

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

IN THE FRANKLIN COUNTY BOARD OF ELECTIONS

- - -

IN RE: :
:
SPECIAL MEETING :

- - -

November 19, 2021

PROCEEDINGS OF
THE FRANKLIN COUNTY BOARD OF ELECTIONS

before Temporary Chairman Josh Jaffe, Director
Antone White, Deputy Director David Payne, and
Board Members Kimberly E. Marinello, and Michael
Sexton, on Friday, November 19, 2021, commencing at
approximately 10:20 a.m., and adjourning at
approximately 1:52 p.m.

- - -

HIGGINS & ASSOCIATES
4889 Sinclair Road, Suite 102
Columbus, OH 43229-5433
614.985.DEPO(3376) 888.244.1211

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

APPEARANCES:

FRANKLIN COUNTY PROSECUTOR'S OFFICE
Jeanine Hummer, Esquire
Assistant Prosecuting Attorney
373 South High Street, 13th Floor
Columbus, Ohio 43215,

On behalf of the Board.

Also present:

Mel Fuhrmann
Carla Patton
Erin Gibbons
Jeff Mackey

- - -

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

I N D E X

- - -

AGENDA ITEMS	PAGE
Nomination of Temporary Chairman	4
Provisional Ballots	5
Extraction of Provisional Ballots	9
Provisional Ballots for Consideration	10
Extraction of Additional Provisional Ballots	15
Re-Making of Provisional Ballots	16
Re-Making of Unscanned Election Day Ballots	18
COVID-19 Testing Policy	54
COVID-19 Vaccination Incentive Program	47
Employee Recognition Program	25
Voter Registration Challenge	20
Provisional Ballots for Consideration	30
November 3, 2021 General Election Results Certification	30
Potential Recount Selection of Voting Locations	31
Potential SOS Ordered Recount Selection Of Voting Locations	37
Post-Election Audit	43
Adjournment	63

- - -

P R O C E E D I N G S

- - -

1
2
3 MEMBER JAFFE: We can't reach Doug.
4 I think there are some things we can take care of
5 and see if we can find out what is wrong with him.

6 DEPUTY DIRECTOR PAYNE: Okay.

7 MEMBER JAFFE: So why don't we do
8 that.

9 DEPUTY DIRECTOR PAYNE: All right.
10 I will go ahead and take roll.

11 Kim Marinello.

12 MEMBER MARINELLO: Here.

13 DEPUTY DIRECTOR PAYNE: Mike Sexton.

14 MEMBER SEXTON: Here.

15 DEPUTY DIRECTOR PAYNE: Doug
16 Preisse.

17 (No response.)

18 DEPUTY DIRECTOR PAYNE: Josh Jaffe.

19 MEMBER JAFFE: Here.

20 DEPUTY DIRECTOR PAYNE: We have a
21 quorum.

22 I think the first order of business
23 would be to nominate somebody as a temporary
24 chairman.

25 MEMBER MARINELLO: I nominate Josh

1 Jaffe as temporary chairman.

2 MEMBER SEXTON: Second.

3 DEPUTY DIRECTOR PAYNE: It's been
4 moved and seconded to make Josh Jaffe temporary
5 chairman, we will just do a voice. All those in
6 favor of the motion, signify by saying aye.

7 All opposed, same sign.

8 Josh Jaffe is the temporary
9 chairman.

10 The first item on the agenda is
11 provisional ballots. And I believe that we had
12 2004 provisional ballots cast. I will call on Mel
13 Fuhrmann, the Director of the Voter Services
14 Department, to give us a briefing on the
15 provisional ballots.

16 MEMBER JAFFE: Were we going to move
17 the voter challenge to the first item since we have
18 someone here or do we want --

19 DEPUTY DIRECTOR PAYNE: I think if
20 we get through this part of --

21 MEMBER JAFFE: Got it.

22 MS. FUHRMANN: Good morning. Mel
23 Fuhrmann for voter services.

24 MEMBER JAFFE: Good morning.

25 MS. FUHRMANN: We had a total of

1 2204 provisional ballots cast. Of that amount,
2 2003 we would like to recommend to approve, and we
3 had 188 provisional ballots for which we recommend
4 that the Board would reject.

5 DEPUTY DIRECTOR PAYNE: And, Mel,
6 just for clarification, that would leave, is that
7 13 ballots that later on will be asking the Board
8 to -- it requires some additional --

9 MS. FUHRMANN: That's right. So of
10 that amount, we have 13 ballots for board review
11 that concern date of birth issues, and then we have
12 another 13 that we -- that need to be remade.

13 DEPUTY DIRECTOR PAYNE: So we will
14 do that later.

15 I think it will be appropriate to
16 have a motion for the approval of the 2003
17 provisional ballots that Mel and her staff
18 recommend to be counted.

19 MS. HUMMER: For the record, it's my
20 understanding that the Board has received the
21 reasons for the rejection as part of their packet,
22 Exhibit A.

23 MS. FUHRMANN: I'm happy to read
24 those into the record, if you would like.

25 MS. HUMMER: They can be adopted

1 into the record by virtue of the packet.

2 MS. FUHRMANN: That's right, those
3 are all in Exhibit A.

4 MEMBER JAFFE: We got them.

5 MEMBER SEXTON: 188?

6 MS. FUHRMANN: 188 rejected. And
7 you can see the breakdown there on Exhibit A.

8 MEMBER JAFFE: So the vast majority
9 are just not registered to vote in Ohio?

10 MS. FUHRMANN: That's correct.
11 There were 113 ballots where the voters simply were
12 not registered anywhere in the state.

13 DEPUTY DIRECTOR PAYNE: Maybe for
14 the purposes of the people in the audience and
15 people on virtual, maybe you could go through the
16 categories of those that we are recommending be
17 rejected.

18 MS. FUHRMANN: Sure. Of the 188
19 provisionals that we are recommending for
20 rejection, 113 were not registered anywhere within
21 the state, 23 were voters who were in the wrong
22 precinct and location, we had five voters who
23 failed to provide a valid address, 30 where no ID
24 was provided at all, we had 10 where the voter had
25 already voted, six where there was no birth of date

1 at all, and then we had one where there was no
2 ballot in the envelope.

3 DEPUTY DIRECTOR PAYNE: And that's
4 our 188.

5 MEMBER JAFFE: And all of these
6 people were contacted with the opportunity to
7 resolve whatever the issue was; is that right?

8 MS. FUHRMANN: Yes. On Election Day
9 they are provided with a handout and it tells them
10 what they would need to do to cure.

11 MEMBER JAFFE: Okay.

12 MEMBER MARINELLO: I move that the
13 Board approve the counting of 2003 provisional
14 ballots, and that all provisional ballots deemed
15 valid will be counted and included in the official
16 canvass results for the November 2, 2021 General
17 Election.

18 MEMBER JAFFE: Second.

19 DEPUTY DIRECTOR PAYNE: All those in
20 favor of the motion, signify aye.

21 All opposed, same sign.

22 Motion carries.

23 Next item is the rejection of the
24 188 provisional ballots as recommended by staff.

25 MEMBER SEXTON: Mr. Chairman, I move

1 the Board reject the counting of 188 provisional
2 ballots as identified by category in Exhibit A, and
3 that all provisional ballots rejected will not be
4 counted or included in the official canvass results
5 for the November 2, 2021 General Election.

