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IN THE SUPREME COURT OF OHIO

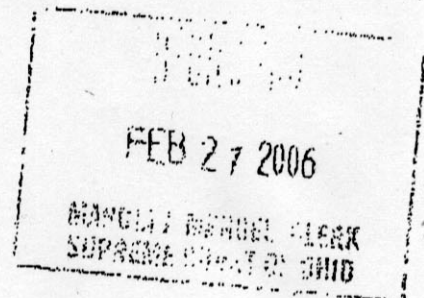
IN RE THE STATE OF OHIO v. THOMAS W. NOE, PENDING IN THE
COMMON PLEAS COURT OF LUCAS COUNTY, OHIO

AFFIDAVIT OF DISQUALIFICATION
OF THE HON. THOMAS J. OSOWIK AND ALL THE OTHER JUDGES OF THE
COURT OF COMMON PLEAS FOR LUCAS COUNTY IN THE STATE OF OHIO v.
THOMAS W. NOE, CASE NO. CR-06-01348 .

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AFFIDAVIT OF DISQUALIFICATION

Thomas W. Noe, being first duly sworn, does hereby state pursuant to Ohio Revised Code Section 2701.03, as follows:

INTRODUCTION

It is my belief that I cannot and will not receive a fair and impartial hearing before any judge of the Lucas County Common Pleas Court as a result of my singular, unprecedented, and extraordinary level of involvement in their political, professional, and personal lives. Indeed, the ferocity and determination with which my wife, Bernadette Restivo Noe, and I set out to achieve our goal of displacing the entrenched majority Democratic political establishment of Lucas County – especially as it has historically existed on the Lucas County Common Pleas bench (“Bench”) – has resulted in what can only be described as a singular and acute animus against us on the part of Democrats in Lucas County, including the majority of judges on the Bench. The remainder of the judges have been the beneficiaries of my decade long campaign to unseat Democrat judges and/or are close personal friends of mine. Accordingly, I consider every judge on the Bench either to be a genuine political enemy, on the one hand, or a political client and/or close personal friend, on the other hand. This requires the disqualification of the entire Bench from presiding in the criminal case which has been initiated against me.

If any question existed whether my relationship with the judges on the Bench requires their disqualification, the voluntary recusals of five Ohio Supreme Court justices in the public records cases filed in 2005 by the *Toledo Blade* and other media outlets in connection with the investigation of Capital Coin Fund I, LLC and Capital Coin Fund II, LLC stands as precedent, and requires that the judges on the Bench be held to no lower standard. My ferocious dedication to unseat Democratic judges and to elect Republican judges is so extraordinary and notorious that all five Supreme Court Justices to whose campaigns my wife and I contributed recused

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themselves from last year's public records cases, even though our involvement in four of the five campaigns involved merely making a financial contribution (Justice Lanzinger being the exception).

BACKGROUND

1. I am an individual and a resident of the State of Florida, residing at 139 Stinger Road, Tavernier, FL 33070.

2. Beginning in 1998, the Ohio Bureau of Workers' Compensation elected to invest funds in two private companies engaged in the buying, selling, and trading of rare and valuable coins and collectibles: Capital Coin Fund I, LLC and Capital Coin Fund II, LLC (the "Coin Funds"). Between 1998 and May 2005, the Coin Funds were by managed by Thomas Noe, Inc., d/b/a Vintage Coins and Collectibles.

3. In 2005, the Lucas and Franklin County Prosecuting Attorneys' Offices and various agencies of the state of Ohio began investigating alleged criminal wrongdoing in connection with the Coin Funds. Grand jury proceedings commenced in January, 2006, and an indictment was issued and criminal complaint filed against me on February 13, 2006 in the Court of Common Pleas for Lucas County, Ohio, Case No. CR-06-01348 (the "Case"). The Hon. Thomas J. Osowik has been assigned to the Case.

4. Because of my extensive, unprecedented, and long-term involvement in the political, professional, and/or personal lives of every judge on the Bench, it is my belief that I cannot and will not receive a fair and impartial hearing if any of them including Judge Osowik, preside in the Case.

**THE CIRCUMSTANCES JUSTIFYING THE DISQUALIFICATION OF JUDGE
OSOWIK AND ALL OTHER LUCAS COUNTY COMMON PLEAS JUDGES FROM
PRESIDING OVER THE CASE**

Background

5. Over the course of the past two decades, I have been active in politics at an intensive and extraordinary level. During this time, I have held an array of positions within the governments of the State of Ohio and Lucas County. Of specific relevance to these proceedings, I was a Republican member of the Lucas County Board of Elections for ten years, from 1993 until 2003. I also served on the Ohio Board of Regents, having been appointed by former Ohio Governor George Voinovich in 1995 to complete an unexpired term, then reappointed for a full nine-year term in 1999 by Governor Bob Taft. I was appointed by Governor Taft to the Ohio Turnpike Commission for an eight-year term in 2003. I was also a member of the Board of Trustees of Bowling Green State University between 1991 and 1995, having been appointed by former Governor Voinovich.

