

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


MINUTES OF THE MEETING ON

11-14-08

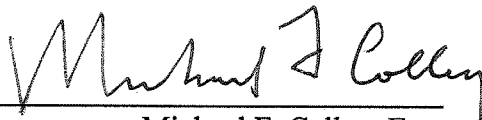
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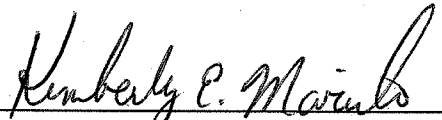
BY:



Douglas J. Preisse, Chairman



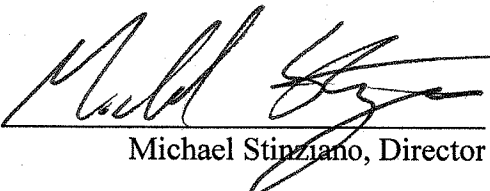
Michael F. Colley, Esq.



Kimberly E. Marinello

William A. Anthony Jr.

ATTEST:



Michael Stinziano, Director

1 APPEARANCES:

2 Mr. Ron O'Brien
3 Assistant Prosecuting Attorney
4 Franklin County Prosecutor's Office
5 373 South High Street
6 13th Floor
7 Columbus, Ohio 43215

8 On behalf of the Board.

9 ALSO PRESENT:

10 Ms. Suzanne Brown, Clerk
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2 P R O C E E D I N G S

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4 CHAIRMAN PREISSE: It appears that
5 we have a full complement of Board members
6 here, so why don't we call this meeting to
7 order.

8 MR. STINZIANO: Roll call. Mr.
9 Colley?

10 MR. COLLEY: Here.

11 MR. STINZIANO: Chairman Preisse?

12 CHAIRMAN PREISSE: Here.

13 MR. STINZIANO: Mr. Anthony?

14 MR. ANTHONY: Here.

15 MR. STINZIANO: Ms. Marinello?

16 MS. MARINELLO: Here.

17 MR. STINZIANO: This is the Franklin
18 County Board of Elections Special Meeting for
19 Friday, November 14th, 2008.

20 The first item on the agenda is
21 regarding supplemental procedures for the
22 processing of provisional ballots. We have
23 several categories that the staff would like
24 guidance on from the Board in terms of

1 clarification and how we should process them.

2 The first regards the individuals
3 who had mistakenly been designated a
4 three-voter on Election Day. It's the staff's
5 recommendation, those individuals that we can
6 determine should not have been designated a
7 three not be processed as provisional ballots
8 but treated as regular ballots.

9 CHAIRMAN PREISSE: Okay. And do we
10 know how many voters this affects?

11 MR. STINZIANO: I don't think we got
12 a final count, but I believe it was less than
13 -- it was around 50 to 75.

14 CHAIRMAN PREISSE: Okay. Do you
15 want to make a motion?

16 MR. ANTHONY: I think that's a good
17 thing.

18 Mr. Chair, I move that the Board
19 process as regular Election Day ballots the
20 provisional ballots cast by individuals who
21 were mistakenly designated in the Election Day
22 poll book as having had their registration
23 notice by the Board of Elections returned as
24 undeliverable, thus improperly requiring them

1 to vote a provisional ballot.

2 MR. COLLEY: Second.

3 CHAIRMAN PREISSE: Do we have any
4 discussion or questions by the Board members
5 or input from our legal counsel on this
6 matter?

7 MR. O'BRIEN: I think that based on
8 our research and discussion with both the
9 staff and the Board, it's our advice that you
10 vote yes on Mr. Anthony's motion.

11 CHAIRMAN PREISSE: Are there any
12 questions?

13 (No audible response.)

14 MR. CHAIRMAN PREISSE: We have a
15 motion and a second.

16 MR. STINZIANO: Do a vote. All in
17 favor?

18 MEMBERS: Aye.

19 CHAIRMAN PREISSE: None opposed.

20 The second category are those
21 individuals who the staff can determine
22 requested a regular paper ballot by their
23 signing of the poll book or providing other
24 information on the provisional ballot

1 envelope; for example, that they wrote "This
2 is a regular ballot" but for whatever reason
3 the poll workers put in a yellow provisional
4 envelope. It is the staff's recommendation
5 that those ballots be treated as a regular
6 ballots and not processed as provisional.

7 MR. ANTHONY: Mr. Chair, I move that
8 the Board process as regular Election Day
9 ballots those provisional ballots of
10 individuals who staff can determine requested
11 a single paper ballot by the signing in the
12 poll book or other information provided to the
13 provisional ballot envelope or whose ballot
14 was placed in a provisional ballot envelope.