6 MEMBER JAFFE: Second.

7 DEPUTY DIRECTOR PAYNE: All those in
8 favor of the motion, signify by saying aye.

9 All opposed, same sign.

10 Motion carries.

11 The next item would be for approval
12 to open the 2003 provisional ballots that were
13 recommended for approval.

14 MEMBER JAFFE: I move the Board
15 authorize the staff to extract the approved
16 provisional ballots.

17 MEMBER MARINELLO: Second.

18 DEPUTY DIRECTOR PAYNE: It's been
19 moved and seconded. All those in favor of the
20 motion, signify by saying aye.

21 All opposed, same sign.

22 Motion carries.

23 DEPUTY DIRECTOR PAYNE: Do you want
24 to just briefly explain what you are going to do
25 now with staff?

1 MS. FUHRMANN: Right. So currently,
2 we have all of the voter services staff members and
3 some absentee staff members back in the vaults in
4 the absentee division, which is under double lock
5 and key, and all of the staff members are sitting
6 in bipartisan pairs and they are ready to extract
7 all of the ballots from the envelopes so they can
8 then be run through the counting machine.

9 MEMBER JAFFE: Great. Very good.

10 DEPUTY DIRECTOR PAYNE: Thank you.

11 Then we had, as you mentioned in
12 your report, we had 13 provisional ballots for
13 board consideration. Do you want to go through
14 those, Mel?

15 MS. FUHRMANN: Right. So we had 13
16 provisional ballots before the Board this morning
17 for date of birth issues. So there was some
18 question about the date of birth, whether it was
19 off by a day, a month, or a year, and there is a
20 provision of the Ohio Revised Code that allows the
21 Board to approve those if they so choose. And I'm
22 happy to read that provision of the code into the
23 record, if you would like.

24 MEMBER JAFFE: We do not have those
25 packets as part of our packet, do we?

1 MS. FUHRMANN: No, we do not have
2 those.

3 MEMBER JAFFE: They are all similar
4 date of birth digit issues?

5 MS. FUHRMANN: That's right. The
6 voter provided a date of birth, but it did not
7 match our record, it was off by either a day, a
8 month, or a year. Or in some instances, the voter
9 may have written 2021 as the year, that's a common
10 mistake also. But all other aspects of the
11 provisional ballot complied with the provisions of
12 the code.

13 And again, there is a provision of
14 the code that allows for approval that I'm happy to
15 read into the record.

16 DIRECTOR WHITE: Please do.

17 MEMBER JAFFE: Yeah.

18 MS. FUHRMANN: All right. "The
19 month and the day of the voter's date of birth on
20 the affirmation statement must match the month and
21 day of the voter's date of birth in the voter
22 registration database, unless one of the two
23 following exceptions apply:

24 One, the voter's date of birth in
25 the database is 1-1-1800; or, two, the Board of

1 Elections finds by a vote of at least three members
2 that the voter has met all of the other
3 requirements of Division (B) (3) of Revised Code
4 3505.183."

5 And that provision of the code has
6 six requirements:

7 One, the provisional voter is
8 registered to vote;

9 Two, the provisional voter is
10 eligible to cast a ballot in the precinct and for
11 the election in which the individual casts the
12 ballot;

13 Three, the provisional voter
14 provided all of the information required, i.e., the
15 printed name, signature, date of birth and current
16 address, and provided identification on election
17 day or during the seven days following the
18 election;

19 Four, if the provisional voter
20 provided their Social Security number, driver's
21 license or state ID number, that number is not
22 different than the number contained in the
23 statewide voter registration database;

24 Five, the provisional voter provided
25 their current address;

1 And six, if the provisional voter
2 has been challenged, they provided information
3 necessary to resolve the challenge during the seven
4 days following the election or the Board resolved
5 the challenge in favor of the voter at a hearing.

6 MEMBER JAFFE: So all 13 of these
7 voters met all of those requirements, and it's up
8 to three of us to decide that they can be counted
9 despite the issue with their date of birth?

10 MS. FUHRMANN: Yes, sir.

11 MEMBER JAFFE: I think Sarah was
12 going to go get the ballots, because I would like
13 to take a look at them before making a decision on
14 that.

15 MS. FUHRMANN: Okay.

16 DEPUTY DIRECTOR PAYNE: So should we
17 wait for her or what's the preference, move on to
18 remaking of unscanned Election Day ballots and then
19 come back to --

20 DIRECTOR WHITE: Why don't we do
21 that.

22 MEMBER JAFFE: Yeah.

23 DEPUTY DIRECTOR PAYNE: Remaking of
24 unscanned Election Day ballots, I will call on
25 Carla Patton. Unless the ballots actually just

1 came in the room.

2 MEMBER JAFFE: Let's take a look at
3 the ballots.

4 DEPUTY DIRECTOR PAYNE: Thank you,
5 Sarah.

6 MEMBER JAFFE: So we don't have the
7 voter record for comparison, does the sticker
8 have -- no, the sticker does not have --

9 MEMBER MARINELLO: Everything is on
10 there except the date of birth?

11 MS. FUHRMANN: That's right.

12 DIRECTOR WHITE: That was determined
13 by bipartisan teams --

14 MS. FUHRMANN: That's right.

15 DIRECTOR WHITE: -- during the
16 provisional review process; is that right?

17 MS. FUHRMANN: Yes.

18 MEMBER JAFFE: All right. It looks
19 like it's marked where the issue was.

20 Quite a few elderly folks.

21 MEMBER MARINELLO: Okay.

22 MEMBER JAFFE: If you guys agree,
23 I'm comfortable erring on the side of not
24 disenfranchising these 13 voters for what appears
25 to be a brain fart.

1 MEMBER SEXTON: These are
2 provisional ballots?

3 DEPUTY DIRECTOR PAYNE: Yes, there
4 were 13.

5 MEMBER SEXTON: So I move the Board
6 approve the counting of 13 additional provisional
7 ballots and the rejection of zero additional
8 provisional ballots, and that all provisional
9 ballots be valid and counted and included in the
10 official canvass results for the November 2nd, 2021
11 Election.

12 MEMBER JAFFE: Second.

13 DEPUTY DIRECTOR PAYNE: All of those
14 in favor of the motion, signify by saying aye.

15 All opposed, same sign.

16 Motion carries.

17 Thank you, Mel.

18 MS. FUHRMANN: Thank you. Did you
19 want to address --

20 DEPUTY DIRECTOR PAYNE: Yeah. We
21 need authorization to extract those additional 13
22 provisional ballots.

23 MEMBER MARINELLO: I move the Board
24 authorize the staff to extract the additional 13
25 approved provisional ballots.

1 MEMBER JAFFE: Second.

2 DEPUTY DIRECTOR PAYNE: All those in
3 favor of the motion, signify by saying aye.

4 All opposed, same sign.

5 Motion carries.

6 In the past, we have given
7 authorization to the staff to remake any of those
8 13 additional that needed to be remade.

9 MEMBER JAFFE: Okay. I move the
10 Board author the staff to remark the provisional
11 ballots and that these remade ballots shall be
12 tabulated and included in the official canvass of
13 the results for the November 2, 2021 General
14 Election, the report should be made to the Board
15 later today.

16 MEMBER MARINELLO: Second.

17 DEPUTY DIRECTOR PAYNE: It's been
18 properly moved and seconded. All those in favor of
19 the motion, signify by saying aye.

20 All opposed, same sign.

21 Motion carries. The remaking of the
22 unscanned Election Day ballots, I think that was
23 it. Right, Mel?

24 MS. FUHRMANN: Right. And just to
25 be clear, the 13 date of birth issues were separate

1 from the 13 -- we had 13 additional ballots that
2 need to be remade because the wrong ballot was
3 given on Election Day. So thank you for that. And
4 I think Sarah has gone to let my staff know that
5 they can begin opening the ballots. So thank you.

6 DEPUTY DIRECTOR PAYNE: Does anybody
7 have any questions? I guess I got confused because
8 the 13 and the 13. So the reopening of the ballots
9 includes the 13 that you approved, as well as 13
10 additional. And do you want to explain those
11 again?

12 MS. FUHRMANN: Sure. So there were
13 13 date of birth issues which you approved, and
14 then there were an additional 13 ballots that we
15 were asking for permission to remake those ballots
16 because they were given -- those voters were given
17 the wrong ballot on Election Day; so we are asking
18 permission to remake those 13, just to be clear.

