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APPEARANCES:

Franklin County Prosecutor's Office
By Mr. Harold J. Anderson, III,
Assistant Prosecuting Attorney
Civil Division-Environmental
373 South High Street
Columbus, Ohio 43215

On behalf of the Board.

ALSO PRESENT:

Ms. Suzanne Brown,
Executive Assistant to the Board.

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Monday Afternoon Session,
June 3, 2013.

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DIRECTOR ANTHONY: I would like to call
the Franklin County Board of Elections meeting to
order.

I will do the roll-call. Kim Marinello.

MEMBER MARINELLO: Here.

DIRECTOR ANTHONY: Zachary Manifold.

MEMBER MANIFOLD: Here.

DIRECTOR ANTHONY: Douglas Preisse.

CHAIRMAN PREISSE: Here.

DIRECTOR ANTHONY: Bradley Sinnott.

MEMBER SINNOTT: Yes.

DIRECTOR ANTHONY: Mr. Chairman, we are
all here and accounted for.

First item on the agenda is approval of
the minutes for the May 22, 2013, meeting.

MEMBER SINNOTT: Mr. Chairman, I move the
Board approve the minutes of the May 22, 2013,
meeting of the Franklin County Board of Elections as
submitted.

DIRECTOR ANTHONY: Is there a second?

MEMBER MANIFOLD: Second.

1 DIRECTOR ANTHONY: All those in favor.
2 Motion carries. I will pass this around for
3 everybody to sign.

4 The next item on the agenda would be the
5 certification of the May 7 Primary Special Election
6 recount we had for Groveport-Madison School District.

7 DEPUTY DIRECTOR WALCH: You were just
8 passed out the results of the conducting the recount
9 on May 29. There were -- there was no change in the
10 vote from our official canvass but because we did do
11 a recount we need you all to certify the results of
12 said recount but there were no changes from the
13 official numbers.

14 CHAIRMAN PREISSE: Good news.

15 MEMBER MARINELLO: Mr. Chairman, I move
16 the Board certify the results of the recount of
17 May 29 in the Groveport-Madison School District Levy
18 as submitted by the staff.

19 DIRECTOR ANTHONY: Is there a second?

20 MEMBER MANIFOLD: Second.

21 DIRECTOR ANTHONY: All those in favor.

22 DEPUTY DIRECTOR WALCH: Bill, I am going
23 to pass to each of the members an additional
24 certification form there. They are going to sign off

1 on that. That's just for us to send to the Secretary
2 of State's Office just as we did with the official
3 canvass a couple of weeks ago.

4 DIRECTOR ANTHONY: All right. The next
5 item on the agenda a couple of weeks ago Dana, Steve
6 Buelin, and I sat down with a group called Hands On
7 as to the grandparent program, and I gave you guys a
8 packet that looks like this on your desk in front of
9 you. It looks just like that. And the group is
10 pretty interesting. It's for people older than I
11 who --

12 CHAIRMAN PREISSE: Are you sure?

13 DIRECTOR ANTHONY: No, I am not really
14 sure. I think we are about the same age. And it's a
15 grandparent organization where they are recruiting
16 grandparents or people who can be foster grandparents
17 to children in our community, and they thought it
18 would be a good idea if they could tap into our poll
19 workers and wanted to at least mail or do a mailing
20 or be part of one of our mailings to our poll workers
21 seeing if they want to be foster grandparents.

22 The program actually pays them some -- a
23 small stipend and gives them -- they take a physical
24 and make sure that they are capable of doing it. And

1 I said we would bring it before you all. Basically
2 that's what -- that's what it is. They just want to
3 be able to have yet another mechanism in which to get
4 volunteers or folks to become foster grandparents,
5 and all we would do is probably put it in -- either
6 mail it to our poll workers or e-mail it to our poll
7 workers.

8 DEPUTY DIRECTOR WALCH: We thought about
9 doing both e-mail and mailing to them. The other
10 reason Bill and I thought this was a good idea to be
11 part of was that we talked with them about not only
12 them -- us communicating with our current poll
13 workers to participate in their program but allowing
14 them to communicate with their current members about
15 possibly being a poll worker for us in the future.

16 So we thought this was one of those
17 unique situations where a partnership with this
18 organization provided us a potential win/win
19 situation of helping them get folks to help with the
20 foster parents -- grandparents program and maybe
21 helping us recruit some poll workers which is always
22 something we are interested in doing.

23 DIRECTOR ANTHONY: And the last -- on the
24 right-hand side of your booklet that I gave you in

1 the very last thing this is the thing about mailing
2 out. You see a nice piece that would be part of --
3 they would provide this to us, and we would put it in
4 our mailing to our poll workers.

5 CHAIRMAN PREISSE: So the foster
6 grandparent program is a program of this group called
7 Hands On?

8 DEPUTY DIRECTOR WALCH: That's correct,
9 Mr. Chairman.

10 DIRECTOR ANTHONY: Yes.

11 CHAIRMAN PREISSE: And Hands On is a
12 stand-alone nonprofit?

13 DIRECTOR ANTHONY: No. I don't think so.
14 Hands On is -- you know, they have a building right
15 on Spring Street, and they do a lot of stuff, not
16 just foster grandparent stuff. That's part of what
17 they do. That's my understanding. And I guess part
18 of --

19 CHAIRMAN PREISSE: Here is what I was
20 looking for, the foster grandparent program is funded
21 to Hands On Central Ohio by the Corporation for
22 National Community Service.