15 MR. COLLEY: Second.

16 CHAIRMAN PREISSE: We have a motion
17 and a second. And I think this is a fairly
18 limited occurrence, and we are endeavoring to
19 correct this limited occurrence. Do we have
20 any questions of the Board or commentary or
21 advice from counsel?

22 MR. O'BRIEN: Yes. We talked to
23 both Mr. Damschroder and Mr. Stinziano and,
24 again, as counsel for the Board would indicate

1 we think that Mr. Anthony's motion should be
2 voted yes.

3 MR. STINZIANO: All in favor?

4 MEMBERS: Aye.

5 MR. STINZIANO: None opposed.

6 The next category of individuals are
7 those that contain a signature but not a
8 written name on the provisional ballot
9 envelope. We provided samples of the
10 envelopes. It would be in step 1, there's no
11 printed name but there is a signature at the
12 bottom in step 1.

13 MR. O'BRIEN: I think those of us
14 that read the newspaper are aware this is the
15 subject of a lawsuit in the Ohio Supreme
16 Court, a writ of mandamus against the
17 Secretary, and the Board itself is named a
18 party. Mr. Piccininni from our office, who
19 regularly represents the Board, entered an
20 appearance in that case.

21 This morning, Secretary of State
22 filed a motion to remove that from the Ohio
23 Supreme Court to the United States Federal
24 Court here in Columbus. It was initially

1 assigned to Judge Frost, who agreed to have it
2 consolidated to a pending case with Judge
3 Marbley, and Judge Marbley has ordered us,
4 attorneys for the plaintiffs, and the
5 Secretary of State's office, represented by
6 Mr. Cogly, who typically handles these
7 election matters, to his office at 9 a.m. in
8 the morning.

9 So in an unusual Saturday morning
10 court proceeding in federal court, these
11 issues are going to be discussed and could be
12 the subject of either a writ or an injunction
13 by Monday.

14 So it's my suggestion that the
15 Board, since it has absentee ballots to count,
16 overseas ballots to count, military ballots to
17 count, that you defer deciding anything with
18 respect to provisional ballots because they're
19 the subject of a lawsuit, and although you're
20 not enjoined right here as we sit in this room
21 today, I think it would be ill-advised to move
22 forward on this with those lawsuits pending.

23 MS. MARINELLO: Any idea how many of
24 those we're talking about?

1 MR. STINZIANO: We do not have a
2 count as of now. We had asked the question of
3 the Secretary of State prior, and they had
4 suggested -- or they said that they must be
5 counted. And I think you've seen Brian Chin's
6 explanation on that. But we do not have a
7 count for any of these; they're just
8 categories.

9 MS. MARINELLO: Okay.

10 CHAIRMAN PREISSE: Well, my concern
11 is that we are aware that the rules of the
12 game may or may not be changing, but there's
13 at least a significant chance that they may,
14 so I'm not sure we're well advised to make the
15 next play when the rules may be about to
16 change. I think I hear counsel saying that in
17 more eloquent terms than my layman verbiage.

18 But do we have any other comments on
19 the pending motion, which hasn't been made
20 yet, before you make it?

21 MR. ANTHONY: Well, thank you, so
22 much, Mr. Chair. I certainly do respect the
23 opinion of our legal counsel, which I
24 certainly appreciate and respect, but I'm

1 under the impression that we should proceed
2 with this anyway, and whatever happens in the
3 court happens and we're protected either --
4 and we are ready to either -- we don't have to
5 come back and meet and talk on it, so I'm
6 going to make a motion that we proceed with
7 this and then at least see what happens with
8 it.

9 I move that the Board proceed with
10 processing and deem as valid those provisional
11 ballots that contain the signature of a voter
12 but not the written name of the voter, if the
13 staff can determine the person to be a
14 qualified elector of the state who voted in
15 the correct precinct and the person was not
16 required to provide additional information to
17 the Board.

18 MS. MARINELLO: Second.

19 CHAIRMAN PREISSE: We have a motion
20 and a second. Is there any discussion?

21 I believe, in reviewing the statute,
22 that this is one of those places where it's
23 pretty crystal clear, at least to my eyes and
24 mind, that this is a clearly stated

1 deficiency, which under the law and current
2 procedure would disqualify this provisional
3 ballot. Am I off base there?

4 MR. DAMSCHRODER: That's certainly
5 my view, having reviewed the statute, that
6 it's very clear that the name and signature of
7 the voter is required by the statute in order
8 for it to be considered a provisional ballot
9 eligible to be counted.