6. I have also served prominently in the Republican Party over the past two decades, serving as chairman of the Lucas County Republican Party from 1992 until 1995. Beginning in the 1980s and continuing on through the period encompassing the Coin Fund Investigation, I chaired and advised multiple political campaigns, including serving as chairman of President Bush's 2004 re-election campaign in northwest Ohio, and was a member of the statewide steering committee for the Bush Campaign. I also served as the regional chairman for Senator Voinovich's 2004 Senate campaign, and served as a prominent Republican party fundraiser. My wife has likewise been politically active, serving on the Lucas County Board of Elections from 2003 until 2005, and serving as Chairman of the Lucas County Republican Party from 2002 until 2005. It is well known that my wife and I joined together in our political mission. In a 2004 installment of his weekly public affairs television show "Carty & Company," current Toledo

Mayor Carleton S. Finkbeiner dubbed my wife and I "the most powerful political couple in Northwest Ohio." In all the matters described in this affidavit, my wife and I acted together, as partners, in our effort to defeat Democratic judicial candidates.

7. By virtue of the political work undertaken by my wife and me, it has long been our duty, intent, and goal to promote the interests of Republicans in Lucas County, and to displace Democrats from elective office. The ferocious and persistent manner in which we pursued this goal, and the success we achieved, were unprecedented for Republicans in Lucas County, and serve as the basis for what can only be described as a singular and acute animus against us on the part of the entrenched majority Democratic political establishment of Lucas County, including the majority of judges on the Bench (the remainder were the beneficiaries of my extraordinary efforts and/or are close personal friends, and were therefore spared the career damage I inflicted or attempted to inflict on Democrat judicial candidates). To understand the resulting animus, one must appreciate both the historic domination of the Democratic Party in Lucas County, and the specific methods employed by my wife and me as we worked to counteract it.

8. When I became active in the Lucas County Republican Party, in the late 1980's, the party's campaign efforts in Lucas County could only be described as moribund. In election after election, Democrats ran unopposed. Even in cases where they were opposed, Republican candidates were underfunded, campaigns lacked direction, and election successes were few and far between, with the result being that Republicans were woefully underrepresented on Toledo City Council, the Lucas County Commission, the Lucas County Court of Common Pleas, and other county and municipal offices. When I became Chairman of the Lucas County Republican

Party in 1992, I launched a concerted effort to change these circumstances, employing a political strategy that has been routinely described as aggressive and confrontational.

9. For example, in the early 1990s, funding was a perpetual problem for Lucas County Republican campaigns, and the lack of campaign funds resulted in an inability to purchase television commercials and print ads. While the long term solution to this problem was to raise hundreds of thousands of dollars (which I did), to immediately combat this, I embarked on a strategy of obtaining what came to be referred to as "earned media." That is, the acquisition of free media coverage derived from the creation of newsworthy stories or events.

10. Perhaps the most effective way I found to obtain earned media was to vigorously pursue enforcement of Ohio's election and campaign finance laws by filing, encouraging to be filed, or threatening to file legitimate complaints against Democratic candidates, whether it be with the Lucas County Board of Elections, the Ohio Ethics Commission, or the Ohio Elections Commission. For example, in 1994 I participated in the filing of a complaint with the Ohio Elections Commission against Judge James Bates' judicial campaign on behalf of his opponent, Judge James Jensen, alleging improper campaign conduct related to the placement of campaign signs and materials on county government property:

Similarly, in 2002, my wife, with my aid and assistance, filed a grievance against Democratic Supreme Court candidate Janet Burnside alleging that her television commercials were misleading. Probable cause was found, and Ms. Burnside stopped running the offending commercials.

During the 2002 election season, my wife filed a complaint with the Ohio Ethics Commission against Sandy Isenberg, then incumbent candidate for the Lucas County Commission, accusing her of accepting a free roof for her home from a government contractor.

among other things. Also in 2002, my wife, again with my aid and assistance, assisted Lucas County Republican Party Vice-Chairman Sam Thurber in the preparation of a grievance with the Ohio Supreme Court against Democratic Judge Bill Skow – who was then running for the Sixth District Court of Appeals against a Republican – alleging that Judge Skow had improperly endorsed a candidate who was then running for the County Commission. This endorsement constituted a violation of Canon 7 of the Ohio Code of Judicial Conduct, which prohibits a Judge from publicly endorsing a political candidate.

In a previous campaign, again with the assistance of my wife and me, Mr. Thurber filed a complaint against Judge Osowik in the Supreme Court of Ohio alleging his misuse of public resources (see ¶ 24 *infra* for discussion).

11. It was typical, in conjunction with these filings, to hold a press conference during which I, my wife, or our surrogates, would attack the integrity of the Democratic candidate. Such aggressive tactics had never been widely employed by my predecessors in the Lucas County Republican Party, and our use of them was both notorious and controversial. Through their use, my wife and I became the scourge of Lucas County Democratic candidates.

12. And I found other ways to attack local Democrats in the media. In 1992 I began making weekly appearances on a public affairs television program called “Upfront Toledo.” I used these appearances as a platform from which to attack local elected Democrats and Democratic candidates, including judges, and made it my mission to employ a provocative and confrontational style in doing so. These appearances had the dual effect of providing another previously non-existent forum for criticism of local Democratic candidates and for making me—rather than Republican candidates—the focus of Democrats’ vitriol, further adding to my standing as the scourge of Lucas County Democratic candidates and office-holders.