23 DIRECTOR ANTHONY: Okay, yeah. There you
24 go. Glad you found that.

1 MEMBER SINNOTT: Well, Bill, Dana, here
2 would be my only concerns. Sounds like a great
3 organization, it has a noble purpose, but there are
4 probably a thousand volunteer organizations in the
5 community about which that could be said. And so
6 when 50 of them come to us next week and say will you
7 mail promotional material about our volunteer
8 opportunities to your poll workers, what are we going
9 to say?

10 Now, if there is kind of a quid pro quo
11 deal that we are striking here with this particular
12 senior activist group where they are going to promote
13 being poll workers in Franklin County in exchange for
14 our promoting the volunteer service opportunities
15 that this group has, that might be the basis for
16 distinction.

17 DEPUTY DIRECTOR WALCH: And that is
18 something we specifically did speak with them about
19 knowing that they would have a -- an already built
20 constituency that is part of their program that would
21 potentially be readily available for us to tap into
22 too. We did specifically mention that to them of if
23 we were to reach out to our organization, so to
24 speak, being already established poll workers, if

1 they would do the same to their organization and help
2 with our promotion of getting poll workers, and they
3 said they absolutely would be part of that with us.

4 DIRECTOR ANTHONY: And this is kind of an
5 extension of our Champions of Democracy Program where
6 we are out there aggressively finding any way we can
7 to recruit poll workers. This is just yet another
8 recruitment tool.

9 If, in fact, other groups wanted us to do
10 something like this, we would talk to them about a
11 dual -- you know, if you help us, we'll help you. We
12 are constantly recruiting good poll workers because
13 as you know, each election cycle it becomes more and
14 more complicated than the one prior.

15 CHAIRMAN PREISSE: So the commitment we
16 are making -- we would be making to them would be to
17 distribute at our minimal expense to our -- how many
18 poll workers?

19 DEPUTY DIRECTOR WALCH: Last election we
20 had about 4,800.

21 CHAIRMAN PREISSE: Not all of them over
22 55 years of age.

23 DEPUTY DIRECTOR WALCH: That's correct.
24 We would segment that list to only those that would

1 be eligible.

2 MEMBER MANIFOLD: Is this included in
3 other mailers?

4 DEPUTY DIRECTOR WALCH: Yes. This would
5 be included in something -- what we envisioned doing
6 they approached us doing this in the paychecks that
7 go out to the poll workers post election which would
8 be a mailing we already do anyways, and the county
9 does do that, where you give them an insert and
10 include that in the mailing free of charge to us.

11 But the timeline when Bill and I met with
12 them that just wasn't going to work so what we
13 proposed to them over the summer us doing e-mail to
14 every poll worker of this age group, that we do have
15 an e-mail to just giving them information on it, and
16 then post election when checks go out to poll
17 workers, include something in it also. So it would
18 be in mailings we were already going to do to our
19 poll workers anyways.

20 MEMBER SINNOTT: I can see how this group
21 might be incorporated into that Champions of
22 Democracy broader project as a way of recruiting poll
23 workers, but before approving the Board's inclusion
24 of promotional material for this group in its

1 communication with its poll workers, I would like to
2 know what it is that Hands On would be doing for the
3 Board by way of assisting with poll worker
4 recruitment so we know what it is they are doing for
5 us in exchange for our doing something for them.

6 And then I think that becomes the basis
7 for distinction between this incident and dozens or
8 hundreds of other requests we might get from
9 worthwhile community groups.

10 CHAIRMAN PREISSE: That's what I was
11 about to articulate, the same kind of desire to have
12 a little more understanding, but I also want to
13 applaud you guys for looking. We all know how
14 difficult it is to get the poll workers we need so I
15 applaud you for looking for what I believe would and
16 hope would be a mutually beneficial relationship.

17 But I think this would be good to
18 understand a little more how hopefully this is an
19 established mutually beneficial relationship that
20 could last through time even.

21 DEPUTY DIRECTOR WALCH: That makes sense
22 to me. Bill, does it make sense to you?

23 DIRECTOR ANTHONY: Yes. And Steve Buelin
24 talked to the guys a little bit more in detail than

1 you and I did and I am seeing if he is here now and
2 if he is here, I will tell him to come into the
3 meeting and explain it to you because we will be here
4 for a full hour anyway so if you want to table this
5 and then Steve could?

6 DEPUTY DIRECTOR WALCH: I think that's --
7 we've got -- I mean, we have got another meeting
8 later this week where we could address this or
9 certainly if we could address it at our July meeting
10 also. I mean, there is nothing horribly time
11 sensitive to it. We could put it on the agenda for a
12 future meeting, Bill, and have some more detail as
13 has been asked for by the Board.

14 DIRECTOR ANTHONY: Yeah.

15 MEMBER SINNOTT: I move to remove the
16 matter from the table.

17 MEMBER MARINELLO: Second.

18 DIRECTOR ANTHONY: All those in favor.

19 All right. The next item on the agenda
20 is the discussion of possible referral to the County
21 Prosecutor. And Dana.