10 MR. STINZIANO: I think we thought
11 there was some gray area with the Directive,
12 and that's why we asked the Secretary of
13 State's office for clarification. Their
14 guidance was to proceed with processing them.

15 MR. ANTHONY: Mr. Chair, part of the
16 reason I'm doing this is, I really believe
17 that there's -- and I understand it's to be
18 decided by the courts, maybe, or it may be
19 decided by the Secretary of State, but based
20 on her -- the e-mail we received not too long
21 ago, and based on my own beliefs also, as
22 well, that just because the person forgot to
23 sign their name on there does not make it a
24 fatal ballot, and we should make every effort

1 we can to count every ballot that was cast on
2 Election Day and not just throw the ballots
3 out because of a deficiency that isn't, in my
4 determination, that fatal.

5 So that's why I'm moving to put this
6 out there, so that we can at least make an
7 attempt to count every ballot that was cast on
8 Election Day.

9 CHAIRMAN PREISSE: Well, my concern
10 with that, Mr. Chairman, is that the advice
11 from the Secretary of State came in the form
12 of an e-mail, not a Directive or a more
13 substantial communication.

14 MR. ANTHONY: I understand.

15 MR. O'BRIEN: I might add, then, Mr.
16 Chairman, the Secretary of State is not
17 counsel for this Board. Mr. Piccininni
18 previously gave advice to counsel of this
19 Board. The regional counsel for the Secretary
20 of State is not the counsel for this Board,
21 either. Our office, by statute, passed by the
22 General Assembly, is your attorney.

23 And in the first instance, we
24 suggested it's ill-advised to try to proceed

1 on this.

2 But secondly, if you are going to
3 proceed on it, it would be our suggestion that
4 you follow our advice and vote no, simply
5 because that's consistent with what the
6 Secretary of State says as recently as last
7 March 31st in writing to this Board.

8 Number two, there's been an apparent
9 flip-flop recently on that advice from the
10 Secretary of State's office that's the subject
11 of this lawsuit, and the cause of this
12 lawsuit, I might add, that it would seem to me
13 that the statute says a signature and the
14 written name of the voter.

15 The last time I looked at a
16 dictionary and the last time I looked at the
17 courts' decisions, the word "and" is something
18 that's called conjunctive; it means both of
19 the items are to be considered together. Not
20 disjunctive; they use the word "or" when you
21 intend it to be a signature or a handwritten
22 notation.

23 So both the case law and the Ohio
24 Revised Code has a specific provision on that

1 matter, and so at least it would be my
2 suggestion and recommendation to the Board, as
3 your lawyer, that you vote no on this and
4 would so recommend.

5 CHAIRMAN PREISSE: We've had
6 substantial discussion on this point. Is
7 there any more?

8 (No audible response.)

9 CHAIRMAN PREISSE: Let's have a
10 vote.

11 MR. STINZIANO: Mr. Colley?

12 MR. COLLEY: No.

13 MR. STINZIANO: Chairman Preisse?

14 CHAIRMAN PREISSE: No.

15 MR. STINZIANO: Mr. Anthony?

16 MR. ANTHONY: Yes.

17 MR. STINZIANO: Ms. Marinello?

18 MS. MARINELLO: Yes.

19 MR. STINZIANO: The next category
20 are those individuals then in step 1 on the
21 provisional ballot form. In this situation,
22 they printed their name at the top but there
23 is no signature. Again, there is a gray area.
24 We asked for clarification from the Secretary

1 of State's office, and they said these should
2 also be counted if we can show that they voted
3 in the correct precinct and they're a
4 qualified elector and they were not required
5 to provide additional information to the
6 Board.

7 MR. ANTHONY: Mr. Chair.

8 CHAIRMAN PREISSE: Are you going to
9 do it again?

10 MR. ANTHONY: I'm going to do it
11 again. And I know I'll be not following the
12 advice of our counsel --

13 MR. O'BRIEN: Well, he followed it
14 twice.

15 (Laughter.)

16 MR. ANTHONY: I'm kind of obstinate
17 at times, and this would be one of those
18 times.

19 Again, I believe that it is not a
20 fatal flaw, and I believe that the intent of
21 the voter -- that we should be looking at
22 trying process as many of these as we can to
23 allow as many folks to be able to vote as
24 possible and not deny folks the right to vote.