13. Another tactic which I was known for employing, and which greatly upset my Democratic rivals, was the recruiting of candidates to run as independents in races with the purpose of having them siphon off votes from Democrats. An example of this occurred in the 1994 campaign for State Representative between Republican John Garcia and Democrat Don Czarinski. Knowing that Mr. Czarinski received considerable support from Toledo's Polish community, I recruited and encouraged another Candidate—Joe Lipinski—to run as an independent in the race and instructed him to campaign only in districts with a large Polish population. Mr. Lipinski's candidacy served to dilute Mr. Czarinski's support and was a key factor in Mr. Garcia's election victory. Again, I am unaware of prior use of this tactic, and my Democratic rivals typically identify me as the tactic's progenitor.

14. Another factor which has caused my wife and me to be singled out as enemies of Lucas County Democrats is my wife's prior history with the Lucas County Democratic Party, and her switch to the Republican Party in the early 1990's. My wife, who is the daughter of retired Lucas County Court of Common Pleas Judge Francis Restivo, first became active in Democratic politics as a teenager, rising to a leadership position within the Democratic Party by her early 20's. In 1984, she was nominated by the Lucas County Democratic Party to serve on the State Central Committee of the Ohio Democratic Party. In 1985 she served as campaign chair for former Democratic Toledo mayoral candidate Mike Rankin. She also served as a member of the Lucas County Democratic Party Judicial Screening Committee in the mid to late 1980's. During this period, my wife was being groomed for future elected office by the Democrats.

15. In the early 1990's, my wife switched allegiances to the Republican Party. Almost immediately thereafter, she and I began to use contacts she acquired during her years as a

Democrat to undermine local Democratic candidates and assist the local Republican Party. One way in which we achieved this was to recruit other Democrats to join the Republican Party. For example, in 2003, my wife and I successfully recruited Toledo City Councilwoman Betty Shultz to switch from the Democratic Party to the Republican Party, thereby diluting the Democratic majority on City Council. Ms. Shultz's conversion was announced at a large and widely-covered press conference organized by my wife and me. Ms. Shultz's, as well as my wife's political conversions created tremendous ill-will among Democrats in Lucas County.

16. Another tactic my wife and I conceived to leverage her Democratic past was to instigate and inflame controversies among local Democrats in a way that benefitted their Republican counterparts. For example, between 2002 and 2005, my wife and I frequently voiced our support for certain Democrats over other Democrats. It was our strategy to endorse Democrats for the purpose of sowing divisions within the Democratic Party. The effect of these endorsements was to cause Democrats to be highly critical of any Democratic candidate my wife—who was considered a pariah to the Democrats—or I—their scourge—supported. An example of this tactic occurred during the 2004 Democratic primary for the Lucas County Commission race between Harry Barlos and Pete Gerken, in which our joint proclamation of support for Barlos—who was then President of the County Commission—directly contributed to the his surprising and controversial rejection by the Democratic Party, which endorsed Pete Gerken. Though Gerken eventually won the race, the Democrats' failure to endorse Barlos offended many Democratic Party members who considered Barlos loyal and dedicated, leading to the formation of a group called the "Coalition of Concerned Democrats," which at the time was commonly referred to in Lucas County as the Democrats' "B-team," and whose purpose was to confront the then current Democratic leadership. The hostilities I instigated had the desired

effect of aiding the Lucas County Republican Party to the detriment of all local Democratic candidates and office-holders.

17. While it cannot be disputed that the employment of the aforementioned campaign tactics proved to make my wife and me immensely unpopular among Democrats—and a few Republicans—in Lucas County, these tactics nevertheless served to vastly improve the electoral prospects and successes of local Republicans during our tenure in leadership. Indeed, after reaching a nadir in the early 1990s, Republicans in Lucas County made significant gains almost immediately after I became Republican Party Chairman. The significant electoral victories for which I am widely credited include:

- In 1992, Republican Sally Perz defeated the long-serving Democratic State Representative, Don Czarinski;
- In 1992, Republican Judge Stephen Yarbrough won election to a newly-created seat on the Lucas County Court of Common Pleas, Domestic Relations Division, defeating the favored Democrat ;
- In 1993, Republicans Judy Jones, Gene Zmuda, and Rob Ludeman won seats on the Toledo City Council, displacing incumbent Democrats. This was especially notable inasmuch as, prior to the election, no Republicans held seats on City Council;
- Also in 1993, in a race many have referred to as “the campaign that put the Lucas County GOP on the map,” Republican Maggie Thurber defeated incumbent Democrat Dick Holzemer in the race for Clerk of the Municipal Court. Ms. Thurber was unknown at the time while Mr. Holzemer, a former County Commissioner, was a well-known and long-serving politician had been expected easily to retain the court clerkship.
- In 1994 Republican John Garcia defeated Democrat Don Czarinski for State Representative (see ¶13 *supra*). Indeed, 1994 marked the first time in decades that Republicans took control of a majority in the Ohio Statehouse—a majority that remains some 12 years later—largely as a result of winning seats from incumbent Democrats in traditionally Democratic parts of the state;
- In 1994 Betty Montgomery defeated Lee Fisher in the race for Ohio Attorney General. Most observers credit Ms. Montgomery’s uncharacteristically strong showing (for a Republican) in Northwest Ohio as a key to her victory.

18. The string of Republican electoral successes that I worked to bring about between 1992 and 1995 was largely broken once I stepped down as Chairman of the Republican Party in 1995. Indeed, between 1995 and 2002 no less than five people served as Republican Chairman, none of whom could be called a success in the position. During this period, Democrats frequently ran for office unopposed and Republican fundraising and earned media efforts were allowed to atrophy. Only when my wife took over as Chairman in 2002 did Republicans' prospects begin to once again improve as our aggressive and confrontational tactics were again deployed. Lucas County Democrats feel ill will towards my wife and me, inasmuch as we have historically been the people responsible for their electoral misfortunes, resulting in our status as pariahs – as the scourge or enemy of Lucas County Democrats.

