

1 ORIGINAL

2 HEARING IN RE: Board Meeting

3 DATE OF DELIVERY:

4 Franklin County Board of Elections
5 280 East Broad Street
6 Columbus, Ohio 43215
7 By Mr. Matthew Damschroder

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MATTHEW DAMSCHRODER

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1 APPEARANCES:

2 Mr. Donald J. McTigue
3 Attorney at Law
4 3886 North High Street
5 Columbus, Ohio 43214

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On behalf of Beverly Campbell.

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2 P R O C E E D I N G S

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4 CHAIRMAN ANTHONY: I'd like to call
5 the Franklin County Board of Elections meeting
6 to order.

7 (Roll call conducted by Director
8 Damschroder.)

9 DIRECTOR DAMSCHRODER: All members
10 are present.

11 The first order of the meeting is to
12 handle the certification of the recounts.

13 There were two automatic recounts, one for
14 Issue 71b, which is a single precinct local
15 liquor option in Westerville, Ward 1,
16 Precinct A.

17 And the other automatic recount was
18 required by the Secretary of State in the 15th
19 Congressional District. There were two other
20 recounts that were requested, one by the
21 Campbell campaign for the 20th Ohio House
22 District. The other, requested by Judge Carol
23 Squire for domestic court judge, the term
24 commencing was January 5, '07, and we can get

1 into more detail.

2 But the first item on your agenda is
3 to retroactively approve the terms of the
4 recount that was negotiated between the Pryce
5 and Kilroy campaigns, and the Board kind of
6 laid some ground rules. Because the Secretary
7 of State establishes minimum requirements,
8 this Board exceeded those minimum requirements
9 by almost three times, doing a ten-percent
10 hand inspection instead of a three-percent, so
11 I think it's important for to us memorialize
12 that fact in the minutes.

13 CHAIRMAN ANTHONY: Thank you. I
14 will entertain a motion.

15 MS. MARINELLO: Mr. Chairman, I move
16 that the Board retroactively approve the terms
17 of the recount of votes cast during the
18 November 7th, 2006 General Election for the
19 Office of Representative to Congress, 15th
20 Ohio Congressional District, as negotiated by
21 the Director and Deputy Director on behalf of
22 the Board and agreed to by counsel to the
23 respective major party nominated candidates
24 for that office.

1 MR. COLLEY: Second.

2 CHAIRMAN ANTHONY: All those in
3 favor, say aye.

4 BOARD MEMBERS: Aye.

5 DIRECTOR DAMSCHRODER: And motion
6 carries.

7 The next motion is an actual motion
8 to certify the results of those recounts and
9 also to issue certificates of election for the
10 winning candidates.

11 I do know that Mr. McTigue, who is
12 here representing Beverly Campbell, may have a
13 comment to make about this at this time.

14 MR. MCTIGUE: Thank you, Matt.

15 Mr. Chairman, Members of the Board,
16 I'm representing Beverly Campbell, and on her
17 behalf, I'm asking that you delay certifying
18 the recount results. And the reason for that
19 is, is that there are five absentee ballots
20 that were not counted during the recount.
21 They were counted during the official, but
22 they have been misplaced or they haven't been
23 located.

24 And if we compare the absentee vote

1 from the official with the recount results
2 thus far, we see, for example, that with
3 regard to Mr. McGregor, he had absentees -- at
4 the official, he had 5,411 votes. He had the
5 exact same number on the recount.

6 If we compare the Campbell, at the
7 official she had 5,081 votes; on the recount,
8 she has 5,076 -- well, 5,077, but that's due
9 to an extra ballot that had originally been
10 rejected being counted this time; it was not
11 included in the official. But if we leave
12 that out, her number is 5,076 on the recount.
13 That's a difference of five. Those are the
14 five missing ballots.

15 And the actual -- and, you know,
16 aside from those five vote -- a five-vote
17 difference, we know from the actual number of
18 ballots counted, that it's five fewer ballots
19 counted.

20 Essentially, what we've been told is
21 that those ballots are in the bins down in the
22 basement in the absentee secure room, and you
23 probably know this, but all the absentee
24 ballots are sorted in bins of approximately, I

1 think, 500.