22 DEPUTY DIRECTOR WALCH: I passed out
23 to -- thanks, Bill. I passed out to each of you a
24 big giant spreadsheet here. I think you are all

1 familiar with what -- that we have been working on
2 this for quite some time. Most of the cases that are
3 in this spreadsheet came from -- when we certified
4 the election, that there were a number of people that
5 were identified as having both voted and sent a
6 ballot and then casting a provisional ballot also on
7 election day so that provisional ballot had been
8 rejected and on our spreadsheet shows the number of
9 folks who had done both of those.

10 I sent a letter -- as you were all aware,
11 I sent a letter back out earlier this year to each
12 one of those people we had on our list asking for an
13 explanation as to why they cast both an absentee
14 ballot and then attempted to vote on election day via
15 the provisional ballot also.

16 Before you is the spreadsheet, about 10
17 pages or so, which is a summary of each one of the
18 cases that we have. The first -- basically I have
19 broken that into two groups, the first group being
20 those individuals that attempted more than one ballot
21 and the second group are those that through research
22 I found did not attempt to vote more than one ballot.

23 We had some cases in which the evidence I
24 put together showed, for example, we showed the voter

1 having voted at the vote center, but we do not show
2 the actual card that they would have filled out, the
3 absentee request form that they would have filled out
4 and presented to a machine judge when they went to
5 vote at the early vote center.

6 The only logical explanation that -- and
7 these are voters that are in group 2. The only
8 logical explanation for that the voters went to the
9 early vote center, filled their card out, checked in
10 at the check-in counter, and then as you know, we did
11 have some very long lines on certain days of the vote
12 center, the only explanation that makes any sense to
13 that is that when they got over in the machine line,
14 they left and never actually gave their card to
15 the -- to the machine judge because otherwise we
16 would have a copy of that card.

17 Those are voters that would be in group 2
18 where I was able to track down the fact that they
19 did -- it does not appear they actually did vote,
20 attempt more than one ballot in any way.

21 But those in group 1 are ones that it
22 does appear, through my research, did attempt to do
23 an absentee ballot of some sort, whether it be in
24 person at the early vote center or via mail and then

1 voted in some other way too.

2 The first six on this sheet that you have
3 here are six individuals who voted by absentee by
4 mail and then also did vote at early ballot at the
5 vote center. We were -- we interviewed those six
6 individuals. Todd Wedekind and Randy Tarr in the
7 back there interviewed those six individuals and a
8 summary of their responses are here on the
9 spreadsheet, and Todd also passed out to each of you
10 the actual testimony when they came in.

11 We did this in front of a court reporter
12 as the Secretary of State has ordered us to do in
13 these instances and so you have those -- the reason
14 they gave for why they did this. There is a -- there
15 is a 7 -- 7th -- No. 7 which is the first one on the
16 second page is a young lady that voted an absentee
17 ballot in Montgomery County, and we have evidence to
18 believe she also voted via absentee ballot here in
19 Franklin County and just due to the timing involved
20 both of those were able to get through the system.

21 The six voters on the first page we were
22 able to get those votes out of the voting machines at
23 the vote center between the time of the unofficial
24 canvass and the official canvass as we had been

1 coding those ballots for that first week of -- when
2 early voting is taking place and we have what is
3 known as golden week, we are required by the
4 Secretary of State's Office to code every ballot that
5 is cast on a DRE voting machine just in case somebody
6 comes and registers to vote and then votes and then
7 later is found out, for example, they may not be a
8 citizen, it's just an example of what might take
9 place, that we can go back and get that ballot out of
10 the machine.

11 For consistency sake for our poll workers
12 at the early vote center, we went ahead and just
13 continued to code those ballots throughout the entire
14 process. So when these six cases came before us,
15 that we had seen they had already voted an absentee
16 ballot by mail and that they did slip through the
17 system up at the early vote system, we were able to
18 get those votes back out again.

19 The remainder of those in group 1 are
20 people that were identified through your provisional
21 ballot process as having cast an absentee ballot and
22 then also being given a provisional ballot on
23 election day and filling out a provisional ballot
24 also. And some of them did respond to my letter and

1 gave a reason for it. Some of them did not. But in
2 the comment section I've noted that those that did
3 respond back. If they did not respond back, you will
4 see in the response portion of this but also then the
5 research I found and was able to find as to what
6 actually occurred in each one of these cases.

7 CHAIRMAN PREISSE: So to summarize, in
8 group 1 including the first 7 and the subsequent
9 cases which constitute 95 voters, we have evidence
10 that each of them attempted to vote more than once.

11 DEPUTY DIRECTOR WALCH: Yes. That's
12 correct.

13 CHAIRMAN PREISSE: In group 2 you've
14 determined that it is not the case -- along the lines
15 principally such as you just described that they may
16 have checked in at the early voting center, but it
17 did not go -- we have no evidence that they voted
18 there.

