

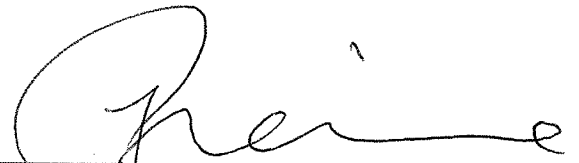
FRANKLIN COUNTY BOARD OF ELECTIONS
280 EAST BROAD STREET
COLUMBUS, OHIO 43215
(614) 462-3100

MINUTES OF THE MEETING ON

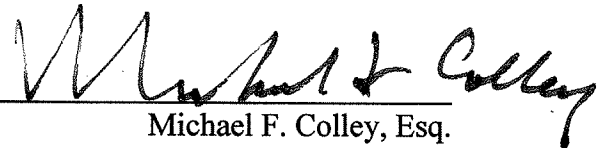
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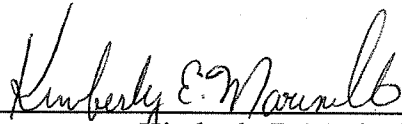
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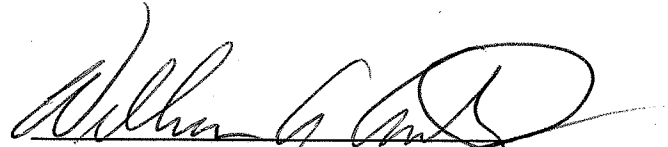
Douglas J. Preisse, Chairman



Michael F. Colley, Esq.

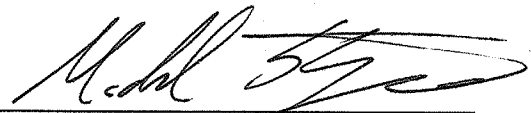


Kimberly E. Marinello



William A. Anthony Jr.

ATTEST:



Michael Stunziano, Director

1 APPEARANCES:

2 Franklin County Prosecuting Attorney
3 373 South High Street
4 13th Floor
5 Columbus, Ohio 43215
6 By Mr. Patrick Piccininni,
7 Assistant County Prosecutor,

8 On behalf of the Board of Elections.

9 ALSO PRESENT:

10 Mr. Michael Stinziano, Director
11 Mr. Matthew Damschroder, Deputy Director
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P R O C E E D I N G S
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CHAIRMAN PREISSE: We're going to call the meeting to order, then. And we'll have a roll call.

MR. STINZIANO: Chairman Preisse?

CHAIRMAN PREISSE: I'm here.

MR. STINZIANO: Mr. Anthony?

BOARD MEMBER ANTHONY: Here.

MR. STINZIANO: Ms. Marinello?

BOARD MEMBER MARINELLO: Here.

MR. STINZIANO: Mr. Colley is not available.

CHAIRMAN PREISSE: Yes. And I talked to Mr. Colley late last night. He sends his regrets that he was not able to make this meeting. He had some long-standing plans that he was not able to rearrange to meet today, given the late notice of the meeting, 24-hour notice of the meeting.

MR. STINZIANO: The first item on the agenda is the voting machine allocation. It is the director and deputy director's recommendation

1 that the Board allocate 4,639 ES&S iVotronic
2 voting machines, that's our entire stock, to all
3 the precincts.

4 We took into consideration the
5 Secretary of State's directive, the waiting line
6 study, when we created the allocation. Of note,
7 on the very last page, we are recommending that
8 we keep one machine at the warehouse and 13,
9 which are repair crews, on election day, and the
10 rest would be in the precincts.

11 CHAIRMAN PREISSE: Thirteen -- restate
12 your last.

13 MR. STINZIANO: Thirteen would be with
14 the repair crews. They drive around.

15 CHAIRMAN PREISSE: Oh, moving around.

16 MR. STINZIANO: Correct. And if a
17 machine goes down or they're unable to open one
18 on election morning, the repair crew would have
19 one to fill that place.

20 BOARD MEMBER MARINELLO: Do you know
21 how many there were last election?

22 MR. DAMSCHRODER: In 2004, I think it
23 was 2,818 or 2,800 and something. It was low.

24 BOARD MEMBER MARINELLO: How many

1 repaired ones did they have?

2 MR. DAMSCHRODER: I'm sorry?

3 BOARD MEMBER MARINELLO: How many
4 repair --

5 MR. DAMSCHRODER: Usually, it's
6 not -- the repair thing isn't so much an issue.
7 I think since we've had the iVotronic since the
8 beginning of 2006, I think we've had three
9 different ones go down on election day.