2 For the recount, board staff went
3 through the bins, they pulled out the ones for
4 the recounts they knew about, like the
5 Kilroy/Pryce, the Campbell/McGregor, the
6 Squire one, they pulled those out. Well,
7 obviously, though, there's still five ballots
8 that got missed.

9 This happened also on the Kilroy
10 recount. There were ones that were initially
11 missed. Board staff went back and located, I
12 don't know if they actually located all of
13 them, but they went back through and found
14 some more.

15 The Campbell -- these
16 Campbell/McGregor absentee ballots are still
17 down there in the basement in these bins. I
18 think, as a recount, and especially, you know,
19 this recount in this precinct, the absentee
20 precinct, was one that she applied for and
21 paid the deposit for. She's entitled to have
22 all of the absentee ballots from the official
23 count counted in the recount. That's the part
24 of the recount, is to recount those same

1 ballots as before and include any new ones
2 that were rejected in error the first time.

3 In order to have accurate results,
4 the certification should be delayed. She is
5 willing to provide volunteers, under board
6 supervision or board employee supervision.
7 That, I realize, is a lot of time involved in
8 going through those bins and there's a lot of
9 demands on the board staff, but she can
10 provide the volunteers with a monitor or
11 supervisor from the board; she'll provide as
12 many as necessary to go through those as
13 quickly as possible, to try to find the five
14 missing ballots.

15 But they should be included in the
16 official certified results. Otherwise,
17 there's a discrepancy that, to the public,
18 raises a question about if these five aren't
19 included, you know, are there other issues or
20 other problems?

21 So I think that we want to things to
22 balance, especially in terms of the number of
23 ballots counted. We know that votes change in
24 recounts, but the number of ballots shouldn't

1 change, except for when you add new -- add
2 more ballots. You shouldn't have fewer
3 ballots.

4 And so I believe that it really
5 behooves the Board to delay certifying that
6 particular recount until these additional five
7 ballots are located and then can be added into
8 the recount results. Especially since, you
9 know, I think the evidence is pretty clear
10 that they are not included here, and that the
11 comparison of the official results to the
12 recount results show that those are most
13 likely five votes for Ms. Campbell.

14 Thank you.

15 CHAIRMAN ANTHONY: All right. Any
16 questions? Dennis.

17 MR. WHITE: Mr. Chairman and Board
18 Members, Don used a word in the beginning of
19 this, the ballots were misplaced. I don't
20 think that's a good --

21 MR. MCTIGUE: I apologize for the
22 word "misplaced." I meant that they're down
23 there, they just weren't sorted out when the
24 board -- board staff originally --

1 MR. WHITE: And I just know there's
2 some questions here; I just want to make sure
3 that you fully understand these ballots are
4 not misplaced. Since election night they've
5 been under lock and key, 24 hours, seven days
6 a week, security cameras, and guards here. So
7 the ballots are not missing, they've not been
8 misplaced. They're there and people had to go
9 through -- Matt, what, 170,000?

10 DIRECTOR DAMSCHRODER: 170,000
11 sheets of paper to find 5,500 absentee
12 ballots, at 5,500 sheets for this House
13 District.

14 MR. WHITE: And after hours and
15 hours and days and days of doing this, this is
16 a situation where every time you add a human
17 factor into this process, you're going to open
18 the process up to things like this.

19 They're there. It will not make a
20 difference in the results of this election.
21 So I would not like to see the Board postpone
22 certifying this election and giving the
23 certifications out to the candidates who have
24 won, but I think we should address the issue

1 of reviewing these ballots again to try to
2 correct the human error and come up with the
3 four ballots that are in there.

4 DIRECTOR DAMSCHRODER: And I concur
5 with Denny. I think the best way to handle
6 this is to go ahead and certify the election
7 or the recount today. After the ten-day
8 period for the contest of election is
9 complete, the ten-day window begins today,
10 after certification, that then we can take up
11 Ms. Campbell's offer to provide volunteers to
12 help sift through the remaining 165,000
13 ballots to find those five sheets of paper,
14 and then have the Board memorialize it for the
15 record at some later date, that those five
16 ballots were identified and what the vote --
17 and kind of almost recertify the recount
18 results.

19 The wrong number of the result. The
20 result isn't going to change, but to recertify
21 the raw vote totals for that contest.

