

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

MINUTES OF THE MEETING ON

11/23/08

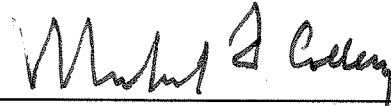
APPROVED ON

1/5/09

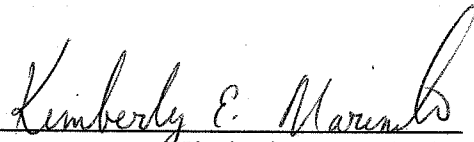
BY:



Douglas J. Preisse, Chairman



Michael F. Colley Esq.

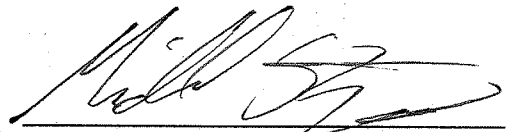


Kimberly E. Marinello



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 Member William A. Anthony, Jr,
Board Member Michael F. Colley, Board Member
Kimberly E. Marinello, and Deputy Director Matthew
Damschroder taken at Franklin County Board of
Elections, 280 East Broad Street, Room 100,
Columbus, Ohio on Sunday, November 23, 2008, at
1:01 o'clock p.m.

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<p style="text-align: right;">Page 2</p> <p>1 APPEARANCES: 2 Ms. Suzanne Brown Mr. Ben Piscitelli, Public Information 3 Officer Mr. Eric Nickolas, Regional Liaison 4 Mr. Todd Wedekind Ms. Renae Kloe 5 Ms. Jane Hanley Ms. Julie Kyle 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24</p>	<p style="text-align: right;">Page 4</p> <p>1 ----- 2 PROCEEDINGS 3 ----- 4 MR. DAMSCHRODER: All right. We'll call 5 the meeting to order. 6 Mr. Colley. 7 MR. COLLEY: Here. 8 MR. DAMSCHRODER: Mr. Preisse. 9 CHAIRMAN PREISSE: Here. 10 MR. DAMSCHRODER: Mr. Anthony. 11 MR. ANTHONY: Here. 12 MR. DAMSCHRODER: Ms. Marinello. 13 MS. MARINELLO: Here. 14 MR. DAMSCHRODER: Good afternoon. The 15 director is not going to be able to join us today. 16 It is his birthday, but unfortunately he is very, 17 very ill. He was kind enough to make a brief 18 appearance a few moments ago just to review the 19 agenda, but is heading home and we wish him our 20 best, and we'll continue to be in contact with him 21 the rest of the day. 22 The first order on the agenda is a vote 23 to refer additional possible voter fraud cases to 24 the prosecuting attorney. These are individuals</p>
<p style="text-align: right;">Page 3</p> <p>1 INDEX 2 3 Agenda Item Page No. 4 Referring Possible Voter Fraud 4 5 Absentee Ballots 5 6 Provisional Ballots 60 7 Executive Session 93 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24</p>	<p style="text-align: right;">Page 5</p> <p>1 who appear to have both voted provisionally or 2 regular ballot in this and in other counties, or 3 voted at the polls in one precinct in this county 4 and then attempted to vote a provisional ballot in 5 another precinct of this county. These will 6 continue to be investigated by our office and the 7 prosecuting attorney's office prior to any charges 8 being filed. 9 So we would appreciate a motion and 10 resolution permitting us to go forward with that. 11 MR. ANTHONY: Mr. Chairman, I move that 12 the Board, per the recommendation of the Director 13 and Deputy Director, refer possible voter fraud 14 cases to the prosecuting attorney for further 15 action. 16 MR. COLLEY: Mr. Chairman, I second that 17 motion. 18 MR. DAMSCHRODER: All in favor say aye. 19 (Board votes unanimously.) 20 MR. DAMSCHRODER: And motion carries. 21 The next item, next two items, are 22 relative to absentee and election day optical scan 23 ballots that had to be remarked for some purpose. 24 The first resolution are ballots where</p>