19 DEPUTY DIRECTOR WALCH: That's correct.
20 The main one was that it appears they got out of line
21 or some others. The way we -- the way we categorized
22 a provisional vote cast at the early vote center did
23 flag it on our system that they may have attempted
24 more than one ballot but, in fact, they did not. It

1 was just simply a coding issue on our voter
2 registration system and those -- some of those that
3 would be another example of ones that could be in
4 group 2 just as another example of through my
5 research I was able to find those folks did not
6 appear to cast more than one ballot.

7 CHAIRMAN PREISSE: And what we are being
8 asked as a Board here to do and is our responsibility
9 is to consider the irregularities described in some
10 detail in group 1 and those irregularities attempting
11 to vote more than once that rise to the level of
12 referral to the County Prosecutor for further
13 consideration.

14 DEPUTY DIRECTOR WALCH: That's correct,
15 Mr. Chairman.

16 CHAIRMAN PREISSE: I am going to ask that
17 the Assistant County Prosecutor here the level -- to
18 articulate for us a new -- what kind of
19 irregularity -- how you -- how the Prosecutor
20 understands what would constitute an irregularity.

21 MR. ANDERSON: An irregularity in this
22 case would be somebody that voted or attempted to
23 vote twice.

24 CHAIRMAN PREISSE: Okay.

1 MEMBER SINNOTT: Dana, so I'm clear on
2 that point, when you -- group 1 involves a list of
3 individuals who tendered two ballots in the same
4 election in every instance.

5 DEPUTY DIRECTOR WALCH: That's correct.

6 MEMBER SINNOTT: We have proof of that.

7 DEPUTY DIRECTOR WALCH: We do.

8 MEMBER SINNOTT: The individuals in group
9 2 we have no proof that they tendered more than one
10 ballot in the same election.

11 DEPUTY DIRECTOR WALCH: That's correct.

12 MEMBER SINNOTT: That's the distinction
13 between the two groups.

14 DEPUTY DIRECTOR WALCH: That's correct.

15 CHAIRMAN PREISSE: Thanks for doing this
16 detailed, in depth review. It took a lot of effort I
17 think from the transcripts too that Randy and Todd
18 had prepared.

19 MEMBER MANIFOLD: I guess I have a few
20 questions.

21 MEMBER SINNOTT: Please go ahead.

22 MEMBER MANIFOLD: So we kind of built in
23 levels here in group 1 like taken to the next step.
24 Essentially the first 7 are ones that we have done --

1 brought people in, done interviews, and then 8
2 through 95 we kind of haven't taken that -- we
3 haven't gone to that step before we -- I just want to
4 make that distinction there is kind of two groups in
5 group 1.

6 I guess if you want to elevate people,
7 then 8 through 95 I guess we could have come in and
8 do interviews with our bipartisan staff to kind of
9 figure out what's going on. I mean, I guess it's all
10 over who responded and who didn't. But besides that,
11 I mean, I guess to say somebody attempted to vote two
12 ballots, it's kind of very intent oriented. I guess
13 you are trying to make intent because clearly there
14 is a revised --

15 MR. ANDERSON: It's a strict liability
16 statute; 99 statute is a strict liability statute.
17 It does not require mens rea. It doesn't require
18 intent.

19 MEMBER MANIFOLD: Okay. There is clearly
20 a Revised Code section. In fact, this Board gives
21 out advice prior to the election. We tell people --
22 I mean, I've had staff -- I've sat there and heard us
23 tell people your ballot -- we don't have it in the
24 system. We received it under section -- Revised Code

1 Section whatever, 3509.09. Yeah, I mean, I guess
2 we've cited this to voters to tell them -- our staff
3 tells people you should -- if we don't have your
4 ballot, we recommend to people you should go vote a
5 provisional ballot on election day. We've made that
6 recommendation. It's been a long-term, longstanding
7 recommendation of this staff of this Board.

8 That's all -- I've heard it come out of
9 people's mouths here on election day. If we don't
10 have your ballot even though, you know, it's in the
11 mail, you should go vote a provisional ballot under
12 Revised Code 3509.09. I have a hard time telling
13 those people that all of a sudden, oh, you are
14 breaking the law because we have been telling you to
15 go do that.

16 CHAIRMAN PREISSE: You know, to your
17 point, Zach, about the difference between the first
18 several, seven I think, and the rest I would not
19 actually draw a definitive type of distinction
20 because my understanding is these irregularities in
21 the first seven we have a little bit more background
22 information because we had the interviews in the
23 office. There's still -- these still, I think, rise
24 to the level of irregularities which I believe would

1 then compel us to refer them to the Prosecutor for
2 his office's further consideration.

3 We have to my mind substantial and
4 sufficient evidence in the following piece of group 1
5 to say the same thing. You proved we have proof of
6 irregularities. As to your reference to 3509.09, it
7 does appear to me there was an attempt by the
8 legislature to consider the ability for a voter if he
9 thinks his absentee ballot -- if he had good
10 reason -- he or she had good reason to believe it may
11 have been consumed by the dog or lost in the mail,
12 but I don't think as I read that section that
13 absolves all voters from attempting to vote twice.

14 But we don't know the circumstances
15 behind those attempts other than what we have in a
16 piece of paper is hard evidence there were many
17 attempts to do so.

18 And that section, Harold, can you read --
19 could you refer to that, the section specifically
20 that is operative here?

