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BEFORE THE FRANKLIN COUNTY BOARD OF ELECTIONS

- - -

In Re: :
 :
Special Meeting. :

- - -

PROCEEDINGS

before Chairman Douglas J. Preisse, Director Edward Leonard, Deputy Director David Payne, and Board Members Bradley K. Sinnott, Kimberly E. Marinello, and Michael Sexton, at the Franklin County Board of Elections, 1700 Morse Road, Columbus, Ohio, called at 2:39 p.m. on Monday, August 27, 2018.

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1 APPEARANCES:

2 FRANKLIN COUNTY PROSECUTOR'S OFFICE
3 By Timothy A. Lecklider, Esq.
4 Assistant Prosecuting Attorney
5 373 South High Street, 13th Floor
6 Columbus, Ohio 43215
7 (614) 525-3520,

8 On behalf of the Board.

9 THOMAS C. DRABICK, JR., Esq.
10 6805 Oak Creek Drive
11 Columbus, Ohio 43229
12 (614) 332-9472,

13 On behalf of Challenger Leo Almeida.

14 AMANDA M. GRANDJEAN, Esq.
15 MARIA J. ARMSTRONG, Esq.
16 Bricker & Eckler
17 100 South Third Street
18 Columbus, Ohio 43215
19 (614) 227-2300,

20 On behalf of Respondent
21 Bobby L. Mitchell.

22 Also present:

23 Alicia Healy, Voter Services
24 Leo Almeida
25 Ron Brown
Bobby Mitchell

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3

Challenge of Right to Vote and Correction of
4 Registration List, 2 pages (Unmarked Doc 1)

5

First Notice of Challenge, 4 pages (Unmarked Doc 2)

6

Second Notice of Challenge, 2 pages
(Unmarked Doc 3)

7

Voter information for Bobby Mitchell,
8 5 pages (Unmarked Doc 4)

9

Copy of ORC 3503.24, Application for correction of
precinct registration list or challenge of right to
10 vote, 2 pages (Unmarked Doc 5)

11

Copy of ORC 3503.02, Residence determination rules,
12 1 page (Unmarked Doc 6)

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Monday Afternoon Session
August 27, 2018
2:39 p.m.

- - -

DEPUTY DIRECTOR PAYNE: We are ready to convene this meeting of the Franklin County Board of Elections. Looks like we're all here. Let's make sure. We'll take roll.

Kim Marinello.

MEMBER MARINELLO: Here.

DEPUTY DIRECTOR PAYNE: Mike Sexton.

MEMBER SEXTON: Here.

DEPUTY DIRECTOR PAYNE: Doug

Preisse.

MEMBER PREISSE: Here.

DEPUTY DIRECTOR PAYNE: Brad

Sinnott.

MEMBER SINNOTT: Here.

DEPUTY DIRECTOR PAYNE: We do have a quorum.

The first item on the agenda is the approval of the minutes of the August 6, 2018, meeting that I believe you all were sent. If there aren't any corrections or deletions or anything else, I'll take a motion.

MEMBER SEXTON: I would move that

1 the board approve the minutes of the August 6,
2 2018, meeting of the Franklin County Board of
3 Elections as submitted.

4 DEPUTY DIRECTOR PAYNE: Is there a
5 second?

6 MEMBER MARINELLO: Second.

7 DEPUTY DIRECTOR PAYNE: All those in
8 favor signify by saying aye.

9 (Vote taken.)

10 DEPUTY DIRECTOR PAYNE: All opposed,
11 same sign.

12 (No response.)

13 DEPUTY DIRECTOR PAYNE: Motion
14 carries.

15 The next item on the agenda is a
16 voter registration challenge. And I'll call on the
17 supervisor of the voter services section, Alicia
18 Healy.

19 MS. HEALY: Good afternoon. We have
20 a challenge of correction of registration dated
21 August 15, 2018, filed by Leonardo Almeida
22 challenging the voter registration of Bobby
23 Mitchell.

24 An initial review was done to
25 determine the sufficiency of the challenge. And

1 the challenge you see attached was filed using the
2 Secretary of State's Form 257 under penalty of
3 election falsification by Leonardo Almeida, a
4 qualified elector of Franklin County. And it
5 states the reason for the challenge being the
6 address of Bobby L. Mitchell located at 6057 Falla
7 Drive, Canal Winchester. Notices were mailed to
8 the person who challenged Bobby Mitchell as well as
9 the person filing the challenge, Leonardo Almeida.

10 If you look in your attachments
11 there's a copy of a poll pad slip that should have
12 been -- that wasn't in your folder. A valid
13 registration was received on file from the BMV,
14 dated 11-1-17. That's going to be your second
15 attachment.

16 MEMBER SINNOTT: Show us what it
17 looks like, Alicia, please.

18 MS. HEALY: It's a registration.
19 It's the second page. Do you have that page there?

20 MEMBER SINNOTT: Yeah. You can stay
21 up there. We can see it.

22 MS. HEALY: Okay.

23 MEMBER SINNOTT: So on November 6,
24 2017 through BMV we received a registration for
25 Bobby Mitchell for the Falla Drive address.

1 Correct?

2 MS. HEALY: Correct.

3 And then the following page shows a
4 hand-delivered registration. So that was brought
5 into the Board of Elections and it was stamped.
6 The date on that was 11-7-17. And then the next
7 copy you have is a copy of a provisional ballot
8 that was cast. This is the envelope that was cast
9 on 11-7-17. And it also has the 6057 Falla Drive.
10 And we also used this provisional envelope as a
11 registration. And then if you go back to the first
12 page, that is a slip from the poll pad. This was
13 the primary May of this year where he cast a
14 machine vote and this is just a slip of that
15 account. We did not receive any return mail or
16 undeliverable mail to this address.