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<p>1 the voter followed the instructions and clearly 2 marked their ballots. The issue why the ballot 3 had to be remade was either printing error on the 4 ballot that rendered the ballot unable to be 5 tabulated by the high speed scanners.</p> <p>6 And we particularly had a challenge with 7 the ballot on-demand printers from Vets where the 8 alignment of the timing marks is off just enough 9 such that the ballots won't be scanned, so we had 10 to remake those in teams of democrats and 11 republicans.</p> <p>12 But, again, in those cases, the voter's 13 intent is absolutely clear. The voter followed 14 the instructions and marked the ballot, so there's 15 no subjectivity there.</p> <p>16 And we would request a motion 17 memorializing that process pursuant to the 18 directive, and I would be happy to answer any 19 questions you would have.</p> <p>20 MR. ANTHONY: Mr. Chair, I have none, so 21 I would move that the Board proceed with 22 processing those properly remade ballots, per the 23 recommendations of the Director and Deputy 24 Director that have been remade and the voter has</p>	<p>1 Again, it doesn't impact the voter's 2 ability to mark their ballot or for us to be able 3 to determine how the voter marked their ballot, it 4 just determines whether or not high speed scanners 5 can see the voting positions on the page.</p> <p>6 And the machines are programmed that if 7 it cannot read the timing marks and cannot, 8 therefore, see the match-up of also where it's 9 expecting to see markings, it will reject that 10 ballot for human inspection.</p> <p>11 And in all these cases, timing marks 12 were such that we needed to just remark the 13 ballots. But, again, no determination of voter 14 intent, and there's no subjectivity, just 15 remarking ballots.</p> <p>16 CHAIRMAN PREISSE: Any other questions? 17 (No response.)</p> <p>18 MR. DAMSCHRODER: Then we'll ask for a 19 vote. All in favor say aye. 20 (Board votes unanimously.)</p> <p>21 MR. DAMSCHRODER: Opposed, nay. 22 (No response.)</p> <p>23 MR. DAMSCHRODER: And motion carries. 24 The next one is, when Todd gets here</p>
Page 7	Page 9
<p>1 followed the instructions.</p> <p>2 MR. COLLEY: Mr. Chairman, I second the 3 gentleman's motion and --</p> <p>4 CHAIRMAN PREISSE: That's about all you 5 need to do.</p> <p>6 MR. COLLEY: That's all I need to do.</p> <p>7 CHAIRMAN PREISSE: Unless we have any 8 discussion or questions for the Deputy Director, 9 these, as you've described here and to us prior, a 10 lot of them had to do with just the volume of 11 going through the printers over there; is that --</p> <p>12 MR. DAMSCHRODER: That's correct, for 13 ballots that were at Vets. This is the first time 14 that we have done ballot on-demand in that kind of 15 quantity. "That kind of quantity" being 55,000 16 ballots, times the quantity average of four pages 17 apiece, double-sided.</p> <p>18 It's a lot of paper to run through 19 printers that really aren't designed for that kind 20 of volume. And so what happens is the 21 registration of the ballot, the image on the page, 22 particularly in times when the machine doesn't 23 have time to adequately cool between each ballot, 24 the image on the page gets a little bit crooked.</p>	<p>1 momentarily with the -- there they are. Perfect 2 timing.</p> <p>3 These are ballots that the Board -- 4 Todd, you want to pull a chair up here with me, 5 please -- that the Board actually does need to 6 inspect and determine the voter's intent, when 7 possible.</p> <p>8 Again, the statutory standard and the 9 standard confirmed by Directive 2008-69 is that 10 the ballot has been marked in a consistent manner. 11 So if a voter, for instance, doesn't necessarily 12 fill in ovals for each contest that the voter's 13 intending to mark, from some other kind of mark, 14 as long as it's the mark that's been made 15 consistently on the ballot, that ballot can be 16 remade for the voter so it can be redone.</p> <p>17 We'll mark the first one X001, and let's 18 pass it down the line for you. It's very clear 19 that the voter consistently marked their ballot 20 using check marks; but instead of in the oval 21 where it would be read, they listed it out to the 22 right of the oval by the candidate's name that 23 they were attempting to vote for, it appears.</p> <p>24 MR. ANTHONY: Mr. Chair, these were</p>