21 MR. ANDERSON: Yes. It's 3599.12. "No
22 person shall do any of the following: Voter or
23 attempt to vote in any primary, special, or general
24 election in a precinct in which that person is not a

1 legally qualified elector; vote or attempt to vote
2 more than once at the same election by any means,
3 including voting or attempting to vote both by absent
4 voter's ballots under division (G) of section 3503.16
5 of the Revised Code and by regular ballot at the
6 polls at the same election, or voting or attempting
7 to vote both by absent voter's ballots under division
8 (G) of section 3503.16 of the Revised Code and by
9 absent voter's ballots under Chapter 3509, or armed
10 service absent voter's ballots under Chapter 3511 of
11 the Revised Code at the same election."

12 CHAIRMAN PREISSE: Thank you.

13 MEMBER SINNOTT: Mr. Chairman, first of
14 all, I would be shocked and disappointed if our staff
15 is telling voters to tender two votes in the same
16 election. That's advice that should never be given
17 and I've never heard it given by our staff and hope
18 that isn't said by a Board of Election's staff.

19 Let me sort of share my perspective and
20 maybe reorient our conversation on this. We often
21 use the term refer for prosecution in instances of
22 double voting or other election irregularities but
23 that's really not what the Board does under statute.

24 Instead what the Board does is

1 investigate irregularities and report the facts of
2 its investigation to the prosecuting attorney. The
3 prosecuting attorney then exercises what is commonly
4 referred to as prosecutorial discretion in
5 determining whether there has been a violation of the
6 law and a case that should be presented to a court of
7 competent jurisdiction for consideration.

8 So as a Board of Election, we are not
9 making any decisions about whether there ought to be
10 a prosecution. Instead we have investigated an
11 irregularity, set of irregularities, and we have
12 uncovered certain facts. The important fact about
13 group 1 is that each individual in that group has
14 tendered more than two ballots in the same election.
15 Each one of these individuals has tried to vote
16 twice. That is an irregularity that I think ought to
17 be reported to the County Prosecutor so the County
18 Prosecutor can investigate and make a determination
19 about whether there has been an offense subject to
20 prosecution.

21 Now, it may be that everybody in group 1
22 went out, had some really compelling story about why
23 he or she thought it was okay to vote twice in
24 November of 2012. That's for the Prosecutor to

1 decide.

2 When you have voted twice in an American
3 election, you have committed an irregularity. You
4 have done something out of the norm. Every American
5 understands it is one person and one vote. So as to
6 everybody in group 1, this Board has investigated,
7 discovered an irregularity, and I believe these
8 irregularities ought to be forwarded to the
9 Prosecutor for further investigation and any decision
10 about prosecution.

11 Those in group 2 are different because we
12 don't have any proof to provide to the Prosecutor
13 that they did that which no voter should do, vote
14 twice in the same election.

15 So as to what this Board's function is,
16 we are not making any decision about prosecution,
17 about the quality of the explanation for having voted
18 twice, about mens rea, or anything of the sort. We
19 are simply investigating irregularities and reporting
20 the facts to the Prosecutor so the Prosecutor can
21 perform his job.

22 CHAIRMAN PREISSE: I would even go so far
23 to say that having read the transcripts that Randy
24 and Todd created in interviews in some of the other

1 cases, it would appear to me that there are some
2 innocent attempts here, but I don't accept the
3 responsibility to weed out some irregularities and
4 not others or some partial information from others,
5 but as long as we have enough evidence it is an
6 irregularity, to my mind we send it to our
7 contemplative Prosecutor for his -- so he can
8 exercise his responsibility.

9 MEMBER MANIFOLD: I guess my problem with
10 the two bubbles here is 1 through 7 has gone through
11 a bipartisan investigation of staff. 8 through 95
12 has not gone through a bipartisan investigation of
13 staff.

14 Before anything I definitely would want
15 to go through this process we set up for the first
16 seven voters. I'm just --

17 CHAIRMAN PREISSE: What --

18 MEMBER MANIFOLD: -- receiving some sort
19 of -- I mean, we have already set this up for at
20 least seven that we thought we were looking at.

21 I think we should have bipartisan staff
22 go through this and I guess you'll -- you know, I
23 guess I'll -- I definitely want 8 through 95 just
24 because I haven't even -- I got this spreadsheet a

1 long time ago. Look, guys when we get this updated,
2 I want to see it and go through it. I haven't
3 drilled down. I haven't looked at hardly any of this
4 other than the seven that we had already kind of
5 elevated to that next level so, I mean, I'm
6 comfortable with looking at these seven and talking
7 about that today.

8 I just -- I know we are going to have a
9 meeting on Thursday. I want to, I guess, talk about
10 8 through 95 or whatever or figure out something. I
11 guess I would like some time to research this and
12 look through this document.