Specific Lucas County Political Activity with Respect to Judicial Races

19. As was the case with my overall political activity, the actions taken by me in support of or in opposition to various Lucas County judges and judicial candidates have not been limited to the mere donation of money or statements of public support. Rather, I became actively involved in the management of judicial campaigns in Lucas County, formulating and executing campaign strategy, pursuing newspaper endorsements in support of or in opposition to candidates, and filing election-related complaints against opposition candidates. In other instances I sought to use whatever lawful influence I could to lead efforts to obtain campaign support or to oppose certain judges' efforts to obtain other elected or appointed offices.

20. For example, while serving as Chairman of the Lucas County Republican Party during the term of a Republican governor, it was my responsibility—and later my wife's—to provide the Governor with recommendations to fill judicial vacancies that occurred in Lucas County and on the Sixth Appellate District of the Court of Appeals. Such recommendations took

the form of detailed memoranda to the Governor or his designee (typically the Director of Boards and Commissions) advocating for the appointment of various candidates to the bench. Prior to compiling these recommendation memoranda, we would typically receive numerous letters or personal inquiries from people interested in obtaining those judicial appointments.

21. It was also our responsibility as party Chairmen to field inquiries from Republican judicial candidates for campaign donations or in-kind contributions from the Lucas County Republican Party. These requests typically sought funding for newspaper and radio advertisements, direct mail items, and other promotional materials. These inquiries were typically addressed directly to my wife or me and came directly from the judicial candidate. Though a mechanism exists with the Republican Party to rule upon such requests, our recommendation about whether or not to do so carried considerable weight in the local and state Party.

22. Finally, the amount of money my wife and I have contributed to Republican judicial candidates in Lucas County, or caused to be contributed, cannot be understated. Since the early 1990s, I have contributed the maximum amount of money allowed by law to virtually every Republican judicial candidate in Lucas County. Indeed, I do not believe that any person has made greater financial contributions to Republican judicial candidates in Lucas County than I have. Moreover, in 1994, I created a Republican Judicial Fund, soliciting money directly for Republican judges and potential candidates into that segregated account. In addition, each judge was expected to donate \$500 to the judicial fund annually as well as \$500 annually to the Republican Party operating fund. Those judges who participated were guaranteed their money back in the form of a donation from this fund during their election campaigns. Following the

completion of my term as party Chairman, my predecessors allowed this fund to fall into disuse. Its use was revived in 2002 when my wife became Chairman.

23. What follows is a summary of our specific dealings with respect to the public, political, and personal lives of Judge Osowik and the other current Lucas County Common Pleas Judges.

24. **Hon. Thomas J. Osowik:** Judge Osowik, who has been assigned to the Case, and who presided over my February 13, 2006 arraignment, is a Democrat who first became a judge in the mid-1980s when he was originally appointed to the Lucas County Municipal Court bench while my wife was a member of the Lucas County Democratic Party Judicial Screening Committee. My wife voted against his appointment to that seat due to her publicly-stated belief Judge Osowik was not qualified for service as a judge. I believe that Judge Osowik was and is aware of that opinion. In 2004, my wife and I strongly supported Judge Osowik's election opponent, current Judge Jack Zouhary, identifying the race as one of the GOP's "Target Races," early in the year, which led to the allocation of significant Party resources to the campaign.

Also, in the late 1990s, at the suggestion and with the assistance of my wife and me, Republican activist Sam Thurber filed a complaint with the Supreme Court against Judge Osowik arising out of what we believed to be his improper use of the Law Enforcement Agency/Area Data System ("LEADS system") to assist Democratic campaigns. The LEADS system provides access to all warrants and confidential investigatory information on file with law enforcement authorities. Upon information and belief, Judge Osowik was using the system to provide information to other Democrats regarding their political opponents. It is my

understanding that, as a result of the complaint, Judge Osowik was barred from unsupervised access to the LEADS system for a period of time following the disposition of the complaint.

Further, we donated heavily to Judge Zouhary's campaign, and caused the Lucas County Republican Party to provide a requested direct contribution for purposes of funding a direct mail effort which totaled over \$7,500. Finally, we advised and formulated strategy for Judge Zouhary's campaign, helping him to mount an aggressive campaign presence to help make up for increased television rates which were difficult for his relatively underfunded campaign to afford.

Judge Osowik is currently presiding in a Lucas County case involving the Ohio Department of Commerce's investigation of John Ulmer and his companies, Westhaven Group and Haven Holdings (Case No. G-4801-CI-2005-06-857). This investigation began when the State of Ohio learned that the Coin Funds had invested with Mr. Ulmer's companies, and involves me because Thomas Noe, Inc. managed the Coin Funds at the time of the subject investments.

Further, Judge Osowik recently filed a petition to run for the Sixth District Court of Appeals this year against incumbent Judge Dennis Parish, whom my wife and I have strongly supported. Indeed, my wife and I were instrumental in lobbying Governor Taft to appoint Judge Parish to his current position in 2005, convincing the Republican Chairmen for the eight counties that comprise the Sixth Appellate District to recommend him to Governor Taft during an early 2005 meeting.