17 MEMBER SINNOTT: Well, what have we
18 mailed to that address since November of 2017?

19 MS. HEALY: So an acknowledgment
20 letter would have been mailed to the address
21 because of the fact that we used a registration. A
22 first time register, if you update your address we
23 send you out an acknowledgment acknowledging the
24 address change.

25 DEPUTY DIRECTOR PAYNE: In addition

1 to the notices of this meeting, correct?

2 MS. HEALY: Yes, and the notice of
3 this meeting.

4 MEMBER SINNOTT: So Alicia, what
5 you're telling us now is that in November of 2017
6 we received three different indications of Bobby
7 Mitchell being registered at the Falla Drive
8 address?

9 MS. HEALY: Correct.

10 MEMBER SINNOTT: One of them being
11 the casting of a provisional ballot in the
12 November 2017 election showing that address?

13 MS. HEALY: Correct.

14 MEMBER SINNOTT: And then he also
15 voted in the primary on election day with that
16 address registered?

17 MS. HEALY: Correct.

18 MEMBER SINNOTT: That's what's
19 revealed by the five sheets of paper that you
20 provided to us?

21 MS. HEALY: Yes.

22 DIRECTOR LEONARD: Do you have a
23 copy of that to be a part of the record for the
24 court reporter?

25 DEPUTY DIRECTOR PAYNE: Yes.

1 CHAIRMAN PREISSE: This is the
2 primary of 2018?

3 MS. HEALY: Correct.

4 CHAIRMAN PREISSE: Is that
5 referenced on here?

6 MS. HEALY: It is not referenced on
7 the copy, but in our system it's referenced as the
8 primary May 8th, 2018.

9 CHAIRMAN PREISSE: Okay.

10 MEMBER SEXTON: Just so I'm clear,
11 the first page is the primary of 2018?

12 MS. HEALY: Correct.

13 MEMBER SEXTON: The second page is a
14 registration as of 11-1?

15 MS. HEALY: Yes.

16 MEMBER SEXTON: It was processed on
17 11-6, 2017?

18 MS. HEALY: Correct.

19 MEMBER SEXTON: Page three would be
20 a registration?

21 MS. HEALY: Yes.

22 MEMBER SEXTON: Page four would be a
23 copy of the primary, the provisional ballot from --

24 MS. HEALY: That would be from the
25 general election of last year.

1 MEMBER SEXTON: 2017 general?

2 MS. HEALY: Yes.

3 MR. SEXTON: And page five would be
4 a provisional ballot envelope?

5 MS. HEALY: That's just the back of
6 the envelope.

7 DIRECTOR LEONARD: Same envelope,
8 the reverse side.

9 MEMBER SINNOTT: Is that everything,
10 Mike?

11 MEMBER SEXTON: I don't have
12 anything else.

13 MEMBER SINNOTT: Now, Alicia, do you
14 have anything to which to direct us that would give
15 us a standard for determining where someone
16 resides?

17 MS. HEALY: So based on the
18 information within the challenge --

19 MEMBER SINNOTT: No. What I'm
20 asking is do you have anything we should look at
21 that would give us instruction on how to determine
22 where someone resides? That might be a statute or
23 it might be a directive from the Secretary of
24 State.

25 MS. HEALY: So we do have an ORC

1 3503.02, residence determination rules.

2 MEMBER SINNOTT: I think you've all
3 been given a copy of Revised Code Section 3503.02.

4 Is there anything else? For
5 example, has the Secretary given us any instruction
6 on this subject?

7 MS. HEALY: We have a directive.
8 You have a copy of that. That talks about an
9 election challenge.

10 MEMBER SINNOTT: What is that
11 directive?

12 MS. HEALY: So it's on page 3, dash,
13 74 where it says challenge of right to vote.
14 That's the process that we go through.

15 CHAIRMAN PREISSE: Is there in this
16 copy of that portion of the Secretary of State's
17 manual discussion of determination of residence or
18 is this merely a procedure?

19 MS. HEALY: It really talks about
20 the procedure.

21 DIRECTOR LEONARD: There is a
22 section in general consideration that does talk
23 about just in terms of the utilization of mail as a
24 sole consideration.

25 CHAIRMAN PREISSE: What page is that

1 on?

2 DIRECTOR LEONARD: Should be 3,
3 dash, 77. I'm sorry. 1, dash, 77. Sorry. 377
4 and 378.

5 CHAIRMAN PREISSE: Oh, general
6 consideration.

7 DIRECTOR LEONARD: It discusses mail
8 and like foreclosure actions is insufficient to
9 grant a challenge. So it does give some general
10 instructions.

11 CHAIRMAN PREISSE: Actually, there's
12 just three examples of insufficient elements to
13 consider for a challenge.

14 DIRECTOR LEONARD: Right.

15 MEMBER SINNOTT: Ed, do you know
16 what the source of authority is for those three
17 observations made under general considerations?
18 They sort of read as though they're drawn from a
19 case or cases decided over space and time,
20 but there's --

21 DIRECTOR LEONARD: The provision
22 that does reference it is 3503.24, which is another
23 one of the statutory provisions that are in your
24 packet, in addition to 3503.02. You should have a
25 packet there that has that statute that references

1 challenge procedures.

2 MEMBER SINNOTT: I don't see where
3 any of those concepts are being drawn from that
4 statute, though.

5 CHAIRMAN PREISSE: I don't, either.

6 MEMBER SINNOTT: Well, what other
7 standard might inform our decision, Alicia? Do you
8 know of anything?

9 MS. HEALY: Only what we've done in
10 the past.

11 MEMBER SINNOTT: Well, what has our
12 past practice been?

13 MS. HEALY: So normally if we do not
14 receive any return mail from an address, that's
15 notably an indication that the person is there.
16 But if we have a challenge where the person that is
17 filing the challenge actually lives at the
18 residence in which they are challenging the voter,
19 then we would remove that particular person from
20 the list. So those have been what we have done in
21 the past.