19 MEMBER JAFFE: It looks like we
20 authorized the staff to remake ballots generally,
21 not specific groups of 13 ballots; so I think we
22 accomplished that.

23 MEMBER MARINELLO: Are the 13 for
24 the wrong ballots in the Exhibit A included
25 anywhere?

1 MS. FUHRMANN: Yes, they are
2 included in the total, the grand total recommended
3 to accept, which is 2003, that includes the 13
4 remakes.

5 DEPUTY DIRECTOR PAYNE: And the
6 remakes are necessary so that those voters are only
7 voting in the elections which they should -- and
8 the races which they should have been permitted to
9 vote in.

10 MEMBER SEXTON: We have a total of
11 26 remakes?

12 DIRECTOR WHITE: 13.

13 MS. FUHRMANN: 13 remakes, and 13
14 date of birth issues, which were separate.

15 MEMBER SEXTON: Okay.

16 MEMBER JAFFE: We are not remaking
17 those.

18 MS. FUHRMANN: Correct. I hope that
19 clears up any confusion. It was just a
20 coincidence, in other words, that there were two
21 sets of 13.

22 DEPUTY DIRECTOR PAYNE: Thank you,
23 Mel.

24 The next on the agenda is the
25 remaking of unscanned Election Day ballots.

1 MS. PATTON: Good morning. We have
2 received -- we have 27 ballots that were unable to
3 be scanned as part of the unofficial results on
4 election night. Those ballots were unable to be
5 scanned. They were either a curbside ballot that
6 may have been damaged by the stub being torn off
7 incorrectly; therefore, damaging the timing marks
8 on the ballot, there were other ballots that came
9 out of the markers that had a streak that went
10 through the barcodes that were unable to be
11 scanned. And so after researching and validating
12 that none of those ballots were recast properly, we
13 are asking that you allow us to remake those
14 ballots and include them in the official canvass
15 today.

16 MEMBER JAFFE: Makes sense to me.

17 MEMBER SEXTON: I would move the
18 Board authorize the staff to remake 27 unscanned
19 Election Day ballots, and that these remade ballots
20 shall be tabulated and included in the official
21 canvass of the results from the November 2, 2021
22 General Election with a report to be made to the
23 Board later today.

24 MEMBER JAFFE: Second.

25 DEPUTY DIRECTOR PAYNE: It's been

1 properly moved and seconded. All those in favor of
2 the motion, signify by saying aye.

3 All opposed, same sign.

4 Motion carries.

5 If we could, the next item on the
6 agenda, if we could move up the voter challenge
7 because we have Sharon Rothermel in the audience,
8 if that's the preference of the Chair and the
9 Board, I think we should do that.

10 MEMBER JAFFE: Let's do it.

11 DEPUTY DIRECTOR PAYNE: Mel, do you
12 want to --

13 MS. FUHRMANN: Sure. So the Board
14 may remember from the last meeting that we had a
15 voter challenge filed by Sharon Rothermel, who I
16 believe is here today, against a voter by the name
17 of Erin Nicole Mills. And they both share the
18 address in our database of 6842 Silverrock Drive in
19 New Albany. And at that time, the Board had voted
20 to table their decision on the voter challenge
21 because they wanted some additional information on
22 Erin Nicole Mills. And that additional
23 documentation is in your packet, and I'm happy to
24 explain what that is.

25 You will see in your packet a

1 printout from our database that shows that we
2 forced Erin Nicole Mills to cast a provisional
3 ballot this time since her residency was in
4 question. And then there's another piece of
5 documentation that is Ms. Mills' voting history as
6 of 11-16. And you will see that she did not vote
7 in this most recent election. So that is that
8 additional documentation requested on behalf of the
9 Board.

10 MEMBER JAFFE: Okay. As of the last
11 meeting several attempts have been made to contact
12 her, as she has continued to be unresponsive?

13 MS. GIBBONS: That's correct.

14 MS. HUMMER: It was sent to the
15 Silverrock address at issue.

16 MS. GIBBONS: We sent it to the
17 former address as well, twice.

18 MS. FUHRMANN: Yes. It was sent to
19 both her Silverrock address and her previous
20 address, which is 1685 Fallhaven Drive. And it's
21 my understanding that to date we have not received
22 any response from Ms. Mills.

23 MEMBER JAFFE: Okay. I also recall
24 from the last meeting that we wanted to hear
25 in-person from Ms. Rothermel, and she has joined us

1 today to hopefully speak with us.

2 MS. HUMMER: She should be able to
3 come to the microphone and be sworn in as well.

4 MEMBER JAFFE: Thank you.

5

- - -

6

SHARON ROTHERMEL,

7 being by me first duly sworn, as hereinafter
8 certified, and says as follows:

9 DEPUTY DIRECTOR PAYNE: Just
10 generally give an overview, I think.

11 MS. ROTHERMEL: I got an
12 acknowledgement notice of a polling place and
13 precinct in the mail in August at my address but
14 with Erin Nicole Mills' name. And it concerned me;
15 so I called and talked to Erin multiple times,
16 actually. And she said to -- she would check it
17 out, I don't know, she told me to -- I'm getting
18 all nervous here.

19 DIRECTOR WHITE: It's all right.

20 MS. ROTHERMEL: Anyway, there was
21 going to be a hearing but that she didn't expect
22 the woman to show up, and didn't think I probably
23 had to either. Then I got another call this last
24 week saying that you wanted some additional
25 information. So I can tell you that I have lived

1 there for 12 years. And the people before me
2 bought it new and lived there until we moved in.
3 And they have currently moved back into our
4 neighborhood into a different condo. So Erin
5 Nicole has never lived on Silverrock Drive. So
6 that's all I know.

7 DEPUTY DIRECTOR PAYNE: Perfect.
8 Does the Board have any questions or prosecutor --

9 MS. HUMMER: So, Ms. Rothermel, do
10 you know Erin Nicole Mills at all?

11 MS. ROTHERMEL: No. And in fact,
12 our neighborhood, it's a condo neighborhood and the
13 street signs are weird, and there's multiple 6482
14 streets in the neighborhood; so I had the condo
15 board president check it out -- I knew one of the
16 families that lived at a 6482, but I didn't know
17 the other two. He checked to see if that one
18 happened to be Erin Nicole Mills, and it wasn't.
19 He looked back in the rosters and there's nobody in
20 our neighborhood with that name.

21 MS. HUMMER: That's it.

22 MEMBER JAFFE: Okay.

23 DEPUTY DIRECTOR PAYNE: Any other
24 questions?

25 MS. ROTHERMEL: All done?

1 DEPUTY DIRECTOR PAYNE: Yeah. Thank
2 you.

3 MS. ROTHERMEL: Thank you.

4 MEMBER JAFFE: Well, looks to me
5 like Erin Nicole Mills filled out a voter
6 registration form with either the wrong address or
7 some other strange happening. I'm convinced that
8 she does not in fact live at the address she's
9 registered to vote; so I move that the Board
10 approve the challenge of right to vote filed by
11 Sharon Kay Rothermel of 6842 Silverrock Drive, New
12 Albany against Erin Nicole Mills of 6842 Silverrock
13 Drive, New Albany, and that Erin Nicole Mills'
14 registration be removed in the Franklin County
15 voter file.

16 MEMBER SEXTON: Second.

17 DEPUTY DIRECTOR PAYNE: It's been
18 properly moved and seconded. All those in favor of
19 the motion, signify by saying aye.