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<p>1 absentee ballots mailed in to us? 2 MR. DAMSCHRODER: These would be 3 absentee ballots that were either mailed in to us 4 or that were marked at Vets. 5 MR. ANTHONY: Okay. 6 MR. DAMSCHRODER: And there might 7 actually be a couple election day ballots down 8 here somewhere, but I don't think so. 9 CHAIRMAN PREISSE: I'll pass it on, and 10 then we can have questions on it. How about that? 11 MR. DAMSCHRODER: That's great. 12 MR. COLLEY: There's inconsistency 13 within the consistency on that. 14 MR. ANTHONY: Mr. Chair, I've got a 15 question on all of these that we're going to look 16 at. Since these were multiple -- were there more 17 pages to that ballot than what we have here? 18 MR. DAMSCHRODER: At this point, all the 19 different pages have been separated, because these 20 were all run through the scanners for election 21 night, so -- 22 MR. ANTHONY: There's no way of putting 23 them back together? 24 MR. DAMSCHRODER: There's no way to put</p>	<p>1 MR. DAMSCHRODER: Which one? 2 MR. ANTHONY: This one. He marked 3 Barack, and then he printed "Barack" on it. 4 MR. DAMSCHRODER: I think the 5 directions -- and Eric is here and can expand on 6 that, but the way we have been handling it is if a 7 voter, for instance, filled in the oval for a 8 presidential candidate, for instance, and then 9 also filled in the write-in oval and wrote in that 10 exact same candidate's name, that we have been 11 treating that as a vote for the presidential 12 candidate. 13 MR. ANTHONY: Okay. 14 MR. DAMSCHRODER: In this instance, it 15 appears, if I recall correctly, that the voter did 16 the check mark next to the candidate's name, wrote 17 in the candidate's name, but didn't do a check 18 mark in the write-in oval. So this would not 19 actually read -- had the voter put the check mark 20 in the correct place in the oval, this would not 21 read as an overvote, it would read as a vote for 22 that candidate. 23 MR. ANTHONY: Okay. Mr. Chair, Matt, 24 what about the writing in for the 15th</p>
Page 11	Page 13
<p>1 them back together. 2 MR. ANTHONY: Okay. 3 MR. DAMSCHRODER: Now, it's possible, as 4 often happened this election, that the voter 5 marked the first page that had the candidates and 6 then didn't mark any of the issue pages. And so 7 it's possible that voter, if we don't come across 8 a similarly marked ballot in the rest of the 9 stack -- 10 CHAIRMAN PREISSE: The other pieces 11 could be here. 12 MR. DAMSCHRODER: -- the other pieces 13 could be here, but it's probably just as likely 14 the voter didn't mark anything else. 15 MR. ANTHONY: On the other pages? 16 MR. DAMSCHRODER: Mm-hmm. 17 MR. ANTHONY: Mr. Chairman -- 18 CHAIRMAN PREISSE: Yes. 19 MR. ANTHONY: -- Matt, what's the 20 Secretary's view or guidelines for overvotes? 21 MR. DAMSCHRODER: I think the guidelines 22 for -- 23 MR. ANTHONY: For that one, it looks 24 like he overvoted or something to that nature.</p>	<p>1 Congressional District? 2 MR. DAMSCHRODER: I think that's going 3 to be something that the Board's going to have to 4 evaluate in this instance, where the voter did not 5 fill in the oval for a candidate, did not fill in 6 the write-in oval, but instead wrote in one of the 7 candidate's names on the line. 8 CHAIRMAN PREISSE: Review, if I may ask 9 you, the issue of consistency from the statutory. 10 And I think you've mentioned the directive, maybe 11 that's what you have in the packet here. 12 MR. DAMSCHRODER: Yeah, with 3506.21 is 13 the statutory authorization for determining intent 14 of the voter who marked his entire ballot contrary 15 to the instructions contained on the ballot. And 16 again, the issue is that we're looking for 17 consistency in the manner in which the voter cast 18 their ballot. 19 Eric, I don't know if you have anything 20 you want to add to that. 21 MR. NICKOLAS: The other counties I've 22 sat in, they are going through the same thing that 23 you're going through right now. They're looking 24 for consistency also, as long as they use the same</p>