22 MEMBER SINNOTT: So I think you're
23 saying that in the absence of mail being sent and
24 returned, you recollect that the Board was inclined
25 to believe the voter was residing where he said he

1 was?

2 MS. HEALY: I'm sorry. Repeat that.

3 MEMBER SINNOTT: In the absence of
4 mail being sent to a voter and being returned to
5 us, you're recollecting that the Board has accepted
6 the premise that the voter is living there?

7 MS. HEALY: Correct.

8 MEMBER SINNOTT: And then you said
9 that you recall cases where we have a challenger
10 who reports living at a particular residence and
11 not living with the person who is registered to
12 vote there?

13 MS. HEALY: Correct.

14 MEMBER SINNOTT: We had one of those
15 not long ago.

16 MS. HEALY: Yes.

17 MEMBER SINNOTT: Any other past
18 practices of the Board related to the subject that
19 you can recall?

20 MS. HEALY: I cannot.

21 CHAIRMAN PREISSE: So let's hear the
22 challenge and then go in that order.

23 Right?

24 MEMBER SINNOTT: Yes.

25 CHAIRMAN PREISSE: Don't run away.

1 Thanks, Alicia.

2 MS. HEALY: Okay.

3 CHAIRMAN PREISSE: So shall we -- Is
4 Mr. Almeida or anyone representing him here?

5 MR. DRABICK: Chariman Preisse,
6 members of the Board, my name is Tom Drabick. I'm
7 an attorney here in Columbus, Ohio. Leo Almeida is
8 here. He's the challenger. He is prepared to give
9 evidence today in the form of his testimony. We
10 have another witness who is here today who will
11 also give testimony. I have a couple of affidavits
12 and a couple of other exhibits that I would like to
13 provide to the Board. I have all of the documents
14 assembled in packets, and if I could hand those
15 out.

16 Would the Board like for the court
17 reporter to have the originals?

18 CHAIRMAN PREISSE: I'm going to ask
19 Brad to help us make some helpful comments here --

20 MR. DRABICK: Sure.

21 CHAIRMAN PREISSE: -- in terms of
22 procedure and timing.

23 MR. DRABICK: Yes.

24 MEMBER SINNOTT: Mr. Drabick, any
25 documents that you want to tender in support of the

1 challenge, the Board will receive if you'll simply
2 submit them to the court reporter. That will be
3 considered a part of the record on the matter.

4 MR. DRABICK: Okay.

5 MEMBER SINNOTT: If you have copies
6 for the Board members, we'd appreciate seeing
7 those.

8 MR. DRABICK: I do.

9 MEMBER SINNOTT: Looks like these
10 are full packets of your exhibits. Correct?

11 MR. DRABICK: That is correct.

12 MEMBER SINNOTT: Have you provided
13 these to Mr. Mitchell's counsel?

14 MR. DRABICK: I have not. I was not
15 aware that Mr. Mitchell would have counsel until I
16 arrived here.

17 MEMBER SINNOTT: Mr. Mitchell and
18 his counsel are seated over there, if you have a
19 copy for them.

20 And Mr. Drabick, how long do you
21 think it will take you to get in your case?

22 MR. DRABICK: I would say
23 20 minutes, 25 minutes. I don't expect to be a
24 long time with this presentation.

25 I do have two quick preliminary

1 matters for the record, if I could address those.

2 MEMBER SINNOTT: Let me check
3 because I think we may have a hard stop problem
4 here. What -- Who needs to be out by when?

5 CHAIRMAN PREISSE: Yeah. I think
6 that's --

7 MEMBER SEXTON: I'm fine.

8 MEMBER MARINELLO: I'm fine.

9 CHAIRMAN PREISSE: I'm not. So
10 perhaps you could endeavor to condense your
11 delivery.

12 MR. DRABICK: We'll move as quickly
13 as we can. What time is our hard stop time?

14 CHAIRMAN PREISSE: I'd say about
15 3:40.

16 MR. DRABICK: 3:40. And I do
17 believe I could be concluded by 3:30.

18 MEMBER SINNOTT: And we also need to
19 hear from the respondent. I'm going to tell you
20 that the rules of evidence do not apply here. So
21 you can be substantially more casual than you would
22 be in court.

23 MR. DRABICK: I appreciate that.

24 MEMBER SINNOTT: That may help you
25 expedite your presentation. So let's see where we

1 are at 3:15 before making any additional decisions
2 about how to proceed.

3 MR. DRABICK: Okay. Very good.

4 And the two preliminary matters are,
5 first of all, with regard to Mr. Sinnott, I believe
6 that Mr. Mitchell's counsel is employed by your
7 firm, the Vorys firm. And if I'm incorrect about
8 that -- Am I correct or incorrect?

9 MEMBER SINNOTT: No. Ms. Armstrong
10 and Ms. Grandjean I recognize from practice.
11 They're lawyers at the Bricker & Eckler law firm.

12 MR. DRABICK: Thank you very much.

13 Next I would like to address
14 Chairman Preisse specifically with respect to a
15 copy of the exhibits in the packet. I believe that
16 the Chairman may have awareness of certain facts
17 that would be in evidence of this matter. And I
18 would ask him to consider recusing himself from
19 hearing the merits of this challenge.

20 The first is Exhibit N. It is an
21 invitation to a fundraiser. It says Franklin
22 County GOP Executive Committee Chairman Doug
23 Preisse invites you to a special fundraiser to meet
24 Bobby Mitchell, candidate for State Representative
25 for House District 20, at the address 9329 Hocking

1 Run, Canal Winchester. And that is a residence
2 that's located in Bloom Township in Fairfield
3 County. And that's at the heart of this challenge
4 here today, is whether Mr. Mitchell resides at that
5 Hocking Run address or whether he resides elsewhere
6 on Falla. So that is -- Exhibit N is the
7 invitation that the Chairman would have been
8 involved in.