1 So, Mr. Chair, I move that the Board
2 proceed with processing and deem as valid
3 those provisional ballots that contain the
4 names of the voter but not the voter's
5 signature, if the staff can determine the
6 person to be a qualified elector of the state
7 who voted in the correct precinct and the
8 person was not required to provide additional
9 information to the Board.

10 MS. MARINELLO: Second.

11 CHAIRMAN PREISSE: We have a motion
12 and a second. Are there any comments,
13 questions by the Board, or input from our
14 counsel? And we may have just heard that
15 already.

16 MR. O'BRIEN: Well, I think this is
17 even more blatant than the previous one, and I
18 say that because the voter's signature is not
19 on the provisional ballot.

20 When people circulate petitions to
21 put people on the ballot, they have to sign
22 their name. The circulator has to sign their
23 name. When they register to vote, they have
24 to sign their name. You have their signature

1 in the poll book to compare.

2 All election documents require the
3 signature of the voter to be effective, and
4 there's a reason for that. There's a warning
5 there that says what you're signing is subject
6 to election falsification, subject to
7 prosecution for voter fraud. And as we all
8 know, and I think you have a motion on the
9 agenda later, there was voter fraud in this
10 county during this election cycle.

11 So what you're doing is saying that
12 the signature that is to be placed on the
13 provisional ballot that has the warning
14 regarding election falsification, that that's
15 not necessary to count the ballot. And I
16 think that is very bad policy, first; but
17 secondly, how are you going to compare the
18 signature if you don't have -- with the poll
19 book, if you don't have the signature of the
20 person who presented himself to vote?

21 So I just don't know legally or from
22 a policy standpoint how you can vote anything
23 other than no, and I think this is a different
24 issue than the previous one that the Board

1 just considered and split on. And I don't
2 want to speak for staff, but I'd ask the Board
3 to ask staff what their view is on it.

4 CHAIRMAN PREISSE: Staff, we would
5 like to hear from you.

6 MR. DAMSCHRODER: From the Deputy
7 Director's standpoint, I think it's for all
8 the reasons Ron mentioned but also that the
9 letter of the law, when it comes to the
10 qualifications for a provisional ballot to be
11 counted, that signature is a requirement.

12 MR. ANTHONY: Mr. Chair, part of the
13 other reason why -- you know, this was a very
14 important election that we just went through,
15 and the person filling out this document here,
16 and looking at it and we have a poll worker
17 also there and the poll worker, part of that
18 responsibility is to kind of review this
19 document to make sure that everything is put
20 out properly.

21 And so in some of those cases, and
22 maybe many or all of those cases, it may be
23 more deemed to be poll worker error than a
24 person's intent to defraud. So I don't

1 believe that those that we will be counting
2 would fall into the category as election
3 fraud. I would put it under the category as
4 it not being checked, it not being checked by
5 our poll workers, and we should not deny the
6 folks a right to vote because of that error.
7 And that's why I made the motion.

8 CHAIRMAN PREISSE: I appreciate your
9 comments. You opened by commenting on the
10 importance, a very important election, and I
11 don't disagree, and congratulations to the
12 victors high and low.

13 But the importance of the election
14 should not dictate to us compliance, pretty
15 standard compliance with very clear election
16 law, which again I reviewed, and I don't think
17 it could be written any clearer than this, the
18 lack of a signature, which is such a common
19 device used in everyday official proceedings
20 that is so clear in the statute, that it would
21 disqualify this document.

22 If there is no other commentary, we
23 can perhaps call a vote on this matter.

24 MR. STINZIANO: A roll call vote.

1 Mr. Colley?

2 MR. COLLEY: Vote no.

3 MR. STINZIANO: Chairman Preisse?

4 CHAIRMAN PREISSE: No.

5 MR. STINZIANO: Mr. Anthony?

6 MR. ANTHONY: Yes.

7 MR. STINZIANO: Ms. Marinello?

8 MS. MARINELLO: Yes.

9 MR. STINZIANO: We have a tie vote.

10 The next category are individuals on
11 the form that printed their name and signed
12 but not necessarily in the places in step 1.
13 In the vast majority of the cases, that
14 occurred in the affirmation at the bottom of
15 step 2.

16 Again, we asked the Secretary of
17 State's office for their interpretation. They
18 felt that if it was on the form, then that
19 would be sufficient, as long as we can
20 determine they are properly registered, voted
21 in the right precinct, and they didn't have to
22 show any more additional identification.