20 All opposed, same sign.

21 Motion carries.

22 MS. ROTHERMEL: Thank you.

23 DEPUTY DIRECTOR PAYNE: Thank you
24 very much for coming.

25 All right. We have our team taking

1 the provisional ballots out. So I think the next
2 item on the agenda would be the employee
3 recognition program, and I'm happy to present that.
4 Robin Link from our staff has been proactive. We
5 had an employee recognition program, at least in
6 the seven years I have been here, but it only
7 involved a banquet at the end, and it was primarily
8 focused on the trainers of election workers. Robin
9 Link took it upon herself to develop and promote an
10 extensive employee recognition program that will
11 include monthly peer recognition awards. Again, we
12 will have the annual dinner, that I know at least a
13 few of our board members have attended in the past
14 for the distinguished service award. We will have
15 an award for the outstanding precinct election
16 official and monthly employee awards, as well as
17 other awards, as required. We would like to ask
18 the Board for an amount of money not to exceed
19 \$5,000 for these awards and for the dinners. This
20 also, this resolution is required in order to spend
21 these types of money by the Ohio Attorney General,
22 as well as the Auditor of State and our county
23 auditor.

24 So if anybody has any questions
25 about our employee recognition program. I think

1 the Director would attest that we have a great
2 group of employees, full-time employees, part-time
3 employees, and seasonal employees, and I think it's
4 absolutely appropriate to recognize our team
5 throughout the year for all of the good work that
6 they do.

7 MEMBER MARINELLO: I agree.

8 MEMBER SEXTON: When is it?

9 DEPUTY DIRECTOR PAYNE: I'm sorry?

10 MEMBER SEXTON: When is the dinner
11 going to be this year?

12 DEPUTY DIRECTOR PAYNE: Some time in
13 January.

14 DIRECTOR WHITE: We are looking to
15 January, probably mid to late January.

16 MEMBER SEXTON: With that, I move
17 the Board pass the resolution creating an employee
18 recognition program that will honor board employees
19 in 2022 for outstanding service, and authorize
20 expenditure of funds not to exceed \$5,000.

21 MEMBER JAFFE: Second.

22 DEPUTY DIRECTOR PAYNE: It's been
23 properly moved and seconded. All those in favor of
24 the motion, signify by saying aye.

25 All opposed, same sign.

1 Motion carries.

2 I think -- I don't want to speak out
3 of turn, but I think it was the wish of the Chair
4 if we could postpone the discussion until later in
5 the day to see if we can get Doug Preisse to talk
6 about the COVID-19.

7 MEMBER JAFFE: Yes. I know Doug had
8 some questions about both of those, and I think it
9 probably warrants some discussion. So why don't we
10 see if we can get ahold of Doug. I don't think
11 there's any particular immediacy to either of those
12 items. So is there anything else?

13 MEMBER SEXTON: You are saying after
14 the certification?

15 MEMBER JAFFE: Yeah. We still don't
16 know what the situation is with Doug.

17 MS. HUMMER: For purposes of your --
18 there's your courtesy to Doug, and there's your
19 Parliamentary Procedure. You do have a quorum, you
20 do have the ability to proceed and vote, if you so
21 desire.

22 MEMBER JAFFE: Sure. I do not so
23 desire. I'm sorry.

24 Are we waiting for provisional
25 ballots to be counted?

1 DEPUTY DIRECTOR PAYNE: We are. At
2 this point in the process, it would be either
3 appropriate for an adjournment or recess.
4 Typically we recess.

5 MEMBER JAFFE: Why don't we do a
6 recess. That usually doesn't take very long.

7 MEMBER SEXTON: Do we know how long?

8 DEPUTY DIRECTOR PAYNE: I talked to
9 Mel before, it's about 30 minutes to open the
10 ballots.

11 MS. FUHRMANN: That's right, 30 to
12 40 minutes to extract. And then Sarah and I have
13 to go back and reclassify the 26 ballots that you
14 just granted permission for us to reclassify, we
15 have to print out the appropriate labels. So if
16 you don't have any further need for us, I would ask
17 for permission to do that.

18 DEPUTY DIRECTOR PAYNE: Then we also
19 need to have a report created, an entire report
20 created by Jeff and by Carla to certify the
21 election. I would guess an hour and a half, two
22 hours.

23 DIRECTOR WHITE: I would recess
24 until 1:00.

25 DEPUTY DIRECTOR PAYNE: Recess until

1 1:00. We are in recess.

2 (Board recessed at approximately 10:53 a.m.)

3 - - -

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1 Friday Afternoon Session
2 November 19, 2021
3 1:00 p.m.

4 - - -

5 DEPUTY DIRECTOR PAYNE: It's 1:00,
6 and we are back from recess. And we have a quorum
7 of three members.

8 The first item would have been
9 provisional ballots for consideration, but I'm told
10 by the folks that we have no more ballots for
11 consideration after opening the provisionals. So
12 we will go straight to certification of the
13 November election. And I will turn that over to
14 Carla Patton.

15 MS. PATTON: Good afternoon. You
16 have been provided with the summary results report
17 with groups for Franklin County only. These are
18 the results from just Franklin County as they were
19 cast for the November 2, 2021 General Election.
20 After a bipartisan canvass of all votes cast in the
21 county, whether it was mail, absentee, office,
22 early voting, election day or provisional, these
23 are the vote results we recommend that you certify
24 for the November 2021 General Election.

25 DIRECTOR WHITE: Very good. What
 were the total votes cast?

1 MS. PATTON: Total votes cast for
2 the election was 203,658, for a turnout of
3 23.54% in the county out of 865,220 voters
4 eligible.

5 DIRECTOR WHITE: Thank you.

6 MEMBER JAFFE: Any questions?

7 MEMBER SEXTON: Questions?

8 Seeing none, I move the Board
9 certify and declare as final the official canvass
10 of the votes cast at the November 2, 2021 General
11 Election as submitted by staff.

12 MEMBER JAFFE: Second.

13 DEPUTY DIRECTOR PAYNE: It's been
14 properly moved and seconded. All those in favor of
15 the motion certification, signify by saying aye.

16 All opposed, same sign.

17 Motion carries.

18 The next item on the agenda is
19 potential recounts. I don't know, Carla, do you
20 want to start that out?

21 MS. PATTON: Yeah, I will start
22 that. I provided to you a little piece of paper
23 with a couple snippets of a spreadsheet on there,
24 we would ask -- these are races that are
25 overlapping with other counties, the Westerville

1 City Council race overlaps with Delaware County.
2 And the Canal Winchester City Council race overlaps
3 with Fairfield County. We would ask that you
4 declare the results as set forth on these sheets
5 for this -- for these races, as both of these races
6 will fall into a recount phase and we need to
7 declare the results prior to declaring a recount.
8 So we would ask that you declare the results as
9 exhibited on that piece of paper that shows you the
10 Westerville City Council race and the Canal
11 Winchester City Council race. You will see the
12 Franklin County votes along with the other
13 counties' votes and then the total votes for each
14 candidate.

15 MEMBER JAFFE: Were the Franklin
16 County portions of these two races not included in
17 the --

18 MS. PATTON: The Franklin County
19 portion is in the report that you were provided
20 with that you certified as part of the official
21 canvass.

22 MEMBER JAFFE: Okay.

23 MS. PATTON: But to show our portion
24 versus the other county portion, we wanted to break
25 it out so you could see, and then you have the

1 total votes that incorporate those counties.

2 MEMBER JAFFE: Is it because we are
3 the most populous county --

4 MS. PATTON: We are the most
5 populous for both of these cities, yes.

6 DIRECTOR WHITE: Carla, point of
7 clarification. My understanding, there's other
8 potential recounts here. Are we going over those
9 later?

10 MS. PATTON: There are other
11 potential recounts, but these are the two that
12 include other counties as a part of that
13 jurisdiction.

14 DIRECTOR WHITE: Thank you.

15 MEMBER SEXTON: I would assume on
16 these, at least Canal Winchester and Westerville,
17 that in front of me, that the orange ones -- or
18 yellow ones are the --

19 MS. PATTON: Right. So both of the
20 races are vote for four races. And so the three
21 candidates in each of the races that are
22 highlighted with the total votes in yellow, those
23 are the winners, and then there's two candidates on
24 each race that are highlighted in orange. Those
25 are the two candidates up for that last seat on

1 both councils, and those votes fall within the
2 margin of recount, once we add everything together.
3 So the declared winner in Westerville will be
4 Coutanya Coombs, and the declared winner in the
5 Canal Winchester race would be Patrick Shea.