10 They have to be replaced on election
11 day. The votes aren't lost; they're still inside
12 the -- they're still saved on the three redundant
13 memories. That's why we have to have the one
14 machine at the warehouse, to switch out that
15 memory in event that that happens.

16 Again, I think -- I think it's been
17 less than a half dozen total machines over all
18 the elections that we've used now. So I think
19 the 13 is an appropriate number that has
20 safeguards in the event that something happens,
21 the unlikely event, really, statistically, if
22 something happens and make sure that we have
23 enough in the precincts for everyone to vote on
24 election day.

1 MR. STINZIANO: And in addition, the
2 deputy director and I would like to request that
3 at the close of voter registration on October 6th
4 we revisit the allocation to update it once we
5 have a better idea of voter registration numbers
6 as well as absentee applications.

7 So in areas where we feel there's a
8 high turnout of absentee applications and
9 ballots, we could then readjust the numbers if
10 needed.

11 CHAIRMAN PREISSE: Okay. Are
12 there questions?

13 BOARD MEMBER ANTHONY: Well, you know,
14 we had a meeting that Mr. Chair, Michael and
15 Matt -- we had a public meeting where we pretty
16 much laid out what our allocation plan was, and I
17 knew that some groups got back with you guys with
18 some concerns and questions on the allocation of
19 it. Did we consider any of the input from those
20 groups in this allocation plan?

21 MR. STINZIANO: We did. I guess I
22 wasn't clear enough. But I wrapped that in as
23 part of the Secretary of State's directive where
24 she -- her first point of emphasis is

1 consideration of places that had waiting line
2 problems before.

3 BOARD MEMBER ANTHONY: Okay.

4 MR. STINZIANO: So that wouldn't be
5 part of the Secretary of State's directive.

6 BOARD MEMBER ANTHONY: Okay. So in
7 these new allocation, it includes those places
8 that had long waiting lines.

9 MR. STINZIANO: That we were made --

10 BOARD MEMBER ANTHONY: Aware of.

11 MR. STINZIANO: -- aware of. Yeah.

12 BOARD MEMBER ANTHONY: Okay. From
13 2004?

14 MR. STINZIANO: We understanding was,
15 the information we received from the groups was
16 '04, '05, '06 information.

17 BOARD MEMBER ANTHONY: Okay. All
18 right. So that's included.

19 MR. STINZIANO: Yes.

20 BOARD MEMBER ANTHONY: Okay.

21 MR. STINZIANO: We feel it's taken
22 into account, yes.

23 BOARD MEMBER ANTHONY: Okay. And
24 based on what you just said earlier, we'll

1 revisit this after the close of registration.

2 MR. STINZIANO: We repress the
3 opportunity. We do feel it's worth publishing
4 the information, making it available on our
5 website now. And then when we have even better
6 numbers, if it needs to be adjusted, we can
7 adjust it at that time.

8 BOARD MEMBER ANTHONY: Okay. How soon
9 after that, do you think?

10 MR. DAMSCHRODER: Well, I think the
11 Secretary of State directive calls on us to
12 reevaluate everything after the close of
13 registration. Obviously, that's pretty late in
14 the game after October the 6th in terms of making
15 any significant changes.

16 But I think there is an
17 intent -- well, there is a directive to follow
18 there, and it would be our intent to then, you
19 know, look at numbers in the event that, you
20 know, registration swells in a particular
21 precinct, that maybe the allocation approved
22 today might not be sufficient to handle that, to
23 be able to have some flexibility there.

24 So we'll be -- I think this -- we

1 established today as our baseline of what we're
2 intending to do on election day and reserving the
3 right to bring it back to the Board as we
4 continue to monitor events.

5 BOARD MEMBER ANTHONY: All right. I
6 have no other questions, Mr. Chairman.

7 BOARD MEMBER MARINELLO: Mr. Chairman,
8 I move that the Board approve the recommendation
9 of the director and deputy director to allocate
10 4,639 ES&S DRE iVotronic machines for election
11 day based on the proposed allotment before us.

12 BOARD MEMBER ANTHONY: And I second
13 that motion.

14 CHAIRMAN PREISSE: Let's have a vote.

15 MR. STINZIANO: All in favor?

16 (Board members in favor of the motion
17 so indicated.)

18 MR. STINZIANO: No opposed.

19 The next item on our agenda is to
20 revisit the challenge of the city of Upper
21 Arlington initiative petition on solid waste.