23 MR. ANTHONY: Mr. Chair, I have a
24 feeling we're not going to agree on this one

1 either, but I move that the Board proceed with
2 processing and deem as valid those provisional
3 ballots that contain the voter's name and/or
4 signature on the provisional ballot envelope
5 but not necessarily in the proper designated
6 place on the provisional ballot envelope, if
7 staff can determine the person to be a
8 qualified elector of the state who voted in
9 the correct precinct and the person was not
10 required to provide additional information to
11 the Board.

12 MS. MARINELLO: Second.

13 CHAIRMAN PREISSE: We have a motion
14 and a second. Any discussion or further
15 counsel?

16 MR. O'BRIEN: At least I think this,
17 I would suggest again, this would permit --
18 and if you have one of these forms and hold it
19 up and look at it, that would purport to say
20 that if someone prints their name anywhere on
21 that item, they're not signing the
22 affirmation, they're not signing who they are,
23 they're not signing the voter information,
24 nothing subject to election falsification,

1 then I could show up and print Bill Anthony's
2 name on a form and you're saying that would be
3 acceptable.

4 And that's just not the law and it's
5 not what the statutes provide for, and I don't
6 know how you can vote yes on that.

7 CHAIRMAN PREISSE: Any other
8 comments or input?

9 (No audible response.)

10 CHAIRMAN PREISSE: Okay. We have a
11 motion on the floor here.

12 MR. STINZIANO: Roll call vote. Mr.
13 Colley?

14 MR. COLLEY: No.

15 MR. STINZIANO: Chairman Preisse?

16 CHAIRMAN PREISSE: No.

17 MR. STINZIANO: Mr. Anthony?

18 MR. ANTHONY: Yes.

19 MR. STINZIANO: Ms. Marinello?

20 MS. MARINELLO: Yes.

21 MR. STINZIANO: Another tie vote.

22 The next category, staff was made
23 aware of at least one situation where the poll
24 worker told an individual that they were in

1 the correct precinct. That individual cast a
2 provisional ballot and subsequently called our
3 office and learned that they were not in a
4 proper precinct.

5 In terms of reading Directive 101
6 and 103, where poll worker error seems to be
7 the concern, we thought it was worth having
8 the Board weigh in on whether or not they
9 thought they should also be processed as a
10 provisional ballot that's fatally flawed or if
11 it could be processed normally.

12 Typically, if they're in the wrong
13 precinct, we would agree it's fatally flawed,
14 but if there is poll worker error, and that is
15 the theme of the day, that seems to be the
16 concern that this is the case where it was
17 documented clearly as poll worker error.

18 MR. ANTHONY: Mr. Chair.

19 CHAIRMAN PREISSE: Yes.

20 MR. ANTHONY: You know, I had an
21 opportunity to visit a number of polling
22 places on Election Day, and I witnessed this
23 happen firsthand.

24 I saw a woman that was in the right

1 precinct but her driver's license had a
2 different address on it, and they told her to
3 go to another precinct. And she went to the
4 other precinct, and when she went to the other
5 precinct they had her in the books there, but
6 she said, I don't live here. And so they
7 said, well, you can vote here.

8 And then she was smart enough to
9 come back to the precinct that she was at, but
10 had she not come back, she would have voted in
11 the wrong precinct, and being directed to vote
12 in the wrong precinct by our poll workers. So
13 I see where this would be a situation that we
14 ought to at least take into consideration.

15 And with that, I move that the Board
16 process and deem as valid those provisional
17 ballots of individuals who have represented to
18 staff that the voter was given false
19 information by a poll worker, such as what is
20 his or her proper precinct for voting, and
21 thus cast a provisional ballot in the wrong
22 precinct.

23 MS. MARINELLO: I'll second that.

24 CHAIRMAN PREISSE: We have a motion

1 and a second on this matter. Do we have any
2 questions, comments, or input from counsel
3 down at the other end of the table conferring?

4 MR. O'BRIEN: I think, in this
5 instance, if the person would come in and
6 confirm, I don't know how the Board is getting
7 the information that they were directed to the
8 wrong location.

9 MR. STINZIANO: We were made aware
10 of it by a poll observer. We didn't suggest
11 the individual come in, and they have not yet,
12 but if they did, we'd want not to just have
13 them come in but kind of let them know, if
14 they came in, what the process would be.

15 MR. O'BRIEN: I think if they came
16 in and confirmed what the poll worker relayed,
17 then it would seem to me that, yes, we should
18 count their vote, because I think that is poll
19 worker error and their vote should be counted.
20 I think somewhat inexplicably, given the other
21 issues, the Secretary of State's Directive
22 says you shouldn't count that vote.

23 So I would say that that person,
24 because it's our employee, directed him to the

1 wrong place, that we should count the vote.