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<p>1 criteria when they decide how that person voted, 2 as long as they stay the same on the next ballot 3 when that same question comes up, regardless of 4 who's running for what particular office. 5 MR. DAMSCHRODER: And you'll notice on 6 page three of the Directive that if their intent 7 cannot be determined, and I'll quote directly from 8 the Directive, "If a majority of the Board members 9 cannot agree on determining voter intent as to any 10 choice on the ballot, as provided by law, the 11 ballot shall not be counted." 12 CHAIRMAN PREISSE: I want to take a 13 moment to review this section referencing 3506.21 14 here. 15 (Reviewing documents.) 16 CHAIRMAN PRIESSE: The voter did not 17 mark any of the ballot according to the ballot 18 marking instructions, then we must determine voter 19 intent prior to remaking the optical scan ballot 20 by examining the ballot for consistency, for a 21 consistently-made mark contrary to voting 22 instructions. 23 Well, obviously there are two instances 24 there that would seem to vary from a fully</p>	<p>1 MR. DAMSCHRODER: Yes. 2 MR. ANTHONY: Okay. 3 MR. DAMSCHRODER: And I think in this 4 case there might actually be two votes that would 5 be necessary. One is how to handle the 15th 6 Congressional District, and then the other, how to 7 handle the -- 8 MR. ANTHONY: Presidential? 9 MR. DAMSCHRODER: -- the ballot in 10 general with the check marks. 11 MR. ANTHONY: Okay. Mr. Chair, I move 12 that based upon review of ballot number X001 -- 13 MR. DAMSCHRODER: Yes. 14 MR. ANTHONY: -- X001, that the Board 15 determine that the intent of the voter was to cast 16 a vote for the 15th Congressional District. 17 CHAIRMAN PREISSE: Mr. Anthony, you have 18 just moved to count the entire ballot; is that -- 19 MR. ANTHONY: No, I just moved to 20 count -- we're going to split it up. We're going 21 to do the 15th seat, so I move that we count the 22 voter's intent for the 15th. 23 MS. MARINELLO: Second. 24 CHAIRMAN PREISSE: I think we ought to</p>
Page 15	Page 17
<p>1 consistent incorrect method that this voter has 2 elected to employ, mainly the overvotes, 3 especially where they have checked and written in 4 the presidential candidate's names. 5 MR. DAMSCHRODER: Well, and on that, 6 again, the presidential wouldn't actually read as 7 an overvote because they didn't check the overvote 8 bubble. So I think the two issues with this, at 9 least from a staff perspective, is that there's 10 check marks outside the oval, so it can't be read. 11 In the case of the 15th Congressional 12 District, there's no check at all relative to the 13 write-in for Mary Jo Kilroy, and a nonwrite-in 14 candidate was written on the line. 15 MR. ANTHONY: Does this voter live in 16 the 15th? I don't remember. 17 MR. DAMSCHRODER: Yes. It's a ballot 18 for a precinct where there's a split of the 19 precinct. It is in the 15th Congressional 20 District. 21 MR. ANTHONY: All right. So what do we 22 do now, start voting on them? 23 CHAIRMAN PREISSE: Are we going to take 24 these one-by-one?</p>	<p>1 have a roll call vote on that. 2 MR. DAMSCHRODER: All right. 3 Mr. Anthony. 4 MR. ANTHONY: Yes. 5 MR. DAMSCHRODER: Mr. Colley. 6 MR. COLLEY: No. 7 MR. DAMSCHRODER: Ms. Marinello. 8 MS. MARINELLO: Yes. 9 MR. DAMSCHRODER: Mr. Preisse? 10 CHAIRMAN PREISSE: No. 11 MR. DAMSCHRODER: And then with the 12 Directive, the majority of the Board members not 13 having determined the voter intent, we can't count 14 that. So how about the check marks for the rest 15 of the ballot? 16 MR. ANTHONY: Mr. Chair, I move -- now, 17 what happens to this? It just goes away? There's 18 no -- 19 MR. DAMSCHRODER: I don't think these go 20 to the Secretary for tie. 21 Is that correct? 22 MR. NICKOLAS: No, it just goes down. 23 It has to have a majority to be counted. We don't 24 break the tie on this.</p>

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<p>1 MR. ANTHONY: All right. Mr. Chair, 2 based on the review of the ballot number X001, the 3 Board determines that it was the intent of the 4 voter to cast the ballot, I guess, or intent to 5 cast the rest of the ballot -- 6 MR. DAMSCHRODER: Using the check marks 7 to identify their choices. 8 MR. ANTHONY: Thank you. Using the 9 check marks to identify their choices. 10 MS. MARINELLO: Second. 11 MR. DAMSCHRODER: Roll call is 12 necessary. All in favor say aye. 13 (Board votes unanimously.) 14 MR. DAMSCHRODER: Motion carries. 15 Where are we? Todd will be the keeper. 16 The next one is ballot number X002. The 17 voter consistently filled in the ovals for choices 18 throughout the ballot, but then put an X through, 19 essentially, the entirety of the front of the 20 first page. And I think in a couple instances 21 that large X would have overvoted a couple of the 22 contests. 23 And so the question is whether the large 24 X is indicative of anything or whether the ballot</p>	<p>1 the X across the front page. 2 CHAIRMAN PREISSE: Do we have any other 3 statutory or directive instructions as to any 4 markings? 5 MR. DAMSCHRODER: I don't think in this 6 kind of a situation we do have any. 7 CHAIRMAN PREISSE: X marks the spot on 8 this one. 9 MR. ANTHONY: You know what? I'm 10 inclined to just count the whole ballot. 11 CHAIRMAN PREISSE: To do what? 12 MR. ANTHONY: To count the ballot as 13 marked and ignore the X on it. 14 CHAIRMAN PREISSE: I am, too. I think 15 my sense is the voter used the X to determine that 16 he or she had completed that side. I can't see 17 any other -- 18 MR. ANTHONY: Mr. Chair, based upon 19 review of the ballot number X002, the Board 20 determined that it was the intent of the voter to 21 cast that ballot for all the names so marked. 22 MS. MARINELLO: Second. 23 MR. DAMSCHRODER: All in favor say aye. 24 (Board votes unanimously.)</p>
Page 19	Page 21
<p>1 that has been consistently marked with the ovals 2 should be remade using the ovals and disregarding 3 the large X. 4 CHAIRMAN PREISSE: The voter didn't vote 5 for the presidential race. Maybe they didn't have 6 enough information. 7 MR. DAMSCHRODER: It's possible. 8 MR. ANTHONY: Now, what is the big X on 9 this one? 10 MR. DAMSCHRODER: I'm sorry? 11 MR. ANTHONY: What does that big X mean? 12 MR. DAMSCHRODER: We don't know. 13 CHAIRMAN PREISSE: That's what they're 14 asking us. 15 MR. ANTHONY: So in this one, they just 16 vote for those on this page not with the big X, 17 was it? 18 MR. DAMSCHRODER: Well, I think it's up 19 to you guys. I mean, the voter clearly followed 20 the instructions in terms of filling in the oval, 21 so the question is do we -- is the big X across 22 the front indicating that the voter didn't want 23 any of those votes counted, or should we follow 24 the consistent marking of the ballot and disregard</p>	<p>1 MR. DAMSCHRODER: And motion carries. 2 Michael, if you want to hand that back 3 to me, I'll give it to Todd. 4 The next one, the voter filled in ovals 5 consistently using a pencil. In the presidential 6 contest, they filled in an oval for a candidate 7 and then filled in the oval for the write-in and 8 wrote in the candidate's name. 9 We have treated these, as discussed 10 earlier, as covering up the write-in oval so 11 that's not viewed as an overvote, meaning that the 12 candidate is counted. 13 However, in the contest for the 15th 14 Congressional District, inconsistent with what the 15 voter did in the presidential vote, the voter did 16 not mark any of the four candidates, but did fill 17 in the write-in bubble and then did not write in a 18 write-in candidate, but wrote in a regular 19 candidate's name. 20 And so the question is whether that 21 write-in vote should be counted as a regular vote 22 for the candidate. 23 CHAIRMAN PREISSE: Did the voter place 24 this piece of paper over the vote?</p>