22 The Board did not make any motions,
23 did not take any action after, I believe it was,
24 Monday's protest hearing. And it's been the

1 recommendation that the Board take up a motion
2 and then vote on that protest.

3 MR. PICCININNI: The Board has been
4 sued in both prohibition and mandamus. Mandamus,
5 you actually have a vote on the issue. And the
6 purpose of the vote is to take that issue off the
7 table.

8 MR. STINZIANO: And just to remind the
9 Board, we had two protests filed previously and
10 gave both parties the opportunity to speak to its
11 protest.

12 MR. PICCININNI: The city of Upper
13 Arlington and two electors in Upper Arlington
14 have sued -- the effect of not having a motion
15 effectively denied the protest and left the issue
16 on the ballot.

17 All we're doing is just taking one
18 issue of the -- that's been filed in court off
19 the table by having a vote.

20 CHAIRMAN PREISSE: That being the --

21 MR. PICCININNI: However the Board
22 chooses to -- the Board needs to make a motion,
23 vote on the motion, and then that one issue would
24 be removed from the pending litigation.

1 MR. DAMSCHRODER: And it's a little
2 bit unusual, as has been explained to me, that if
3 the Board intends to follow this through in the
4 same way that it did Monday, there would have to
5 be a motion to uphold the protest to grant the
6 protest, a second, and then a vote on that
7 motion.

8 All votes -- and then a majority
9 opposed to the motion would have the same effect
10 as what we did on Monday, which was keeping the
11 question on the ballot.

12 MR. PICCININNI: All motions need to
13 be made in the affirmative. You can't make a
14 motion and say, I move to reject the protest.

15 BOARD MEMBER ANTHONY: I got you. I
16 got you. So a no vote opposed what we did --

17 MR. PICCININNI: Monday night.

18 BOARD MEMBER ANTHONY: -- Monday
19 night.

20 MR. DAMSCHRODER: That's correct.

21 MR. STINZIANO: And it's the Staff's
22 recommendation that you consolidate the two
23 protests. So we need a motion on the protest
24 that collectively deals with both motions that

1 were filed with our office.

2 MR. PICCININNI: Both protests.

3 MR. STINZIANO: Both protests.

4 BOARD MEMBER ANTHONY: Unless, of
5 course, we change our mind and --

6 MR. PICCININNI: In the next 30
7 seconds, yeah.

8 (Laughter.)

9 CHAIRMAN PREISSE: So we would vote to
10 consolidate and then vote to --

11 MR. DAMSCHRODER: Deny.

12 MR. PICCININNI: Vote to uphold the
13 protest and then --

14 MR. DAMSCHRODER: Vote to consolidate
15 the protest and then a second motion on whether
16 or not to accept the protest. Voting no on the
17 second motion would have the same effect as what
18 the Board did Monday.

19 BOARD MEMBER ANTHONY: Okay. And
20 voting on the first motion would do what?

21 MR. DAMSCHRODER: It would keep them
22 separate protests.

23 BOARD MEMBER ANTHONY: So a no vote
24 would be in line with what we've already done.

1 MR. DAMSCHRODER: On the second
2 motion.

3 BOARD MEMBER ANTHONY: But on the
4 first motion.

5 MR. DAMSCHRODER: I think Counsel's
6 recommendation is that, on the first motion, it
7 is in the interest of the Board, moving forward,
8 to have them consolidated, yes.

9 BOARD MEMBER ANTHONY: All right. Got
10 you. Y'all just make it so interesting.

11 MR. DAMSCHRODER: It's kind of like
12 putting a referendum on the ballot. Yes means no
13 and no means yes.

14 CHAIRMAN PREISSE: I think I see a
15 friend from Upper Arlington wishing to, perhaps,
16 address the Board.

17 MR. LINDSEY: Briefly, if I could,
18 Chairman Preisse, members of the Board. Tom
19 Lindsey on behalf of the city of Upper Arlington
20 in this matter.

21 I do want to thank the Board for
22 reconvening this special meeting to take formal
23 action.

24 As Patrick explained, there is a

1 mandamus count in the suit that was filed in the
2 Supreme Court out of an utmost of procedural
3 concern of wanting it to be clear, the Board's
4 determination of this issue.

5 As far as whether or not
6 Mr. Albright's protest is combined with ours, I'd
7 defer to the Board's determination on that. I do
8 know that it would be our preference since, at
9 least in the discussion Monday night, it seemed
10 that Staff had agreed with a number of the
11 specific signatures and, therefore, changed the
12 total number of signatures that were being
13 invalidated.