13 DEPUTY DIRECTOR WALCH: If I might just
14 real quick in full disclosure, everything, you know,
15 that has taken place on this, the Hamilton County
16 Board of Elections did have a tie vote that occurred
17 on this very same issue. The Secretary did give a
18 decision in that last week that I was going to pass
19 around just, again, just for your --

20 MEMBER MANIFOLD: I haven't seen it.

21 DEPUTY DIRECTOR WALCH: -- just for your
22 knowledge. What I'm passing to you now the top page
23 are impacts too, Mr. Sinnott. The first page is the
24 decision and the tie vote. The bottom part is the

1 opinion that was requested of the Hamilton County
2 Board of Elections of the Hamilton County Prosecutor
3 Deters and his response to it. But the top part is
4 the actual tied vote that was just rendered late last
5 week from Secretary Husted on matters very similar.
6 Did I give you enough copies of that? Did everybody
7 get a copy?

8 MEMBER MARINELLO: Yeah.

9 MEMBER SINNOTT: To Zach's question,
10 Dana, consider group 1, 8 through the end, you have a
11 column on the spreadsheet that shows response. So
12 has the Board attempted to communicate with voters 8
13 through 95?

14 DEPUTY DIRECTOR WALCH: Yes. Those
15 would -- those would all be voters that received my
16 letter and that responded so in that column if they
17 did respond, what their response was or if they did
18 not, it is so indicated in that column, yes.

19 MEMBER SINNOTT: So we have already
20 contacted voters 8 through 95 and said explain why
21 you voted twice in the same election.

22 DEPUTY DIRECTOR WALCH: Yes, that's
23 correct and there were some people that through their
24 response, they are in group 2, for example, there

1 were folks that responded back to that letter by
2 saying, yeah, you know, I went up there that last
3 couple of days at the vote center and the line was,
4 you know, really long and I checked in but then I got
5 out of line. I looked back through our records at
6 the office and confirmed that was true and that is
7 just one example but an example of where that voter
8 is in group 2 because that's -- that is what appears
9 happened.

10 MEMBER SINNOTT: What puts that voter in
11 group 2 is not your subjective satisfaction with that
12 explanation. We have no proof that that voter
13 tendered two ballots in the same election.

14 DEPUTY DIRECTOR WALCH: That's correct.

15 CHAIRMAN PREISSE: So your point about
16 the bipartisan interviews which I think were
17 conducted well but I don't think there is anything of
18 a partisan nature in the attempt to get a response
19 from the remainder of group 1. And if, as I do, a
20 Board member believes that irrespective of the
21 explanations learned through the interviews, in
22 office interviews, were still -- this member still
23 feels compelled to refer these several to the
24 prosecutor because they still even with the

1 explanations while edifying do not wash away the fact
2 pattern here of irregularity, namely, attempting to
3 vote twice.

4 Then I don't see why there should be a
5 distinction because we do have sufficient evidence of
6 the remainder as well in group 1 to -- to call them
7 irregular to prove that they did have a vote twice.

8 So we have more information about the
9 first several and that information, as I said several
10 minutes ago, causes me to think, hum, some of these
11 look a little less nefarious than they had at face
12 value at first but there is still irregularities and,
13 again, to this Member's judgment, I would support
14 sending those to the Prosecutor for his and his
15 team's review as well as the remainder of the first
16 95.

17 MEMBER MARINELLO: These interviews are
18 for the first six people?

19 MEMBER MANIFOLD: Seven.

20 DEPUTY DIRECTOR WALCH: We did -- there
21 is six that are interviews. There was one that just
22 submitted a letter; she sent us a notarized letter.

23 Is that correct, Todd?

24 MR. WEDEKIND: There were actually two.

1 DEPUTY DIRECTOR WALCH: Two that did
2 letters.

3 MR. WEDEKIND: Correct.

4 DEPUTY DIRECTOR WALCH: Five that did
5 interviews.

6 MR. WEDEKIND: Five that came through.

7 MEMBER MANIFOLD: 8 through 95, have they
8 just received the one letter, the one notice?

9 DEPUTY DIRECTOR WALCH: Yes, that's
10 correct.

11 MEMBER MANIFOLD: Okay. I guess because
12 when we discussed this before, we talked about, you
13 know -- we kind of, I guess, took those people to
14 that next step so that it would be a little more
15 serious to know what's happened. We sent notarized
16 letters if they didn't respond. We've taken quite a
17 few steps to make sure people -- I would hate to see
18 somebody got a letter -- I mean, most of these
19 never -- at least 8 through 95 we have no response
20 for a large amount of them, I guess half. I would
21 hate to see, you know, these 80 some -- or whatever,
22 95 -- 80 some voters, I guess they had gotten one
23 letter and then all of a sudden they are talking --
24 they have been referred to the Prosecutor. They have

1 to hire an attorney. They have to do all these
2 things.

3 I guess I think we have already set this
4 thing up where we sent notarized letters, and the
5 first several got treated this way before they got
6 referred to a Prosecutor.

7 MEMBER MARINELLO: Right.

8 MEMBER MANIFOLD: I don't disagree maybe
9 they will end up getting referred to the Prosecutor.
10 I just think when half of them haven't even responded
11 and they just had one letter, who knows if they even
12 saw the one letter that they got. I mean, it wasn't
13 notarized.

14 CHAIRMAN PREISSE: That's the point I was
15 trying to make is if, as I believe, the first several
16 must be referred to the Prosecutor in any event,
17 there's conceivably no way we would learn something
18 in the following 80 some interviews that would
19 cause -- because we already have sufficient evidence,
20 proof that they tried to vote twice there is nothing
21 that we could learn that would lower the standard of
22 irregularity in my mind.