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<p>1 MR. DAMSCHRODER: No, no, the staff did, 2 over the write-in bubble for president, so that 3 would not be determined as an overvote when it was 4 scanned. 5 CHAIRMAN PREISSE: I see. And that 6 first ballot we worked on, there was a check by 7 the presidential candidate, and a write-in and a 8 check by the write-in? 9 MR. DAMSCHRODER: In the first instance, 10 the first ballot, the person wrote in the 11 candidate's name but didn't check the oval, and 12 that failed to win a majority. 13 CHAIRMAN PREISSE: Because there was 14 internal inconsistency with the inaccurate -- 15 MR. DAMSCHRODER: Correct. 16 CHAIRMAN PREISSE: And to continue on my 17 comment about it, the two inconsistencies, one you 18 pointed to precedent in that we can avoid the 19 overvote, or that we're avoiding the overvote, 20 it's pretty clear and cut in there; but this in 21 the 15th Congressional District, it is 22 inconsistent with the rest of this voter's 23 methodology, in my opinion. 24 So any discussion on that one, what you</p>	<p>1 MR. ANTHONY: Mr. Chair, I move, based 2 on the review of the ballot number X003, the Board 3 determines that it was the intent of the voter to 4 cast a vote for the rest of the ballot. 5 MS. MARINELLO: Second. 6 MR. DAMSCHRODER: Okay. That's for the 7 rest of the ballot. All in favor say aye. 8 (Board votes unanimously.) 9 MR. DAMSCHRODER: And the motion 10 carries. 11 The next is 004. The problem on this is 12 the Supreme Court contest in the bottom of the 13 left-hand column on that back page. The voter 14 clearly and consistently filled in ovals, and in 15 this contest it appears that both ovals are filled 16 in and that there's additional marking outside of 17 one of the other ovals, I think trying -- I 18 think -- to potentially indicate the voter's 19 intent. But I think there's a question on that, 20 so that's presented to the Board for your review. 21 CHAIRMAN PREISSE: It looks to me like 22 they marked it, decided they didn't want to mark 23 it, marked the other one, and put a check by the 24 one they wanted to count.</p>
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<p>1 reviewed? 2 MR. ANTHONY: I looked at it, and it 3 looked like whoever voted there put an oval, made 4 their own oval. So based on review of the ballot 5 number X003, the Board determines that it was the 6 intent of the voter to cast a vote for -- and we 7 should separate this in two, I would imagine. 8 MR. DAMSCHRODER: Yeah, I think the 15th 9 is the only question. 10 MR. ANTHONY: -- for the 15th 11 Congressional District where they placed Mary Jo 12 Kilroy as the candidate by writing her name and 13 making her own oval. 14 MS. MARINELLO: I second. 15 CHAIRMAN PREISSE: We should do a roll 16 call vote. 17 MR. DAMSCHRODER: Okay. Mr. Anthony. 18 MR. ANTHONY: Yes. 19 MR. DAMSCHRODER: Mr. Colley. 20 MR. COLLEY: No. 21 MR. DAMSCHRODER: Ms. Marinello. 22 MS. MARINELLO: Yes. 23 MR. DAMSCHRODER: Mr. Preisse. 24 CHAIRMAN PREISSE: No.</p>	<p>1 MR. ANTHONY: Mr. Chair, based upon 2 review of the ballot number X004, the Board 3 determines that it was the intent of the voter to 4 cast a, I guess, ballot for the entire ballot. I 5 don't think that's -- 6 MR. DAMSCHRODER: So essentially that 7 contest would remain as an overvote. 8 MR. ANTHONY: As an overvote. 9 CHAIRMAN PREISSE: So you're not 10 persuaded by my reasoning? 11 MR. ANTHONY: I am persuaded by it, but 12 it really doesn't matter, it looks like an 13 overvote to me. 14 MS. MARINELLO: Second. 15 CHAIRMAN PREISSE: So the issue is that, 16 interpreting Mr. Anthony's motion, to indicate 17 that that's an overvote? 18 MR. DAMSCHRODER: Yes. 19 CHAIRMAN PREISSE: Okay. My sense is 20 that voter here changed his or her mind, crossed 21 it out, filled in that bubble, and checked it. 22 As I reflect on the last time we did 23 this, we were to reach consensus in situations 24 like this, for that sort of narrative was applied</p>