22 CHAIRMAN ANTHONY: Any other
23 comments or questions? Yes, ma'am?

24 MS. PETREE: Matt, how secure can

1 the ballots be, if we have volunteers down
2 there going through the ballots? Will there
3 be employees with those volunteers?

4 DIRECTOR DAMSCHRODER: Yes. That
5 process will be supervised by employees, and
6 employees will likely take part in it.

7 That's why I recommend that we wait
8 until the period for filing contest of
9 election is complete. My feeling is that
10 after -- while they're still technically
11 ballots, at that point in time they become
12 less of a legal instrument for purposes of an
13 election and become more of a public record.
14 So we would have employees supervising them
15 and let the public, that is, Beverly
16 Campbell's campaign volunteers, actually
17 handle the ballots at that point under staff
18 supervision, as we have done in the past for
19 public records.

20 CHAIRMAN ANTHONY: Any other
21 questions? And I will entertain a motion one
22 way or the other.

23 MS. PETREE: Mr. Chairman.

24 CHAIRMAN ANTHONY: Yes, ma'am.

1 MS. PETREE: I move that the Board
2 certify the results of the recount of the
3 votes cast during the November 7th, 2006
4 General Election for the offices of
5 Representative to Congress, 15th Ohio
6 Congressional District, State Representative,
7 20th Ohio House District, Judge of the Court
8 of Common Pleas, Domestic Division, for the
9 full term commencing January 5th, 2007, and
10 Issue 71b, and further move to direct the
11 Director and Deputy Director to issue
12 certificates of election to Deborah Pryce, Jim
13 McGregor, and Chris Geer for their respective
14 offices.

15 CHAIRMAN ANTHONY: Is there a
16 second?

17 MS. MARINELLO: Second.

18 CHAIRMAN ANTHONY: All those in
19 favor say aye.

20 BOARD MEMBERS: Aye.

21 DIRECTOR DAMSCHRODER: And for the
22 record, Denny and I will work with Mr. McTigue
23 and schedule a time to bring Ms. Campbell's
24 volunteers in, after the ten days have

1 expired, to begin the hunt for those five
2 sheets of paper out of the 170,000 that are in
3 there.

4 CHAIRMAN ANTHONY: All right.

5 DIRECTOR DAMSCHRODER: The third
6 item under recounts is just a
7 housekeeping/financial issue, both.

8 Initially, when the Campbell
9 campaign and the Squire campaign paid for
10 their recounts, they reduced the number of
11 precincts to be counted, so the Board owes
12 them a refund.

13 Under state law, those funds have
14 been paid. We owe them a refund for the
15 precincts that weren't counted. So under
16 state law, those funds are placed in a special
17 account with the county auditor, so we need to
18 have a resolution of the Board to apply to the
19 auditor for a refund of those funds, \$50 per
20 precinct.

21 The Campbell campaign had 16
22 precincts that were not counted at their
23 request, and the Squire campaign had one
24 precinct that was not counted at their

1 request.

2 CHAIRMAN ANTHONY: Okay. I will
3 entertain a motion.

4 MR. COLLEY: Mr. Chairman, I move
5 that the Board direct the Director and Deputy
6 Director to apply to the county auditor for a
7 refund of \$800 to the Committee to Elect
8 Beverly Campbell and \$50 to the Squire for
9 Judge Committee as return payment for sixteen
10 and one precincts not recounted, respectfully,
11 per the request of the candidate, and to
12 deposit the balance of the special recount
13 fund into the county's general fund pursuant
14 to statute.

15 CHAIRMAN ANTHONY: Is there a
16 second?

17 MS. MARINELLO: Second.

18 CHAIRMAN ANTHONY: All those in
19 favor, say aye.

20 BOARD MEMBERS: Aye.

21 DIRECTOR DAMSCHRODER: And motion
22 carries.

23 That is all the items for the
24 recount. I would recommend that we skip the

1 coin toss and presiding judges for the moment,
2 because we have counsel here on the Shamansky
3 issue. We'll revisit the coin toss.

4 As you'll recall, on October the
5 20th, this Board considered allegations made
6 by Doug Preisse that Robert Shamansky had
7 allegedly violated election laws of this
8 state. The Board received presentation from
9 counsel for both Mr. Price and Mr. Shamansky
10 on the 20th. There was a motion that was made
11 and properly seconded to conduct an
12 investigation.

