

FRANKLIN COUNTY BOARD OF ELECTIONS
280 EAST BROAD STREET
COLUMBUS, OHIO 43215
(614) 462-3100

MINUTES OF THE MEETING ON

11/23/08

APPROVED ON

1/5/09

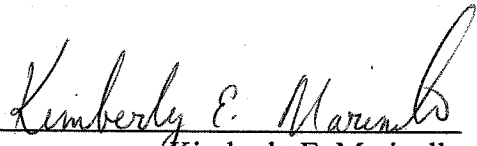
BY:



Douglas J. Preisse, Chairman



Michael F. Colley Esq.

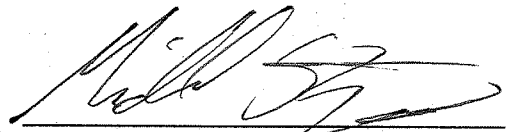


Kimberly E. Marinello



William A. Anthony Jr.

ATTEST:



Michael Stinziano, Director

<p style="text-align: right;">Page 2</p> <p>1 APPEARANCES: 2 Ms. Suzanne Brown Mr. Ben Piscitelli, Public Information 3 Officer Mr. Eric Nickolas, Regional Liaison 4 Mr. Todd Wedekind Ms. Renae Kloe 5 Ms. Jane Hanley Ms. Julie Kyle 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24</p>	<p style="text-align: right;">Page 4</p> <p>1 ----- 2 PROCEEDINGS 3 ----- 4 MR. DAMSCHRODER: All right. We'll call 5 the meeting to order. 6 Mr. Colley. 7 MR. COLLEY: Here. 8 MR. DAMSCHRODER: Mr. Preisse. 9 CHAIRMAN PREISSE: Here. 10 MR. DAMSCHRODER: Mr. Anthony. 11 MR. ANTHONY: Here. 12 MR. DAMSCHRODER: Ms. Marinello. 13 MS. MARINELLO: Here. 14 MR. DAMSCHRODER: Good afternoon. The 15 director is not going to be able to join us today. 16 It is his birthday, but unfortunately he is very, 17 very ill. He was kind enough to make a brief 18 appearance a few moments ago just to review the 19 agenda, but is heading home and we wish him our 20 best, and we'll continue to be in contact with him 21 the rest of the day. 22 The first order on the agenda is a vote 23 to refer additional possible voter fraud cases to 24 the prosecuting attorney. These are individuals</p>
<p style="text-align: right;">Page 3</p> <p>1 INDEX 2 3 Agenda Item Page No. 4 Referring Possible Voter Fraud 4 5 Absentee Ballots 5 6 Provisional Ballots 60 7 Executive Session 93 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24</p>	<p style="text-align: right;">Page 5</p> <p>1 who appear to have both voted provisionally or 2 regular ballot in this and in other counties, or 3 voted at the polls in one precinct in this county 4 and then attempted to vote a provisional ballot in 5 another precinct of this county. These will 6 continue to be investigated by our office and the 7 prosecuting attorney's office prior to any charges 8 being filed. 9 So we would appreciate a motion and 10 resolution permitting us to go forward with that. 11 MR. ANTHONY: Mr. Chairman, I move that 12 the Board, per the recommendation of the Director 13 and Deputy Director, refer possible voter fraud 14 cases to the prosecuting attorney for further 15 action. 16 MR. COLLEY: Mr. Chairman, I second that 17 motion. 18 MR. DAMSCHRODER: All in favor say aye. 19 (Board votes unanimously.) 20 MR. DAMSCHRODER: And motion carries. 21 The next item, next two items, are 22 relative to absentee and election day optical scan 23 ballots that had to be remarked for some purpose. 24 The first resolution are ballots where</p>