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<p>1 to what appeared to have happened, but that's how 2 I feel. 3 MR. ANTHONY: That's a good way to feel. 4 MR. DAMSCHRODER: So if this motion 5 fails, the motion to treat it as an overvote fails 6 to win a majority, another motion could always be 7 made. 8 MR. ANTHONY: Then let me take that 9 motion off the table, and I would like to make -- 10 then my motion would be to count the rest of the 11 ballot and leave that one race as an overvote. 12 MR. DAMSCHRODER: So second, Kim? 13 MS. MARINELLO: Second. 14 CHAIRMAN PREISSE: Okay. We have a 15 motion and we have a second. Let's have a little 16 discussion so we're all clear on what we're doing, 17 if we can be. 18 Now, you wish your motion to ask the 19 questions to whether this ballot should be 20 counted, except for this race in question, the 21 Supreme Court case? 22 MR. ANTHONY: That's correct. 23 CHAIRMAN PREISSE: If that motion 24 passes, that's what will happen. If it fails, the</p>	<p>1 subsequent ballots. 2 MR. ANTHONY: Haven't been reasonable 3 with the other two. 4 CHAIRMAN PREISSE: I point to the 5 Secretary of State's recent directive that calls 6 to consistency. Let's see, we have a motion on 7 the -- 8 MR. DAMSCHRODER: I think the motion on 9 the floor by Mr. Anthony is to essentially run the 10 ballot through the scanner as it is, resulting in 11 an overvote for that contest. 12 Correct me if I'm wrong, Mr. Anthony. 13 MR. ANTHONY: You did a good job at 14 that, sir. 15 MR. DAMSCHRODER: Thank you, sir. 16 CHAIRMAN PREISSE: Do you wish to confer 17 on that? What do you think? Do you have an 18 opinion on that? 19 MR. COLLEY: What's yours? 20 CHAIRMAN PREISSE: I think reasonable 21 people, when they're feeling reasonable, could 22 agree that that voter wished to vote for O'Connor, 23 accidentally voted Russo, and changed his or her 24 mind. Is that what appears to have happened there</p>
Page 27	Page 29
<p>1 Board could consider a secondary motion. 2 Looking to Matthew for a nod. 3 MR. DAMSCHRODER: Yes. 4 CHAIRMAN PREISSE: Which would, I 5 anticipate, be made by someone, by me, that would 6 suggest we can determine the voter's intent there 7 and count the entire ballot. If that passed, so 8 be it. And if it failed, there could be a third. 9 MR. DAMSCHRODER: I think it's unlimited 10 debate and unlimited motions. I think if we run 11 the ballot through as it is right now, all the 12 contests are going to be read as properly voted 13 and it's going to read as an overvote for that one 14 Supreme Court contest. 15 CHAIRMAN PREISSE: So it won't count at 16 all? 17 MR. DAMSCHRODER: Not for that one 18 contest. 19 CHAIRMAN PREISSE: That one contest? 20 MR. DAMSCHRODER: Right. 21 CHAIRMAN PREISSE: Well, I'm hoping to 22 establish a cooperative precedent that where the 23 voter's intent may be able to be agreed upon by 24 reasonable people, that we could do that in</p>	<p>1 to you? 2 MR. COLLEY: Mm-hmm. 3 CHAIRMAN PREISSE: Well, for the sake of 4 conscience, a clear conscience, I'm going to -- 5 let's call the question. 6 MR. DAMSCHRODER: All right. 7 Mr. Anthony. 8 MR. ANTHONY: Yes. 9 MR. DAMSCHRODER: Mr. Colley. 10 MR. COLLEY: No. 11 MR. DAMSCHRODER: Ms. Marinello. 12 MS. MARINELLO: Yes. 13 MR. DAMSCHRODER: Mr. Preisse. 14 CHAIRMAN PREISSE: No. 15 MR. DAMSCHRODER: And so failing to get 16 a majority on that, as it stands, the ballot is to 17 be read as is, unless there are any other -- 18 CHAIRMAN PREISSE: Well, I would, in the 19 interest of providing all of us a second 20 opportunity to serve our consciences and 21 intentions, including my own, I move that based 22 upon the review of ballot X004, it appears that 23 the voter attempted to correct his or her initial 24 marking and indicate to those who would be viewing</p>