2 MR. DAMSCHRODER: I think we
3 probably need some clarification then.
4 Because at this point, my understanding is all
5 we have is a written statement from an
6 observer and perhaps a copy of a declaration
7 from a voter that I don't believe was made
8 under oath and signed by a notary, and so I
9 guess if we're going to allow this to be a
10 category, I think the Board needs to develop
11 some kind of process or standard by which we
12 judge those, as opposed to just getting an
13 e-mail from an observer saying, on
14 such-and-such a date a person came in and a
15 poll worker directed them to the wrong place.

16 CHAIRMAN PREISSE: That sounds
17 reasonable to me. It falls within your --

18 MR. O'BRIEN: It falls within the
19 statute on how you should proceed, I think.

20 CHAIRMAN PREISSE: Well, I wonder if
21 it would be satisfactory to Chairman Anthony
22 to reconsider that motion; subsequently, we
23 can develop a policy and approach.

24 MR. ANTHONY: How come we can't vote

1 on it and then develop a policy?

2 MR. O'BRIEN: Maybe if you would
3 modify the motion to say that the vote should
4 be counted if satisfactory proof is provided
5 to the Board by the voter.

6 MR. ANTHONY: Then I will do that.
7 See, I don't always disagree with you, Ron.

8 What Ron said.

9 CHAIRMAN PREISSE: What would
10 satisfactory proof constitute? Any opinion?

11 MR. STINZIANO: I think a statement
12 from the poll worker that that incident did
13 occur and a statement from the voter that the
14 incident occurred, I think that would show
15 that said incident was truthful and that it
16 was properly then recorded, that they did tell
17 that individual to stay and vote and the voter
18 did that, and then that the voter learned
19 afterwards that they were given improper
20 information and there was a poll worker error
21 there.

22 CHAIRMAN PREISSE: I wonder if that
23 statement would require something so drastic
24 as a signature from the voter.

1 (Laughter.)

2 CHAIRMAN PREISSE: Should we have
3 the motion read as amended so we know what
4 we're voting on? Who's our scribe?

5 MR. DAMSCHRODER: I think we
6 probably should do that. I don't know if the
7 transcriptionist is able to put all of those
8 different things together, or whether we're
9 better off moving forward with other agenda
10 items and maybe drafting something quickly
11 that can be in the form of a substitute
12 amendment, Mr. Anthony.

13 MR. ANTHONY: So what was the
14 verbiage you had used?

15 MR. O'BRIEN: I think if you just
16 tack on to the end of the existing motion
17 "provided that sufficient evidence is
18 presented to the Board from the poll worker
19 and the voter."

20 MR. ANTHONY: Then I'd like to amend
21 my motion to include "provided that sufficient
22 evidence is provided by the poll worker and
23 the voter." So is there a second for my
24 amendment?

1 MS. MARINELLO: I second it.

2 MR. ANTHONY: So the whole motion is
3 -- should we read it back?

4 MR. DAMSCHRODER: I think we have
5 the sense.

6 MR. ANTHONY: Okay, then.

7 CHAIRMAN PREISSE: All right. Any
8 further discussion?

9 MR. STINZIANO: Roll call?

10 CHAIRMAN PREISSE: I think that
11 sounds sufficient. No, I don't think we need
12 a roll call.

13 MR. STINZIANO: Okay. All in favor?

14 MEMBERS: Aye.

15 MR. STINZIANO: Any opposed?

16 (No audible response.)

17 MR. STINZIANO: Motion passes.

18 The last category are individuals
19 with provisional ballot envelopes that contain
20 no identification verification, which would be
21 your category 3 -- or category 2.

22 MR. DAMSCHRODER: From step 2.

23 MR. STINZIANO: From step 2, there's
24 nothing checked in that box. There is a

1 printed name, a signature, but no forms of
2 identification documentation.

3 Again, contacted the Secretary of
4 State's office and it was their recommendation
5 that if a person is qualified elector of the
6 state who voted in the correct precinct and
7 they were not required to provide the
8 additional form, that we go ahead and process
9 them as valid.

10 CHAIRMAN PREISSE: All right.

11 MR. ANTHONY: Mr. Chair, I move that
12 the Board proceed with processing and deem as
13 valid those provisional ballots' envelopes
14 that contained no identification verification
15 on the provisional ballot such as the last
16 four digits of the Social Security number or
17 Ohio driver's license number, et cetera, if
18 the staff can determine the person to be a
19 qualified elector of the state who voted in
20 the correct precinct and the person was
21 required to provide additional information to
22 the Board.