9 Exhibit P is a photograph of the
10 Chairman with Bobby Mitchell at the fundraiser on
11 Hocking Run.

12 And Exhibit Q is another photograph
13 of Mr. Mitchell, the Chairman, persons that I'm
14 aware to be Steve Sissack (phonetic) and
15 Mr. Sissack's wife also at the fundraiser in June.

16 And because of being aware of the
17 location of the residence and these facts, I'm
18 going to ask that the Chairman consider recusing
19 himself of hearing the merits of the matter.

20 CHAIRMAN PREISSE: I don't know how
21 to respond to that other than I might attend a
22 hundred fundraisers for dozens of candidates in
23 private residences and in public spaces and in
24 commercial spaces all yearlong every year.

25 MR. DRABICK: And with that, I would

1 just note our objection for the record and we are
2 ready to proceed with the evidence in the matter.

3 How would you like Mr. Almeida to
4 present? Do you want him to come up and sit down
5 or what would be your pleasure in that respect?

6 MEMBER SINNOTT: Well, Mr. Almeida
7 or any other witness you're going to call would
8 need to be sworn in. And within the time confines
9 that we earlier have discussed, I think you can
10 make your own decision about how to proceed.

11 MR. DRABICK: And would the court
12 reporter please swear in this witness.

13 (Witness sworn by reporter.)

14 - - -

15 LEONARDO ALMEIDA,
16 being first duly sworn, testifies as follows:

17 EXAMINATION

18 BY MR. DRABICK:

19 Q. Sir, would you state your name for
20 the record, please?

21 A. Leo Almeida.

22 Q. Will you spell Almeida, please?

23 A. A-l-m-e-i-d-a.

24 Q. Where do you reside?

25 A. 6408 Rossi Drive, Canal Winchester.

1 Q. Is that address located in an
2 apartment complex?

3 A. It is.

4 Q. What complex is that?

5 A. It's called Madison at the Lakes by
6 Cortland Partners.

7 Q. How long with have you lived there?

8 A. Since December of 2017.

9 Q. Are you a registered voter,
10 qualified elector in Franklin County, Ohio?

11 A. I am.

12 Q. Are you aware that Bobby L. Mitchell
13 is registered to vote in Franklin County from the
14 address 6057 Falla Drive, Canal Winchester, Ohio?

15 A. Yes.

16 Q. Do you know where 6057 Falla Drive
17 is located?

18 A. Yes.

19 Q. Where is it?

20 A. It's in the same apartment complex
21 that I live in. My -- The townhouse that I live in
22 is in the north part or top part of the complex.
23 It's a big circle, essentially. This residency
24 that you just referenced is at the front of the
25 complex.

1 Q. And you heard reference to a
2 challenge of Bobby Mitchell's voter registration.
3 Did you file that challenge?

4 A. I did.

5 Q. So where in proximity to your
6 apartment is 6057 Falla Drive?

7 A. So essentially it's the opposite
8 side of the complex. Our complex has one entrance
9 and exit. So if I'm entering the complex I usually
10 turn right and would pass this residence in order
11 to follow the driveway that goes up to my
12 townhouse.

13 Q. And on any given day, how many times
14 might you come in and out of the apartment complex?

15 A. At least two times a day.

16 Q. Do you know what type of motor
17 vehicles Mr. Mitchell or his wife drive?

18 A. Yes.

19 Q. What are those?

20 A. Two vehicles, both are Lexus
21 vehicles. One is a white Lexus SUV and a white
22 Lexus sedan.

23 Q. Between July 8th of 2018 and
24 August 14th of 2018 did you look for the Mitchells'
25 two Lexus vehicles, the SUV and the sedan, in the

1 vicinity of 6057 Falla Drive?

2 A. I did.

3 Q. And I'm going to hand you what is
4 marked as Exhibit A. And my question to you, are
5 you -- can you identify this document?

6 A. Yeah. This is a log that I kept of
7 the dates and times that I went by that residency
8 and noted whether or not I saw the two vehicles
9 there.

10 Q. And there are, what, 28 different
11 dates in that log?

12 A. Yeah, I think so.

13 Q. At any time did you see either of
14 those two vehicles in the vicinity of 6057 Falla
15 Drive?

16 A. I did not.

17 Q. Now, off to the right of your log
18 you have a note about no lights. Do you see that?

19 A. I do.

20 Q. What does that indicate on your log?

21 A. These were the times I went by at
22 night when it was dark and didn't notice any lights
23 on at that apartment.

24 Q. And so on those 28 different days
25 that you made observances and took notes in your

1 log, you didn't see either of the two vehicles.

2 Correct?

3 A. Correct.

4 Q. And on four occasions you didn't see
5 any lights on in hours when lights would have been
6 on?

7 A. Correct.

8 Q. Those are all the questions I have
9 for you, Mr. Almeida.

10 A. Okay.

11 MEMBER SINNOTT: You may call your
12 next witness.

13 MR. DRABICK: My next witness is Ron
14 Brown.

15 (Witness sworn by reporter.)

16 - - -

17 RONALD BROWN,

18 being first duly sworn, testifies as follows:

19 EXAMINATION

20 BY MR. DRABICK:

21 Q. Mr. Brown, will you state your full
22 name for the record?

23 A. Ronald Brown.

24 Q. Where do you reside?

25 A. 9488 Hocking Run Street.

1 Q. And what subdivision is that?

2 A. Hocking Run Estates.

3 Q. Is Hocking Run Estates fully located
4 in Bloom Township, Fairfield County, Ohio?

5 A. That is correct.

6 Q. I want to hand you what is marked as
7 Exhibit V, as in victor. Can you identify this
8 document?

9 A. Yes, I can.

10 Q. What does Exhibit V show?

11 A. Exhibit B, as in boy?

12 Q. V, as in victor.

13 A. This is basically the geographical
14 overlook or the satellite picture of our actual
15 residence or our neighborhood.