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1 the ballot later that he or she wished to cast a
 2 vote for Maureen O'Connor.
 3 I think that that is a reasonable
 4 conclusion, based on the markings, and I would
 5 move that said ballot be counted, including that
 6 race as marked for Maureen O'Connor.
 7 I need a second, Michael.
 8 MR. COLLEY: Second.
 9 MR. DAMSCHRODER: Any discussion on the
 10 motion?
 11 (No response.)
 12 MR. DAMSCHRODER: Mr. Anthony.
 13 MR. ANTHONY: No.
 14 MR. DAMSCHRODER: Mr. Colley.
 15 MR. COLLEY Yes.
 16 MR. DAMSCHRODER: Ms. Marinello.
 17 MS. MARINELLO: No.
 18 MR. DAMSCHRODER: Mr. Preisse.
 19 CHAIRMAN PREISSE: Yes.
 20 MR. DAMSCHRODER: And resulting in a
 21 tie, majority not being found, the ballot will be
 22 counted as it is with the overvote, unless there's
 23 any other motions before the Board.
 24 CHAIRMAN PREISSE: Okay.

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1 MR. DAMSCHRODER: The next is ballot
 2 X005. The voter consistently marked the ballot by
 3 darkening in all the ovals for the candidates.
 4 There is an overvote for president, but that's not
 5 at issue. What is at issue is the marking for
 6 question number one, Constitutional Amendment,
 7 where instead of marking yes or no consistent with
 8 the other markings on the ballot, the voter put an
 9 oval over the word "yes," inconsistent with the
 10 other markings on the ballot.
 11 CHAIRMAN PREISSE: Now, what happens in
 12 that?
 13 MR. DAMSCHRODER: If that ballot was run
 14 through the scanner right now, the presidential
 15 contest would be overvoted, which is, I think,
 16 clear. And then for Issue 1, it would be an
 17 undervoted contest because the voter did not fill
 18 in the oval for yes or no.
 19 CHAIRMAN PREISSE: So it's consistently
 20 incorrectly filled out, except for two instances,
 21 the presidential would be an overvote and then not
 22 counted at all?
 23 MR. DAMSCHRODER: Correct. And the
 24 overvote, I think it was just an overvote. The

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1 question really is with Issue No. 1.
 2 CHAIRMAN PREISSE: So the question would
 3 be to count it as is?
 4 MR. DAMSCHRODER: Yeah.
 5 MR. ANTHONY: Mr. Chair, based upon
 6 review of ballot number X005, the Board determines
 7 that it was the intent of the voter to cast a
 8 ballot -- or how should we do it?
 9 MR. DAMSCHRODER: The question is if
 10 Issue 1 is voted or not. I think staff's
 11 recommendation in this instance is that the voter,
 12 having consistently marked the rest of the ballot,
 13 did not fill in the oval for Issue 1; so
 14 therefore, we have the scanner just reading it as
 15 an undervoted contest.
 16 MR. ANTHONY: All right. So how do I
 17 say that?
 18 MR. DAMSCHRODER: Count ballot number
 19 X005 as marked.
 20 MR. ANTHONY: As marked? All right.
 21 That's my motion.
 22 MR. DAMSCHRODER: Second?
 23 MS. MARINELLO: And I second that.
 24 MR. DAMSCHRODER: All in favor say aye.