13 I believe following that, there was
14 a motion and properly seconded to table the
15 motion to investigate, and a tie vote to table
16 the motion was sent to the Secretary of State.
17 The Secretary of State has essentially broken
18 that tie vote on the motion to table by
19 declaring the motion moot.

20 And so the motion on the table
21 before the Board at this time is -- was made
22 and properly seconded to conduct an
23 investigation, and so a vote would be in order
24 on the motion to conduct an investigation.

1 Are there any questions about all
2 that?

3 CHAIRMAN ANTHONY: No, sir, I got
4 the email.

5 MR. WHITE: Now, since he said the
6 motion to table was moot, the only other
7 motion --

8 CHAIRMAN ANTHONY: Right.

9 MR. WHITE: -- is to move the tabled
10 motion back on the table?

11 CHAIRMAN ANTHONY: Yeah, there's a
12 motion back on the table now, that Mr. Colley
13 had made.

14 DIRECTOR DAMSCHRODER: If you read
15 the Secretary of State's memo, the vote wasn't
16 technically broken.

17 CHAIRMAN ANTHONY: Right.

18 DIRECTOR DAMSCHRODER: It was just
19 declared moot. So we'll have Robert's Rules
20 of Order deal with that.

21 CHAIRMAN ANTHONY: Well, we probably
22 should start over again, I would imagine.

23 MR. WHITE: Well, you have a motion,
24 I think, on the table.

1 DIRECTOR DAMSCHRODER: There is a
2 motion that's properly seconded on the table.

3 CHAIRMAN ANTHONY: There is one on
4 the table.

5 MR. WHITE: Should you investigate
6 this --

7 CHAIRMAN ANTHONY: Right. And so we
8 should do a roll call vote then.

9 DIRECTOR DAMSCHRODER: Are there any
10 questions? Counsel for both sides are here if
11 there's any questions. I don't think either
12 of them need to make a statement unless --
13 we've asked them to kind of defer unless
14 there's any questions.

15 MR. WHITE: I would just recommend
16 that before you call the vote, you read the
17 motion so that it's clear on what you're
18 voting on.

19 CHAIRMAN ANTHONY: Do we have a copy
20 of that prior motion that we made?

21 DIRECTOR DAMSCHRODER: Let me see if
22 it's in the letter from the Secretary of
23 State.

24 MR. WHITE: Since it's been a few

1 days.

2 CHAIRMAN ANTHONY: It's been a
3 month.

4 DIRECTOR DAMSCHRODER: The full text
5 of the motion is not in the Secretary of
6 State's letter. If we wanted to recess for a
7 few minutes, I can run downstairs and get the
8 file.

9 MR. WHITE: I thought it was in this
10 letter. Can I see that?

11 DIRECTOR DAMSCHRODER: Yeah.

12 (Pause in proceedings.)

13 MR. MCTIGUE: Here's what Blackwell
14 said: I am in possession of a document that
15 explains that Board Member Mike Colley offered
16 a motion that the Board members conduct the
17 aforementioned investigation into Mr.
18 Shamansky's actions. Carolyn Petree seconded
19 the motion. The record as presented reflects
20 events that show the Board did not conduct a
21 roll call on the motion.

22 DIRECTOR DAMSCHRODER: Well, if
23 there's confusion what the original motion
24 was, Mr. Colley could withdraw that motion and

1 make a new one today.

2 MR. WHITE: Are you all clear on
3 what you'll be voting on?

4 DIRECTOR DAMSCHRODER: Should we
5 conduct an investigation of the irregularities
6 alleged by Mr. Preisse against Mr. Shamansky.

7 CHAIRMAN ANTHONY: Yeah, I'm pretty
8 clear on that.

9 MR. WHITE: Okay.

10 CHAIRMAN ANTHONY: But if Mr. Colley
11 wants to withdraw that motion and do a new
12 motion, we can do that too, or we can just go
13 ahead and do the vote on the motion as it
14 exists.

15 MR. WHITE: Yeah, as long as you're
16 all clear what you're voting on. You're
17 actually voting on a motion to conduct an
18 investigation.