Page 6	Page 8
<p>1 the voter followed the instructions and clearly 2 marked their ballots. The issue why the ballot 3 had to be remade was either printing error on the 4 ballot that rendered the ballot unable to be 5 tabulated by the high speed scanners.</p> <p>6 And we particularly had a challenge with 7 the ballot on-demand printers from Vets where the 8 alignment of the timing marks is off just enough 9 such that the ballots won't be scanned, so we had 10 to remake those in teams of democrats and 11 republicans.</p> <p>12 But, again, in those cases, the voter's 13 intent is absolutely clear. The voter followed 14 the instructions and marked the ballot, so there's 15 no subjectivity there.</p> <p>16 And we would request a motion 17 memorializing that process pursuant to the 18 directive, and I would be happy to answer any 19 questions you would have.</p> <p>20 MR. ANTHONY: Mr. Chair, I have none, so 21 I would move that the Board proceed with 22 processing those properly remade ballots, per the 23 recommendations of the Director and Deputy 24 Director that have been remade and the voter has</p>	<p>1 Again, it doesn't impact the voter's 2 ability to mark their ballot or for us to be able 3 to determine how the voter marked their ballot, it 4 just determines whether or not high speed scanners 5 can see the voting positions on the page.</p> <p>6 And the machines are programmed that if 7 it cannot read the timing marks and cannot, 8 therefore, see the match-up of also where it's 9 expecting to see markings, it will reject that 10 ballot for human inspection.</p> <p>11 And in all these cases, timing marks 12 were such that we needed to just remark the 13 ballots. But, again, no determination of voter 14 intent, and there's no subjectivity, just 15 remarking ballots.</p> <p>16 CHAIRMAN PREISSE: Any other questions? 17 (No response.)</p> <p>18 MR. DAMSCHRODER: Then we'll ask for a 19 vote. All in favor say aye. 20 (Board votes unanimously.)</p> <p>21 MR. DAMSCHRODER: Opposed, nay. 22 (No response.)</p> <p>23 MR. DAMSCHRODER: And motion carries. 24 The next one is, when Todd gets here</p>
Page 7	Page 9
<p>1 followed the instructions.</p> <p>2 MR. COLLEY: Mr. Chairman, I second the 3 gentleman's motion and --</p> <p>4 CHAIRMAN PREISSE: That's about all you 5 need to do.</p> <p>6 MR. COLLEY: That's all I need to do.</p> <p>7 CHAIRMAN PREISSE: Unless we have any 8 discussion or questions for the Deputy Director, 9 these, as you've described here and to us prior, a 10 lot of them had to do with just the volume of 11 going through the printers over there; is that --</p> <p>12 MR. DAMSCHRODER: That's correct, for 13 ballots that were at Vets. This is the first time 14 that we have done ballot on-demand in that kind of 15 quantity. "That kind of quantity" being 55,000 16 ballots, times the quantity average of four pages 17 apiece, double-sided.</p> <p>18 It's a lot of paper to run through 19 printers that really aren't designed for that kind 20 of volume. And so what happens is the 21 registration of the ballot, the image on the page, 22 particularly in times when the machine doesn't 23 have time to adequately cool between each ballot, 24 the image on the page gets a little bit crooked.</p>	<p>1 momentarily with the -- there they are. Perfect 2 timing.</p> <p>3 These are ballots that the Board -- 4 Todd, you want to pull a chair up here with me, 5 please -- that the Board actually does need to 6 inspect and determine the voter's intent, when 7 possible.</p> <p>8 Again, the statutory standard and the 9 standard confirmed by Directive 2008-69 is that 10 the ballot has been marked in a consistent manner. 11 So if a voter, for instance, doesn't necessarily 12 fill in ovals for each contest that the voter's 13 intending to mark, from some other kind of mark, 14 as long as it's the mark that's been made 15 consistently on the ballot, that ballot can be 16 remade for the voter so it can be redone.</p> <p>17 We'll mark the first one X001, and let's 18 pass it down the line for you. It's very clear 19 that the voter consistently marked their ballot 20 using check marks; but instead of in the oval 21 where it would be read, they listed it out to the 22 right of the oval by the candidate's name that 23 they were attempting to vote for, it appears.</p> <p>24 MR. ANTHONY: Mr. Chair, these were</p>