23 MEMBER SINNOTT: And I share that view as
24 to the particular subject that's before us, that is,

1 are we going to show to the Prosecutor the results of
2 our investigation.

3 As to everybody in group 1, we have proof
4 that that person tendered two votes. They are all
5 double voters. At this point they need to explain
6 why they double voted to the Prosecutor.

7 MEMBER MANIFOLD: I guess I would -- I
8 still tend to think that I don't agree with the
9 classification that they have double voted.

10 MEMBER MARINELLO: It sounds too harsh.

11 MEMBER MANIFOLD: I still would go
12 back -- not only we talked about the example where
13 the Board doesn't have a ballot which is 3509, what
14 is it, (B)(1) where we haven't received a ballot,
15 we've had staff tell people, oh, we don't have it;
16 you should vote, 3501(B)(1), or where we have told
17 people to do this.

18 Not only that but then it goes to (2)
19 which says "If the registered elector appears to vote
20 in that precinct and that elector has requested an
21 absent voter's ballot for that election but the
22 director has not received a sealed identification
23 envelope purporting to contain that elector's voted
24 absent voter ballots for that election, the elector

1 shall still be permitted" -- "shall be permitted to
2 cast a provisional ballot under 3505.181. I mean --

3 MR. ANDERSON: That still doesn't excuse
4 the double vote though. The double voting provision
5 in the .99 section of Title 35 is a strict liability
6 offense. So even though there is a procedure for
7 having you deal with the ballot, it still doesn't
8 give somebody permission to vote twice.

9 MEMBER MARINELLO: Yeah. We don't want
10 anybody to vote twice but that's when the
11 provisional -- if they don't understand or you never
12 know, just like what they say here, provisional is
13 provisional given that they didn't --

14 MR. ANDERSON: Our opinion differs. The
15 Prosecutor's opinion differs.

16 MEMBER MANIFOLD: I guess do we have --

17 MR. ANDERSON: We concur fully with the
18 Prosecutor Deter's opinion.

19 MEMBER MANIFOLD: I have got to tell you
20 I haven't looked fully through this so, I mean, I --
21 I definitely want to take time to look this over. I
22 need to look at the Secretary's -- what we need to do
23 as far as investigations and I guess I have a lot of
24 reading to do. I didn't know it was going to be on

1 today. I apologize. I guess I have a lot to do. I
2 have a lot of homework.

3 MEMBER SINNOTT: Have all Board members
4 had an opportunity to speak?

5 CHAIRMAN PREISSE: Any other questions?

6 DIRECTOR ANTHONY: Well, I have been
7 quiet. Of course, I have an opinion on everything.
8 I have an opinion on everything. Excuse me. I have
9 been quiet so long I lost my voice.

10 Mr. Manifold made a statement that the
11 Board employees have pretty much told folks and have
12 allowed folks who cast a provisional ballot cast an
13 absentee ballot -- or requested an absentee ballot
14 that they can go and vote a provisional ballot. As a
15 matter of fact, we code our poll books to that fact,
16 that if a person shows up on election day having
17 requested an absentee ballot, that they are to vote a
18 provisional ballot so we instruct folks that even if
19 you have requested an absentee ballot and whether you
20 voted or not voted, we so mark you in the poll book.

21 So when you show up, we don't send you
22 away. We allow you to vote a provisional ballot, and
23 we have been doing this since I can remember. And,
24 now, what I am hearing is we have been doing it wrong

1 and I don't think we have been doing it wrong because
2 just because a person shows up on election day, their
3 name is in the poll book, and as having received an
4 absentee ballot and whether they voted or not is --
5 just received an absentee ballot, we tell them to
6 send them away, you cannot vote.

7 MR. ANDERSON: Well, that's incorrect.

8 DIRECTOR ANTHONY: Hold on. It may be
9 incorrect but this is how we have been -- we have
10 trained the poll workers. We've trained our staff,
11 you know, that if they show up on election day, have
12 them request an absentee ballot, they are in our poll
13 book as provisional voter. We do not tell them sorry
14 for your luck; go home.

15 MR. ANDERSON: And, in fact, that would
16 be correct if they requested an absentee ballot but
17 that does not excuse a voter from voting twice if
18 they come in and say "I've mailed it."

19 DIRECTOR ANTHONY: Hold on. Let me
20 finish. And most of that's -- folks I see on this
21 list, it appears to me, and I am concerned about your
22 investigation when you guys start doing the
23 investigation exactly what type -- the Prosecutor's
24 Office, I have some grave concerns on what type of

1 investigation will be held because it's still been
2 our longstanding principle that just because
3 somebody -- and we catch it. They may have voted a
4 provisional ballot. You show up, you voted a
5 provisional ballot knowing that you had requested an
6 absentee ballot, mailed it in, but thinking it may
7 not have made it, it may not have postage on it or
8 whatever, and you vote anyway, you forgot you
9 requested it or your wife or your daughter mailed it
10 and you didn't know they mailed it, and so you vote a
11 provisional ballot on election day. All of a sudden
12 you voted twice. And according to what I'm hearing,
13 you've created voter fraud.