19 CHAIRMAN ANTHONY: I'm pretty clear
20 on it. So we're doing a roll call vote.

21 DIRECTOR DAMSCHRODER: A roll call
22 vote on the notion conduct an investigation.

23 CHAIRMAN ANTHONY: Right. And so
24 that would be a vote for the motion, it would

1 carry; a vote against the motion, it would
2 fail.

3 DIRECTOR DAMSCHRODER: Correct. A
4 yes vote is for the investigation, a no vote
5 is against the investigation.

6 CHAIRMAN ANTHONY: All right. So,
7 Mr. Colley.

8 MR. COLLEY: Yes.

9 DIRECTOR DAMSCHRODER: Ms.
10 Marinello.

11 MS. MARINELLO: No.

12 DIRECTOR DAMSCHRODER: Ms. Petree.

13 MS. PETREE: Yes.

14 DIRECTOR DAMSCHRODER: Chairman
15 Anthony.

16 CHAIRMAN ANTHONY: I'm going to vote
17 no, and I'd like to give an explanation why
18 I'm doing that just for the record.

19 The reason is that after reviewing
20 the complaint filed by Mr. Preisse and the
21 attachments, I do not believe that it sets
22 forth any substantial basis to conclude that
23 any laws were violated by Mr. Shamansky.

24 We've all believed that persons may

1 have more than one residence and they may
2 choose from which residence they wish to vote;
3 that's been our position, and so that goes
4 along with my no vote.

5 DIRECTOR DAMSCHRODER: Well, the
6 vote on the motion has resulted in a tie. We
7 will forward it to the Secretary of State for
8 that tie vote to be broken.

9 CHAIRMAN ANTHONY: So we're going to
10 do this on January 8th?

11 (Laughter.)

12 DIRECTOR DAMSCHRODER: If I remember
13 the statute, both sides have, I think,
14 fourteen days to submit their explanations to
15 the Secretary of State, at which time the
16 current or next Secretary of State, depending
17 on what's left over, will break the tie vote.

18 CHAIRMAN ANTHONY: All right. So
19 I've got fourteen days to give you my opinion?
20 Okay.

21 DIRECTOR DAMSCHRODER: If it goes
22 beyond the statement you just made for the
23 record, yes.

24 CHAIRMAN ANTHONY: All right. Thank

1 you.

2 DIRECTOR DAMSCHRODER: We'll go back
3 to the second primary item on the agenda,
4 which is a coin toss.

5 As you know, the party whose
6 candidate carries a precinct in the last
7 gubernatorial election is the party that the
8 presiding judge in that precinct will
9 represent. And there are two precincts in
10 this county where there was a tie vote in that
11 precinct for the office of Governor of the
12 State. And those precincts are Jefferson,
13 Township C; and Upper Arlington, Ward 6,
14 Precinct D. So we have a coin toss on both of
15 those precincts.

16 MR. WHITE: Individually.

17 DIRECTOR DAMSCHRODER: Individually,
18 to determine --

19 CHAIRMAN ANTHONY: Who won.

20 DIRECTOR DAMSCHRODER: -- which
21 party will have the presiding judge. I think
22 the last time this happened was 2000 -- the
23 last gubernatorial election.

24 CHAIRMAN ANTHONY: So who does the

1 coin toss?

2 DIRECTOR DAMSCHRODER: I think we
3 can have the Chairman do the coin toss and
4 allow another political party to call it.

5 CHAIRMAN ANTHONY: Okay.

6 DIRECTOR DAMSCHRODER: How's that
7 sound?

8 CHAIRMAN ANTHONY: Yeah, that's
9 fair. We got a coin?

10 DIRECTOR DAMSCHRODER: We have a
11 coin.

12 CHAIRMAN ANTHONY: Is that
13 two-headed?

14 DIRECTOR DAMSCHRODER: We'll let
15 Carolyn call it in the air.

16 CHAIRMAN ANTHONY: Okay. Hope I can
17 catch it. I did this one time before and
18 missed it.

19 MS. PETREE: Heads.

20 CHAIRMAN ANTHONY: All right, heads?

21 (Coin toss conducted.)

22 MS. PETREE: Tails.

23 DIRECTOR DAMSCHRODER: So for
24 Jefferson Township, Precinct C, it is tails.