6 DIRECTOR WHITE: For the fourth
7 seat --

8 MS. PATTON: For the fourth seat in
9 each race, yes.

10 MEMBER JAFFE: So what in particular
11 is the initial action the Board needs to take with
12 respect to these two? We certify at least our
13 portion --

14 MS. PATTON: Make a motion to
15 declare the results of those races as final, and
16 including all results within the subdivision.

17 MEMBER JAFFE: Okay. That's not the
18 reason for the --

19 DEPUTY DIRECTOR PAYNE: I think with
20 their previous motion, they certified all races,
21 and which would include those, and my understanding
22 it's just an explanation of the races.

23 MS. PATTON: You need to declare the
24 winners.

25 DEPUTY DIRECTOR PAYNE: Oh, okay. I

1 gotcha. We have to declare a winner in order to
2 have a recount.

3 MS. PATTON: You have to declare the
4 results showing the winners.

5 MEMBER JAFFE: Okay. For the
6 particular purpose of the two multi-county city
7 council races where three candidates are clearly
8 declared winners, the fourth candidate is within
9 the recount margin, I move that we declare Dennis
10 Blair, Megan Reamsnyder, Michael Heyeck and
11 Coutanya Coombs winners in Westerville City
12 Council, and as part of the same motion can I also
13 move that we declare that Laurie Amick, Jill Amos,
14 Ashley Ward and Patrick Shea are the winners in the
15 Canal Winchester City Council race.

16 MEMBER SEXTON: I will second.

17 DEPUTY DIRECTOR PAYNE: It's been
18 moved and seconded. All those in favor of the
19 motion, signify by saying aye.

20 All opposed, same sign.

21 Motion carries.

22 MS. PATTON: So as a result of
23 declaring those two races, as you can see on the
24 side there, you see a margin for each race for
25 Westerville City Council the margin 59.65. And how

1 the margin is determined is you take the number of
2 votes received by the declared winner, as well as
3 all candidates, the votes for candidates that were
4 after, lower than that declared winner. So we took
5 the fourth place, fifth place and sixth place,
6 actually seventh place numbers, added them together
7 and then multiplied that by one half of one percent
8 to come up with a margin of automatic recount. The
9 margin is 59.65 in Westerville. The difference
10 between candidates four and five was 58 votes; so
11 therefore, falls within the recount. Same thing
12 with Canal Winchester candidates. Vote totals for
13 candidates four, five, six and seven were added
14 together, the margin of difference was 22.67 votes,
15 the difference between the fourth and fifth place
16 candidates was eight, which was well within that
17 recount range as well.

18 In addition to these two races, we
19 also had a Local Option in Columbus 28-D, as in
20 delta, that race resulted in a tie vote. So those
21 three races we will need to select some precincts
22 or locations that we will need to hand recount.

23 In addition to that, we will need to
24 set the date for those recounts. And also included
25 in the recount is an anticipated recount coming

1 from the Secretary of State for a district that
2 overlaps from Madison County into Franklin County
3 for the Madison-Plains Local School District Board
4 of Education.

5 DIRECTOR WHITE: Carla, point of
6 clarification. On the tie vote in the Local Option
7 race, does the Board need to declare a winner?

8 MS. PATTON: No. In a Local Option
9 race, a majority affirmative vote on issues is
10 required for passage; therefore, a majority
11 affirmative vote was not reached; therefore, the
12 issue failed as a tie vote.

13 DIRECTOR WHITE: Thank you.

14 MEMBER JAFFE: Is a mandatory
15 recount triggered in that case?

16 MS. PATTON: Yes.

17 MEMBER JAFFE: Okay.

18 MS. PATTON: The margin of error
19 would be two votes in that case but --

20 MEMBER JAFFE: Zero, yeah.

21 MS. PATTON: -- zero is well within
22 the margin.

23 MEMBER JAFFE: Okay. So we now need
24 to select voting locations or is there something we
25 need to do beforehand to approve these recounts?

1 MR. MACKEY: First step is to order
2 the recount of each of those.

3 MS. PATTON: I will say because
4 there are multi-county races here, the Secretary of
5 State will order, ultimately, the recounts for
6 Westerville City Council and Canal Winchester City
7 Council. However, we do need to -- we have the
8 ability to set the date for the Columbus 28-D Local
9 Option recount.

10 MR. MACKEY: In the past weeks, in
11 anticipation of the Secretary ordering those other
12 recounts, we can go ahead and set a date for those,
13 too.

14 MS. PATTON: And make our selections
15 in anticipation of that order.

16 MEMBER JAFFE: Is that Blendon
17 Township Trustees ultimately outside of
18 the margin --

19 MS. PATTON: Yes. So also the
20 inclusion of the provisional ballots and all other
21 ballots that were not included in the unofficial
22 results, that race ended up with the margin of
23 error being, had to be seven votes or less to be in
24 the recount, and it ended up with a nine vote
25 difference; therefore, it falls outside of the

1 automatic recount.

2 MEMBER JAFFE: Okay. So for the one
3 Franklin County only race, which is the Local
4 Option Columbus 28-D is within the half of a
5 percent that triggers an automatic recount, I move
6 that the Board order a recount in that contest for
7 Local Option Columbus 28-D.

8 MEMBER SEXTON: Second.

9 DEPUTY DIRECTOR PAYNE: It's been
10 moved and seconded. All those in favor of the
11 motion, signify by saying aye.

12 All those opposed, same sign.

13 Motion carries.

14 DEPUTY DIRECTOR PAYNE: Did we need
15 to set a date for that also at this time? And we
16 would recommend Monday, November 29th.

17 MR. MACKEY: Yeah, we have to
18 conduct a recount for any recounts that we order
19 within 10 days of certification. So the 10th day
20 would be the 29th, that would be the last day to do
21 it.

22 DEPUTY DIRECTOR PAYNE: And would we
23 think that that would start at 10:00 a.m.?

24 MR. MACKEY: That's fine.

25 MEMBER MARINELLO: I move that the

1 recount in the contest for Local Option 28-D only
2 be conducted by voting location, and that the
3 recount is scheduled for Monday, November 29th,
4 beginning at 10:00 a.m., at the office of the
5 Franklin County Board of Elections, 1700 Morse
6 Road, Columbus, Ohio.

7 MEMBER JAFFE: Second.

8 DEPUTY DIRECTOR PAYNE: It's been
9 moved and seconded. All those in favor of the
10 motion, signify by saying aye.

11 All opposed, same sign.

12 Motion carries.

13 Thank you, Carla.

14 DIRECTOR WHITE: Carla, I'm sorry.
15 Do we have to take up Blendon Township?

16 MS. PATTON: No, there's no
17 automatic recount for the Blendon Township; so no
18 action required in that.

19 MR. MACKEY: If you would like to go
20 ahead and do, in anticipation of the motion for the
21 other two, draw --

22 MEMBER JAFFE: It's three now,
23 Madison-Plains was not the most populous.

24 MR. MACKEY: Sorry. But because in
25 that race there are only two voting locations, and

1 we have to choose at least two voting locations to
2 hand count, we don't have to actually draw voting
3 locations for that one, because there's only two;
4 so we just hand count everything in Madison-Plains.

5 MEMBER SEXTON: So we include
6 Madison-Plains?

7 MR. MACKEY: Yes, for scheduling
8 purposes you could include that.

9 MEMBER MARINELLO: All right. The
10 results of the election for Canal Winchester City
11 Council, for Westerville City Council, for
12 Madison-Plains Local School District levy are
13 within the percentage required to trigger an
14 automatic recount. In the event that the Secretary
15 of State orders a recount in this district, I move
16 that the recount in the contest of Westerville City
17 Council be conducted by voting location, and that
18 the recount is scheduled for Tuesday,
19 November 30th, beginning at 10:00 a.m., at the
20 office of the Franklin County Board of Elections,
21 1700 Morse Road, Columbus, Ohio.