It was reported to me that Judge Osowik indicated that the high profile nature of my prosecution, combined with the fact that he will soon be facing an election, all but compelled him to side with the prosecution during bond proceedings in my Case on February 13, 2006,

which he did. What's more, it was reported to me that the bond which Judge Osowik set in my case—\$500,000—was ten times higher than the bond set in some recent murder cases in Lucas County. In stark contrast, my former business associate, Timothy LaPointe, who has been charged with seven felony accounts for his own involvement in alleged illegalities related to the Coin Funds, was arraigned and released on a monitored recognizance bond.

Finally, Judge Osowik's wife, Dr. Rosemary Osowik, is an emergency room physician who treated my wife's parents, Francis and Jane Restivo, following an automobile accident which is currently in litigation and in which Dr. Osowik is likely to be a key witness.

I consider Judge Osowik to be a political enemy and I have made extraordinary efforts over the years to prevent him from winning election to his judicial office.

The Other Democratic Judges on the Bench

25. **Hon. James D. Bates:** Judge Bates is the husband of Lucas County Prosecutor Julia Bates, who is leading the prosecution in the Case. He is the current Administrative Judge for the Lucas County Court of Common Pleas.¹ In 1994, while Chairman of the Lucas County Republican Party, I actively recruited and supported Republican Judge James Jensen (see below), who was at that time Judge Bates' challenger for office. I advised Judge Jensen's campaign that year, worked on a complaint filed against Judge Bates' campaign with the Ohio Elections Commission, and was instrumental in getting Judge Jensen an endorsement from *The Toledo Blade*. Judge Bates nevertheless prevailed in that election.

In 2000, Judge Bates was opposed by Mark Berling, a former colleague of mine in both the Lucas County Republican Party and at the Lucas County Board of Elections. My wife and I both actively supported and advised Mr. Berling's campaign, donating to his campaign the

¹ Prosecutor Bates' involvement in the Case, alone, is sufficient to require Judge Bates' disqualification. See *In re Disqualification of Carr* (2004), 105 Ohio St. 3d 1233, 1235.

maximum amount of money legally allowed, and soliciting donations from others for his campaign.

It would be inappropriate for Judge Bates to preside in a high-profile case with political overtones that is being prosecuted by his wife's office. Further, I consider Judge Bates to be a political enemy and I have made extraordinary efforts over the years to prevent him from winning election to his judicial office.

26. **Hon. Gary G. Cook:** Judge Cook took office in 2004, when he defeated the Republican incumbent, Judge Patrick Foley in what most observers described as a high-spirited and hotly-contested campaign. My wife and I were substantial and active supporters of Judge Foley, donating to his campaign the maximum amount of money legally allowed, and soliciting donations from others. Indeed, my wife and I made significant efforts to have Judge Foley appointed to the bench by Governor Taft, including writing a recommendation for him in a memorandum to Governor Taft's Director of Boards and Commissions. To prevent Judge Cook's election, we wrote letters to attorneys and others who had previously indicated support for Judge Foley, asking them to contribute money and to contact their clients to ask them to support him, financially or otherwise. In this extraordinary effort, we also successfully solicited Governor Taft, Attorney General Petro, and State Auditor Montgomery for contributions to Judge Foley's campaign.

I consider Judge Cook to be a political enemy and I have made extraordinary efforts over the years to prevent him from winning election to his judicial office.

27. **Hon. Charles J. Doneghy:** I personally opposed Judge Doneghy's election while Chairman of the Lucas County Republican Party in 1994, campaigning for, donating to, and soliciting donations to the campaign of his opponent. Judge Doneghy is also presiding over

the prosecution of my former business associate, Timothy LaPointe, who has been charged with seven felony accounts for his own involvement in alleged illegalities related to the Coin Funds.

At the same time, Judge Doneghy is a former colleague and friend of my wife's father, Retired Judge Francis Restivo, having served together on the Toledo Municipal Court and the Lucas County Court of Common Pleas. When my wife was a law clerk for former Judge Joe Flores in the early 1980's, she would frequently be called on to assist Judge Doneghy if the need arose, and she served as a campaign volunteer for Judge Doneghy during this period. Judge Doneghy was a guest at my wife's first wedding, and they have remained close over the years.

Nevertheless, for my party, I personally consider Judge Doneghy to be a political enemy and I have made extraordinary efforts over the years to prevent him from winning election to his judicial office.

28. **Hon. Denise Ann Dartt:** I personally opposed Judge Dartt's 2004 election, donating to the campaign of her opponent—current Lucas County Municipal Court Judge Tim Kuhlman—the maximum amount legally allowed, and soliciting donations from others for his campaign. My wife likewise opposed her election while serving as Chairman of the Lucas County Republican Party, and was instrumental in drafting Judge Kuhlman as her opponent. To do so, my wife promised him that, if he ran unsuccessfully against Judge Dartt, he would get our unqualified support for a subsequent judicial appointment, which support he later received, resulting in his current post on the Lucas County Municipal Court. Both my wife and I advised and made major financial and in-kind contributions to Judge Kuhlman's unsuccessful campaign.

I consider Judge Dartt to be a political enemy and I have made extraordinary efforts over the years to prevent her from winning election to her judicial office.

