13 just said when you filled out this affidavit?

14 A. Yes.

15 Q. Okay. Well, none of that, what you
16 said, was in this affidavit, is it?

17 A. I believe it is.

18 Q. Okay. Where at?

19 A. On or about March 13th of 2017 I
20 spoke with Patricia Wolfe, elections
21 administrator with the Ohio Secretary of State's
22 office, regarding the typographical error in
23 Madeira Ordinance No. 17-03.

24 Patricia Wolfe advised that the
25 proper course was for the City of Madeira to

1 pass an ordinance that corrected the
2 typographical error in Madeira Ordinance No.
3 17-03.

4 I relayed this information to City
5 Manager, Thomas Moeller, and law director, Brian
6 W. Fox.

7 Q. So it's your position that what is
8 circled in red was a typographical error?

9 A. That's correct. After consulting
10 with the Secretary of State's office.

11 Q. Okay.

12 A. They were sent copies of both
13 ordinances.

14 Q. And to be clear then, when you were
15 talking to Ms. Wolfe, what did you tell her the
16 typographical error was?

17 A. I sent her copies of the -- of the
18 ordinance.

19 Q. Well, she had already had that?

20 A. I believe.

21 Q. Didn't she already have it?

22 A. She had the -- correct. Right.

23 Q. She had already approved it for
24 ballot language.

25 A. That's correct. And then once --

1 and then once we received the second ordinance,
2 I sent that to -- to the secretary of State's
3 office, and they approved the revised language.

4 MR. PARKER: Thank you, Judge. I
5 have nothing further.

6 THE COURT: Okay. Thank you.

7 well, on behalf of the defendants,
8 Mr. Stevenson, do you have any questions
9 at this time, or do you want to
10 reserve -- my question is: Do you have
11 any further questions for Ms. Poland?
12 Mr. Goodin? Mr. Stevenson?

13 MR. STEVENSON: I just as soon ask
14 the questions now and have her be
15 released.

16 THE COURT: Okay.

17 CROSS-EXAMINATION

18 BY MR. STEVENSON:

19 Q. Ms. Poland, does the Board of
20 Elections require the use of the ballot language
21 as submitted by the municipality to put a
22 charter amendment on the ballot?

23 A. We have little discretion with
24 that.

25 Q. In fact, you -- the Board of

1 Elections has the duty to make sure the ballot
2 language is an accurate reflection of the
3 amendment that's to be voted on?

4 A. Correct.

5 Q. And that's what you did in this
6 case?

7 A. Correct.

8 MR. STEVENSON: Thank you.

9 THE COURT: Okay. And, Mr. Goodin,
10 anything?

11 MR. GOODIN: Well, just a couple
12 quick questions.

13 CROSS-EXAMINATION

14 BY MR. GOODIN:

15 Q. Just one quick question. You've
16 seen the new allegations that showed -- that
17 accused the Board of Elections of engaging in
18 fraud in regards to this election?

19 A. I -- just before walking into the
20 courtroom I glanced at it briefly.

21 Q. Can you respond to those
22 allegations?

23 A. Absolutely no fraud or corruption
24 on behalf of the Board of Elections.

25 Q. Did you personally, or any of your

1 employees, to the best of your knowledge,
2 intentionally act to deceive the voters in any
3 way on these --

4 A. Absolutely not.

5 MR. GOODIN: Okay. No further
6 questions, Judge. Thank you.

7 THE COURT: Any redirect, sir? Or
8 re -- this is re -- ask any questions you
9 may have.

10 REDIRECT EXAMINATION

11 BY MR. PARKER:

12 Q. Response to Mr. Stevenson's request
13 mentioned you did have some discretion, and I
14 think your answer was yes, right?

15 A. Uh-huh.

16 Q. And your discretion is to make sure
17 that the ballot language matches up with the
18 ordinance, correct?

19 A. Of what's submitted.

20 Q. Okay. So what -- let's be clear,
21 so that everybody who has a question about this
22 what is appearing on the ballot, on May the 2nd,
23 2017, is a result of an ordinance that was
24 passed by the City of Madeira on March the 14th,
25 2017, right -- March 13th, 2017?

1 A. It's a combination of both. Both
2 the ordinance that was filed on the -- on March
3 3rd, 17-03, as well as the ordinance that was
4 filed on March 13th.

5 Q. It wouldn't be a combination of
6 them both. It is what appears -- it is what was
7 in ordinance 17-06, right?

8 A. I believe 17-06 contains Exhibit C.
9 It does not contain, I don't believe, A and B,
10 because there was not an error in those
11 exhibits. And what will be posted at the
12 polling place on Election Day is both 17-03 and
13 17-06. It's the entire ordinance. It's both
14 ordinances together.

15 Q. All right. So 17-06, what you've
16 said was handed to you, was passed on March
17 13th, that was after 60 days prior to the
18 election, right?

19 A. Correct.

20 MR. PARKER: Okay. Thanks.

21 THE COURT: Anything else, Mr.
22 Goodin or Mr. Stevenson? Anything
23 further?

24 MR. STEVENSON: Nothing further,
25 Your Honor.