22 MEMBER JAFFE: Second.

23 DEPUTY DIRECTOR PAYNE: It's been
24 properly moved and seconded. All those in favor of
25 the motion, signify by saying aye.

1 All opposed, same sign.

2 Motion carries.

3 DEPUTY DIRECTOR PAYNE: Jeff, do you
4 want to --

5 MR. MACKEY: Go ahead and draw those
6 locations now.

7 DIRECTOR WHITE: Jeff, would you
8 explain for the people on Zoom and the Board what
9 the process is, what we are going to do?

10 MR. MACKEY: Yep. We have to
11 randomly select voting locations, such that we
12 choose voting locations that include at least 5% of
13 the vote cast in each election. So we are going to
14 use the web tool RANDOM.ORG to randomly order our
15 locations, and we will add those to our handy
16 spreadsheet that tells us when we hit the 5% mark.

17 Canal Winchester comes first
18 alphabetically. Canal Winchester race, there are
19 three locations, No. 101 to 103. 101, 102, 103, we
20 will add that in here.

21 Three, two, one are the order,
22 starts -- that's well over, as I mentioned before,
23 we have to choose at least two locations. We will
24 do both 103 and 102 with 3,013, and 2,042 for the
25 Canal Winchester race.

1 Whitehall we have 12 locations.
2 Six, five, and 11 are the first three. See how
3 that does. 105.

4 DIRECTOR WHITE: Yes.

5 MR. MACKEY: We are already over 5%
6 so that will do us.

7 So in Westerville, we will hand
8 recount 2046 and 2037. Save this.

9 And as I explained for the
10 Madison-Plains one, there's only two locations, so
11 we will just hand count both.

12 We will get to do this again here in
13 a second for the audit portion.

14 DEPUTY DIRECTOR PAYNE: So the next
15 item on the agenda is the post-election audit. We
16 are required to do an audit of the 15th
17 Congressional District, as well as two county-wide
18 offices. And I believe we had seven judicial races
19 county-wide and we need to select two of those.

20 DIRECTOR WHITE: Two contested
21 races.

22 DEPUTY DIRECTOR PAYNE: Two
23 contested races. What's the pleasure of the Board
24 in the way we select those two? We can do
25 RANDOM.ORG or we can select just by agreement

1 amongst the Board.

2 MEMBER JAFFE: I'm content with the
3 random selection.

4 DEPUTY DIRECTOR PAYNE: I think each
5 judicial race was listed one through seven.

6 MR. MACKEY: I think you guys have a
7 list of the judicial contests currently in order by
8 full-term commencing date, I numbered them there.
9 I go one through seven here. First two will be the
10 first two.

11 MEMBER JAFFE: Very good.

12 MR. MACKEY: That is Judge of
13 Franklin County Municipal Court, full-term
14 commencing January 1, 2022, and Judge of the
15 Franklin County Municipal Court, full-term
16 commencing January 2, 2022.

17 MEMBER JAFFE: Does the staff have a
18 recommendation on when the audits will begin?

19 DIRECTOR WHITE: The audit has to
20 take place immediately after the Board certifies
21 the results of the recount. So the Board certifies
22 the results of the recount at its December 6th
23 meeting, we would then begin audits on
24 December 7th.

25 MEMBER JAFFE: Is there any reason

1 we would not expect to certify the results of the
2 recount on December 6th?

3 DIRECTOR WHITE: I don't believe so.
4 We should be able to present those recount results
5 at the next board meeting on December 6th.

6 MEMBER JAFFE: Well, that would make
7 sense to plan to start the audit December 7th.

8 MEMBER SEXTON: Okay. Mr. Chairman,
9 following the certification of any recounts, I move
10 that the Board conduct a post-election audit of the
11 2021 General Election; the audit be conducted by
12 voting location; that the audit will be of the
13 contests for Representative to Congress for the
14 15th Congressional District, for Judge of the
15 Franklin County Municipal Court full-term
16 commencing 1-1-2022, and for Judge of the Franklin
17 County Municipal Court full-term commencing
18 1-2-2022; that the audit will begin December 7th
19 until completed; and that the audit will be
20 conducted in accordance with the Secretary of State
21 Directive 2012-56; and that the audit will be
22 conducted at the office of the Franklin County
23 Board of Elections, 1700 Morse Road, Columbus,
24 Ohio.

25 MEMBER JAFFE: Second.

1 DEPUTY DIRECTOR PAYNE: It's been
2 moved and seconded to conduct a post-election
3 audit, all those in favor of the motion, signify by
4 saying aye.

5 All opposed, same sign.

6 Motion carries.

7 And now we need to select those,
8 correct, Jeff?

9 MR. MACKEY: Correct. I think we
10 have 114 locations involved in the Congressional
11 District of 101 to 214 on my selection here.

12 First one, 3061, 3058, 2002, 2003,
13 1050, 1292, 2040, 5028, and 202, 5001.

14 We will do the same thing for the
15 county-wide races here. 323 voting locations in
16 the entire county so 101 through 423.

17 DIRECTOR WHITE: We have a problem
18 with the spreadsheet -- here we go.

19 Does the Board wish to wait for this
20 or go on to other agenda items?

21 MS. HUMMER: I think you can move on
22 to other agenda items and come back to that.

23 DEPUTY DIRECTOR PAYNE: So it looks
24 like we are waiting for the RANDOM.ORG to come back
25 up, and we will get back to that, but in the

1 meantime, I think the final item on the agenda
2 would be the discussion of the COVID-19 testing
3 policy, as well as the COVID-19 vaccination
4 incentive program. And I will turn that over to
5 Director White.

6 DIRECTOR WHITE: Well, I was going
7 to present to the Board the COVID-19 testing policy
8 and incentive program for the Board staff. My
9 understanding that we may want to postpone any
10 discussion on the testing policy at this time.

11 MEMBER JAFFE: Let's go ahead and
12 take them both up.

13 DIRECTOR WHITE: Take them both up.
14 All right.

15 Good afternoon. In your Board
16 materials today for your consideration is to adopt
17 two programs, both the COVID-19 testing policy, as
18 well as the COVID-19 incentive program. First, I
19 will discuss the COVID-19 testing policy.

20 The policy that's being presented
21 today for Board consideration closely mirrors the
22 policy that the Franklin County Board of
23 Commissioners adopted for all Board Commission
24 agencies on September 10th. The Board of
25 Commissioners then put that policy into effect for

1 their commission agencies on October 18. Part of
2 the reason we are introducing this policy for Board
3 of Elections staff is that we know that efforts to
4 reduce the spread of COVID-19 have worked, but we
5 know that the spread continues.

6 As Board of Elections employees,
7 much of our work requires us to work on site and
8 in-person; as such, we believe providing a healthy
9 and safe working environment is paramount to
10 ensuring this office can continue to perform its
11 critical duties.

12 Now, antidotally, we know much of
13 our workforce is vaccinated. While obtaining a
14 vaccination is a personal choice, and we do respect
15 that, we believe that adopting this policy will
16 help continue to ensure the safety of all employees
17 that must regularly work on site and in-person.

18 This new policy requires weekly
19 testing of unvaccinated employees, that includes
20 full-time, part-time and seasonal. Any vaccinated
21 employees that show proof of a COVID-19 vaccination
22 record card will be exempt from testing, and any
23 short-term election workers and precinct election
24 officials are also exempt from this policy.

