

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


MINUTES OF THE MEETING ON

11-14-08

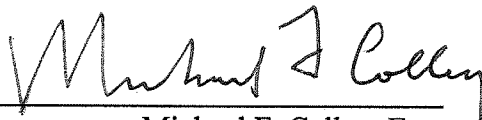
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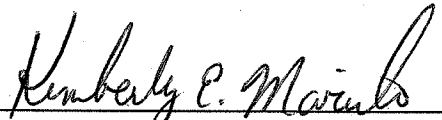
BY:



Douglas J. Preisse, Chairman



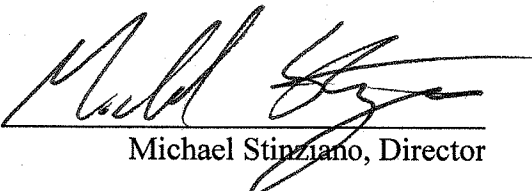
Michael F. Colley, Esq.



Kimberly E. Marinello

William A. Anthony Jr.

ATTEST:



Michael Stinziano, Director

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BEFORE THE
FRANKLIN COUNTY BOARD OF ELECTIONS

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IN RE: :
Special Meeting :
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Proceedings before Chairman Douglas J.
Preisse, Board Members William A. Anthony,
Jr., Michael F. Colley and Kimberly E.
Marinello, Director Michael Stinziano, and
Deputy Director Matthew Damschroder, taken at
the Franklin County Board of Elections, 280
East Broad Street, Columbus, Ohio, on Friday,
November 14, 2008, at 4:53 o'clock p.m.

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1 APPEARANCES:

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

8 On behalf of the Board.

9 ALSO PRESENT:

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

3 - - - - -

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

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

10 MR. COLLEY: Here.

11 MR. STINZIANO: Chairman Preisse?

12 CHAIRMAN PREISSE: Here.

13 MR. STINZIANO: Mr. Anthony?

14 MR. ANTHONY: Here.

15 MR. STINZIANO: Ms. Marinello?

16 MS. MARINELLO: Here.

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

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

1 clarification and how we should process them.

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

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

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

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

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

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

1 to vote a provisional ballot.

2 MR. COLLEY: Second.

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

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

11 CHAIRMAN PREISSE: Are there any
12 questions?

13 (No audible response.)

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

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

18 MEMBERS: Aye.

19 CHAIRMAN PREISSE: None opposed.

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

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

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

15 MR. COLLEY: Second.

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

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

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

3 MR. STINZIANO: All in favor?

4 MEMBERS: Aye.

5 MR. STINZIANO: None opposed.

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

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

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

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

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

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

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

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

9 MS. MARINELLO: Okay.

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

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

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

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

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

18 MS. MARINELLO: Second.

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

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

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

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

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

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

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

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

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

14 MR. ANTHONY: I understand.

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

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

1 on this.

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

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

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

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

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

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

8 (No audible response.)

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

11 MR. STINZIANO: Mr. Colley?

12 MR. COLLEY: No.

13 MR. STINZIANO: Chairman Preisse?

14 CHAIRMAN PREISSE: No.

15 MR. STINZIANO: Mr. Anthony?

16 MR. ANTHONY: Yes.

17 MR. STINZIANO: Ms. Marinello?

18 MS. MARINELLO: Yes.

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

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

7 MR. ANTHONY: Mr. Chair.

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

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

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

15 (Laughter.)

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

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

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

10 MS. MARINELLO: Second.

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

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

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

1 in the poll book to compare.

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

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

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