16 Q. Do you see the letter B on that map?

17 A. I do.

18 Q. What does that indicate?

19 A. That indicates my home.

20 Q. And what about the letter A?

21 A. That represents Bobby Mitchell's
22 home.

23 Q. And just to the left of letter C,
24 who would live there?

25 A. That's Andy Gilbert, sir.

1 Q. All right. Letter D, do you know
2 who lives in the vicinity of where that letter D is
3 on the map?

4 A. That's Mr. and Mrs. Brunney.

5 Q. And what about E?

6 A. Mr. and Mrs. Craycraft.

7 Q. Mr. Brown, where are you employed?

8 A. I'm with Jeff Wyler Automotive.

9 Q. And that is in the automobile
10 service industry?

11 A. That's correct.

12 Q. Are you familiar with various makes
13 and models of automobiles?

14 A. Yes, I am.

15 Q. Do you know what type of automobiles
16 Bobby Mitchell and his wife drive?

17 A. Both are Lexus. One is an SUV, the
18 other is a Lexus sedan.

19 Q. Do you know Bobby Mitchell to see
20 him? Do you recognize him?

21 A. Yes, I do.

22 Q. Have you had opportunity in the past
23 to work on projects with Bobby Mitchell?

24 A. Yes, I have.

25 Q. What would that have been?

1 A. I was hired by Bobby to do a
2 barbecue for his church.

3 Q. So the two of you have some
4 familiarity?

5 A. Yes, we do.

6 Q. How long have you resided at
7 9488 Hocking Run Street?

8 A. Since 2008. October of 2007.
9 Sorry.

10 Q. Do you recall roughly when Bobby
11 Mitchell and family moved into 9329 Hocking Run
12 Street?

13 A. Roughly 2016.

14 Q. Do you believe that Mr. Mitchell
15 currently resides at 9329 Hocking Run Street?

16 A. I currently believe that, yes.

17 Q. What leads you to that belief?

18 A. Because I see both vehicles at their
19 residence.

20 Q. Do you pass their cars daily?

21 A. I do.

22 Q. On your way to work and your way
23 home?

24 A. Correct.

25 Q. Is there trash out at the curb?

1 A. Yes, there is.

2 Q. Does it appear that people are
3 residing there?

4 A. There is.

5 Q. Okay. Do the Mitchells park their
6 vehicles in the garage or on the driveway?

7 A. In the driveway.

8 Q. Are you a registered voter?

9 A. I am.

10 Q. And where is your registration?

11 A. In Fairfield County.

12 Q. Do you have any military experience?

13 A. I do.

14 Q. Would you tell the Board about that,
15 please?

16 A. Served nine years in the United
17 States Navy; three tours, Iraq.

18 Q. I'm going to hand you what is marked
19 as Exhibit D, as in dog. Can you identify this
20 exhibit?

21 A. That's the residence of the
22 Mitchells.

23 Q. And that's across the street from
24 your residence?

25 A. It's catty-corner from my residence.

1 It's not directly across the street; but it is
2 across the street catty-corner, yes.

3 Q. Sir, do you -- so you've testified
4 that you're registered to vote. What party
5 affiliation are you registered?

6 A. I'm affiliated with Republican as a
7 conservative.

8 Q. And you're aware that Mr. Mitchell
9 is Republican. Correct?

10 A. That is correct.

11 Q. So this must not be some partisan
12 issue. Can you tell the Board why you've giving
13 testimony today?

14 A. Well, given the fact that, you know,
15 such claim is a misrepresentation of this district.
16 I just want to believe that things are right,
17 things are true, and that everybody holds up their
18 end as far as ethics just like military and just
19 like everything else.

20 MR. DRABICK: I don't have any
21 further questions for Mr. Brown.

22 MR. BROWN: Thank you.

23 MR. DRABICK: In the packet of
24 documents that I've provided to the Board --

25 MEMBER SINNOTT: Do you have any

1 additional questions for Mr. Brown?

2 MR. DRABICK: I am finished with
3 Mr. Brown.

4 MEMBER SINNOTT: I believe, sir, you
5 may take a seat in the gallery. Thank you.

6 MR. DRABICK: In the packet of
7 documents I have provided for the Board we have
8 Exhibit C. The Board will see an affidavit from
9 Patrick Craycraft who Mr. Brown identified as
10 living in the same neighborhood. The affidavit is
11 very similar to the sworn testimony that you heard
12 from Mr. Brown here today, that they live in the
13 same subdivision as Mr. Mitchell, they have
14 observed the vehicles parked in the driveway. He
15 has no doubt in his mind Bobby Mitchell and his
16 children reside at the 9329 Hocking Run Street
17 address in Fairfield County. Mr. Craycraft
18 attaches two exhibits to his affidavit. One is
19 kind of a rainy picture of the Mitchell residence,
20 and the other, Exhibit 2 attached to the Craycraft
21 affidavit, are two vehicles, the SUV, Lexus SUV,
22 and the Lexus sedan we've heard testimony about
23 here today.