25 Just a few highlights of the policy

1 before you today. One, unvaccinated employees are
2 required to submit proof of a negative COVID-19
3 test to human resources by 5:00 o'clock every
4 Thursday. We do have COVID-19 proctored
5 self-administered home tests that will be made
6 available to an employee at no charge through our
7 human resources department, or an employee can seek
8 a COVID-19 test from another healthcare provider.

9 Any unvaccinated employee who
10 becomes fully vaccinated after the policy takes
11 effect would be exempt from testing requirements,
12 as long as they provide proof of that vaccination.
13 Unvaccinated employees that do not comply with the
14 COVID-19 testing policy are not eligible for
15 telework, for our telework policies. And the
16 employees who fail to comply with this policy would
17 be subject to discipline.

18 If adopted, this policy would be
19 added to our employee handbook.

20 And pending any questions, I would
21 ask for adoption of this policy. I'm happy to talk
22 about the incentive program, if you want to pack
23 them together.

24 **MEMBER JAFFE:** Go ahead and go over
25 the incentive program, too.

1 DIRECTOR WHITE: Okay. As a
2 compliment to the testing program I just presented
3 to you, we also wish to put forth the COVID-19
4 incentive program.

5 Now, the COVID-19 incentive program,
6 the purpose of the program is to increase the
7 number of unvaccinated employees or to motivate
8 employees to get vaccinated sooner than they
9 otherwise would have. This incentive program will
10 provide \$1,000 to fully vaccinated employees.

11 The program was announced by the
12 Franklin County Board of Commissioners for all
13 Board of Commissioner agencies on October 26th with
14 the ability of non-Board of Commissioner agencies
15 to participate pending leadership approval. The
16 funds for this program will be provided through the
17 Board of Commissioners as part of the American
18 Rescue Plan Act.

19 All employees, full-time, part-time
20 and seasonal who worked during the 2021 General
21 Election and grossed a minimum of \$1,000 are
22 eligible to participate in this program. Again,
23 short-term election workers and precinct election
24 officials are not eligible for this program. To be
25 eligible and receive this incentive, an employee

1 must have received two doses of the Moderna or
2 Pfizer vaccines and one dose of the Johnson &
3 Johnson. The initial disbursement of the \$1,000
4 will be made on December 30, 2021, and the second
5 disbursement of \$1,000 will be made on February 11,
6 2022. The incentive is a taxable source of income.

7 So that's my briefing on these two
8 programs. I'm happy to answer any questions.

9 MEMBER JAFFE: On behalf of Chairman
10 Preisse, who is sick and not able to be with us, I
11 want to communicate a concern that he had upon
12 reviewing the incentive policy, in particular. I'm
13 going to paraphrase what he said, because it was a
14 little less diplomatic than I am inclined to be.
15 He's concerned about paying people to do the right
16 thing, in his words, and what precedent that might
17 create the next time we have an issue like this in
18 terms of people voluntarily seeking out
19 vaccinations in a future pandemic, for example, if
20 we create the expectations that they will be
21 financially-induced to do that.

22 MS. HUMMER: The one thing I would
23 say with regard to that, if I could.

24 DIRECTOR WHITE: Please.

25 MS. HUMMER: Is the narrow scope of

1 this particular incentive is completely tied to the
2 funds provided by the federal government to be used
3 specifically for this pandemic. So that is the
4 nexus for this particular incentive program.

5 MEMBER JAFFE: Sure. I don't think
6 his concern was a legal one so much as what
7 expectation are we creating if employees -- if we
8 find ourselves in a similar situation in the
9 future.

10 DIRECTOR WHITE: And I would say to
11 that, MEMBER JAFFE, to address that concern, I
12 think the Board has in past incentivized employees,
13 you know, annually, whether it be through
14 cost-of-living adjustments or performance pay; so I
15 look at this as just another part of compensation
16 for an employee who -- for employees, particularly,
17 ones who have to work here regularly. We here at
18 the Board of Elections, while we do have a telework
19 policy, we have had some employees take advantage
20 of, the majority of our work has to be conducted on
21 site and in-person, and we recognize that. So this
22 is just another way to incentivize our employees
23 who are really frontline workers, and having to be
24 here and work in-person. So we think that it would
25 make sense to do that.

1 MS. HUMMER: And the other aspect of
2 that, to just add to that, is that your current
3 health benefits program for the county does include
4 a wellness incentive program, where they are either
5 monitoring compensation provided for certain steps
6 throughout the wellness, hitting those items.

7 MEMBER MARINELLO: So it's basically
8 the same thing.

9 MS. HUMMER: Very similar.

10 MEMBER JAFFE: Thank you for
11 addressing those concerns.

12 I'm actually, at this point,
13 comfortable moving on the vaccination incentive
14 program. If we want to take that up and then talk
15 about the testing program afterward, do you think
16 that would be appropriate?

17 MS. HUMMER: Admissible.

18 MEMBER JAFFE: Okay. I move the
19 Board adopt the COVID-19 vaccination incentive
20 program, with the purpose of decreasing the number
21 of unvaccinated employees and/or motivating
22 employees to get vaccinated sooner than they
23 otherwise would have.

24 MEMBER MARINELLO: Second.

25 DEPUTY DIRECTOR PAYNE: It's been

1 properly moved and seconded. All those in favor of
2 the motion, signify by saying aye.

3 All opposed, same sign.

4 Motion carries.

5 MEMBER JAFFE: All right. I do have
6 some questions about the testing program. Which
7 strikes me as distinct from the vaccination
8 incentive program for a couple of reasons is it's
9 an ongoing board policy rather than a one-time
10 incentive, and it sort of, in my mind is
11 unprecedented, for lack of a better word, intrusion
12 into employees' private lives and medical privacy.
13 So I do think it warrants some further discussion.

14 I did want to ask, do we ask for any
15 other private or protected health information from
16 employees at the Board of Elections?

17 MS. HUMMER: If I may.

18 DIRECTOR WHITE: Please.

19 MS. HUMMER: Every county agency has
20 an HR department whereby employees will submit
21 information regarding health-protected information.
22 There is a protocol in place for where that
23 information goes, how it's protected and kept.

24 MEMBER JAFFE: Sure.

25 MS. HUMMER: And that process and

1 procedures have been communicated to the
2 administration here that it would be no different.

3 MEMBER JAFFE: Do we at present ask
4 employees to provide in a blanket way that type of
5 information?

6 DIRECTOR WHITE: We ask for doctors
7 notes, we ask for FMLA information to process that
8 if you request FMLA.

9 MS. HUMMER: Doctors certifications
10 are often filled out with protected health
11 information and kept.

12 MEMBER JAFFE: Okay. Well, that's
13 helpful. I did want to raise a couple timely
14 issues as well, I think. I don't know if everyone
15 saw the Ohio House yesterday passed a piece of
16 legislation that would prohibit employers from
17 requiring proof of vaccination, I believe, is the
18 way that that legislation is phrased. Now, that's
19 not law yet, it just moved to the Ohio House. If
20 that would become law, would this policy be in
21 conflict with that?

22 MS. HUMMER: It's my understanding
23 that because this is not a requirement that you
24 provide proof, but it's a testing requirement, if
25 you don't have the proof, you are to test. So you

1 are not required to show your proof of vaccination,
2 but rather there's an alternative to it.

3 MEMBER JAFFE: Okay.

4 MS. HUMMER: Without having gone
5 through word-by-word, I think because there's an
6 alternative, you are not making every employee
7 submit proof of vaccination irrespective of an
8 alternative testing protocol, I believe this policy
9 would be upheld.