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1 (Board votes unanimously.)
 2 MR. DAMSCHRODER: Motion carries.
 3 The next is ballot X006, which is
 4 troublesome. The voter used any number of
 5 different methods consistently inconsistently
 6 marking his or her ballot, including the use of an
 7 orange highlighter, check marks, filled-in ovals,
 8 circles, and other various markings.
 9 MR. ANTHONY: Just a creative voter.
 10 MR. DAMSCHRODER: Yes.
 11 MR. ANTHONY: She wanted us to --
 12 whoever it was, wanted us to talk about her
 13 ballot, right?
 14 MR. DAMSCHRODER: That's right.
 15 (Laughter.)
 16 CHAIRMAN PREISSE: So what happens in
 17 the scanning of this where there's coloring in?
 18 MR. DAMSCHRODER: It will pick up the
 19 markings and the oval that were made with the
 20 black ink without a problem.
 21 CHAIRMAN PREISSE: But we have
 22 inconsistency in these other --
 23 MR. DAMSCHRODER: Right. And so the
 24 Board could choose to run it through a scanner and

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<p>1 it will -- I mean, the scanner will read those 2 where the check marks have been made in the ovals; 3 and the contests that are overvoted, are 4 overvoted. But it's consistently inconsistently 5 marked. 6 MR. ANTHONY: Yeah, this could be one of 7 the issues we see from voting at home and you 8 can't have another ballot to fix it up. 9 MR. DAMSCHRODER: Well, and we give them 10 in the instructions -- I think it is something 11 that does happen, particularly when folks are 12 voting at home and they maybe are rushed trying to 13 get it back by the deadline, but we do provide in 14 the instructions that they can contact the Board 15 of Elections for additional replacement ballots. 16 I think up to three total ballots, if my memory 17 serves, to correct any errors, or they can come to 18 Vets or they can come here. 19 CHAIRMAN PREISSE: And was it the 20 inconsistency in the markings that flagged this 21 one out to us, or the Issue 1 -- 22 MR. DAMSCHRODER: The overvote in Issue 23 1 is what brings it to the Board today; but, 24 again, it's consistently inconsistently marked.</p>	<p>1 of the contest, then the presidential contest only 2 will be overvoted. 3 And, again, the voter marked ovals for 4 two candidates, then wrote "no" under them, put 5 the date and what purports to be the voter's 6 initials, and then voted a different oval. 7 MR. ANTHONY: So why did you guys remake 8 this one? 9 MR. DAMSCHRODER: It's being brought to 10 the Board today because of the presidential 11 contest. 12 MR. ANTHONY: Okay. 13 CHAIRMAN PREISSE: These other votes for 14 the judicial contest with the X, those would be 15 counted? 16 MR. DAMSCHRODER: Mm-hmm. 17 CHAIRMAN PREISSE: So the question is 18 determining that voter's intent, even though they 19 sort of spoiled portions of the ballot? 20 MR. DAMSCHRODER: Right. 21 CHAIRMAN PREISSE: They filled in the 22 rest of it consistently -- 23 MR. DAMSCHRODER: Right. 24 CHAIRMAN PREISSE: -- within the bounds</p>
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<p>1 We're not dealing with any other contests. 2 CHAIRMAN PREISSE: Other than? 3 MR. DAMSCHRODER: Other than Issue 1, 4 which will read as an overvote at this point. 5 MR. ANTHONY: Mr. Chair, based upon 6 review of ballot number X006, the Board determines 7 that it was the intent of the voter to cast the 8 ballot as marked. 9 MS. MARINELLO: Second. 10 MR. DAMSCHRODER: All in favor say aye. 11 (Board votes unanimously.) 12 MR. DAMSCHRODER: Next is ballot X007, 13 which has the majority of the contests are marked 14 using filling in the oval, with the exception of 15 the presidential contest where the voter filled in 16 the oval for two candidates then wrote "no" under 17 both of those ovals, then filled in a different 18 candidate for president. 19 And then for three of the judicial 20 contests, instead of filling in the oval, the 21 voter used an X through the oval. At this point, 22 those three judicial contests, if scanned as is, 23 will read as votes for those candidates, unless 24 the Board votes to remake the presidential portion</p>	<p>1 of reason, because the X is in the filled-in 2 bubbles, or fairly consistent. 3 MR. ANTHONY: Fairly consistent. So for 4 that presidential race -- what do we do with this 5 one, again? 6 MR. DAMSCHRODER: Well, I think the 7 opinion of staff is that based on the note 8 provided to the Board, right now it will read as 9 an overvote, but I think the staff's 10 recommendation would be that the voter's intent is 11 to vote for Obama, having filled in two other 12 ovals, appearing to have marked over it so the 13 markings are inconsistent with the rest of the 14 ballot, and writing his little note there saying 15 "no." 16 MR. ANTHONY: I gotcha. Mr. Chair, 17 based upon review of the ballot number X007, the 18 Board determines that it was the intent of the 19 voter to cast his ballot as marked. Would 20 that be -- 21 MR. DAMSCHRODER: Maybe add that it's 22 not an overvoted contest for president, but that 23 it's a vote for Obama. 24 MR. ANTHONY: Okay. As marked, it is</p>