23 MS. MARINELLO: Second.

24 CHAIRMAN PREISSE: Well, okay. I

1 have some thoughts about this one, but I
2 wonder if counsel wants to precede those with
3 any thoughts about this amazing motion, in my
4 mind.

5 MR. O'BRIEN: The only observation I
6 would make is the statute imposes a mandatory
7 duty on the voter to put that information on
8 the document, and in the absence of the voter
9 fulfilling their duty, that it should not be
10 acceptable. I mean, it's not the poll worker
11 error.

12 CHAIRMAN PREISSE: And as I
13 understand our statutes, in addition to that,
14 if the voter fails to or consciously chooses
15 not to, he or she may visit the Board within
16 ten days and provide further information.

17 And with respect, Mr. Chairman, your
18 motion would appear to say it's okay to do one
19 and, also, you don't have to comply with the
20 law and do the second piece which was
21 permitted previously. So you can guess how
22 I'm going to vote, I think. Any other --

23 MR. STINZIANO: I think again it's
24 the interpretation of reading Directive 101

1 and 103, with poll worker error, that there's
2 responsibility to the poll worker that there
3 is a reason it's not checked, and the
4 interpretation, as I understood it, was that
5 it's the poll worker's fault, not the voter's
6 fault.

7 MR. ANTHONY: And not to be
8 redundant, one of the things that I think we
9 all should be trying to do is, if the person,
10 after we've checked all the other information
11 out, if they are a qualified elector and
12 they're given a precinct where they voted,
13 that we should let them vote. And that's my
14 stance. So are we ready to vote on this?

15 MR. STINZIANO: Are you ready for a
16 vote?

17 CHAIRMAN PREISSE: Mm-hmm.

18 MR. ANTHONY: I am.

19 MR. STINZIANO: Mr. Colley?

20 MR. COLLEY: No.

21 MR. STINZIANO: Chairman Preisse?

22 CHAIRMAN PREISSE: No.

23 MR. STINZIANO: Mr. Anthony?

24 MR. ANTHONY: Yes.

1 MR. STINZIANO: Ms. Marinello?

2 MS. MARINELLO: Yes.

3 MR. STINZIANO: Those are all the
4 categories that we desire to present before
5 the Board, four of which have resulted in tie
6 votes, three of which have passed.

7 CHAIRMAN PREISSE: Okay. Then I'm
8 going to move that as certain of the preceding
9 motions regarding the categories with
10 provisional ballots that resulted in a tie
11 vote shall be submitted to the Ohio Secretary
12 of State pursuant to Section 3501.11,
13 paragraph 10, of the Ohio Revised Code.

14 The Chairman asks that both sides of
15 the issue submit their rationale for voting
16 for or against the motions to the Director not
17 later than noon on Tuesday, November 18th,
18 2008, so that the Director may submit the
19 matter in controversy to the Ohio Secretary of
20 State on Tuesday, November 18th, 2008.

21 MR. STINZIANO: The next item on the
22 agenda is referral of possible voter fraud
23 cases to the prosecuting attorney.

24 MR. DAMSCHRODER: We do have six

1 individual cases right now that are prepared
2 to go to the prosecuting attorney's office
3 that range from illegal registration of voting
4 to double voting, and so we would recommend
5 that the Board authorize the Director and
6 myself to forward these six instances on to
7 the prosecuting attorney for further
8 investigation and, if necessary, prosecution.

9 MR. STINZIANO: In addition, I think
10 it's also written there, there are other broad
11 categories that we are working on, and those
12 be persons voting in more than one county,
13 persons voting or attempting to vote who are
14 not citizens, fraudulent registrations and
15 absentee ballot applications, and persons
16 registering and voting who are in Ohio only on
17 a temporary basis and did not meet the
18 residential requirements.

19 So right now, we have six suggested,
20 but that's kind of the universe of cases we
21 are looking at.

22 MR. ANTHONY: Mr. Chair, I move that
23 the Board, per the recommendation of the
24 Director and Deputy Director, refer possible

1 voter fraud cases to the prosecuting attorney
2 for further action.

3 MR. COLLEY: Second.

4 CHAIRMAN PREISSE: Any discussion?

5 MR. O'BRIEN: The only thing I would
6 add, Mr. Chairman, is that we have been
7 working with Mr. Stinziano and Mr. Damschroder
8 probably back two weeks before the election.