Page 10

1 absentee ballots mailed in to us?
 2 MR. DAMSCHRODER: These would be
 3 absentee ballots that were either mailed in to us
 4 or that were marked at Vets.
 5 MR. ANTHONY: Okay.
 6 MR. DAMSCHRODER: And there might
 7 actually be a couple election day ballots down
 8 here somewhere, but I don't think so.
 9 CHAIRMAN PREISSE: I'll pass it on, and
 10 then we can have questions on it. How about that?
 11 MR. DAMSCHRODER: That's great.
 12 MR. COLLEY: There's inconsistency
 13 within the consistency on that.
 14 MR. ANTHONY: Mr. Chair, I've got a
 15 question on all of these that we're going to look
 16 at. Since these were multiple -- were there more
 17 pages to that ballot than what we have here?
 18 MR. DAMSCHRODER: At this point, all the
 19 different pages have been separated, because these
 20 were all run through the scanners for election
 21 night, so --
 22 MR. ANTHONY: There's no way of putting
 23 them back together?
 24 MR. DAMSCHRODER: There's no way to put

Page 11

1 them back together.
 2 MR. ANTHONY: Okay.
 3 MR. DAMSCHRODER: Now, it's possible, as
 4 often happened this election, that the voter
 5 marked the first page that had the candidates and
 6 then didn't mark any of the issue pages. And so
 7 it's possible that voter, if we don't come across
 8 a similarly marked ballot in the rest of the
 9 stack --
 10 CHAIRMAN PREISSE: The other pieces
 11 could be here.
 12 MR. DAMSCHRODER: -- the other pieces
 13 could be here, but it's probably just as likely
 14 the voter didn't mark anything else.
 15 MR. ANTHONY: On the other pages?
 16 MR. DAMSCHRODER: Mm-hmm.
 17 MR. ANTHONY: Mr. Chairman --
 18 CHAIRMAN PREISSE: Yes.
 19 MR. ANTHONY: -- Matt, what's the
 20 Secretary's view or guidelines for overvotes?
 21 MR. DAMSCHRODER: I think the guidelines
 22 for --
 23 MR. ANTHONY: For that one, it looks
 24 like he overvoted or something to that nature.

Page 12

1 MR. DAMSCHRODER: Which one?
 2 MR. ANTHONY: This one. He marked
 3 Barack, and then he printed "Barack" on it.
 4 MR. DAMSCHRODER: I think the
 5 directions -- and Eric is here and can expand on
 6 that, but the way we have been handling it is if a
 7 voter, for instance, filled in the oval for a
 8 presidential candidate, for instance, and then
 9 also filled in the write-in oval and wrote in that
 10 exact same candidate's name, that we have been
 11 treating that as a vote for the presidential
 12 candidate.
 13 MR. ANTHONY: Okay.
 14 MR. DAMSCHRODER: In this instance, it
 15 appears, if I recall correctly, that the voter did
 16 the check mark next to the candidate's name, wrote
 17 in the candidate's name, but didn't do a check
 18 mark in the write-in oval. So this would not
 19 actually read -- had the voter put the check mark
 20 in the correct place in the oval, this would not
 21 read as an overvote, it would read as a vote for
 22 that candidate.
 23 MR. ANTHONY: Okay. Mr. Chair, Matt,
 24 what about the writing in for the 15th

Page 13

1 Congressional District?
 2 MR. DAMSCHRODER: I think that's going
 3 to be something that the Board's going to have to
 4 evaluate in this instance, where the voter did not
 5 fill in the oval for a candidate, did not fill in
 6 the write-in oval, but instead wrote in one of the
 7 candidate's names on the line.
 8 CHAIRMAN PREISSE: Review, if I may ask
 9 you, the issue of consistency from the statutory.
 10 And I think you've mentioned the directive, maybe
 11 that's what you have in the packet here.
 12 MR. DAMSCHRODER: Yeah, with 3506.21 is
 13 the statutory authorization for determining intent
 14 of the voter who marked his entire ballot contrary
 15 to the instructions contained on the ballot. And
 16 again, the issue is that we're looking for
 17 consistency in the manner in which the voter cast
 18 their ballot.
 19 Eric, I don't know if you have anything
 20 you want to add to that.
 21 MR. NICKOLAS: The other counties I've
 22 sat in, they are going through the same thing that
 23 you're going through right now. They're looking
 24 for consistency also, as long as they use the same