24 Also in the packet of information is
25 Exhibit E, an affidavit of Andrew Gilbert.

1 Mr. Gilbert testifies in his affidavit that he
2 resides in Hocking Run Estates. He gives his
3 address. He says he knows Bobby Mitchell,
4 recognizes him by appearance, that the Mitchells
5 are neighbors, subdivision is small. Mr. Gilbert
6 is also in the car industry, recognizes the Lexus
7 SUV and the Lexus sedan belonging to the Mitchells.
8 He attaches an exhibit to his affidavit which shows
9 the Lexus SUV outside of the Mitchell residence.
10 In paragraph 13 of his affidavit Mr. Gilbert says:
11 Bobby Mitchell usually arrives at the house at
12 9329 Hocking Run Street Northwest around 9:30 p.m.
13 and often later. I am aware of his arrival times
14 because I often see him from my porch and also
15 because the headlights of his white SUV often set
16 off the motion detector and activate security
17 lights in my house. His white SUV is still in the
18 driveway the following morning when I leave for
19 work. And he concludes that he has no doubt that
20 Bobby Mitchell resides in that Hocking Run Street
21 address with his family.

22 Exhibit F is an affidavit from Eric
23 Brunney. He lives in the Hocking Run Estates
24 subdivision. He says similar things to what you
25 heard from Mr. Brown and the other two affiants.

1 He knows Mr. Mitchell and recognizes him by
2 appearance. The Mitchells are his neighbors in the
3 Hocking Run Estates subdivision. It's a small
4 subdivision. Mr. Mitchell typically drives a white
5 Lexus SUV and his wife drives a white Lexus sedan.
6 I regularly see both vehicles. I regularly see
7 both the white Lexus SUV of Bobby Mitchell and the
8 white Lexus sedan of his wife coming and going from
9 9329 Hocking Run Street Northwest and parked in the
10 driveway at the house. They do not park in the
11 garage. He concludes by saying he has no doubt
12 that Bobby Mitchell resides at the Hocking Run
13 Street address with wife and family.

14 Just a couple of more exhibits and I
15 will conclude. Exhibit G is the deed to the
16 residence, the Hocking Run Street residence. It's
17 deeded to Janeisha T. Mitchell.

18 Exhibit H is a photograph, an
19 Instagram picture, that Mr. Mitchell put up showing
20 him in the foyer of the residence. That's clearly
21 not an apartment.

22 Exhibit I is another photograph,
23 Instagram photograph, that Mr. Mitchell posted of a
24 beautiful BMW outside of the very attractive
25 residence where he resides.

1 Exhibit J is a picture of the house
2 lighted at night with the caption, "New lights
3 installed at my house today. Beautiful."

4 Exhibit K is a picture of
5 Mr. Mitchell with the SUV, the Lexus SUV, behind
6 him and the house behind them.

7 Exhibit L is offered to show that
8 when Mr. Mitchell is posting on social media you'll
9 see where it says Slough, Ohio under his name.
10 That's important because there is a cell tower in
11 Slough, Ohio that is -- and I'll show you a map
12 here in a moment -- very close to his property. So
13 that's where the activation, where the signal is
14 bouncing from when he posts to social media.

15 And you'll see in Exhibit M a
16 picture of his two kids having fun. He has a
17 caption that they woke him up, got him out of bed
18 to referee their wrestling match. You'll see that
19 it was bounced out of Slough, Ohio.

20 Exhibit N is the invitation to the
21 fundraiser. We already talked about that.

22 Exhibit O is an Instagram post of
23 Mr. Mitchell and a friend outside of his residence.
24 It talks about him running for state
25 representative.

1 Exhibit P and Exhibit Q, we've
2 discussed those photographs.

3 Exhibit R is a map that shows
4 Franklin County highlighted in yellow and Fairfield
5 County highlighted in gold with Bloom Township
6 colored in pink. So you'll see that Bloom Township
7 is outside of Franklin County.

8 Exhibit S, the parcel 0090234100 is
9 Mr. Mitchell's residence in Hocking Run
10 subdivision. The other indication is the Slough,
11 Ohio, cell tower.

12 Exhibit T, this shows where the 20th
13 House District is in Franklin County, wholly and
14 completely contained within the county boundaries
15 of Franklin County, and Mr. Mitchell's house
16 sitting in Fairfield County, several miles to the
17 east.

18 Exhibit U, this is a transcript of a
19 challenge hearing that was conducted here. And
20 Mr. Sinnott, you have very prescient and important
21 questions in that hearing. I offered this because
22 I thought it was important and might provide some
23 guidance.

24 And we've already talked about
25 Exhibit V, as in victor.

1 That is all of the materials that I
2 have. I would like to ask Mr. Mitchell some
3 questions if he's going to testify. If he isn't
4 going to testify, I'll just do it now.

5 MEMBER SINNOTT: My recollection is
6 that we have always called upon the challenger and
7 the respondent to do the full presentation they
8 each want to make when first called. So if you
9 want to elicit any testimony from Mr. Mitchell and
10 if he's willing and available, I think now would be
11 the time to do it --

12 MR. DRABICK: All right.

13 MEMBER SINNOTT: -- as opposed to
14 trying to participate in the respondent's case.

15 MR. DRABICK: Mr. Mitchell, if you
16 would step forward, please.

17 I would ask the court reporter to
18 swear in the witness.

19 (Witness sworn by reporter.)

20 - - -

21 BOBBY MITCHELL,
22 being first duly sworn, testifies as follows:

23 EXAMINATION

24 BY MR. DRABICK:

25 Q. State your name, please.

1 A. Bobby Mitchell.

2 Q. Mr. Mitchell, is it -- it's true,
3 isn't it, that you reside with your wife, your
4 children, and your mother at 9329 Hocking Run
5 Street Northwest, Canal Winchester, Ohio?

6 A. No, that's not true. My mother
7 lives in New Jersey. She doesn't even live here.

8 Q. What about with your wife and your
9 children?

10 A. No, it's not true.

11 Q. Is it true, sir, that 9329 Hocking
12 Run Street Northwest is located in Bloom Township,
13 Fairfield County, Ohio?