10 MEMBER JAFFE: Similarly, I believe
11 at the national level, the Occupational Safety and
12 Health Administration has recommended or I think
13 actually mandated a very similar testing or
14 vaccination policy that was within the last couple
15 weeks stayed by the Fifth Circuit Court of Appeals,
16 and I understand that will now be considered on the
17 merits by the Sixth Circuit Court of Appeals here
18 in Ohio. That may relate to the federal
19 government's ability to mandate such policies
20 rather than employer's individual ability --

21 MS. HUMMER: I believe that is
22 correct.

23 MEMBER JAFFE: So you don't think
24 there will be an issue with that?

25 MS. HUMMER: I do not.

1 MEMBER JAFFE: Another sort of
2 practical question, the policy describes
3 fully-vaccinated employees as being exempt from the
4 testing requirement if they show proof of that
5 vaccination. I think at this point, at least,
6 under the incentive program, we are defining fully
7 vaccinated as one dose of the J&J or two doses of
8 Pfizer or Moderna, given the situation with booster
9 shots and that kind of thing, do we anticipate
10 redefining what fully vaccinated means to include
11 additional shots or sticking with --

12 MS. HUMMER: I think at this point,
13 the county has not changed that definition. We
14 don't anticipate that.

15 MEMBER JAFFE: And if that were to
16 come up, would it be up to the Board specifically
17 to change the definition as it relates to our
18 policy?

19 MS. HUMMER: Right.

20 DIRECTOR WHITE: On that point, I
21 did ask that question of county administration, and
22 that's the answer I received, that the definition
23 is currently the two shots of the Moderna, Pfizer
24 or one shot of J&J.

25 MS. HUMMER: Your decision today is

1 based on the policy that's in front of you, any
2 change to that policy would come before you.

3 DIRECTOR WHITE: Correct.

4 MEMBER JAFFE: Okay. There was
5 something else that came up, I think, late last
6 night related to workers' compensation and this
7 policy that I think raised maybe more concerns than
8 it addressed. It indicates that the Board has an
9 obligation to protect its employees from infection
10 by each other with COVID, such as, if somebody does
11 get, contracts COVID through their work here, we
12 would be liable under workers' comp.

13 MS. HUMMER: That's an open question
14 that we have seen in the workers' compensation law.
15 And what we were, and what we have been trying to
16 do is anticipate issues regarding that. And put
17 the Board and its employees in the best place in
18 terms of addressing that. And if it was raised
19 with regard to exposure, if it did go to a workers'
20 compensation clause, what do you have in place to
21 address that as the management entity.

22 MEMBER JAFFE: I think I have a
23 particular concern then there about how much is
24 enough to, for us to do as a management entity to
25 protect employees from -- I was looking at the CDC

1 guidance on breakthrough infections, and it's clear
2 people who have been vaccinated are still able to
3 contract COVID and still can be contagious and
4 spread it to others, including other vaccinated
5 people. If we take the testing requirement at face
6 value as a way to detect an outbreak and prevent it
7 from spreading throughout the entire office, should
8 we not consider whether testing vaccinated
9 employees as well would be appropriate?

10 DIRECTOR WHITE: That's a fair
11 question.

12 MS. HUMMER: I think it's based on
13 reasonableness. I mean, what we are seeing is that
14 throughout, you know, nationally, that the
15 vaccinated employees are protected. It is when
16 exposed to non-vaccinated employees that do not
17 have an indication of being positive for COVID that
18 potential for a vaccinated employee to contract
19 COVID occurs. So what we have in place is what we
20 considered the most reasonable policy, the least
21 intrusive policy to address the safety of the
22 employees.

23 DIRECTOR WHITE: And I think, too,
24 because of administrative issues that we have
25 discussed, in terms of how do we manage the testing

1 of 150 employees at any given time.

2 MEMBER JAFFE: Right.

3 MS. HUMMER: And we want to
4 encourage employees -- to be frank, we want to
5 encourage employees as much as we can to become
6 vaccinated. And we have all heard the debate of
7 issues regarding employees who are vaccinated being
8 treated exactly like the non-vaccinated. And you
9 are creating incentives to get people vaccinated,
10 you are hoping people get vaccinated so that the
11 exposure is reduced.

12 MEMBER JAFFE: Sure. I think the
13 incentive program we just adopted is an excellent
14 mechanism to provide an inducement positively to
15 get people to become vaccinated. I was interested
16 to observe and pleased to see that the testing
17 program, both at the commission level and before
18 us, has changed somewhat since we first saw it in
19 September, I think it was. At that point, it was
20 clear that it was intended to be the stick version
21 of the incentive; whereby, the testing program was
22 almost punitive, it required employees to be tested
23 twice a week, and required them to pay
24 out-of-pocket for the testings, and required them
25 to take the test outside of work hours. So all of

1 those things have been changed in the current
2 policy making it much less punitive. I was glad to
3 see that.

4 MS. HUMMER: And the county is
5 providing, I think, rapid tests that are being used
6 throughout all county agencies to again make it
7 easier and quicker for employees.

8 DIRECTOR WHITE: Within what we have
9 acquired, those rapid tests, we have them available
10 for employees here, should the policy pass, that we
11 give out at no charge.

12 MEMBER JAFFE: So I think, even with
13 those changes, making the policy less punitive than
14 it was originally, it's still clear that it's less
15 a testing policy and more another vaccination
16 incentive program, with the incentive being not
17 having to go through the weekly testing rigamarole.
18 I gathered that was an attempt to skirt actually
19 enforcing a vaccine mandate, and it sounds like
20 your legal opinion is it would be enough of a
21 distinction to survive any sort of legal challenge
22 or the Ohio legislature taking some kind of action
23 in that regard.

24 MS. HUMMER: If it isn't, we will be
25 right here to tell you about it.

1 MEMBER JAFFE: I think that
2 represents all of my questions.

3 MS. HUMMER: Thank you very much.
4 Very thoughtful questions.

5 MEMBER MARINELLO: I move that the
6 Board adopt the COVID test policy in order to
7 protect the health of the Board of Elections
8 employees, as well as the public.

9 MEMBER SEXTON: I will second.

10 DEPUTY DIRECTOR PAYNE: It's been
11 properly moved and seconded. Is there a need for a
12 roll call or just a voice vote?

13 MS. HUMMER: Just voice.

14 DEPUTY DIRECTOR PAYNE: All those in
15 favor of the motion, signify by saying aye.

16 MEMBER SEXTON: Aye.

17 MEMBER MARINELLO: Aye.

18 DEPUTY DIRECTOR PAYNE: All opposed,
19 same sign.

20 MEMBER JAFFE: No.

21 DEPUTY DIRECTOR PAYNE: Motion
22 carries 2-1.

23 I think we need to get back to the
24 continued selection of our recount, or our audit.

25 MR. MACKEY: We had an error on the

1 spreadsheet we are using to calculate our 5% rule;
2 we have addressed that now. We will be selecting
3 the list here. 372, 366 is the next one.

4 Still have an issue with the mid
5 numbers. We have got 2152, 5021, 6008, 2026, 2075,
6 2014, 2176, 4032, 4025, 1060, 2213, 3035, 4007,
7 4024, and then 1165 for the county-wide races.
8 That concludes that portion.

9 DEPUTY DIRECTOR PAYNE: And we
10 already did the 15th.

11 MR. MACKEY: Yep.

12 DEPUTY DIRECTOR PAYNE: Great.
13 Unless there's any other items that the Board would
14 like to take up or discuss, I believe adjournment
15 would be in order.

16 MEMBER MARINELLO: I move to
17 adjourn.

18 MEMBER SEXTON: Second.

19 DEPUTY DIRECTOR PAYNE: All those in
20 favor of adjournment, signify by saying aye.

21 All opposed, same sign.

22 We are adjourned.

23 (Thereupon, the proceeding adjourned at
24 approximately 1:52 p.m.)

25

- - -

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

C E R T I F I C A T E

- - -

THE STATE OF OHIO:

SS:

COUNTY OF FRANKLIN:

I, Angela S. Moore, 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 either party and have no interest whatsoever in the event of this litigation.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal of office at Columbus, Ohio, this 19th day of December, 2021.

/s/Angela S. Moore
Notary Public, State of Ohio

My Commission Expires: February 28, 2026.

- - -