9 When matters came to the Board's
10 attention, they discussed them with our
11 office, and we did look into some and resolved
12 some apparent problems, and that precluded
13 some votes being cast that would have been
14 improper, and I think it was that effort that
15 was successful and prevented it, but there are
16 others that were not prevented and some cases
17 that we've seen fraud using P.O. boxes for
18 multiple applications and things of that
19 nature.

20 So I would recommend that you
21 approve it, and I appreciate the Board's
22 cooperation to date on it.

23 CHAIRMAN PREISSE: And we appreciate
24 the prosecutor's able work and the cooperation

1 of our professional staff and yours on this
2 very, very important matter of voter fraud.
3 Any time anybody is voting who shouldn't be
4 voting, they're cancelling out the vote of
5 someone who has voted properly.

6 I think we're ready for a vote.

7 MR. STINZIANO: Okay. All in favor?

8 MEMBERS: Aye.

9 MR. STINZIANO: No opposed.

10 The last item is the staff's
11 recommendation that the Board move into
12 executive session to consider the appointment,
13 employment, dismissal, discipline, or demotion
14 of an employee.

15 MS. MARINELLO: Mr. Chairman, I move
16 that the Board adjourn into executive session
17 to consider the appointment, employment,
18 dismissal, discipline, or demotion of a public
19 employee.

20 MR. COLLEY: Second.

21 MR. STINZIANO: Do a roll call vote.
22 Mr. Colley?

23 MR. COLLEY: Yes.

24 MR. STINZIANO: Chairman Preisse?

1 CHAIRMAN PREISSE: Yes.

2 MR. STINZIANO: Mr. Anthony?

3 MR. ANTHONY: Yes.

4 MR. STINZIANO: Ms. Marinello?

5 MS. MARINELLO: Yes.

6 MR. STINZIANO: We are in executive
7 session.

8 - - - - -

9 Thereupon, the Board entered into
10 executive session at 5:30 o'clock p.m.

11 - - - - -

12 MR. ANTHONY: I'd like to move that
13 the Board come out of executive session. No
14 motions were made, no votes were taken, and no
15 consensus were reached.

16 MS. MARINELLO: Second that.

17 MR. STINZIANO: Mr. Colley?

18 MR. COLLEY: Yes.

19 MR. STINZIANO: Chairman Preisse?

20 CHAIRMAN PREISSE: Yes.

21 MR. STINZIANO: Mr. Anthony?

22 MR. ANTHONY: Yes.

23 MR. STINZIANO: Ms. Marinello?

24 MS. MARINELLO: Yes.

1 MR. STINZIANO: Out of executive
2 session.

3 MR. ANTHONY: Mr. Chair, I'd like
4 to make a motion for Erin Sellers to continue
5 on paid administrative leave through November
6 25th, 2008, at which time the Board will hold
7 an employment hearing in executive session.

8 CHAIRMAN PREISSE: Is there a
9 second?

10 MS. MARINELLO: Second.

11 MR. DAMSCHRODER: Do a roll call
12 vote.

13 MR. STINZIANO: Mr. Colley?

14 MR. COLLEY: Yes.

15 MR. STINZIANO: Chairman Preisse?

16 CHAIRMAN PREISSE: I'm going to
17 abstain.

18 MR. STINZIANO: Mr. Anthony?

19 MR. ANTHONY: Yes.

20 MR. STINZIANO: Ms. Marinello?

21 MS. MARINELLO: Yes.

22 MR. STINZIANO: And those are all
23 the items we have for this special meeting.

24 MR. ANTHONY: Mr. Chair, I move that

1 we adjourn.

2 CHAIRMAN PREISSE: Do we have a
3 second?

4 MS. MARINELLO: Second that.

5 MR. STINZIANO: All in favor.

6 MEMBERS: Aye.

7 MR. STINZIANO: None opposed.

8 Meeting adjourned.

9 - - - - -

10 Thereupon, the proceedings were
11 concluded at 5:39 o'clock p.m.

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CERTIFICATE

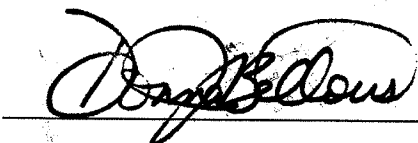
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The undersigned do hereby certify that the foregoing proceedings were digitally recorded, electronically transmitted, and transcribed via audible playback, and that the foregoing transcript of such proceedings is a full, true and correct transcript of the proceedings as so recorded.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal of office at Columbus, Ohio, on this 17th day of November 2008.



MICHELLE K. SALINAS
Certified Digital Reporter
Notary Public - State of Ohio.
My commission expires July 10, 2013.



DONNA J. BELLOUS
Certified Digital Transcriber