14 A. I believe that's true.

15 Q. Do you drive a white Lexus SUV?

16 A. I drive multiple vehicles.

17 Q. Is a white Lexus SUV one of them?

18 A. Yes, it's one of them.

19 Q. And do you also have a white Lexus
20 sedan that your wife often drives?

21 A. She drives multiple vehicles as
22 well; but, yes.

23 Q. How many nights per week do you
24 spend at the apartment at 6057 Falla Drive in Canal
25 Winchester?

1 A. I spend most nights there.
2 Sometimes five, six nights just depending on my
3 schedule.

4 Q. Tell me, where do you keep your
5 clothes, your apparel?

6 A. My clothes at 6057 Falla Drive. I
7 have clothes at 9329 Hocking Run.

8 Q. Well, which is your principal
9 residence? In other words, which do you intend to
10 return to when you are away?

11 A. 6057 Falla Drive.

12 Q. Where do your wife and children
13 reside?

14 A. My wife is retired and so she -- and
15 my children are home schooled, so they have the
16 ability to go do whatever they want to do.

17 Q. My question is where do they reside?

18 A. I just answered your question.
19 They're at Falla Drive with me sometimes and
20 sometimes they're at Hocking Run. They have that
21 flexibility.

22 Q. Are you and your wife separated or
23 experiencing marital issues?

24 A. No.

25 Q. How far is it from 9329 Hocking Run

1 Street Northwest, Canal Winchester to 6057 Falla
2 Drive?

3 A. Depending on the traffic, sometimes
4 it could take me 20 minutes, 25. There's a
5 railroad track that runs through when you're coming
6 in from Gender Road. So it just depends on the
7 time of day and traffic.

8 Q. It's about nine or ten miles,
9 correct?

10 A. Yeah, but there's a lot of traffic.

11 Q. Is there some business reason why
12 you would have the apartment on Falla Drive?

13 A. Absolutely.

14 Q. What would that be, sir?

15 A. That would be that my church is
16 right around the corner. It's closer to my church.
17 I have activities that I deal with all throughout
18 the day. My car dealership is right down the
19 street, maybe about ten minutes, on Brice Road.
20 And so it's much easier for me to conduct business.
21 I have plenty of meetings downtown. Falla Drive is
22 much closer and allows me to be able to provide for
23 my family.

24 Q. If we went over to the apartment at
25 6057 Falla right now, --

1 A. Yes.

2 Q. -- keeping in mind that your
3 testimony is under oath, what would we find there?

4 A. You would find a beautiful place.
5 You would find a nice TV, a nice living room
6 sectional, you'd find pictures of me and my family.
7 When you first walk in there's a picture of my
8 whole family standing right up there on the wall.
9 You'll see my Air Force pictures all on the wall.
10 You'll see all of my suits in the front room, suits
11 in my bedroom, and you'll see a really beautiful
12 place that's well cleaned. You'll see some Chinese
13 food in the refrigerator that I ate last night.

14 Q. That was my next question. Are
15 there food and general type staples that you would
16 need to survive in the apartment?

17 A. Absolutely.

18 Q. Toothbrush in bathroom, deodorant?

19 A. Absolutely. Washcloth, towels.

20 MR. DRABICK: I have no further
21 questions for Mr. Mitchell. Thank you.

22 MEMBER SINNOTT: Please don't leave,
23 Mr. Drabick.

24 MR. DRABICK: Yeah.

25 MEMBER SINNOTT: It seems,

1 counselor, as though we have a statute, Revised
2 Code Section 3503.02, that provides a set of
3 observations --

4 MR. DRABICK: Uh-huh.

5 MEMBER SINNOTT: -- that a registrar
6 or a precinct election official should take into
7 account in what seems to be an undescribed way when
8 making a determination about where an elector
9 resides.

10 Are you aware of any case law or
11 other interpretive authority that would instruct us
12 on how to apply the statute?

13 MR. DRABICK: Well, I believe
14 probably the seminal case interpreting the statute
15 is the Husted case when then Speaker of the House
16 John Husted was claiming his residency in
17 Montgomery County in Kettering. He had been
18 elected from there, he had lived there probably
19 20 years. But when he was in Columbus on business
20 as Speaker of the House primarily, a very time
21 consuming and important position, he would stay in
22 a residence that was owned by his then wife. I
23 believe she may still be his wife. And in that
24 case, you know, you had some I think extraordinary
25 facts that are kind of different from here, just

1 given the fact that Mr. Husted was commuting that
2 great distance. The Husted case, the Ohio Supreme
3 Court ruled that Mr. Husted could maintain his
4 residence in Kettering in Montgomery County and
5 that the fact that he leaves from Montgomery County
6 to conduct business in Columbus on behalf of the
7 state is an important consideration, it's an
8 exception to whether one's residency would be in
9 the county where they claimed.

10 But there's also some very important
11 language there that if you can't resolve or if the
12 other factors in the statute are in conflict then
13 you have to go back and look at the intent of the
14 voter in describing where that individual intends
15 to return to when he is away, he or she is away.

16 It's an important case. I don't
17 think it's directly on point to the type of fact
18 pattern that we have in this case because in this
19 case Mr. Mitchell voluntarily left Fairfield
20 County, moved ten miles into Franklin County and
21 registered there. The Husted case is probably
22 opposite of that, but it's still the primary
23 concern -- the primary consideration is to look at
24 the statute to determine whether you can identify
25 the residence based on those statutory

1 applications. 3503.02(A), the place shall be
2 considered the residence of a person which the
3 person's habitation is fixed and to which whenever
4 the person is absent the person intends to return.
5 (D), and this is important as well, the place where
6 the family of a married person resides shall be
7 considered the person's place of residence unless
8 they're separated and living apart. That's why I
9 asked Mr. Mitchell that question. I wasn't prying
10 into his personal life, but to a statutory
11 consideration.

12 MEMBER SINNOTT: Are you aware of
13 any other interpretive authority that we ought to
14 be considering? You mentioned the Husted case.