29. **Hon. Frederick H. McDonald:** Earlier this month, Judge McDonald removed himself from the criminal case of Toledo Councilman Robert McCloskey because of a potential conflict of interest arising out of Mr. McCloskey's assistance to Judge McDonald in a past election campaign. In the course of recusing himself, Judge McDonald said in a letter to Administrative Judge Bates "I believe that my impartiality might reasonably be questioned since Mr. McCloskey was a member of my campaign committee in a contested election." In 1998, both my wife and I were significant donors, supporters, and advisors to Judge McDonald's election *opponent*, Linda Jennings, for whom we solicited substantial campaign donations and provided the same type of support as did Mr. McCloskey for Judge McDonald.

Moreover, Judge McDonald's wife, Holly Taft-Sydlow, is an Assistant United States Attorney for the Northern District of Ohio, the U.S. Attorney's office which is currently prosecuting me for alleged criminal violations of federal campaign finance law.

30. **Hon. Charles S. Wittenberg:** In 1996, his first time on the ballot, Judge Wittenberg was opposed by Republican Mark Smollinger in what quickly became a hotly contested race. During this campaign, the Board of Elections, of which I was at that time a member, was called on to make a number of tough calls which, in the large part, favored Mr. Smollinger at the expense of Judge Wittenberg. Indeed, the Board of Elections was ultimately sued by supporters of Judge Wittenberg—and I myself was sued in my capacity as a member—to keep Mr. Smollinger off the ballot, an effort that was ultimately unsuccessful. In 2002, Judge Wittenberg unsuccessfully ran for a seat on the Sixth District Court of Appeals. I was a major contributor and adviser for his opponent, current Supreme Court Justice Judith Lanzinger, and my wife was at that time Chairman of the Lucas County Republican Party. Our efforts on behalf of Justice Lanzinger and against Judge Wittenberg in this race were extensive.

31. **Hon. Ruth Ann Franks:** Judge Franks was assigned to the courtroom of my father-in-law, Retired Judge Francis Restivo, when she served as a Lucas County Assistant Prosecutor, and she remains close to the Restivo family. I likewise have had social and professional interaction with Judge Franks, and she has been a guest in the home of the Restivo family over the years.

I consider Judge Franks to be a close, personal friend, and she is even closer to my wife and her family going back several years.

Republican Judges

32. **Hon. James D. Jensen:** Judge Jensen is a very close friend of mine, whom I initially recruited to become a judge, and for whom I served as a campaign contributor, adviser and strategist. My wife served as Judge Jensen's law clerk prior to entering private legal practice. Following his election loss to Judge Bates (see paragraph 25) I was chairman of the Lucas County Republican Party and advocated his appointment to his current position by Governor Voinovich. In early 2005, my wife wrote to Senator Mike DeWine on Judge Jensen's behalf, strongly recommending him to fill the vacancy then present on the United States District Court for the Northern District of Ohio. I consider Judge Jensen to be a close personal friend.

33. **Hon. Jack Zouhary:** I was a major advisor to, and my wife and I both helped fund, Judge Zouhary's unsuccessful 2004 campaign against Judge Osowik. Following his loss to Judge Osowik, Judge Zouhary began actively seeking an appointment to the Sixth District Court of Appeals. An appointment to the Court of Appeals entails gaining the support of the other Republican County Chairmen in that District, which was an extraordinarily difficult task for someone with Judge Zouhary's relative lack of political experience at the time. My wife and I nevertheless championed Judge Zouhary for the appointment during an early 2005

meeting of Republican Chairmen for the eight counties that comprise the Sixth Appellate District. Although that effort proved unsuccessful, we were able to convince Judge Zouhary to accept his appointment to the Lucas County Common Pleas Court. Soon afterwards, both my wife and I participated in telephone conferences and meetings with staff members for Senators DeWine and Voinovich, lobbying them to convince the two Senators to propose Judge Zouhary to President Bush as a potential nominee to fill a vacancy on the United States District Court for the Northern District of Ohio. Judge Zouhary was subsequently nominated by President Bush to fill that vacancy.

All Lucas County Common Pleas Court Judges

34. All judicial proceedings should bear the clear and unmistakable appearance of fairness and impartiality to all litigants and the general public. No matter what the circumstances, the trial court should always refrain from any appearance of impropriety or bias in favor of or against one of the parties. As the foregoing paragraphs demonstrate, however, given my extensive, unprecedented, historic and extraordinary personal involvement with every single sitting judge on the Lucas County Court of Common Pleas, it will be impossible for me to receive a fair and impartial hearing from any judge in Lucas County. My relations with the Bench fall into two categories—every sitting judge is either a political enemy or a close personal friend. At the very least, my involvement with these judges creates an appearance of bias and prejudice which constitutes compelling grounds to disqualify these judges from my Case.

LEGAL AUTHORITY SUPPORTING THE AFFIDAVIT OF THIS CASE DISQUALIFICATION OF ALL LUCAS COUNTY COMMON PLEAS JUDGES FROM PARTICIPATING IN FURTHER PROCEEDINGS

The Applicable Legal Standard

35. Disqualification is an extraordinary remedy that will only be ordered when there is compelling evidence that overcomes the presumption that judges are unbiased. *In re Disqualification of O'Neill* (2002), 100 Ohio St.3d 1230, 1232, 798 N.E.2d 15. Vague or unsubstantiated allegations are insufficient to support a finding that disqualification is necessary. *Id.* However, a judge must be disqualified if he or she has an actual bias or prejudice against a party to the proceeding, a member of his or her family, or if there is an appearance of prejudice or partiality. R.C. 2701.03(A); Canon 3 of the Code of Judicial Conduct; *In re Disqualification of Celebrezze* (2004), 105 Ohio St.3d 1241, 826 N.E.2d 301; *Armor v. Armor*, 398 A.2d 173 (Sup. Ct. Pa, 1978). Disqualification of all of a given county's Common Pleas Court judges may also be appropriate, and a visiting judge may be appointed, when the participation of any judge in a county would give the appearance of bias, prejudice, or impropriety. *Id.*; see also *In re Disqualification of Corrigan* (1996), 77 Ohio St.3d 1235, 1236, 674 N.E.2d 350; *In re Disqualification of Nadel* (1989), 47 Ohio St.3d 604, 546 N.E.2d 926; *In re Disqualification of Nugent* (1987), 47 Ohio St.3d 601, 601, 546 N.E.2d 927.