Page 14	Page 16
<p>1 criteria when they decide how that person voted, 2 as long as they stay the same on the next ballot 3 when that same question comes up, regardless of 4 who's running for what particular office. 5 MR. DAMSCHRODER: And you'll notice on 6 page three of the Directive that if their intent 7 cannot be determined, and I'll quote directly from 8 the Directive, "If a majority of the Board members 9 cannot agree on determining voter intent as to any 10 choice on the ballot, as provided by law, the 11 ballot shall not be counted." 12 CHAIRMAN PREISSE: I want to take a 13 moment to review this section referencing 3506.21 14 here. 15 (Reviewing documents.) 16 CHAIRMAN PRIESSE: The voter did not 17 mark any of the ballot according to the ballot 18 marking instructions, then we must determine voter 19 intent prior to remaking the optical scan ballot 20 by examining the ballot for consistency, for a 21 consistently-made mark contrary to voting 22 instructions. 23 Well, obviously there are two instances 24 there that would seem to vary from a fully</p>	<p>1 MR. DAMSCHRODER: Yes. 2 MR. ANTHONY: Okay. 3 MR. DAMSCHRODER: And I think in this 4 case there might actually be two votes that would 5 be necessary. One is how to handle the 15th 6 Congressional District, and then the other, how to 7 handle the -- 8 MR. ANTHONY: Presidential? 9 MR. DAMSCHRODER: -- the ballot in 10 general with the check marks. 11 MR. ANTHONY: Okay. Mr. Chair, I move 12 that based upon review of ballot number X001 -- 13 MR. DAMSCHRODER: Yes. 14 MR. ANTHONY: -- X001, that the Board 15 determine that the intent of the voter was to cast 16 a vote for the 15th Congressional District. 17 CHAIRMAN PREISSE: Mr. Anthony, you have 18 just moved to count the entire ballot; is that -- 19 MR. ANTHONY: No, I just moved to 20 count -- we're going to split it up. We're going 21 to do the 15th seat, so I move that we count the 22 voter's intent for the 15th. 23 MS. MARINELLO: Second. 24 CHAIRMAN PREISSE: I think we ought to</p>
Page 15	Page 17
<p>1 consistent incorrect method that this voter has 2 elected to employ, mainly the overvotes, 3 especially where they have checked and written in 4 the presidential candidate's names. 5 MR. DAMSCHRODER: Well, and on that, 6 again, the presidential wouldn't actually read as 7 an overvote because they didn't check the overvote 8 bubble. So I think the two issues with this, at 9 least from a staff perspective, is that there's 10 check marks outside the oval, so it can't be read. 11 In the case of the 15th Congressional 12 District, there's no check at all relative to the 13 write-in for Mary Jo Kilroy, and a nonwrite-in 14 candidate was written on the line. 15 MR. ANTHONY: Does this voter live in 16 the 15th? I don't remember. 17 MR. DAMSCHRODER: Yes. It's a ballot 18 for a precinct where there's a split of the 19 precinct. It is in the 15th Congressional 20 District. 21 MR. ANTHONY: All right. So what do we 22 do now, start voting on them? 23 CHAIRMAN PREISSE: Are we going to take 24 these one-by-one?</p>	<p>1 have a roll call vote on that. 2 MR. DAMSCHRODER: All right. 3 Mr. Anthony. 4 MR. ANTHONY: Yes. 5 MR. DAMSCHRODER: Mr. Colley. 6 MR. COLLEY: No. 7 MR. DAMSCHRODER: Ms. Marinello. 8 MS. MARINELLO: Yes. 9 MR. DAMSCHRODER: Mr. Preisse? 10 CHAIRMAN PREISSE: No. 11 MR. DAMSCHRODER: And then with the 12 Directive, the majority of the Board members not 13 having determined the voter intent, we can't count 14 that. So how about the check marks for the rest 15 of the ballot? 16 MR. ANTHONY: Mr. Chair, I move -- now, 17 what happens to this? It just goes away? There's 18 no -- 19 MR. DAMSCHRODER: I don't think these go 20 to the Secretary for tie. 21 Is that correct? 22 MR. NICKOLAS: No, it just goes down. 23 It has to have a majority to be counted. We don't 24 break the tie on this.</p>