15 MR. DRABICK: Of first concern for
16 the Board should be the statute to determine
17 whether the residence can be identified using those
18 four factors that we talked about. And if they're
19 in conflict, the Husted case would direct the Board
20 to look at the voter's intent.

21 MEMBER SINNOTT: Mr. Drabick, thank
22 you for your excellent presentation. That took
23 35 minutes, and I see that we're now at 3:33 in the
24 afternoon.

25 And you are leaving in a few minutes

1 by prior to agreement?

2 CHAIRMAN PREISSE: Correct.

3 MEMBER SINNOTT: I think the
4 question is whether the Board wants to hear a few
5 minutes of presentation from Mr. Mitchell and then
6 recess or whether we recess now. Seems that it
7 makes more sense to me that we recess at this
8 point. You can respond. Why don't we talk about
9 schedules for a moment of when we can reconvene.

10 MR. DRABICK: And I thank the Board
11 for your attention.

12 MEMBER SINNOTT: Do you have time
13 tomorrow?

14 MR. SEXTON: The question is when we
15 reconvene, tomorrow or at some point here, to hear
16 the rest of the testimony?

17 MEMBER SINNOTT: That's right.
18 That's the question. We've heard from one side and
19 we're now going to have to break.

20 CHAIRMAN PREISSE: I can do tomorrow
21 or I can do Wednesday.

22 MR. SINNOTT: We should also ask
23 counsel, because counsel tend to be busy.

24 MR. DRABICK: Wednesday is better
25 for me.

1 Do these two witnesses need to
2 return or are we done with them?

3 MS. GRANDJEAN: Could you please
4 subpoena the two witnesses to return when we
5 determine the next hearing date?

6 MEMBER SINNOTT: It sounds like
7 Mr. Drabick is indicating the ability to produce
8 those two witnesses by agreement.

9 Is that right, Mr. Drabick?

10 MR. DRABICK: If it's Wednesday
11 afternoon, yes, sir.

12 MEMBER SINNOTT: Okay.

13 MS. GRANDJEAN: Let me ask my client
14 if he's able to make it on Wednesday afternoon.

15 MEMBER SINNOTT: Sure. If you want
16 to confer, that's fine.

17 CHAIRMAN PREISSE: 2:00?

18 MEMBER SINNOTT: I'm back by 2.

19 Counselors? Witnesses? Respondent?
20 2:00 Wednesday afternoon?

21 MR. DRABICK: That's agreeable.

22 MS. GRANDJEAN: That works for us as
23 well.

24 MEMBER SINNOTT: And the
25 understanding is that the two witnesses,

1 Mr. Drabick, that you called today, Mr. Almeida and
2 Mr. Brown, will be available at 2:00 on Wednesday
3 when we reconvene?

4 MR. DRABICK: That is correct, sir.

5 CHAIRMAN PREISSE: So we'll -- we're
6 not going to recess. We're going to pass to take
7 up this matter again on Wednesday, and we have a
8 little bit more Board business to conduct now. Is
9 that right?

10 MEMBER SINNOTT: I think at this
11 point we're going to call a matter having to do
12 with a hiring here at the Board. And then after
13 that there will be a declaration of recess until
14 Wednesday at 2:00.

15 CHAIRMAN PREISSE: That sounds
16 right.

17 DEPUTY DIRECTOR PAYNE: The next
18 item on the agenda is employee hire and promotion.
19 Director, do you want to talk to that?

20 DIRECTOR LEONARD: Board members may
21 be aware that one of our Democratic employees in
22 the office who works in concert with Carla resigned
23 her position so we had a vacancy to fill. We've
24 decided to recommend to the Board that that vacancy
25 be filed by a current employee, Mike Wheel

1 (phonetic), in the office who's been with us a
2 number of years, very experienced in this area.
3 And then this resolution would provide for a slight
4 increase in pay, given the additional
5 responsibilities. And then to fill his position,
6 it would be to hire Kim Walter as a full-time clerk
7 in our precinct election official division, both of
8 those beginning today. She's been, again, a very
9 experienced seasonal employee for us in that
10 department, and I know the manager of that division
11 is happy about the prospect of having Kim brought
12 on as a full-time employee.

13 MS. MARINELLO: I move the Franklin
14 County Board of Elections hire Kim Walter as a
15 full-time clerk in the PEO department beginning
16 Monday, August 27, 2018, at a salary of \$39,000 per
17 year, \$18.75 per hour, and promote Michael Wheel to
18 the position of election operations department at a
19 salary of \$49,920 per year or \$24 per hour.

20 MEMBER SINNOTT: Second.

21 DEPUTY DIRECTOR PAYNE: All those in
22 favor signify by saying aye.

23 (Vote taken.)

24 DEPUTY DIRECTOR PAYNE: All opposed,
25 same sign.

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(No response.)

DEPUTY DIRECTOR PAYNE: Motion carries.

CHAIRMAN PREISSE: So we'll be in recess until 2:00 this Wednesday.

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Thereupon, the proceedings were concluded at approximately 3:36 p.m.

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C E R T I F I C A T E

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THE STATE OF OHIO:

SS:

COUNTY OF FRANKLIN:

I, Carla D. Castle, a Professional Reporter and Notary Public in and for the State of Ohio, do hereby certify that the foregoing is a true, correct, and complete written transcript of the proceedings in this matter;

That the foregoing was taken by me stenographically and transcribed by me with computer-aided transcription;

That the foregoing occurred at the aforementioned time and place;

That I am not an attorney for or relative of any of the parties and have no interest whatsoever in the event of this matter.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal of office at Columbus, Ohio, this 31st day of August, 2018.

/s/Carla D. Castle
Notary Public, State of Ohio

My Commission Expires: September 29, 2021.

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