36. In instances where a party to litigation or his or her attorney has provided ordinary political support or opposition to the judge assigned to their case, no conflict is apparent and disqualification is not typically required. See *In re Disqualification of Cleary* (1996), 77 Ohio St.3d 1246, 674 N.E.2d 357. Ordinary political support includes campaign contributions, endorsements, and service on campaign committees. *Id.*

37. However, disqualification is required in those instances when the party or the party's attorney has gone beyond providing ordinary support or opposition to judicial candidates, and instead has become so extensively involved in judicial campaigns as to require the disqualification of any judges with whose candidacy he has been involved. See *Celebrezze*,

supra; *Neiman-Marcus Group, Inc. v. Robinson* (Fla. Dist. Ct. App. 2002), 829 So.2d 967, 968. See also Code of Ala. 12-24-1 (requiring disqualification in cases where a party or party's attorney made a substantial contribution); *Pierce v. Pierce* (Okla. 2001), 39 P.3d 791, 798; *Keane v. Andrews* (Fla. 1991), 581 So.2d 160, 161 (Overton, J., dissenting); Banner, *Disqualifying Elected Judges from Cases Involving Campaign Contributions* (1988), 40 Stan. L. Rev. 449; Joy, *A Professionalism Creed for Judges: Leading By Example* (2001), 52 S.C.L. Rev. 667. Such a situation exists, it is typically held, where the party or the party's attorney has made substantial contributions, solicited substantial contributions, formulated political strategy, or has otherwise been highly involved in the judges' political activities. See *Neiman-Marcus Group, supra* (disqualifying a judge in a case in which a party's attorney served as the judge's campaign treasurer in the previous election); *Calfeffe v. Vitale* (Fla. Dist. Ct. App. 1986), 488 So.2d 627, 629 (disqualifying judge from a case involving an attorney who was acting as the judge's co-chair for his ongoing campaign).

38. In determining whether disqualification is required, the totality of the facts must be considered. See *Dodson v. Singing River Hosp. Sys.* (Miss. 2003), 839 So.2d 530, 534; *United States v. DeTemple* (C.A.4 1998), 162 F.3d 279, 287; *Parker v. Connors Steel Co.* (C.A.11 1988), 855 F.2d 1510, 1525.

39. Disqualification is also required where the party or party's attorney has a close, personal relationship with a judge that gives the appearance of bias, prejudice, or impropriety. *Celebrezze, supra*; *Armor v. Armor, supra*; *Eason v. Erwin* (Ark. 1989), 781 S.W. 2d 1, 7 300 Ark. 384; *State ex rel. Larecy v. Sullivan* (Okla. 1952), 248 P.2d 239, 243-44, 207 Okla. 128. See also Richard E. Flamm, *Judicial Disqualification: Recusal and Disqualification of Judges* (1996), Section 8.121. In *Celebrezze*, a visiting judge was appointed after all Cuyahoga County

judges were disqualified from a case involving a county officeholder with "significant personal and professional connections to many judges in the county." Although the originally appointed judge stated he could impartially hear the case, and even though the originally appointed judge had not received any election-related assistance from the litigant, disqualification of the entire county's bench was required to ensure there was no appearance of impropriety. *Celebrezze, supra* at 1242; *See also Hahn v. Federick* (Fla. 1953), 66 So.2d 823, 825-26 (Terrell, J.; dissenting) (arguing disqualification should be required because of an allegation that the judge, opposing party, and opposing counsel were close social, professional, and political friends); *Sullivan, supra* (disqualification required when one party campaigned on the judge's behalf and the judge visited the party's house). And relations to spouses are as relevant as relations between the judges and litigation parties themselves. In *Armor*, the Superior Court of Pennsylvania held that the entire panel of the Montgomery (Pa.) County Court of Common Pleas must be disqualified where one of the parties in a case married one of the judges during the pendency of the case. *Id.* at 173 (holding that a party's "remarriage to a member of that bench demands that such a case not be heard by any of the judge-husband's colleagues").

40. Likewise, disqualification is required when the political rivalry between the judge and party or party's attorney gives the appearance of bias, prejudice, or impropriety. *See Hartford Nat. Bank & Trust Co. v. DeFazio* (Conn. Ct. App. 1986), 506 A.2d 1069; 1071, 6 Conn.App. 576; *Michigan v. Lobsinger* (Mich.Ct.App. 1975), 235 N.W.2d 761, 764, 64 Mich.App. 284; *Kentucky Journal Publishing Co. v. Gaines*, (Ky.Ct.App. 1908), 110 S.W. 268, 272, 139 Ky. 747 ("Political bias (amounting to personal hostility) is an arch enemy to an impartial trial."). In *Lobsinger*, the court found disqualification was necessary although the trial court stated it could be impartial because the trial court stated it might have some personal

degree of animus towards the defendant. See also *Hartford National Bank, supra* (noting allegations of political rivalry may support disqualification although the party failed to substantiate the allegations).