14 Well, I don't think that's -- that's
15 necessarily true because we then go through these
16 things and we check them because we allow it to
17 happen. We allow you to vote a provisional ballot so
18 then we check your provisional ballot against --
19 against the absentee ballots we have gotten in. And
20 if we see it, we pull it, and we do not count it.

21 Now, in the cases where we don't pull it
22 and we count it, that may be our error or may or may
23 not be our error, but it certainly isn't the voter's
24 error. So I think we are going down a slippery slope

1 here that we need to really be careful. If we are
2 going to investigate all these people, it better be a
3 real good investigation and not partial, not saying
4 that it will but.

5 MR. ANDERSON: I will pass on your
6 concerns to the Prosecutor, our investigations, to
7 Mr. O'Brien.

8 DIRECTOR ANTHONY: I have just got my
9 concerns. We've allowed this process to happen
10 for -- I have been on this Board for 13 years or
11 more, and we've done it this way for at least that
12 long. We allow -- we don't count the provisional
13 ballot if they have requested an absentee ballot.
14 That's why we mark the poll books. We don't say
15 don't let this voter vote because he requested an
16 absentee ballot.

17 CHAIRMAN PREISSE: With respect, Bill,
18 what you have described, and I think accurately so,
19 and I would venture all the Board members agree,
20 you're describing the effective following of the law
21 that we -- that we do. Zach's earlier commentary
22 about what Board members -- or rather staff may tell
23 voters late in the process I have made a note of it
24 too. That's a separate question. You've described

1 what should be happening and that is if somebody has
2 marked previously for whatever reason as a
3 provisional voter, then he or she should be able to
4 vote as a provisional voter. That's agreed upon.

5 DEPUTY DIRECTOR WALCH: And,
6 Mr. Chairman, I might, there is nobody on the list
7 who just simply because they requested an absentee
8 ballot and then voted a provisional, there's nobody
9 like that on the list. These all would have been
10 people who an absentee ballot was received by us.

11 I agree wholeheartedly with you, Bill.
12 We mark the poll books if you requested an absentee
13 ballot because there are times that the people lose
14 the absentee or whatever, just decide not to vote it
15 and didn't make up their mind until election day,
16 that they didn't cast the absentee ballot, and the
17 poll books, they are given a provisional ballot and
18 if we do see they did not turn in the absentee
19 ballot, that provisional ballot is counted.

20 CHAIRMAN PREISSE: Okay.

21 DEPUTY DIRECTOR WALCH: There is nobody
22 in here who simply is in here just for requesting an
23 absentee and then voting provisional.

24 MEMBER SINNOTT: This has been a healthy,

1 long discussion, has brought to light a need to
2 examine whether there should be training of the
3 Board's staff.

4 But in any event I don't know of any
5 additional inquiry by the Board that is going to be
6 enlightening in this juncture so noting that we have
7 discovered in Franklin County a group of 95 double
8 voters, and what I mean by that individuals who cast
9 more than one ballot in the same election, I move
10 that we report the facts of group 1, those 95 voters.

11 CHAIRMAN PREISSE: Just point of
12 information slot 8 is blank.

13 DEPUTY DIRECTOR WALCH: There are --
14 actually there are 90 because there are a few breaks
15 in there so there is actually 90 voters.

16 CHAIRMAN PREISSE: Thank you.

17 MEMBER SINNOTT: So the class of voters
18 is actually 90.

19 DEPUTY DIRECTOR WALCH: Correct.

20 MEMBER SINNOTT: Mr. Chairman, I move
21 that we refer -- report the facts of group 1 of these
22 90 double voters to the County Prosecutor for further
23 inquiry, investigation, and any decision about
24 prosecution.

1 CHAIRMAN PREISSE: Second.

2 DIRECTOR ANTHONY: We will do a roll-call
3 vote. Kimberly Marinello.

4 MEMBER MARINELLO: I abstain further --
5 or no.

6 DIRECTOR ANTHONY: Zachary Manifold.

7 MEMBER MANIFOLD: I am going to abstain.

8 DIRECTOR ANTHONY: Douglas Preisse.

9 CHAIRMAN PREISSE: Yes.

10 DIRECTOR ANTHONY: Bradley Sinnott.

11 MEMBER SINNOTT: Yes.

12 DIRECTOR ANTHONY: So we have got two
13 yeses and two abstentia.

14 MR. ANDERSON: It's a majority.

15 CHAIRMAN PREISSE: What's that?

16 MEMBER SINNOTT: We couldn't hear that
17 sidebar.

18 MR. ANDERSON: It's a majority vote in
19 the affirmative.

20 MEMBER MANIFOLD: I can't express how
21 disappointed I am, quite frankly. The document that
22 hasn't been bipartisan is looked at, gets laid upon
23 my desk at the beginning of this meeting, and decided
24 on a vote. That's just outrageous.

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CERTIFICATE

I do hereby certify that the foregoing is a true and correct transcript of the proceedings taken by me in this matter on Monday, June 3, 2013, and carefully compared with my original stenographic notes.

Karen Sue Gibson, Registered
Merit Reporter.

(KSG-5713)

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