14 The City would actually prefer that
15 there be a separate vote upholding that portion,
16 at which the Staff had agreed with our protest,
17 and then a subsequent vote on any of the other
18 claims, if the Board was not going to approve it.

19 I did speak with Pat. I think he
20 differs in that regard and may want to speak to
21 you as well on that issue. And the -- we would
22 simply ask the Board to seriously consider its
23 statutory duties to determine the legal
24 sufficiency of the petition.

1 And if it doesn't propose any action
2 at all or only administrative action, then it is
3 the Board's duty to deny this initiative being on
4 the ballot or to uphold a protest.

5 It also is of grave concern that over
6 4,000 absentee votes in the city of Upper
7 Arlington are being disenfranchised or not being
8 considered in determining the number of votes
9 required for initiative petition.

10 I understand that has been the Board's
11 prior practice, but the administrative
12 convenience is not a basis to not consider those
13 votes for all the purposes set forth in the
14 statute.

15 So I do ask the Board to consider this
16 carefully as it decides it and appreciate the
17 opportunity to address the Board and would answer
18 any questions, if you have any.

19 CHAIRMAN PREISSE: Are there any
20 questions on those matters or?

21 MR. PICCININNI: There was one protest
22 with multiple grounds, and the motion that's
23 going to be before the Board is dealing with the
24 protest.

1 You can deal with the other issues in
2 the prohibition action. This is just to take the
3 mandamus case, the mandamus count, off the
4 table. This is not a revisit of the entire
5 protest hearing for Monday night.

6 BOARD MEMBER ANTHONY: Okay. Thank
7 you. Understood.

8 CHAIRMAN PREISSE: I think I
9 understood that as well. Thank you, Mr. Lindsey.

10 MR. DAMSCHRODER: Do we need to give
11 Mr. Becker --

12 BOARD MEMBER ANTHONY: If he wishes.

13 MR. BECKER: Thank you, Mr. Chairman,
14 members of the Board. We would have stipulated
15 before the Supreme Court to save you all this
16 time that the Board did, in fact, act on Monday
17 night, that the Board did give a fair hearing,
18 that everything was done.

19 We would have been glad to have
20 stipulated. I notice Mr. Damschroder shaking his
21 head yes. So this has been a colossal waste of
22 the Board's time to have to come back here.

23 Agreeing lawyers know that we already
24 did this. You went through; you voted it down.

1 But, procedurally, they're here to have you go
2 ahead and say, we hereby vote no on this,
3 therefore denying it.

4 It's fine with us if you want to go
5 ahead and formalize it that way, just don't blame
6 this wasted time on us. We would have been far
7 willing to have -- go ahead and have a
8 stipulation on it.

9 Thank you.

10 CHAIRMAN PREISSE: Thank you.

11 Okay. Mr. Anthony, what do you think?

12 BOARD MEMBER ANTHONY: Well, sir,
13 based on everything I hear, I will make a motion.

14 CHAIRMAN PREISSE: Okay.

15 BOARD MEMBER ANTHONY: I move, per the
16 advice of Counsel, that the Board consolidate the
17 two protests filed against the Board's
18 certification to the ballot of the Upper
19 Arlington initiative -- initiated ordinance on
20 refuse collection.

21 The two protests filed were by Don
22 McTigue on behalf of the city of Upper Arlington
23 and Margaret Concilla and by Mr. Robert
24 E. Albright.

1 BOARD MEMBER MARINELLO: Second.

2 MR. STINZIANO: All in favor?

3 (Board members in favor of the motion
4 so indicated.)

5 MR. STINZIANO: Any opposed?

6 (No response.)

7 BOARD MEMBER ANTHONY: Now that
8 they've been consolidated, Mr. Chair, I
9 respectfully move -- per the advice of Counsel, I
10 move that the Board uphold --

11 MR. PICCININNI: It's the advice of
12 Counsel that the Board have a vote to memorialize
13 the issue, not that the Board -- that the advice
14 of Counsel -- that the Board uphold the protest
15 but that the Board have a vote to deal with its
16 action the other day.

17 BOARD MEMBER ANTHONY: You got what he
18 said, right? All right, then. I move that the
19 Board uphold the consolidated protest filed
20 against the Board's certification to the ballot
21 of the Upper Arlington initiative ordinance on
22 refuse collection.

23 BOARD MEMBER MARINELLO: Second.

24 MR. STINZIANO: Think we should do a