41. Disqualification has also been required where the conduct of the defendant may impact the working environment of the judiciary, and where the underlying case is "high profile" such that it may affect the public's confidence in the proceedings. *Corrigan, supra* at 1236; *In re Disqualification of Glickman* (2002), 100 Ohio St.3d 1217, 1218-1219, 798 N.E.2d 5. In *Corrigan*, the entire Cuyahoga County bench was disqualified from hearing a case against securities dealers involving missing funds from the Cuyahoga County "Secured Assets Fund Earnings" program. There, Chief Justice Moyer ruled that because funds were missing, the Cuyahoga County Court of Common Pleas' budget may have been or would be negatively impacted, and that this possibility would create the appearance of impropriety if any of the county judges were permitted to try the case, and therefore disqualified the entire bench. *Corrigan, supra*. There, the whole panel was removed even though many of the judges had no direct contact with the defendants. Here, all of the Judges on the Bench have had extensive, direct contact with me.

The Legal Standard as Applied to the Case

42. As set forth above, given our positions with the Lucas County Board of Elections and the Lucas County Republican Party, my wife and I provided extraordinary and unprecedented support for or opposition to virtually every judge on the Lucas County Court of Common Pleas, becoming personally and actively involved in the election of every single sitting judge over the past two decades.

43. While most sitting and retired Common Pleas Judges in the State of Ohio—whether they be Republicans or Democrats—could fairly preside over the Case, the same cannot be said for any judge from Lucas County. Indeed, given my well-publicized substantial personal financial support of judicial candidates, my fundraising on behalf of candidates, my management of judicial campaigns, my formulation and execution of campaign strategy for judicial campaigns, my pursuit of newspaper endorsements in support of or in opposition to judicial candidates, and my filing of election-related complaints against judicial candidates, the conclusion that I have long been extraordinarily and inextricably intertwined in Lucas County judicial politics is inescapable. I am either confidante or enemy to every sitting judge in Lucas County. As such, pursuant to the foregoing legal authority, recusal and/or disqualification of all Judges on the Bench is required.

44. If there existed any question whether my relationship with the judges on the Bench requires recusal and/or disqualification, the recent precedent set by the recusals of five Ohio Supreme Court Justices in the 2005 public records cases filed by the *Toledo Blade* and other media outlets in connection with the Coin Fund Investigation should put that question to rest. There, four of the five recusing Justices felt they were disqualified, even though they received campaign contributions and political support (or opposition) in levels that fell far short of the intensive and extraordinary levels provided Republican candidates for the Lucas County Common Pleas Bench,² whom I have supported with such an unprecedented level of ferocity that

² The exception is Justice Lanzinger, whom I supported as a candidate from Lucas county prior to her election to this Supreme Court. Moreover, it has been reported that Justice Resnick did not recuse from the public records cases because those cases did not involve any alleged liability on my part. In this case, however, it is expected that Justice Resnick will join her colleagues in recusing herself because it involves my most vital interests and because my dealings with Justice Resnick are such that require her recusal. Specifically, during the course of Justice Resnick's 2000 campaign, I was a close advisor to the campaign of her opponent, Judge Terrence O'Donnell, providing considerable financial and strategic support. More recently, following Justice Resnick's January 2005 arrest for drunken driving, my wife was extensively quoted in the Toledo media regarding the legal and political impact occasioned by the arrest.

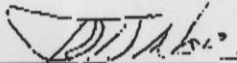
I became the scourge of the Democratic opposition. If my comparatively slight connection to four Supreme Court Justices in a mere public records case required recusal, my pervasive influence on and involvement in the judicial campaigns the judges on the Lucas County Bench dictates the same result in my criminal Case, where my very liberty is at stake in one of the highest profile cases in Ohio's history and which involves highly-publicized political overtones. To hold otherwise would be to hold that judicial ethics in Lucas County are enforced at a lower standard than in Columbus. That cannot be the law, and such a result would constitute a manifest injustice and disregard of my right to a fair trial in my Case.

CONCLUSION

45. As a result of the foregoing facts, the legal standards set forth in R.C. 2701.03(A), Canon 3 of the Code of Judicial Conduct, and legal precedent in which it was determined that judges should be disqualified from presiding over cases involving an attorney or a party who has provided extraordinary political support or opposition to the judge assigned to their case, Judge Osowik and all of the Judges on the Bench should be disqualified from conducting any further proceedings in the Case.

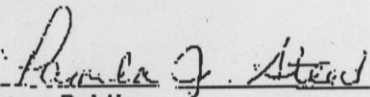
46. The next scheduled hearing in the Case is March 7, 2006.

FURTHER AFFIANT SAYETH NAUGHT.



THOMAS W. NOE

Sworn to and subscribed this 27th day of February, 2006.



Notary Public



Pamela J Stead
My Commission 001-1529
Expires April 22, 2008

CERTIFICATE OF SERVICE

I hereby certify that on this 27th day of February 2006, a true copy of the foregoing renewed affidavit of disqualification was served upon the following:

Honorable Thomas J. Osowik
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Prosecutor
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Counsel for Thomas W. Noe